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# Doing Business In... 2026

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**Contributing Editor**
Philip Tully
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Global Practice Guides

# Doing Business In...

Contributing Editor

Philip Tully

**Matheson LLP**

2026

# Chambers Global Practice Guides

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# INTRODUCTION

**Contributed by:** Philip Tully, **Matheson LLP**

**Matheson LLP** is the law firm of choice for internationally focused companies and financial institutions doing business in and from Ireland. Established in 1825 in Dublin, Ireland, Matheson LLP celebrates its 200-year anniversary in 2025. The firm has offices in Dublin, Cork, London, New York, Palo Alto and San Francisco, almost 900 people work across the firm's six offices, including 127 partners and tax principals and over 600 legal, tax and digital services professionals. The firm's expertise is spread across more than 30 practice groups. Its clients include over half of the world's 50 largest banks, seven of the world's ten largest asset managers and seven of the top ten global technology brands, and it has advised the majority of the Fortune 100 companies.

## Contributing Editor



**Philip Tully** is a partner in Matheson's tax department and is a member of the firm's international business group and US business group. He advises multinational corporations doing business in and from Ireland on all aspects of corporate tax. His main focus is on cross-border reorganisations, inward investment projects and cross-border tax transactions, as well as transfer pricing matters and tax disputes. He is a member of the Law Society of Ireland, the Irish Tax Institute and the International Bar Association.

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# INTRODUCTION

**Contributed by:** Philip Tully, **Matheson LLP**

## Introduction

The eighth edition of Chambers Global Practice Guides: Doing Business In... is published at a time when macroeconomic volatility and geopolitical instability have become the new normal for global enterprises.

Economic growth is weaker than initially projected in 2026, weighed down by the recent outbreak of conflict in the Middle East and its consequences, a sharp rise in energy costs, record depletion of global oil reserves and supply chain disruptions (see IEA Oil Market Report – May 2026). The full impact of war on the global economy remains to be seen but the spectre of inflation and a significant slowdown in economic growth looms.

Against this backdrop, international policymakers have been striving to achieve security and stability for global businesses in the areas of trade. A notable development in the first half of 2026 was the agreement of major trade deals between the EU and the US and the EU and India, in a bid to restore economic confidence amid ongoing tariff disputes. The legality of the tariff policies imposed by the US administration remains a contested issue both domestically and globally, but the willingness of stakeholders to engage in multilateral trade negotiations signals a constructive development.

On the tax front, the OECD's Side-by-Side Package has sought to bring clarity to the implementation of the Pillar Two rules for US headquartered multinational enterprises (MNEs). However, it remains to be seen whether this marks the final chapter of the OECD's minimum tax project or whether the "stocktake" exercise to be conducted in future years will see further changes to remove any unfair advantages between different countries. With most large MNEs required to register for Pillar Two taxes this year, the impact and efficacy of this global minimum tax regime will need to continue to be assessed.

One particular area of economic growth that remains resilient in 2026 is investment in generative AI. By all accounts, the so-called "AI boom" appears set to continue this year, with many tech players implementing cost efficiency plans in an effort to shift capital towards investment in AI. Investment in physical infrastructure and data centres to support the rapid advancements in AI also remains steady. However, there has been a marked increase in scrutiny on the potential costs of such investments, including constraints in energy supply and impact on energy costs. This industry is also seeing increased regulatory requirements, which may slow growth in this developing sector.

In terms of digital regulation, the EU is continuing to focus on simplification and competitiveness as Ireland takes over the reins of the EU Presidency in July. The EU bloc will seek to remove overlapping regulations and reduce compliance burdens for digital businesses operating within the region with targeted amendments to align the EU Data Act, GDPR and AI Act. These changes are with a view to boosting AI innovation in Europe so as to ensure that regulatory complexity does not contribute to the region falling behind its global peers.

What does remain clear this year is that it is imperative for businesses and investors to remain agile in yet another year of volatility. The economic and geopolitical environment is shifting faster than policymakers and regulators can keep up with, and the businesses best placed to manage the gap will be those that proactively monitor regulatory changes while remaining flexible in their planning and responses.

In the context of this global macro-economic environment, the 2026 edition of the Doing Business In... guide provides a concise summary of the key legal and tax considerations for doing business in countries around the world. It serves as an essential reference point for both lawyers and investors looking to understand the basic principles and legal frameworks of the relevant jurisdictions.

The contributing experts for each jurisdiction have followed a common template, allowing readers to easily compare and contrast different jurisdictions. The guide also summarises recent developments and updates that are of particular importance for those doing business in 2026.

We would like to thank all the participating contributors for their efforts in making this Doing Business In... guide such a vital resource and an essential component of the Chambers Global Practice Guides series.

# ANDORRA




## Law and Practice

**Contributed by:**
Oriol Giró, Laia Bertran, Yaumara Toledo and José Luis Andrés
**Emindset Law Firm**

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**Emindset Law Firm** is a business-focused law firm with a team of over 15 and key offices in Andorra and Barcelona, providing integrated legal advice on cross-border matters. Emindset has recognised expertise in commercial law, real estate, new technologies and entertainment law, enabling it to address the legal, regulatory and strategic aspects of complex transactions and innovative projects. Recent highlights include advising on three landmark real estate development projects in Andorra; acting on the acquisition of one of Spain's leading financial institutions; providing legal advice in connection with a feature film; and assisting the Government of Andorra with a major digital transformation initiative. The firm combines technical rigour, commercial insight and a highly responsive, multidisciplinary approach.

## Authors



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## 1. Legal System

### 1.1 Legal System and Judicial Order

Andorra's civil-law system is based primarily on the Constitution of 1993 as the supreme legal norm. Its private law has also been influenced by both Roman law and Catalan legal traditions. Case law is not formally binding, although decisions of the higher courts are highly persuasive.

The *Batllia* is the main first-instance court for civil, administrative and certain criminal matters, while the *Tribunal de Corts* primarily hears serious criminal cases. Appeals are generally decided by the High Court of Justice. The Constitutional Court, which is separate from the ordinary judiciary, reviews constitutional matters and protects fundamental rights. Once effective domestic remedies have been exhausted, individuals may also bring an application before the European Court of Human Rights concerning an alleged violation of the European Convention on human rights attributable to Andorra.

## 2. Restrictions on Foreign Investments

### 2.1 Approval of Foreign Investments

Foreign investment in Andorra is generally subject to prior administrative authorisation by the Andorran Government. Approval is required for incorporating or acquiring interests in Andorran companies, establishing branches or permanent establishments, and acquiring more than 10% of a company's capital or voting rights; subsequent changes above that threshold also require approval. Direct and indirect holdings are aggregated. Real estate investments always require prior approval, subject to limited inheritance and matrimonial-property exceptions. Applications are assessed against public order, national security, economic stability, environmental, housing, labour-market, public-health and anti-money laundering considerations. Real estate acquisitions are quantitatively restricted, while property development and tourist accommodation investments are subject to specific prohibitions or conditions. Regulated sectors, including finance, insurance and telecommunications, may require additional sector-specific approvals.

### 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

Foreign investors must submit a prior-authorisation application to the competent ministry, either directly or through an authorised representative. The filing must identify the investor, beneficial ownership and proposed investment, and include supporting corporate and transaction documents. Individuals must generally provide a valid passport and criminal-record certificate, duly legalised or apostilled as applicable. Additional documents may be required depending on whether the investment concerns a company, shareholding or real estate. The statutory decision period is two months, extendable by one further month, and the investment may only be completed after approval. Unauthorised investments may be declared null and void.

### 2.3 Commitments Required From Foreign Investors

Foreign investment approvals may be made subject to compliance with the conditions stated in the application and authorisation. In practice, investors may be expected to demonstrate effective economic activity, adequate financing, genuine business substance, employment creation, sustainability and consistency with Andorra's public and economic interests. Companies with foreign investment must generally commence effective activity within 18 months and comply with ongoing reporting and operational requirements. For certain real estate investments, commitments may include maintaining the asset, using it for an authorised business purpose or creating and preserving employment. The government has recently intensified its scrutiny and may reject projects that fail to meet statutory requirements or do not generate sufficient added value for Andorra.

### 2.4 Right to Appeal

A refusal of foreign investment authorisation is a reasoned administrative act and may be challenged for errors of law, fact, procedure or misuse of administrative discretion. The investor must generally file an administrative appeal before the government. Once the administrative route has been exhausted, judicial review may be sought before the Administrative Section of the *Batllia*.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

The principal corporate vehicles are the *societat de responsabilitat limitada* (SL) and the *societat anònima* (SA). Both may be incorporated by one or more shareholders, whose liability is generally limited to their capital contributions. An SL requires minimum share capital of EUR3,000, while an SA requires EUR60,000, fully subscribed and paid in. Both are governed by the shareholders' general meeting and may be managed by a sole director, joint or several directors, or a board of directors.

The SL is the most commonly used form because of its lower capital requirement and flexible governance, making it suitable for greenfield projects, family businesses, holdings and joint ventures.

The SA is generally preferred for larger projects, broader investment structures and businesses requiring more sophisticated governance. Certain regulated activities, particularly in the financial sector, must be carried out through an SA or another specifically prescribed legal form.

### 3.2 Incorporation Process

The process to set up a company generally begins with the reservation of the company name and, where applicable, obtaining prior foreign investment authorisation. The founders must then open an Andorran bank account and deposit the required share capital. Once the bank certificate and corporate documents are available, the articles of association are executed before an Andorran notary. The company is subsequently registered with the Companies Registry and obtains its tax and administrative identification details. Before commencing operations, it must complete the commercial opening procedure and secure any municipal or sector-specific authorisations required for its activity. In practice, the process usually takes approximately three to four months and remains relatively documentation-intensive. Administrative procedures are, however, being digitised in Andorra, with the objective of enabling more stages to be completed online.

### 3.3 Ongoing Reporting and Disclosure Obligations

Private companies are subject to ongoing filing and disclosure obligations. Changes to the management body, including appointments and removals, and amendments to the articles must generally be approved by the shareholders' general meeting, formalised before an Andorran notary and registered with the Companies Registry.

Companies must also file their annual accounts and periodically confirm or update their beneficial ownership information, which are publicly recorded in the Companies Registry and generally include key corporate data, as well as the identity of registered shareholders and directors. Failure to comply may result in sanctions and restrictions on further registry filings.

### 3.4 Management Structures

Andorran companies may be managed by a sole director, two or more joint directors, two or more several directors, or a board of directors. A sole director exercises the management and representation powers individually. Joint directors must act together in accordance with the articles, while several directors may generally bind the company independently. A board of directors is a collegiate body that adopts decisions collectively, subject to quorum and majority requirements, and may delegate specific powers where legally permitted. Andorran law therefore follows a flexible one-tier model rather than a mandatory two-tier structure.

### 3.5 Directors', Officers' and Shareholders' Liability

Directors may incur civil, administrative and, where their conduct constitutes an offence, criminal liability. They must act in the company's interests with the diligence of an orderly businessperson and the loyalty of a faithful representative, remain properly informed, participate actively in management and investigate irregularities.

Directors are liable for damage caused by acts or omissions contrary to law, the articles or their statutory duties, and liability may extend jointly to all participating directors, including de facto directors.

Andorran courts also recognise an exceptional doctrine comparable to "piercing the corporate veil", allowing the company's separate legal personality to be disregarded where it is used fraudulently, abusively or to evade legal obligations, potentially exposing shareholders or controlling persons to personal liability.

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

Employment relationships in Andorra are primarily governed by the Law on Labour Relations, alongside mandatory statutory minimum standards, individual employment contracts and, where applicable, collective bargaining agreements. Employment contracts may be indefinite or fixed-term and should clearly regulate the position, duties, remuneration, working time, probation, duration and termination conditions.

The parties retain contractual freedom, but they may not waive mandatory employee protections concerning matters such as salary, working hours, leave, equality and health and safety. Case law assists in interpreting these rules, while employment disputes fall within the civil jurisdiction.

The recruitment of non-resident foreign nationals is also subject to immigration quotas and work-authorisation requirements. In practice, available positions must generally be offered first to Andorran nationals and lawful residents before an employer may recruit from abroad.

### 4.2 Characteristics of Employment Contracts

Employment contracts must be concluded individually and in writing, irrespective of their duration or type; a purely verbal contract does not satisfy the statutory formalities. The contract should identify the parties and regulate the employee's position, duties, remuneration, working time, workplace, start date and any probationary period. Contracts may be indefinite or concluded under one of the legally recognised fixed-term or special arrangements.

Fixed-term contracts must state the objective reason for their temporary nature and the date or circumstances determining their expiry. Any contractual term that provides less favourable conditions than mandatory employment law or an applicable collective agreement is invalid.

### 4.3 Working Time

The statutory standard working week is 40 hours, although part-time and legally permitted flexible arrangements may apply. Under an irregular working-time system, daily work may not generally exceed ten hours or 48 hours per week, and minimum rest periods must be observed.

Overtime comprises hours exceeding the statutory, contractual or collectively agreed working time and is limited to 12 hours per week, 48 hours per month and 426 hours per year. It is generally voluntary for the employee, except in exceptional or force majeure

circumstances. Overtime must be paid with at least a premium or, with the employee's consent, compensated by equivalent paid rest.

### 4.4 Termination of Employment Contracts

Andorra is not an employment-at-will jurisdiction. Indefinite contracts may be terminated without cause subject to statutory notice and compensation, while fixed-term contracts normally end on the agreed date or upon completion of the relevant work. Employers may also dismiss employees for objective or disciplinary reasons, provided the legal grounds and procedural requirements under Law 31/2018 are met. Unjustified, defective or discriminatory dismissals may trigger increased compensation or nullity.

Collective redundancies arise when dismissals exceed the statutory workforce thresholds within 90 days. Employers must consult employee representatives, justify the measures and notify the Labour Ministry. An agreement is not mandatory; however, in its absence, prior administrative authorisation is required. Affected employees are entitled to the notice and compensation applicable to objective dismissal.

### 4.5 Employee Representations

Employers must inform employees of their role, duties and working conditions, which should be clearly stated in the written employment contract. They must also comply with ongoing obligations concerning remuneration, working time, health and safety, equality and any material changes affecting the employment relationship.

Employee representation is not mandatory in every company. However, companies with more than 30 employees must establish a works council elected by the workforce. Management must inform and consult that body on relevant employment, organisational and collective measures.

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/Employers

Employment income is taxed at a maximum rate of 10%, subject to statutory allowances and reductions. Employers must withhold and remit any applicable personal income tax.

Social security contributions to the *Caixa Andorrana de Seguretat Social* (CASS) amount to 22% of gross salary: 6.5% is borne by the employee and withheld from salary, while 15.5% is paid by the employer. These contributions cover the general healthcare and retirement benefits. No separate payroll tax generally applies.

### 5.2 Taxes Applicable to Businesses

Companies incorporated in Andorra are generally subject to corporate income tax on worldwide profits at a standard rate of 10%, subject to available exemptions, deductions and special regimes.

Businesses supplying goods or services are also subject to the general indirect tax (IGI), normally at 4.5%, with reduced and increased rates for certain transactions.

Dividends distributed by Andorran companies are generally not subject to withholding tax, while payments to non-residents, including certain interest and service income, may attract non-resident income tax at up to 10%, subject to domestic exemptions and tax treaties.

Real estate transfers may trigger transfer tax, generally between 3% and 4%, and foreign real estate investment may also be subject to a specific tax (currently 6%).

As of June 2026, Andorra has not implemented the OECD Pillar Two GloBE rules or a domestic top-up tax, and no Andorran regime appears on the OECD Central Record as qualifying for safe-harbour status.

### 5.3 Available Tax Credits/Incentives

Andorra already offers a competitive tax framework, with maximum rates of 10% for corporate and personal income tax and a general IGI rate of 4.5%.

Corporate incentives include deductions for creating permanent employment and for qualifying new investments made in Andorra.

Eligible holding companies may benefit from an exemption on qualifying foreign dividends and capital gains, rather than a general 80% rebate. An 80% reduction applies to certain international intangible, trading and intragroup financial activities, subject to strict substance, activity and authorisation requirements.

Tax-neutral treatment may also be available for qualifying corporate reorganisations.

### 5.4 Tax Consolidation

Tax consolidation is available on an optional basis for qualifying Andorran corporate groups. All eligible group companies must agree to apply the regime, consolidate their financial statements and satisfy the statutory parent–subsidiary ownership requirements. The parent company must notify the Ministry of Finance before the beginning of the first tax period concerned and assumes responsibility for the group's consolidated corporate tax filing.

### 5.5 Thin Capitalisation Rules and Other Limitations

Andorra does not apply a traditional debt-to-equity thin-capitalisation ratio. However, net financial expenses are generally deductible only up to certain percentage of tax-adjusted EBITDA, subject to a minimum deduction and statutory exemptions. Related-party financing must also comply with arm's-length transfer-pricing rules.

### 5.6 Transfer Pricing

Transfer pricing rules apply to transactions between related parties, which must be valued on an arm's-length basis. The Andorran tax authorities may adjust the taxable base where agreed terms differ from market conditions, and taxpayers must retain sufficient supporting documentation.

### 5.7 Anti-Evasion Rules

Andorra applies anti-evasion rules allowing the tax authorities to disregard simulated, abusive or artificial arrangements lacking economic substance. These measures are supported by transfer-pricing, beneficial-ownership, anti-money laundering and tax-information exchange rules. Breaches may lead to reassessment, interest, penalties and, in serious cases, criminal liability.

### 5.8 Tariffs

Banking and financial services are subject to an increased IGI rate of 9.5%. Foreign real estate investment is also taxed at 6% for qualifying limited acquisitions and 10% for other investments exceeding the statutory limits. Current developments are influenced by Andorra's closer economic integration with the EU.

## 6. Competition Law

### 6.1 Merger Control Notification

Andorra does not currently apply a general merger-control notification regime based on turnover or market-share thresholds. However, acquisitions, mergers or joint ventures involving foreign investors require prior Government authorisation where they constitute foreign investment, including the acquisition of more than 10% of an Andorran company. Corporate mergers and demergers must also be registered with the Companies Registry. Where the tax-neutral restructuring regime is applied, the transaction must be notified to the tax authorities before execution of the relevant public deed.

### 6.2 Merger Control Procedure

The process usually begins with due diligence, negotiation and preparation of a common merger plan and merger balance sheets. The governing bodies approve the plan, which is then submitted to the shareholders of each participating company for approval. Any required independent expert reports and creditor protection procedures must be completed before implementation.

Where the tax-neutral restructuring regime applies, the transaction must be notified to the tax authorities before execution of the public deed and must be supported by valid economic reasons. The merger is then formalised before an Andorran notary and registered with the Companies Registry, producing universal succession of assets and liabilities. Foreign investment authorisation may also be required. Depending on complexity and approvals, the process generally takes three to four months.

### 6.3 Cartels

Law 13/2013 on effective competition and consumer protection prohibits agreements, concerted practices and decisions that restrict competition, including price-fixing, market-sharing and output limitations. It also prohibits abuse of a dominant position (see **6.4 Abuse of Dominant Position**), subject to limited statutory exemptions and de minimis rules.

The regime applies to conduct carried out in Andorra and to conduct implemented abroad where it produces or may produce anti-competitive effects in the Andorran market. Infringements may result in administrative sanctions, invalidity of the relevant arrangements and civil liability.

### 6.4 Abuse of Dominant Position

Law 13/2013 prohibits the abuse of an individual or collective dominant position where conduct harms consumers or unjustifiably forecloses the market. Prohibited practices include unfair pricing, limiting production or market access, discriminatory conditions and contractual tying.

Andorran law does not establish a separate general prohibition of abuse of economic dependency, although such conduct may fall within dominance, unfair competition or general contractual rules.

The regime applies whenever the conduct produces effects in Andorra, irrespective of where it occurred or the parties' domicile.

## 7. Intellectual Property

### 7.1 Patents

According to Andorran legislation, a patent protects an invention in any technological field that is new, involves an inventive step and is capable of industrial application. Protection lasts 20 years from the filing date, subject to payment of annual renewal fees. Applications are filed with the Andorran Trademarks and Patents Office and must include a description, claims, drawings where applicable and an abstract. Following formal examination, the application is normally published after several months and, once the applicable requirements and fees are satisfied, the patent is granted and registered. Patent holders may bring civil proceedings seeking cessation of infringement, injunctions, damages, seizure or destruction of infringing goods and publication of the judgment; invalid patents may be challenged before the courts.

### 7.2 Trade Marks

According to Andorran law, a trade mark is any sign capable of distinguishing the goods or services of one undertaking from others.

Registration with the Andorran Trademarks and Patents Office (OMPA) grants protection for ten years, renewable indefinitely for successive ten-year periods. The application must identify the mark, owner and relevant Nice classes, after which OMPA conducts a formal examination and registers the mark if statutory requirements are met.

Infringement may be challenged through civil proceedings seeking injunctions, damages, seizure or destruction of infringing goods and publication of the judgment.

As Andorran registration protects only within Andorra, internationally active businesses should also consider obtaining an EU trade mark or other foreign protection.

### 7.3 Industrial Designs

Andorra currently has no specific national registration system granting standalone industrial design rights. A product's appearance may nevertheless be protected automatically by copyright where it qualifies as an original artistic work. Additional protection may arise through three-dimensional trademarks, patents for technical features and unfair competition rules. Rights holders may seek injunctions, damages, withdrawal or destruction of infringing products and, where applicable, criminal remedies.

### 7.4 Copyright

Copyright protects original literary, artistic and scientific works, including software and audiovisual creations, from the moment of creation. No registration is required, although evidence of authorship and creation date is advisable.

Economic rights generally last for the author's lifetime plus 70 years. Infringement may give rise to injunctions, damages, withdrawal or destruction of unlawful copies and, in serious cases, criminal liability.

### 7.5 Others

Trade secrets are safeguarded through confidentiality, contractual and unfair competition rules, provided reasonable measures are taken to preserve secrecy. It is recommended to document and notarise the relevant IP, register protectable rights whenever possible, and maintain clear evidence of creation and ownership. Agreements with developers, employees and contractors should expressly regulate confidentiality, IP assignment, permitted use and ownership of improvements.

## 8. Data Protection

### 8.1 Applicable Regulations

Data protection is primarily governed by Qualified Law 29/2021 on Personal Data Protection, as amended by Qualified Law 12/2024, and its implementing regulations. The framework is closely aligned with the EU GDPR and regulates lawful processing, transparency, data-subject rights, security, international transfers, breach notification and accountability. Compliance is supervised by the Andorran Data Protection Agency (APDA).

The GDPR may also apply directly to Andorran companies offering goods or services to, or monitoring, individuals in the European Economic Area. In practice, many Andorran businesses align their policies and procedures with GDPR standards to ensure consistent cross-border compliance.

### 8.2 Geographical Scope

Andorran data protection law applies to processing carried out by entities established in Andorra and may also apply to foreign companies targeting or monitoring individuals in Andorra.

Conversely, Andorran companies offering goods or services to, or monitoring, individuals in the European Economic Area (EEA) may be directly subject to the GDPR.

International transfers are restricted where the destination does not provide an equivalent level of protection, unless appropriate safeguards or a statutory exception applies. As Andorra benefits from an EU adequacy decision, data may generally flow freely between Andorra and the EEA.

### 8.3 Role and Authority of the Data Protection Agency

The Andorran Data Protection Agency (APDA) is the independent supervisory authority responsible for monitoring and enforcing compliance with Andorran data protection law. It may issue guidance, advise public bodies and organisations, investigate complaints, conduct inspections and order controllers or processors to remedy infringements.

The APDA may also impose corrective measures and effective, proportionate and dissuasive administrative sanctions. Its supervisory powers do not extend to processing carried out by courts when acting in their judicial capacity.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

Andorra's principal forthcoming legal development is the proposed Association Agreement with the European Union, which remains subject to completion of the European approval process and approval by referendum in Andorra.

If approved, the Agreement will require the progressive incorporation of substantial parts of the EU internal-market acquis into Andorran law, subject to the adaptations and transitional periods negotiated for the country.

This represents one of the most significant legal and institutional challenges in Andorra's recent history and will affect numerous areas, including financial services, company law, employment, consumer protection and competition.

No definitive referendum or entry-into-force date has yet been confirmed. Nevertheless, many recent Andorran laws are already being drafted in alignment with European standards.

# Trends and Developments

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**Emindset Law Firm** is a business-focused law firm with a team of over 15 and key offices in Andorra and Barcelona, providing integrated legal advice on cross-border matters. Emindset has recognised expertise in commercial law, real estate, new technologies and entertainment law, enabling it to address the legal, regulatory and strategic aspects of complex transactions and innovative projects. Recent highlights include advising on three landmark real estate development projects in Andorra; acting on the acquisition of one of Spain's leading financial institutions; providing legal advice in connection with a feature film; and assisting the Government of Andorra with a major digital transformation initiative. The firm combines technical rigour, commercial insight and a highly responsive, multidisciplinary approach.

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### Andorra: A Small Country with an Increasingly International Outlook

For many international entrepreneurs, investors and professionals, Andorra is no longer simply a mountain destination between Spain and France. Over the past decade, the Principality has developed into an increasingly sophisticated jurisdiction for establishing businesses, managing investments and relocating families. Its appeal rests on a distinctive combination of political stability, personal security, competitive taxation, high-quality public services and proximity to the main markets of Western Europe.

Andorra nevertheless remains a small country with limited land, housing and administrative capacity. Its recent development has therefore created a difficult policy question: how can the country remain open to international investment without allowing growth to undermine social cohesion, access to housing or the natural environment?

Recent legislation reflects this tension. The Government continues to welcome international businesses and residents, particularly where their projects create employment, technological development, economic diversification or lasting value. At the same time, foreign investment, real estate acquisitions and immigration are being examined more closely than in the past, and some barriers have been implemented.

The result is a jurisdiction that remains attractive but is becoming increasingly selective. Foreign investors should no longer approach Andorra merely as a low-tax destination. A successful project increasingly requires a credible business plan, demonstrable economic substance and a clear understanding of the country's administrative and regulatory expectations.

#### *Why Andorra continues to attract investors and residents*

Andorra's tax system remains one of its most visible advantages. Corporate income tax and personal income tax are generally capped at 10%, while the standard indirect tax, known as the *Impost General Indirecte* (IGI), is 4.5%. These rates compare favourably with those of most neighbouring European jurisdictions.

Taxation, however, is only part of the picture. Andorra also offers a stable constitutional system, the euro as its official currency, a regulated financial sector and a legal system that has progressively incorporated international standards on transparency, taxation, money laundering and data protection. Andorra is one of the safest countries in the world and benefits from an exceptional quality of life, a pristine natural environment and strong political stability, making it a truly unique jurisdiction. The country also benefits from a customs union with the European Union for industrial products and a network of double tax treaties that has expanded its capacity to support cross-border business.

For individuals and families, the practical attractions are equally important. Andorra is widely valued for its safety, natural environment, education system, healthcare, sporting infrastructure and quality of life. It is geographically close to Barcelona and Toulouse while retaining the advantages of a smaller, more personal business and social environment. Andorra also has a

national heliport, which is expected to begin operating regular helicopter services this year, as well as the Andorra–La Seu d'Urgell Airport in Spain, located approximately ten minutes from the Andorran border and offering scheduled flights to Madrid and Palma de Mallorca.

The country is therefore particularly attractive to:

- entrepreneurs establishing businesses with an international or digital dimension;
- family-owned companies and holding structures;
- investors seeking access to Andorra's domestic economy;
- professionals working in technology, consultancy, finance, sport or creative industries;
- high-net-worth individuals seeking genuine residence in a stable European jurisdiction; and
- families seeking a secure and multilingual environment.

These advantages should not be interpreted as allowing artificial or purely formal structures. Andorran authorities increasingly expect companies to demonstrate genuine economic substance, with tax residence determined by the factual circumstances and companies required to maintain genuine governance, business activity and decision-making arrangements. Banks, immigration authorities, tax authorities and foreign investment regulators likewise expect investors to demonstrate the commercial rationale behind their proposed structures.

### *The process to set up a company in Andorra*

The two principal corporate forms are the limited liability company, or *societat de responsabilitat limitada* (SL), and the public limited company, or *societat anònima* (SA). The limited liability company requires minimum share capital of EUR3,000 and is the vehicle most commonly used by entrepreneurs, family businesses, holding companies and joint ventures. The public limited company requires minimum share capital of EUR60,000 and is generally used for larger projects, more complex investment structures and certain regulated activities.

Both vehicles offer limited liability to their shareholders, subject to the usual exceptions for fraud, abuse or unlawful conduct. They may be incorporated by one or more shareholders and managed by a sole director, joint or several directors, or a board of directors. The appropriate structure depends on the number of investors, the decision-making model, the need for checks and balances, and any regulatory requirements applicable to the activity.

In practical terms, incorporating an Andorran company normally involves the following stages:

- reserving the proposed company name;
- obtaining foreign investment authorisation, where required;
- completing bank compliance and opening a capital account;
- depositing the required share capital before an Andorran bank;
- preparing the articles of association and beneficial ownership documentation;
- executing the incorporation deed before an Andorran notary;
- registering the company with the Companies Registry;
- obtaining tax and administrative identification;
- registering the relevant trade or commercial activity; and
- obtaining any "communal", professional or sector-specific permits.

Foreign investment approval is usually required where a non-Andorran investor incorporates a company or acquires a qualifying participation in an existing company. Direct and indirect interests are considered, and acquisitions exceeding the statutory participation threshold require prior authorisation. The authorisation must be obtained before the investment is completed.

Applicants are required to identify the investor, ultimate beneficial owners, source of funds and proposed investment. Individuals generally provide an apostilled or legalised passport and criminal record certificate. Corporate investors must produce incorporation documents, registers, ownership charts and evidence identifying the natural persons who ultimately control the investment.

The authorities may also request information about the business plan, financing, intended premises, projected employees and economic contribution of the project. The more complex or strategically sensitive the investment, the more important it becomes to provide a coherent and properly documented application from the outset.

### *Administrative process and practical timelines*

A straightforward incorporation may still require approximately three to four months, although timing varies considerably. Foreign investment approval, banking compliance, the availability of documents and the nature of the business activity are the principal variables.

The most time-consuming and complex step is often obtaining the criminal record certificate, as it is generally required both from the applicant's country of nationality and from their most recent country of residence. In some jurisdictions, this process can be particularly cumbersome and may require the applicant to complete the formalities in person.

Documents issued abroad frequently require an apostille or legalisation and, depending on their language, a sworn translation. Corporate ownership chains may require several levels of supporting records. Applicants should therefore avoid beginning the process with incomplete or soon-to-expire documents.

Andorra's company formation process remains relatively documentation-intensive. Different stages involve the government, banks, notaries, the Companies Registry, municipal authorities and, where applicable, professional or sectoral regulators. Effective coordination between these actors is crucial.

The country is also progressively digitalising public administration. More procedures can now be initiated or managed electronically, and the stated policy direction is towards a more integrated online system. Nevertheless, investors should not yet assume that company formation can be completed entirely through a single digital platform.

### *Moving to Andorra through an active business*

Incorporating a company and obtaining residence are legally distinct processes. Ownership of an Andorran company does not automatically grant the shareholder the right to reside or work in the country; a separate immigration authorisation is required.

Entrepreneurs who intend to manage and operate their own company commonly apply for residence and work as self-employed persons. This route generally requires the applicant to hold a qualifying ownership interest, form part of the management body and demonstrate that the company has a registered and active commercial establishment in Andorra.

The applicant will normally need to provide identification documents, a criminal record certificate, evidence of accommodation, proof of the corporate investment and documentation concerning the company's activity. A medical examination, municipal registration and enrolment with the Andorran Social Security Fund are also typically required. In addition, a non-refundable payment of EUR50,000 must be made to the Andorran Financial Authority.

The immigration process is subject to annual quotas. This is an important practical consideration, as satisfying the substantive requirements does not necessarily guarantee that an authorisation will be immediately available. In 2026, the government reduced the quota for certain self-employed residence permits as part of its controlled-growth policy.

Applicants must also meet continuing requirements after receiving authorisation. The company should remain operational, the applicant must retain the required corporate position and social security obligations must be fulfilled. Renewal applications may require evidence of actual commercial activity, income and contributions.

A residence strategy should therefore be consistent with the underlying business. Creating a company that exists only on paper may create difficulties not only for tax purposes but also when renewing the immigration authorisation.

### *Other forms of residence: employees and passive residents*

Andorra also offers residence categories for employees, passive residents and persons with certain international, professional, sporting, cultural or scientific profiles. Each category has its own conditions, investment requirements, physical-presence rules and permitted activities.

Passive residence may be relevant for individuals who do not intend to carry out ordinary employment in Andorra. It generally requires a substantial investment commitment, adequate financial resources, insurance and a minimum period of annual presence. The precise investment thresholds and qualifying assets should be reviewed under the legislation applicable when the application is filed, as this area has been subject to reform.

Active residence, by contrast, is intended for persons working in Andorra, whether as employees or self-employed entrepreneurs. It normally entails a more substantial presence in the country and participation in the social security system.

Prospective residents should also distinguish immigration residence from tax residence. An immigration permit grants a legal right to live in Andorra, but tax residence is determined according to statutory tests and factual circumstances. These may include the number of days spent in Andorra and the location of the individual's principal economic or personal interests. The government actively verifies that residents comply with the statutory minimum stay requirements and may request evidence demonstrating their effective residence in the country.

A relocation should therefore be implemented in practice, not merely documented administratively. Housing, family arrangements, management responsibilities, banking, professional activity and connections with previous countries of residence should be reviewed as part of a coordinated legal and tax strategy.

### *Investing in estate*

Real estate has traditionally formed part of many relocation and investment projects. However, this is now one of the most closely regulated areas of foreign investment.

Foreign acquisitions of Andorran real estate generally require prior administrative authorisation. A specific tax on foreign real estate investment also applies, with the applicable rate depending on the scope and characteristics of the acquisition. Recent reforms have increased the tax burden for certain investments and reinforced quantitative and qualitative restrictions.

The regulatory purpose is not simply fiscal. The legislation seeks to moderate speculative demand, improve access to housing and direct foreign capital towards projects that generate broader value. Certain exemptions or reductions may be linked to maintaining the investment for a minimum period, creating rental housing, conducting an authorised economic activity or satisfying employment-related conditions.

Investors should therefore assess real estate acquisitions in the context of the entire project. A property intended as a genuine home for an active resident raises different issues from a portfolio investment, development project or acquisition through a corporate structure.

Foreign investors may undertake real estate investments jointly with local partners, creating opportunities to combine international capital with local knowledge and expertise.

The tax treatment of the acquisition, ongoing ownership, rental income and future disposal must also be analysed. The foreign investment authorisation does not replace urban planning, municipal, construction or sector-specific approvals.

### *Substance Is becoming the key concept*

The direction of Andorran policy can be summarised in one word: substance. Companies are expected to undertake real activity, investors must explain the origin and purpose of their capital, and residents should have a genuine connection with the country. Commercial and tax substance is required, ensuring that investors genuinely contribute value to Andorra.

Substance does not require every business to employ a large workforce or occupy extensive premises. A consulting company, digital enterprise or investment office may naturally operate with a smaller structure. The relevant question is whether the resources, decision-making and activity are proportionate to the business being presented.

Good governance is equally important. Directors should actively exercise their responsibilities, maintain proper records and ensure that important decisions are genuinely taken in Andorra where the company claims Andorran tax residence. Contracts, invoices, intellectual property arrangements and service relationships should reflect commercial reality.

This approach is also relevant internationally. Foreign tax authorities increasingly examine beneficial ownership, effective management, permanent establishments and controlled foreign company rules. An Andorran structure should therefore be designed not only to comply locally but also to withstand scrutiny in the jurisdictions where its shareholders, clients or assets are located.

### The Association Agreement with the European Union

The proposed Association Agreement with the European Union has the potential to become the most significant legal and economic development in Andorra's modern history. Negotiations have produced a framework intended to give Andorran businesses broader access to the EU internal market while recognising the specific characteristics of a microstate.

Andorra faces both the challenge and the opportunity of closer association with the European Union and alignment with the relevant EU acquis. This will require the country to incorporate a substantial body of European legislation into its domestic legal framework within a demanding timeframe, while businesses will also need to adapt their governance, compliance and operating models. At the same time, the process offers a major opportunity to internationalise and diversify the Andorran economy, enabling companies established in Andorra to develop cross-border business more easily while continuing to benefit from the country's highly competitive tax framework.

The agreement would not make Andorra a member of the European Union. Nor would all EU law automatically become applicable. It would, however, require Andorra to incorporate and apply substantial parts of the EU acquis in the areas covered by the Agreement, particularly those connected with the internal market.

Potentially affected areas include:

- the free movement of goods, services, persons and capital;
- competition and state aid;
- financial services;
- company and commercial regulation;
- consumer protection;
- employment and social standards;
- professional qualifications;
- telecommunications and digital services;
- transport, energy and environmental rules; and
- regulatory supervision and judicial co-operation.

The Association Agreement will not require tax harmonisation, allowing Andorra to retain its current tax rates rather than align them with the generally higher levels applicable across the European Union.

For Andorran companies, the central opportunity is improved access. Businesses that currently encounter legal or administrative barriers when operating in the European Union may benefit from a more predictable framework. The recognition of professional qualifications and more consistent rules for services could be particularly important for professionals and smaller companies whose natural market extends beyond Andorra.

The agreement may also increase Andorra's attractiveness as a base for internationally oriented businesses. A company could potentially combine Andorra's stable and competitive domestic environment with a closer legal relationship to the EU market.

#### *Immigration and the preservation of Andorra's particularities*

Free movement of persons is one of the most politically sensitive aspects of the agreement. Andorra's population, labour market and housing stock are too

small to absorb unrestricted demographic change without careful planning.

The negotiated framework is intended to allow Andorran nationals greater freedom to live and work in the EU while preserving specific mechanisms for managing immigration flows into Andorra. These adaptations recognise the structural vulnerability of a country with a population smaller than that of many European cities.

For investors and employers, the future regime may create opportunities to recruit and operate more easily across borders. However, it should not be assumed that Andorra will immediately abandon all immigration controls. The precise implementation of the negotiated safeguards will be essential.

This issue illustrates the broader philosophy of the agreement: integration without erasing Andorra's identity or institutional capacity. Whether that balance can be maintained will be a central question in the public debate.

### *Approval and referendum: no final date yet*

The negotiated Agreement remains subject to the relevant approval procedures at European level. Andorra has also committed to submitting it to a national referendum.

As of June 2026, no definitive referendum date has been confirmed. Work continues within the European institutions, while the Andorran Government and the State Pact on the Association Agreement are preparing the legal, institutional and public-information framework for the vote.

The referendum will not be a purely technical decision. It will require the electorate to weigh long-term market access and legal integration against concerns about sovereignty, regulatory burden, immigration and the capacity of the country to adapt.

Businesses should follow the process but avoid making assumptions about its outcome or timetable. Even if approved, implementation would be progressive rather than immediate. Sector-specific transition periods, institutional preparation and the adoption of domestic legislation will shape the practical effects.

### *What investors should do now*

The most sensible strategy is neither to wait passively for the agreement nor to assume that it is already in force. Projects should be structured under current Andorran law while remaining capable of adapting to closer European integration.

Investors should therefore:

- define the genuine economic purpose of the project;
- analyse foreign investment, company, tax, immigration and property issues together;
- prepare source-of-funds and beneficial ownership records early;
- adopt governance arrangements consistent with the intended activity;
- assess whether the business may fall within a regulated sector;
- monitor housing, immigration and foreign investment reforms;
- consider how future EU-derived rules may affect the activity; and
- ensure that the structure remains defensible in all relevant jurisdictions.

Contractual flexibility can also be valuable. Shareholders' agreements, financing arrangements, licences and service contracts may need mechanisms allowing the parties to respond to future regulatory developments.

Companies already operating in Andorra should conduct a similar review. European alignment may create opportunities for expansion but may also expose weaknesses in compliance, corporate governance, data protection or employment practices.

### *Andorra is now a more mature investment destination*

Andorra's attractiveness has sometimes been reduced to its tax rates. That view is increasingly incomplete. The Principality is evolving into a more regulated, transparent and strategically selective economy.

Its central advantages remain compelling: stability, security, quality of life, competitive taxation, proximity to major European markets and an administration that remains accessible by international standards. At the same time, housing pressures and rapid demographic growth have led the government to demand greater value from new investment.

For genuine entrepreneurs and long-term investors, this evolution should not necessarily be seen as an obstacle. A jurisdiction that distinguishes between productive investment and purely speculative capital may become more sustainable and more credible over time.

The possible Association Agreement adds a further dimension. It could give Andorra a level of integration with the European internal market that substantially changes the scale of opportunity available to its businesses and professionals. It will also require a legal transformation of unprecedented scope.

Andorra therefore stands at a crossroads. It is seeking to remain open without losing control of its development, to integrate with Europe without ceasing to be distinct, and to preserve its quality of life while building a more diversified economy.

For those considering living or investing in the country, the opportunity remains significant. The key is to approach Andorra not as a shortcut, but as a jurisdiction in which a properly structured, genuinely implemented and economically credible project can grow over the long term.

Andorra is also an ideal place to live: one of the few countries in the world that continues to offer a high level of personal and institutional security, an excellent quality of life, competitive taxation and strong legal certainty. More importantly, it is a place where people can build a fulfilling life and share that sense of wellbeing with those closest to them.

# ARMENIA




## Law and Practice

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**Concern Dialog** is a top-tier, full-service law firm, headquartered in Yerevan, Armenia. It has been a trusted partner for businesses and individuals seeking legal counsel and representation since 1998. The firm is renowned for its work in the areas of corporate law, labour law, competition law, tax law, contract law, family law (including child abduction cases), and regulatory issues. Concern Dialog has extensive experience in regulatory matters in TMT, mining, energy, utilities, banking and finance, medical services, real estate, and not-for-profit sectors. In addition to its renowned consulting and transaction practice, the firm's litigation practice is regarded as one of the leaders in Armenia for landmark litigation and arbitration cases. Concern Dialog's membership of TagLaw and Nextlaw networks, as well as its co-operation with individual law firms from various jurisdictions, allow the firm to provide services to its Armenian clients virtually worldwide. Members of the law firm are identified as "top tier" by Chambers and Partners.

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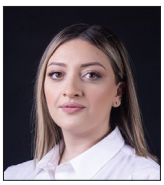
**Aram Orbelyan** is a managing partner at Concern Dialog, leading the firm's dispute resolution practice. He represents clients' interests in civil and administrative proceedings, as well as commercial and investment arbitrations, provides advice and performs representation in proceedings related to international law. Aram is also involved in deal-signing projects. His internationally recognised expertise has consistently earned him rankings in Chambers and Partners guides and other esteemed legal directories. Aram is a board member of the Arbitrators' Association of the Republic of Armenia, and is included in the lists of arbitrators of several arbitration centres in Armenia and abroad.



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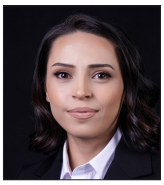


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## 1. Legal System

### 1.1 Legal System and Judicial Order

Armenia is a unitary parliamentary republic (based on the Constitution, as amended in 2015). Armenia belongs to the (continental) civil law system. The Civil Code is based on the Napoleonic Code, while administrative law was developed based on the German model.

In Armenia, only courts are authorised to administer justice. The following courts operate in Armenia:

- the Constitutional Court (responsible for constitutional justice);
- the Court of Cassation (the highest court outside of constitutional justice; it ensures the uniform application of legislation and eliminates the fundamental violations of human rights and freedoms);
- the criminal, civil, administrative and anti-corruption courts of appeal (these are responsible for reviewing the judicial acts of the courts of first instance; they mostly act as courts of law, with a limited capacity to act as courts of fact – mostly in administrative and criminal proceedings);
- the courts of first instance of general jurisdiction;
- the Administrative Court;
- the Court of Bankruptcy; and
- the Anti-Corruption Court.

The Administrative Court has jurisdiction over all cases arising from public relations (both those between public bodies and those between public bodies and individuals), including disputes relating to public or alternative service and disputes between administrative bodies not subject to settlement by order of precedence. The Administrative Court is the body empowered to review fines and other administrative acts. Starting from 1 January 2025, cases related to disputes concerning entering into public or alternative service, performing such service, exemption from service, and being subjected to disciplinary liability will be examined not by the Administrative Court, but by the first instance courts of general jurisdiction.

The Court of Bankruptcy is responsible for managing bankruptcy cases.

The Anti-Corruption Court has criminal and civil jurisdiction. The criminal jurisdiction covers criminal cases with corruption-related charges. Within the civil jurisdiction, the court deals with civil forfeiture cases and recovery of damages to state and other public entities caused by crimes.

The courts of first instance of general jurisdiction have jurisdiction over all other cases which are not subject to other courts.

## 2. Restrictions on Foreign Investments

### 2.1 Approval of Foreign Investments

The Law on Foreign Investments defines a foreign investor as a foreign state, a foreign legal entity, a foreign citizen, a stateless person, a citizen of Armenia permanently residing outside of Armenia, or any international organisation that engages in investment in Armenia according to the legislation in force. Foreign investment is further defined as any property, including financial resources and intellectual assets, directly invested by a foreign investor as defined above in commercial or other activities in Armenia to gain profit, revenue or any other benefit.

Based on the practice established by Armenian courts, only those assets that are invested in the company's equity (via relevant corporate decisions) shall be considered as investments.

As a general remark, Armenian law in this area does not determine requirements for pre-approval or approval of such foreign investment by any state body. Accordingly, besides the generally applicable processes for carrying out business in Armenia, the law does not determine any such pre-approval requirements.

That being said, in specific sectors, approval of the investment plan assures incentives and other benefits to the investor.

For example, according to the Land Code of the Republic of Armenia (RA), property owned by the state or community can be donated for social or charitable purposes or for implementing investment plans approved by the government of the RA. Such a deci-

sion of the government and the donation agreement indicate the sole purposes for which the donated land can be used.

Furthermore, investors can be entitled to specific tax or customs incentives in specific cases if the government approves the granting of incentives per a submitted investment plan under the particular decree of government specifying the incentives. For example, investors might apply for a five-year exemption from customs duties during the implementation of their investment plan.

Furthermore, investments in public service sectors can be considered by the Public Services Regulatory Commission (PSRC) when determining tariffs for public services. However, obtaining an operational permit in these sectors is not contingent on the submission of an investment plan.

In general, the stated cases concern benefits to and incentives for the investor rather than a pre-approval process to protect the investment or for the investment to be qualified as a foreign investment.

Finally, it should be noted that the Parliament of Armenia is currently discussing the adoption of a new Law on Investments, which is further discussed in **9.1 Upcoming Legal Reforms**. Although the draft law has not yet been adopted, it is already included in the formal agenda of Parliament. Upon its adoption, the Law on Foreign Investments will cease to be in force. However, the new law does not substantially alter the overall approach of maintaining an open regime towards foreign investment.

### 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

As described in **2.1 Approval of Foreign Investments**, there is no mandatory regulation of pre-approval mechanisms for investment plans; ie, there is no requirement to invest with prior approval of state bodies. As a general rule, there is no procedure or sanction regarding the supervision or fulfilment of an investment plan as well. However, once incentives are granted under a government-approved investment plan, the relevant plan becomes subject to reporting obligations to the government, and failure to comply with its requirements may give rise to liability depending on the type of incentive granted and the conditions of the government decree on approval of the investment plan under which the incentives are granted. For instance, in the case of incentives for land purchase, the consequence may be the judicial cessation of ownership rights over the land plot should the land plot be used for purposes other than those granted.

### 2.3 Commitments Required From Foreign Investors

The applicable legislation indicates no such specific commitments. However, under the law on public-private partnerships, the government may agree with the investor on specific commitments on a case-by-case basis. As a matter of practice, such commitments can be imposed under the government decree on approval of the investment plan.

### 2.4 Right to Appeal

There is no specific process applicable to the appeal of government decisions concerning failure to approve an investor's investment plan. Theoretically, however, the generally applicable administrative litigation processes concerning the appeal of administrative bodies' decisions would apply. The recipient of a decision not to grant consent to the investment plan can bring a claim to challenge the decision before the Administrative Court. Such a claim must be brought within two months of receipt of the decision.

However, the grounds and scope for potential arguments are limited. The government enjoys considerable discretion in approving investment plans, with no specific criteria for rejection outlined. Technically, an appeal can be filed for procedural violations or breaches of equality requirements, where administrative bodies are required by law to treat similar cases consistently.

In any case, it is important to reiterate that no prior authorisation for foreign investment is required, and the involvement of the government (and other state bodies) is necessary only for additional incentives or where there is a general licensing or permission procedure (not linked to the specific status as a foreign investor).

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

The most common business vehicles are limited liability companies (LLCs) and joint-stock companies (JSCs).

In both cases, the liability of shareholders (or, in the case of LLCs, participants) is limited. Furthermore, no requirements for the minimum share capital or a minimum number of shareholders are determined. However, minimum capital requirements are envisaged in several sectors (mainly for financial institutions).

Both LLCs and JSCs are governed by the meeting of shareholders (participants), which is the highest governing body. The sole director, in the case of LLCs or, in the case of JSCs, a sole director (CEO) or a collegial executive board (directorate), carries out the company's ongoing management. The establishment of a board (board of directors) is possible in either type, with the Law on JSCs regulating specific requirements and the scope of authorities of such a board. In contrast, the Law on LLCs is silent on most of these issues, allowing the companies to determine the scope at their discretion.

The main differences between the two types of entities are as follows.

LLCs are preferred when the shareholding and management structures are straightforward and less complex. For JSCs, it is possible to have multi-layered, complex management structures (including the collegial executive body) and regulate the relationships between the shareholders, including through shareholders' agreements, etc.

Furthermore, in LLCs, the participant has a right to withdraw from the company without the consent of the other participants and request the company to pay the market value of its share. The participant with 10% or more in the charter capital may bring a claim to expel the participant from the company if that participant hinders the company's activities.

Finally, a significant difference to consider is that the information on the participants of LLCs is open to the public; however, in the case of JSCs, the information on shareholders is maintained by private registry keepers and is not provided to third parties without the company's consent. At the same time, since 2023 all the companies are obliged to disclose their UBOs, and that information on UBOs is publicly and freely available on the webpage of the State Registry of Legal Entities. Therefore, irrespective of the corporate type, the information on the UBOs of any company is publicly available.

### 3.2 Incorporation Process

The process of incorporation of both LLCs and JSCs is fairly straightforward. The registration of both types of entities before the Agency for State Register of Legal Entities of the Republic of Armenia (the "Agency") is free of charge. However, JSCs must engage private entities (account operators) licensed by the Central Depository for share registry keeping, incurring additional expenses compared to LLCs.

The process of registration itself takes no more than two working days after submitting the necessary package of documents. For JSCs, the registry-keeping process may be longer, as account operators conduct KYC and due diligence procedures before entering into registry-keeping agreements. Foreign investors should consider the following nuances in the incorporation process.

#### Template (Pre-Approved) Package-Based Registration of LLCs

If the founder(s) of an LLC is an individual, and both the director and the founder(s) are in Armenia, the establishment process is relatively quick. They can simply visit the Agency with their passports (and verified translations if applicable) and answer basic questions from an Agency employee. The employee will provide a standard, pre-approved template package (in Armenian), and the company can be registered in under half an hour, free of charge.

#### The Standard Process of Establishment and Registration of LLCs

As an alternative, the founding and governing documents of the LLC (founding decision, charter) can be drafted to meet the specific needs and requirements of the founders, including preparing multilingual ver-

sions (the Armenian version shall still prevail), establishing specific governing mechanisms, and thus not following pre-approved standard documents.

It must be noted that although the founding package (founding decision, charter) does not need any verification by a notary under Armenian law, the documents or copies thereof related to a foreign founder (in the case of a legal entity – charter and excerpt from the register or equivalent; in the case of an individual – passport) and a foreign director (passport) must be verified by a notary and legalised (consular or by an apostille) and subsequently translated into Armenian with the verification of an Armenian notary.

#### Establishment of a JSC

The process of establishment of a JSC consists of two stages. The first stage is the preparation of the founding documents and submission thereof to the Agency (similar to the registration of an LLC). The second stage is the registration of the company's shares with the Central Depository through one of the account operators (to ensure the quality of services and competition, the Central Depository does not provide services to the public directly, only through the account operators who are acting based on the agreement signed with the Central Depository).

In either case, within 40 days of registration, the companies shall submit declarations on their ultimate beneficial owners (UBOs), disclosing the full ownership structure up to the beneficial owner. Such declaration shall also include the notarised translations of the UBOs' passports if the UBO is a foreign national.

Depending on the company's business activity, there may be exceptions to the general rules described above. For example, the registration and licensing are performed by the relevant regulatory authority – for banks, this is the Central Bank of Armenia – ie, the bank must be registered and obtain a licence simultaneously by applying to the Central Bank.

### 3.3 Ongoing Reporting and Disclosure Obligations

#### Changes of Management

According to the general rules of Armenian legislation, only the head of the executive body is subject to registration with the Agency. Hence, the company needs to disclose a change to its executive body (CEO, general manager, general director, etc).

Depending on the company's business activity, there may be exceptions to the general rules described above. For example, the executive body of a bank, including the chief accountant, deputy directors, chief compliance officers and compliance officers, chief auditor and auditors, as well as the board of directors, is subject to certification and registration by the regulator, in this case, the Central Bank of Armenia. Thus, practically any change in the bank's management needs to be filed and approved by the regulator.

#### Amendments to Articles of Incorporation (Charter)

In the case of the amendment of articles of incorporation in whole or in part (a new edition of articles of incorporation/charter), the amendments must be filed for registration with the Agency. The company needs to change its articles of incorporation when, for instance, it changes its firm name, address, charter capital or corporate governance process.

The process and requirement for registration of amendments to the articles of incorporation/charter may have some peculiarities depending on the reasons for and the content of such amendments. For example, in the case of amendments to the articles of incorporation/charter due to investment into the company (ie, an increase of the company's charter capital), the company needs to submit proof of payment of the investment for registration. There may be some differences, depending on the company's business activity, when the Central Bank, instead of the Agency, is responsible for registration (mostly typical for legal entities that provide financial, insurance and investment services, and investment funds).

#### Change of Shareholder

Participation in the share capital of an LLC needs to be registered with the Agency (open to the public). In contrast, participation in a JSC (ownership of shares) is recorded by the Central Depository, while the process is carried out through account operators). Information on the participation of commercial co-operatives is not recorded by the Agency or in any outsourced registers.

While changing the participation in an LLC, the articles of incorporation must be changed as far as it is mandatory to include that data in the articles of incorporation and keep them up to date.

Information about shareholders of a JSC is not required to be included in its articles of incorporation except at the stage of incorporation of the company (ie, the initial registration of the articles of incorporation). Thus, a shareholder change must only be recorded in the company's shareholders register by the account operators.

### UBO

There is an obligation to submit a declaration to the Agency in the case of a change of UBO.

The legal entity shall submit the following report/information to the Agency by 20 February of each year:

- confirmation that the information on the UBOs submitted to the Agency in the last declaration was still accurate as of 31 December of the previous year; or
- changes in the information on the legal entity's UBOs.

In the case of a change of data regarding beneficial owners, the change must be declared immediately after the disclosure to the legal entity but not later than 40 days after the change.

The declaration on the UBOs and further changes in the declaration are submitted to the Agency through the website bo.e-register.am (see the procedure for filling out the application below). In this case, the declaration shall be signed via electronic signature accepted by the government. Completion of the declaration is possible through an authorised person, in which case a power of attorney is required.

Liability for failure by an entity obliged to submit a declaration on UBOs to file such declaration within the period prescribed by law, for submitting it in violation of the law or for inadvertently providing incorrect or incomplete data in the declaration, is governed by the RA Law on Administrative Offences. Such breaches can result in a warning or a fine of up to AMD100,000.

In addition, if the declaration on the UBOs contains false information or lacks information which should have been included, and the person submitted the false information wilfully, they can be held criminally liable.

In addition, if the obligation to submit confirmation or amended information on UBOs is violated each year for three years in a row, as well as in cases of repeated or gross violation of the rules regarding submitting a declaration, the Agency may apply to the court to dissolve the legal entity.

### Approval of Financial Statements

Companies need to submit financial statements to the State Revenue Service:

- annually for profit taxes;
- monthly for VAT and taxes on the income of individuals (if income is reported by an individual themselves, then the reporting is done annually);
- quarterly for turnover tax (if the company operating within a turnover tax regime/simplified system for small businesses); and
- annually for micro-taxes (if the company pays taxes under this special regime).

As a general rule, there is no requirement for companies to disclose their financial statements. Depending on the type of business activity or size of the company, the law may specifically mandate companies to publish financial statements and financial audit reports. For instance, medium-sized or large companies, banks, insurance companies, and investment fund managers must meet this requirement.

## 3.4 Management Structures

### General Notes on Management Structure

The highest governing body of the company is its general meeting of shareholders (participants). All companies need to have at least one executive body.

There are specific cases defined in the law when the company must have a board of directors. Open JSCs or companies with activities in specific areas, such as banking and insurance, must have a board of directors. The board of directors of an open JSC must have an audit committee under it.

Under its articles of incorporation, the company may declare and set forth the collective executive body.

### The Powers of the General Meeting

The general meeting approves the amendments to the articles of incorporation, decides on reorganisation and liquidation of the company, approves final, interim and liquidation balance sheets, and appoints the liquidation committee. The general meeting approves the number of board members, elects board members, terminates their powers and appoints and dismisses the executive body (unless these authorities are delegated to the board of directors). Increasing and reducing the charter capital, approving the company's annual report, distributing dividends, and approving significant transactions and transactions with conflicts of interest are powers of the general meeting as well.

### The Board of Directors

The Law on LLCs does not explicitly define the powers of the board of directors, allowing flexibility for these powers to be outlined in the articles of incorporation or charter. However, the board cannot exercise powers exclusively reserved for the general meeting or executive body. Conversely, the Law on JSCs provides a specific list of exclusive powers for the board of directors. It stipulates that, in the absence of a board of directors, these powers are exercised by the general meeting – except for those relating to the organisation of the general meeting itself, which then fall under the competence of the executive body.

The board of directors of a JSC determines and approves the strategy of the company, decides on using the reserve fund and other funds of the company, and approves (i) internal documents regulating the activities of the company's governance bodies; (ii) the administrative and organisational structure of the company; and (iii) a list of the company's staff positions. It also establishes branches and representative offices and exercises the powers related to convening the general meeting and other powers defined in the law.

### The Executive Body

The single-person executive body or head of the collegial executive body is responsible for the company's day-to-day activities and has the authority to represent the company without requiring a letter of authorisation. The director is entitled to issue letters of authorisation, conclude agreements and contracts, perform banking operations, issue orders, directives, and binding instructions, supervise their implementation, decide on employment and dismissal, apply incentives, and impose disciplinary action on employees.

## 3.5 Directors', Officers' and Shareholders' Liability

### Liability of Board Members and Executive Body

Both the Law on LLCs and the Law on JSCs (the latter consists of more detailed regulation on the matter) determine the liability of board members and the executive body.

The rules are the following: the board members and executive body must act for the benefit (in the interest) of a company in good faith and reasonable manner and avoid actual and possible conflicts of interest while exercising their rights and performing their obligations (fiduciary duty). The Law on JSCs also forbids a person who may, by virtue of participation in the charter capital of the company or other circumstances, have a material impact on the decisions of the company from inducing board members or the executive body to make decisions that contradict the interests of the company or the legitimate interests of shareholders who cannot have a material impact on the decisions of the board.

Members of the board and the executive body may be released from liability if (i) no damage was caused through their fault or, where damage has occurred, if (ii) they voted against the relevant decision, (iii) they did not participate in the meeting, or (iv) they acted in good faith and in a reasonable manner, avoiding actual or potential conflicts of interest between their own interests and those of the company. The resignation, recall or dismissal of a board member or a member of the executive body does not exempt them from liability for any damage caused to the company.

If the damage was caused to the LLC by one of its board members or the executive body, any shareholder (participant) of the company and the company may apply to court on behalf of the company against

that board member or executive body and claim damages. If the damage was caused to the JSC by one of its board members or the executive body, the claim for compensation of damages against that board member or executive body might be brought against the company or its shareholder(s) (jointly) owning 1% or more of the placed common (ordinary) stocks of the company. A breach of fiduciary duty might cause criminal liability for a board member or executive body if their actions or omissions cause essential damages.

### Shareholders' Liability

Under Armenian law, the separation of liability of a legal entity from its shareholders' liability is determined.

Armenian legislation allows for the "piercing of the corporate veil" in specific cases of activities between parent and daughter or dependent companies (subsidiaries). The daughter company must not be liable for the obligations of the parent company, but the parent company must bear joint and several liabilities with the daughter company if the parent company (i) has the right to give binding instructions to the daughter company and (ii) transactions are concluded in pursuance of that instruction.

Other shareholders of a daughter company also have a right to claim from the parent company compensation for any damages caused to the daughter company by the fault of the parent company – ie, when the damage is caused by the execution of binding instructions given by the parent company.

The parent company must bear subsidiary liability for the debt of the daughter company in the case of bankruptcy of the latter if the bankruptcy is caused by the fault of the parent company – ie, when the damage is caused as the result of the execution of binding instructions given by the parent company.

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

The primary sources regulating labour relations in Armenia are the Labour Code and relevant international treaties. Specific regulations of the Civil Code and legislation regulating different types of state service (civil service, military and diplomatic service, etc) regulate particular types of labour relations. Finally, specific aspects of labour relations are regulated by the Law on Foreigners, the Law on Labour and Collective Agreements, and internal and individual legal acts of the employer.

### 4.2 Characteristics of Employment Contracts

The Labour Code mandates that employment contracts should be concluded or issued in writing and should contain specific terms, such as:

- the date, month, year and location of adopting an individual legal act or concluding an employment contract;
- the employee's first and last name, as well as their patronymic name;
- the name of the organisation or, if applicable, the first and last name of the employer as an individual, and their patronymic name;
- the place of work;
- the organisational unit within the company, if applicable;
- the date, month and year when the employment begins;
- the employee's Social Security Number (SSN) or the reference number of a certificate confirming its absence; this does not apply to foreign citizens or stateless persons who do not hold Armenian residency and are performing their duties from abroad;
- the employee's email address;
- the job title and/or job responsibilities, or a reference to the document defining the functions stemming from the position;
- the base salary amount (including taxes, social payments, or other mandatory payments stipulated by law) and/or the method used to determine it (hourly, daily, piecework, or monthly rate);
- additional allowances, bonuses, subsidies, etc, which are/shall be provided to employees according to established procedures;
- the duration of validity for the individual legal act or employment contract if required;
- the duration and conditions of the probationary period (where applicable);
- the work schedule (normal working hours, part-time, reduced working hours, or cumulative

working time) and the weekly duration (excluding cumulative working time);
- the type and duration of annual leave, including minimum, additional or extended vacation;
- the position, first name and last name of the person signing the legal act on behalf of the organisation; and
- the methods by which the employer and employee shall notify each other regarding employment-related matters.

Parties to the contract can agree to include additional conditions in the employment contract or individual legal act, but these conditions must be no less favourable than what is established by law.

### Fixed-Term Contracts

Generally, an employment contract is intended to be of indefinite duration. However, it is also possible to conclude an employment contract for a fixed term if labour relations cannot be defined for an indefinite period, considering the conditions or the nature of the work to be done. The Labour Code specifies certain circumstances in which an employment contract may be concluded for a fixed term. These include the following cases:

- with employees holding elected positions for the specified term;
- with employees appointed for a duration prescribed by law;
- with employees performing seasonal work;
- with individuals engaged in temporary work lasting up to two months;
- with an employee who is filling in for a temporarily absent employee;
- with learners undergoing practical workplace training and performing specific work within the framework of work-based learning under a vocational education and training programme; and
- with foreigners for the duration of validity of a work permit, in cases when a work permit is required for employment by RA legislation.

## 4.3 Working Time

Under Armenian legislation, the regular working hours must not exceed 40 hours per week and eight hours per day (exceptions are specified by the Labour Code, other laws or legal acts).

Certain categories of employees, such as those working in healthcare organisations with continuous duty, guardianship organisations, children's educational institutions, specialised energy, gas and heat supply organisations, specialised communication and emergency response services, etc, may have 24-hour continuous work shifts. The specific list of such occupations is determined by the government of the Republic of Armenia.

Any work performed beyond the specified limits shall be classified as overtime work and must be compensated according to the following rate: for each hour of overtime, in addition to the regular hourly rate, a supplement of no less than 50% of the hourly rate must be provided.

The total working hours, including overtime, must not exceed 12 hours per day (including breaks for rest and meals) and 48 hours per week.

## 4.4 Termination of Employment Contracts

An employment contract can be terminated through various means. The most common cases are:

- termination at the employee's initiative;
- mutual agreement;
- expiration of the contract; or
- termination at the employer's initiative.

The employment contract can also be terminated by the force of law. For example, when the employer fails to notify the employee of the termination of an employment contract that was originally agreed upon for a specific period, and the parties also do not sign the appropriate individual legal act to terminate such a contract, and the employment relationship does not continue in practice, then in such cases, the law may deem the contract terminated.

The Labour Code provides an exhaustive list of reasons that entitle an employer to terminate an employment contract. This implies that an employee cannot be dismissed by the employer for any arbitrary reason.

The grounds for termination specified in the Labour Code are as follows:

- in the case of:
  - (a) the liquidation of a company (termination of the activity of an individual entrepreneur);
  - (b) reduction in workforce or positions resulting from changes in workload, economic or technological conditions, work organisation, or production-related needs;
  - (c) non-compliance of the employee with the position held or the work performed;
  - (d) reinstatement of the employee at their previous job;
  - (e) periodic non-fulfilment by an employee (without a valid reason) of the duties assigned to them by an employment contract or internal regulations;
  - (f) loss of trust in the employee;
  - (g) the employee's long-term incapacity for work (if the employee has been temporarily incapacitated for more than six consecutive months or for more than 180 days within the last twelve months, excluding days of maternity leave);
  - (h) an employee's refusal or evasion of mandatory medical examinations; and
  - (i) the residence status of a foreign worker being recognised as invalid;
- if the employee:
  - (a) is in the workplace under the influence of alcohol, narcotic drugs or psychotropic substances;
  - (b) fails to show up for work for no valid reason during the entire working day; and
  - (c) is excluded from work for more than ten consecutive working days or more than 20 working days during the previous three months because of their failure to submit the necessary documents required to attend work during isolation declared in relation to the COVID-19 pandemic.

According to the Labour Code, the employer is obliged to give notification prior to dismissal to employees in cases specified by the Labour Code. For example, where the employment contract is terminated due to the liquidation of the company or a reduction in the staff, the employer must provide employees with two months of prior notice.

According to the Labour Code, it is possible for an employer to provide pay in lieu of notice, which is calculated by multiplying the employee's average daily salary by each day of notice.

### 4.5 Employee Representations

The Labour Code allows the establishment of employees' representatives, such as a trade union or works council elected by the assembly (conference) of workers. Apart from that, the Law on Trade Unions regulates and guarantees the activities of trade unions.

A works council is elected if the organisation does not have a trade union (or any trade unions) or if any existing trade unions do not unite more than half of the organisation's employees. At the same time, the presence in the organisation of works councils elected by employees should not interfere with the exercise of the trade unions' functions.

Employees' representatives have the power to develop charters, conduct negotiations, propose organisational improvements and participate in decision-making processes. They also oversee labour law implementation, have access to employee information, and can propose measures for better working conditions and fair compensation. They can organise lawful strikes and appeal to the court against violations. Employees' representatives play a crucial role in protecting workers' rights and promoting collaboration between employees and employers.

If an employee's representative violates the rights of the employer or breaches legislation or agreement norms, the employer has the option to seek legal action through the appropriate procedures defined by the legislation, requesting the cessation of the representative's unlawful activities.

Employee representation is not a widespread practice in Armenia. There are some single cases of the practice, and it is expected to develop in the future.

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/ Employers

Employees pay income tax on their employment remuneration.

Employers act as tax agents for their employees. They calculate their employees' income tax due every month and pay it by the 20th day of the following month. So effectively, employers bear liability for any wrong calculation or late payment of those taxes and payments.

According to the Tax Code of Armenia, the income tax rate for employees is 20%.

Besides income tax, employees must also pay a mandatory social security (pension) payment with the following rates:

- 5% on salary up to AMD500,000; and
- AMD25,000 plus 10% on salary above AMD500,000, but not more than AMD87,500 (total cap).

### 5.2 Taxes Applicable to Businesses

The following tax regimes apply in the RA.

- General Taxation: In this case, taxpayers generally calculate and pay VAT and profit tax.
- Special Taxation Regimes:
  (a) Turnover Tax: Taxpayers calculate and pay turnover tax, which replaces VAT and/or profit tax.
  (b) Micro-Enterprise Taxation System: The taxpayer, by carrying out the relevant activities defined by law, is exempt from all types of state taxes related to the enterprise.
- Profit Tax: The object of taxation is the taxable profit, which is the gross income less expenses, and the profit tax rate is:
  (a) 18% for residents and non-residents that have a permanent establishment in Armenia (including a branch); and
  (b) 20% for non-residents who do not have a permanent establishment in Armenia.
- VAT: The VAT rate in Armenia is 20%.
- Turnover Tax: Only resident entities and individual entrepreneurs can pay turnover tax, which is 10% of income received from trade activities or rendering services; the entity and an individual entrepreneur can become a turnover taxpayer only if their turnover last year did not exceed AMD115 million. The following entities cannot be considered turnover tax payers: banks, credit organisations, insurance companies, insurance agents, insurance brokers, investment companies, specialised participants of the securities market, pawnshops, entities engaged in foreign currency exchange operations, investment funds, fund managers, payment and settlement organisations, entities engaged in organising casinos, games of chance, totalisators and internet totalisators, entities engaged in organising lotteries, notaries, audit organisations, and providers of legal services, those engaged in legal and accounting activities, head office activities, management consulting services, temporary employment services, and other labour supply activities.
- Micro-Enterprise: Resident entities and individual entrepreneurs whose sales turnover for all types of activities without VAT during the previous calendar year did not exceed AMD24 million can be considered micro-enterprises, which do not pay any taxes.
- Dividends: Dividends received by natural persons are taxable at 5%. Dividends received by entities are added to the taxpayer's tax base.
- Interest Paid: Interest paid to shareholders is taxed at 20%.
- IP Royalties: Royalties paid to shareholders are taxed at 10%.

### 5.3 Available Tax Credits/Incentives

All taxpayers involved in agricultural production are exempt from profit tax until the end of the year 2026.

Taxpayers who are dealing with handmade carpet production are also exempt from paying profit tax.

### 5.4 Tax Consolidation

There is no tax consolidation prescribed in Armenian tax legislation.

## 5.5 Thin Capitalisation Rules and Other Limitations

There are no thin capitalisation rules in Armenia. At the same time, there are some limitations on the deductibility of interest expenses. The following are not deductible from gross income:

- interest on loans and credit facilities exceeds twice the settlement rate set by the Central Bank of Armenia (currently, the deductible interest rate is capped at 24%); and
- annual interest on loans received from non-bank and non-credit entities that, according to fiscal year results, is above:
  (a) the two-fold positive amount of the equity of the taxpayer (excluding banks and credit organisations) on the last day of the fiscal year; and
  (b) the nine-fold positive amount of the equity of a taxpayer that is a bank or credit organisation on the last day of the fiscal year.

## 5.6 Transfer Pricing

Under the Tax Code, transfer pricing rules are applicable for a taxpayer if the amount of all supervised transactions of the taxpayer exceeds AMD200 million for the current year.

According to the Tax Code, there are several transfer pricing methods allowed:

- the comparable uncontrolled price method – where the price of the object of a controlled transaction is compared with the price of the object of a comparable uncontrolled transaction;
- the resale price method – where the mark-up derived from the resale of an object of a controlled transaction is compared with the mark-up derived from the resale of an object of a comparable uncontrolled transaction;
- the cost-plus method – where the mark-up on the direct and indirect costs incurred during the supply of an object of a controlled transaction is compared with the mark-up on the direct and indirect costs incurred during the supply of an object of a comparable uncontrolled transaction;
- the transactional net margin method – where the net profit realised from a controlled transaction relative to an appropriate base – in particular, costs, sales and assets – is compared with the net profit realised from a comparable uncontrolled transaction relative to the same base; and
- the profit split method – where each of the related taxpayers participating in a controlled transaction receives the share of the profit generated or loss incurred from the transaction in question, which a person not considered as related would anticipate when participating in a comparable uncontrolled transaction (within the meaning of this point, the profit generated from the transaction shall mean the positive difference between the income generated and the costs incurred within the scope of the transaction in question).

## 5.7 Anti-Evasion Rules

The Armenian legislation envisages liabilities provided by the Code on Administrative Offences of the Republic of Armenia, Tax Code of the Republic of Armenia and Criminal Code of the Republic of Armenia.

- The Code on Administrative Offences of the Republic of Armenia provides for administrative liability in cases where a taxpayer fails to submit information to the tax authorities within the prescribed time limit or submits incorrect information (Article 170.6). For these offences, the Code provides for the imposition of a fine on the taxpayer.
- The Tax Code of the Republic of Armenia establishes tax liability for tax evasion. Such liability may arise where a taxpayer fails to pay taxes within the prescribed time limits, submits a tax return after the prescribed deadline or fails to submit one at all, understates the amount of tax due, overstates a tax loss, fails to maintain accounting records in the prescribed manner, or fails to provide accounting records to the officials responsible for conducting tax audits.
- Apart from the liability for the taxpayer legal entities, natural persons (individuals) are obliged to annually declare their income, from which the relevant income tax should be calculated. The Tax Code provides tax liability in the form of fines, penalties and interests for taxpayers who have committed the abovementioned tax offences.
- Concerning criminal liability, it should be mentioned that, pursuant to the anticipated amend-

ment to Article 290 of the Criminal Code of the Republic of Armenia, which will enter into force on 8 June 2026, criminal liability for tax evasion arises if the amount of unpaid taxes is more than AMD30 million (approximately USD81,000). The envisaged punishment for this crime is a fine or even imprisonment for up to eight years. The Criminal Code also establishes criminal liability for legal entities. The criminal liability of a natural person does not preclude the criminal liability of a legal entity. The applicable coercive measures are a fine, temporary suspension of the right to engage in a certain type of activity, compulsory liquidation, and a ban on carrying out activities in the territory of the Republic of Armenia (for non-resident legal entities only).

### 5.8 Tariffs

In the Republic of Armenia, a state fee of AMD800,000 is set for obtaining a licence for each importation of up to 100 tonnes of cement. This measure is aimed at creating fair competition between cement importers from the Islamic Republic of Iran and cement producers in Armenia.

Armenia, like many countries around the world, encourages the import of electric vehicles. Therefore, importers of such vehicles are exempt from the obligation to pay 20% VAT. Under the recent amendments, the VAT exemption will continue to apply in 2026, but from 1 February 2026 to 31 December 2026 it will be limited to electric vehicles classified under the relevant EAEU CN FEA codes and manufactured after 31 December 2023.

## 6. Competition Law

### 6.1 Merger Control Notification

#### Concentrations

Mergers and acquisitions are subject to notification to the Competition and Consumer Interests Protection Commission (the Commission) if they are notifiable concentrations under the Law on the Protection of Economic Competition and Consumer Interests. According to the law, the following actions are considered concentrations:

- acquisition and merger of business entities registered in the RA;
- acquisition of assets of an economic entity registered in the RA by another economic entity if the value of those assets solely or together with the assets already acquired from that economic entity during the last three years equals or exceeds 20% of the value of the total assets of the selling economic entity at the moment of submitting the declaration of concentration;
- acquisition of shares of an economic entity registered in the RA by another economic entity if the amount of those shares solely or together with the shares already owned by that economic entity equals or exceeds 20% of the total shares of the first economic entity;
- acquisition of the right to use an object of intellectual property, including the means of individualisation, as a result of which the economic entity can gain influence on the competitive situation in any product market in the RA;
- any transaction, action, reorganisation or behaviour of economic entities through which an economic entity can directly or indirectly influence the decision-making or competitiveness of another economic entity, or can directly or indirectly influence the decision-making or competitiveness of another person, or can influence the competitive situation in any product market in the RA; and
- establishing a legal entity in the RA by more than one economic entity, which shall act independently/separately.

The law also provides for cases where a transaction is not considered a concentration, regardless of whether the established thresholds are exceeded. These include:

- reorganisations, actions or transactions of economic entities carried out between economic entities forming a group of persons as defined above, namely:
  (a) an economic entity and a natural or legal person, where such natural or legal person, on the basis of participation and/or a contract, has the right, in accordance with the law, to directly or indirectly dispose of (including through sale and purchase agreements, joint activity agree-

ments, mandate, power of attorney or other transactions) more than half of the charter capital or share in the economic entity;
(b) economic entities, where the same natural or legal person, on the basis of participation and/or a contract, has the right, in accordance with the law, to directly or indirectly dispose of (including through sale and purchase agreements, fiduciary management, joint activity agreements, mandate or other transactions) more than half of the charter capital or share in the economic entities;
(c) a natural person, their spouse, parent, child, adoptive parent or adopted child;
- transactions relating to the acquisition of securities listed on stock exchanges, except for over-the-counter transactions;
- transactions concluded through auctions conducted on the basis of a court decision; and
- acceptance of inheritance.

### Notification

A concentration must be declared before the Commission and shall not be completed prior to receiving the Commission's consent in the following cases:

- where the applicable financial thresholds are met, specifically:
  (a) income thresholds (based on the previous financial year):
    (i) the combined income of the parties to the concentration is at least AMD4 billion; or
    (ii) the income of at least one of the parties is at least AMD3 billion.
  (b) asset thresholds (based on the previous financial year or at the time of filing the declaration):
    (i) the combined asset value of the parties is at least AMD4 billion; or
    (ii) the asset value of at least one of the parties is at least AMD3 billion.
  (c) These thresholds also apply where one or more participants were not active in the previous financial year or have been active for less than 12 months.
- where one of the participants in the concentration holds a dominant position in any product market in Armenia.

In all such cases, the transaction is subject to mandatory prior declaration, and may not be implemented or closed until clearance is granted by the Commission.

## 6.2 Merger Control Procedure

The concentration of economic entities is subject to notification before it takes effect. For the assessment of a concentration, the participants submit an application and declaration. The declaration should contain the following information: (i) the purpose of the concentration and (ii) information about the participants (name, address, annual financial statements of the activity, volumes of goods sold during the previous year, etc).

### Duration of Assessment

The Commission's concentration assessment process lasts three months. Based on the Commission's reasoned decision, the three-month period may be extended to another three months.

If, during the review of a notifiable concentration, false, incomplete or misleading information is provided, or if the requested information is not submitted, the Commission may decide to leave the application without consideration. Such a decision may be taken at any stage of the procedure.

In addition, there is a simplified assessment procedure for mixed concentration and concentration within a group of persons. In this case, the assessment procedure lasts one month.

### Liability

Failure to declare the concentration as stipulated by the Law on the Protection of Economic Competition and Consumer Interests shall lead to the imposition of a fine of up to AMD5 million.

The fine imposed for enacting a prohibited concentration shall be up to 10% of the turnover of the preceding financial year.

Also, enacted prohibited concentrations shall be subject to liquidation (annulment, cessation) according to the procedure defined by the legislation.

### 6.3 Cartels

The Law on the Protection of Economic Competition and Consumer Interests prohibits restrictive agreements and practices. According to this Law, anti-competitive agreements are those transactions concluded between economic entities; their oral or written agreements; direct or indirectly agreed actions or behaviour; and decisions made by business associations that lead to or may lead to restriction, prevention or prohibition of competition.

Restrictive agreements and practices can be:

- between economic entities that are potential or actual competitors operating in the same product market if the agreement relates to the given product market (horizontal agreement);
- between economic entities that are not competitors and act as acquirers and sellers in the same product market if the agreement relates to the given commodity market (vertical agreement); and/or
- between economic entities operating in related or different product markets, which directly or indirectly lead to or may lead to the prevention, restriction or prohibition of competition (other agreement).

Restrictive agreements and practices, among other things, relate to the following:

- distribution or division of markets or supply sources;
- setting unfair prices; and
- restricting other economic entities from entering the market.

The actions or behaviour of economic entities in foreign countries, when such actions or behaviour may prevent, restrict or prohibit economic competition or harm the interests of consumers in the RA, may also be considered as restrictive agreements within the meaning of the Law.

### 6.4 Abuse of Dominant Position

The Law on the Protection of Economic Competition and Consumer Interests prohibits the abuse of a dominant or monopoly position, including:

- charging unreasonably high or low prices;
- obstructing competitors in the market;
- refusing to deal with certain customers or offering special discounts to customers who buy all or most of their supplies from the dominant company;
- not authorising the use of transmission networks, other distribution networks or other infrastructure for a reasonable fee or condition; and
- imposing conditions for membership or participation in professional or other unions.

## 7. Intellectual Property

### 7.1 Patents

Patents can be granted for technical solutions that concern a product or a method. There are three conditions for the patentability of an invention:

- novelty;
- inventive step (non-obviousness); and
- industrial applicability (utility).

Patents are registered by the Intellectual Property Office of Armenia. The Office's website has guidance on the procedure and samples of the necessary forms.

If the object of the protection is a product, the rightholder has an exclusive right to prohibit any third party from manufacturing the product, using it, introducing it to the market, offering it for sale, or importing or obtaining the product for any of those purposes. Similar prohibitions can be imposed if the object is a method. The infringement of a patent can result in civil and criminal liability.

Patents are protected for 20 years from the filing date or ten years in the case of short-term patents.

### 7.2 Trade Marks

A trade mark is a mark that is used to distinguish the products and/or services of one person from the products and/or services of another. There are very detailed regulations on the absolute and relative grounds of refusal of trade mark registration, such as:

- non-distinctiveness;
- descriptiveness or genericism; or

• being against public order or morals, etc.

Trade marks are registered by the Intellectual Property Office of Armenia. The Office's website has guidance on the procedure and samples of the necessary forms.

The right-holder of a registered trade mark has the right to prohibit:

- the use of a mark that is identical to its trade mark for the same products and/or services;
- the use of an identical or similar mark for identical or similar goods and/or services if there is a likelihood of consumer confusion; and
- the use of an identical or similar mark for different goods and/or services if the trade mark is declared as well known in Armenia and the use of the mark may cause damage to the interests of the owner of the well-known trade mark.

The length of protection is ten years from the filing date and can be renewed indefinitely every ten years.

## 7.3 Industrial Designs

An industrial design protects the unique and new appearance of an object.

In the RA, the following are protected by the law:

- a registered industrial design protected by a patent;
- an industrial design with international registration in accordance with the law; and
- an unregistered industrial design if it has become public, in accordance with the law.

Designs are registered with the Intellectual Property Office of Armenia. The Office's website has guidance on the procedure and samples of the necessary forms.

A right-holder has the right to prohibit use of a design without permission. Infringement can result in civil liability.

The length of protection is five years from the filing date, and may be renewed every five years, but for no more than 25 years in total.

## 7.4 Copyright

Copyright protects the unique outcome of a creative activity in the domain of science, literature and art created individually or jointly with other authors, which are expressed in a spoken, written or any other objectively perceivable manner, including those stored either permanently or temporarily in electronic format, regardless of the scope, significance, merits and purpose of creation. Subject matters of copyright are:

- literary, scientific works, as well as computer programs;
- works of painting, sculpture, graphics, design and other works of fine arts;
- dramatic and dramatic-musical works, scenarios, scenario sketches, librettos, and other works created for staging;
- choreographic and pantomimic works;
- musical works with or without words;
- audiovisual works (cinematographic, television films, animation films and cartoon films, musical clips, advertisement, documentary and fact-documentary, and other films);
- works of applied decorative art and stage graphics;
- photographic works and works created by analogous modes, which comply with the provisions of the law;
- works of urban planning, architecture, landscaping and their solutions both in whole and separate parts thereof;
- maps, plans, sketches and plastic works related to geography, topography, geology, urban planning, architecture and other sciences;
- derivative works (translations, adaptations of works, changes, arrangements and rearrangements, stage versions, audiovisual adaptations and other transformations of works in the scientific, literary and artistic domain, which are in compliance with the law; collections of works (encyclopaedias, anthologies), databases and other composite works, which are, by reason of the selection and (or) arrangement of their contents, results of a creative work; parts (titles, personages, etc) of a work, which are in compliance with the law and can be used separately;
- fonts; and
- other works in compliance with the law.

Copyright does not require registration.

Authors have the exclusive right to use their creations as they wish and to prohibit or authorise their use by third parties. The infringement of copyright can result in civil and/or criminal liability.

Authors' economic rights are protected during the authors' lifetimes, plus 70 years after their death. The intangible (moral) rights are inalienable and non-transferable and are not subject to exhaustion with the exception of the right of withdrawal, which runs for the life of the author.

### 7.5 Others

There are no specific regulations for the protection of software; software is subject to copyright protection under general rules.

According to the Law on Copyright and Related Rights, a "database" means a collection of works, data or other independent materials arranged in a systematic or methodical way, the individual elements of which shall be separately accessible by electronic or other means, and the acquisition, verification or presentation thereof shall require a substantial qualitative and/or quantitative contribution.

The maker of a database shall be deemed any person by whose initiative and on whose own responsibility a substantial qualitative and/or quantitative contribution is made for the acquisition, verification or presentation of the content of the database.

The rights of a database developer shall arise from the moment of completing the development of the database and shall have effect for 15 years.

#### Trade Secrets

There is no specific definition of "trade secret" in the Armenian legislation. Article 141 of the RA Civil Code provides a definition and protection for "Information Constituting an Employment, Commercial, or Banking Secret".

Information constitutes an employment, commercial, or banking secret, when such information has an actual or potential commercial value by virtue of it being unknown to third persons when there is no free access thereto on a legal basis, and when the holder of the information takes measures for the protection of its confidentiality.

Persons having illegally obtained information that constitutes a trade secret shall be obliged to compensate the damages caused. This obligation shall also be imposed on parties to a contract that have disclosed and/or used a trade secret in violation of a civil law or employment contract.

## 8. Data Protection

### 8.1 Applicable Regulations

#### The Regulation of Data Protection

Under the Armenian Constitution, the right to the inviolability of private and family life and the right to protection of personal data are declared as basic human rights, which may only be legally suspended or restricted during a state of emergency or under martial law.

Armenia has ratified the Convention for the Protection of Human Rights and Fundamental Freedoms 1950. This means that Armenia applies personal data protection in its jurisdiction as it is stipulated under Article 8 of this Convention. Armenia has also ratified the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Strasbourg, 28 January 1981), including the Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Strasbourg, 10 October 2018).

The main internal legal act related to data protection in Armenia is the Law on Protection of Personal Data, which was adopted in 2015 (Data Protection Law). The Data Protection Law stipulates that the following separate laws indicate specific rules for processing the defined particular personal data:

- bank secrecy regulated by the Law on Banking Secrecy;
- notarial secrecy regulated by the Law on the Notarial System;

- insurance secrecy regulated by the Law on Insurance and Insurance Activities;
- legal professional privilege regulated by the Law on the Profession of Advocate;
- personal data use during operations concerning national security and defence regulated by a number of legal acts relating to the national security service and military forces;
- personal data use in preventing and detecting money laundering and terrorism financing regulated by the Law on Combating Money Laundering and Terrorism Financing;
- operational intelligence activities regulated by the Law on Operational Intelligence; and
- proceedings regulated by the Criminal Procedural Code of Armenia, the Civil Procedural Code of Armenia, the Administrative Procedural Code of Armenia, and the Law on Compulsory Enforcement.

There are some other laws that regulate personal data protection in specific areas, such as the Labour Code.

### Principles of Data Protection

The Data Protection Law specifies the principles of personal data protection, which are as follows:

- principle of lawfulness;
- principle of proportionality;
- principle of reliability; and
- principle of minimum engagement of data subjects.

The principle of lawfulness requires the processing of personal data to be in compliance with the law as well as with the data subject's consent. Under the principle of proportionality, the law mandates that:

- the processing must pursue a legitimate purpose, and the measures to achieve it must be suitable, necessary and moderate;
- the volume of personal data processed needs to be the minimum necessary for achieving a legitimate purpose;
- processing needs to comply with its purpose or be compatible with it; and
- processing should be depersonalised if the purpose of processing may be achieved without personalisation of the data subject.

Compliance with the principle of reliability means that personal data being processed needs to be complete, accurate, simple and, where necessary, kept up to date. The principle of minimum engagement of a data subject is mostly applicable to the public authorities when the latter must collect data necessary for exercising their powers from the official sources available rather than request that a data subject regularly provide the same information.

### Data Processing Framework

Data processing should be performed with the data subject's consent unless the law allows the processing without it – eg, in the case of a court order to disclose personal data. The data subject has basic rights such as the right to access personal data, the right to erasure, the right to rectification, and the right to object.

The data processor should notify the data subject prior to the processing of their personal data by indicating the purpose of processing, the list of data processed, the category of processors and other information defined under the law. There is no mandatory requirement to approve a privacy policy.

The transfer of personal data to third parties needs to be performed with the data subject's consent, as well as the transfer of personal data abroad. The transfer of personal data abroad is subject to the preliminary approval of the Personal Data Protection Agency of the Republic of Armenia if the data needs to be transferred to a state without a sufficient level of data protection.

## 8.2 Geographical Scope

The Data Protection Law and the powers of the Personal Data Protection Agency of the Republic of Armenia are limited to the territory of Armenia.

If the personal data is collected (stored) by a legal entity – or a branch or representative office of a legal entity – established in Armenia, the collection and further processing will have to be performed under the Data Protection Law, and the Personal Data Protection Agency of the Republic of Armenia will be entitled to enforce its powers over this data processing.

### 8.3 Role and Authority of the Data Protection Agency

The Personal Data Protection Agency of the Republic of Armenia is part of the Ministry of Justice of Armenia. However, the Data Protection Law declares that the Agency operates independently.

Among other authorities listed under the law, the Agency is entitled to do the following:

- apply administrative sanctions prescribed by law in the case of violation of the requirements of the Data Protection Law;
- require the blocking, suspension or termination of the processing of personal data violating the requirements of the Data Protection Law;
- require the rectification, modification, blocking or destruction of personal data;
- prohibit completely or partially the processing of personal data;
- recognise electronic systems for processing the personal data of legal persons as having an adequate level of protection and include them in the register;
- ensure the protection of rights of the data subject; and
- consider applications of natural persons regarding the processing of personal data and deliver decisions within the scope of its powers.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

#### Draft Law on Investments

As of 20 May 2025, the draft of the new Law on Investments has passed its first reading. After this draft law passes its second reading and is signed by the President, it will enter into force one month after its publication.

This new law intends to grant protection to investments made by both local and foreign investors, except for certain portfolio investments. Local investments, however, will be protected under this new law only if the investment is made after the law enters into force and meets certain criteria defined under the law. This new law will apply to foreign investments made prior to its entry into force, unless the old law grants more favourable conditions and the foreign investor chooses to remain under the old Law on Foreign Investments.

The National Treatment regime for foreign investment will be retained, while the Most Favoured Nation regime will be added.

The possibility of restricting investment in certain business operation areas for defined purposes is introduced. Currently, Armenia is at the stage of discussions and drafting with regard to FDI screening, and this new provision is possibly linked to the expected legislative developments.

#### Law on Cybersecurity and Other Related Laws and Sub-Legislative Normative Legal Acts

On 4 December 2025, the National Assembly, upon second reading, adopted the new laws of the Republic of Armenia “On Cybersecurity” and “On the Regulation of Information Systems”, as well as a number of other normative legal acts aimed at regulating cybersecurity.

The Law of the Republic of Armenia “On the Regulation of Information Systems” entered into force on 26 December 2025, while the Law of the Republic of Armenia “On Cybersecurity” (hereinafter referred to as the Law) entered into force on 4 January 2026.

The Law stipulates that the provisions defining the obligations of economic operators shall enter into force with respect to those obligations only after the entry into force of subordinate normative legal acts establishing detailed requirements concerning such obligations. However, the rule set forth in Article 27 of the Law of the Republic of Armenia “On Normative Legal Acts” must be highlighted as it specifically states that, where the implementation of a norm is conditional upon the adoption of another normative legal act, such norm shall not apply until the said other normative legal act enters into force.

Currently, the legal framework regarding cybersecurity is at the stage of development, and it is expected that by the end of 2025 Armenia will have adopted all rel-

evant legal acts, with the first phase of cybersecurity requirements expected to take effect in 2026.

### Amendments to the Law on Joint Stock Companies

Under the new amendments to the Law on Joint Stock Companies, which are expected to enter into force by the middle of June 2026, the list of cases in which a shareholder may request the buy-back of shares has been significantly expanded. These amendments are mainly intended to protect minority shareholders and foresee a mandatory buyback request right as a remedy against potential abuse by the majority shareholder(s).

### Consumer Protection Laws

Throughout 2025 and 2026, Armenia has undertaken significant steps towards aligning its consumer protection regulatory framework with European Union standards. The recent amendments to the Law on Consumer Rights Protection are due to enter into force in July 2026. The said amendments are aimed at strengthening transparency obligations vis-à-vis consumers, as well as providing more comprehensive regulation of digital trade and services, with particular regard to distance contracts and contracts concluded outside business premises.

# Trends and Developments

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**MB Legal** is a Yerevan-based law firm providing legal services for complex cross-border matters, particularly within the financial services, technology, and investment management sectors. The firm maintains a strong international focus, with a majority of instructions involving foreign counterparties across the APAC, EMEA, and Americas regions. Based in the capital, the team offers specialised expertise in commercial dispute resolution, capital markets, and financial regulation. Recent engagements include advising on bank and investment company licences, handling initial public offerings (IPOs) on the Armenian Securities Exchange, and managing debt restructurings for international financial institutions. The firm also provides support for multi-jurisdictional mergers and acquisitions and is active in private fund registrations within the jurisdiction.

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### Overview of the Market

The Republic of Armenia has positioned itself as a resilient and rapidly evolving destination for international investment within the Caucasus region. As we move through 2026, the legal landscape is characterised by a profound shift towards transparency, digital integration, and alignment with international regulatory standards. These developments are not merely cosmetic but represent a fundamental restructuring of how business is conducted, regulated, and protected within the jurisdiction.

### A Regulated Crypto-Assets Framework

A brand-new Crypto-Assets Law has brought an entire sector out of legal ambiguity and into a regulated framework. Until mid-2025, there was no licensing framework, no regulatory oversight, and no clear legal basis for the commercial relationships these businesses needed to establish. Banks were frequently reluctant to provide services, and clients faced genuine uncertainty about the enforceability of agreements. That changed fundamentally when the Law on Crypto-Assets was adopted, representing the first comprehensive legal framework for the sector.

This legislation establishes a clear licensing regime for service providers and sets out rigorous disclosure requirements for public offerings. The law identifies various kinds of crypto-assets, including asset-referenced tokens and electronic money tokens. Issuers must now provide detailed offering documents, which are subject to approval by the Central Bank of Armenia. This regulatory clarity is a significant development for fintech companies looking to operate in a stable and legally defined environment.

The framework places a heavy emphasis on consumer protection and financial stability within the digital asset market. Entities providing crypto-services are now required to maintain specific reserve assets and follow strict internal rules of conduct. There are also robust prohibitions against insider trading and market manipulation to ensure market integrity. For international firms, these rules provide the necessary legal certainty to treat crypto-assets as a legitimate part of their Armenian operations.

### Safeguarding the Digital Economy with Cybersecurity Law

The Cybersecurity Law, now in force, imposes mandatory obligations on virtually every business operating in Armenia. This legislation entered into force in 2026, and its scope is deliberately broad to cover all vital economic activities. It identifies critical sectors such as energy, finance, and telecommunications as being essential for the country's security. Providers operating in these critical information infrastructure sectors must now implement robust security measures and protocols.

For international companies, the 72-hour notification timeline for cyber incidents mirrors requirements under the EU's GDPR and the NIS2 Directive. This means that organisations already compliant with European cybersecurity standards will find the Armenian framework conceptually familiar. The key task for these businesses is to ensure that Armenian subsidiaries have their own local incident response protocols. The law also emphasises international co-operation and information sharing regarding digital threats.

The designated autonomous body for cybersecurity has the authority to monitor standards and conduct audits. Entering the Armenian market now involves adherence to high-level digital safety protocols designed to enhance national economic resilience. Businesses are encouraged to develop internal cybersecurity regulations that align with international ISO standards. This proactive approach to digital safety is a vital consideration for any enterprise relying on modern digital infrastructure in the region.

### The High-Tech Sector: A Fiscal Environment Built to Compete

Armenia has been building its technology sector credentials for years, but a new package of incentives represents a qualitative step change. The Law on State Support for the High-Tech Sector, effective from 1 January 2025, introduced a suite of competitive incentives. This framework is structured around a new High-Tech Registry that identifies eligible businesses and entrepreneurs. In our view, the resulting fiscal regime is now one of the most competitive for technology businesses anywhere in the region – and one that merits serious attention from international investors evaluating technology hub locations.

International companies considering establishing technology centres or R&D functions in Armenia can benefit from substantial state support. For example, the state provides support equal to 60% of the calculated income tax for new employees and migrant workers – a meaningful subsidy that directly reduces the cost of scaling a local team. When combined with Armenia's competitive local labour costs and a well-educated technical workforce, this creates a compelling commercial case for software development and engineering operations that goes beyond tax efficiency alone.

A particularly significant feature of the current regime is the "super deduction" incentive for research and development. Article 123 of the Tax Code allows companies to deduct 200% of salaries paid to staff involved in R&D and specialised high-tech professional work from their taxable base. In practice, this means that for every AMD spent on qualifying R&D salaries, companies receive twice the deduction against corporate income tax – effectively the state co-funding innovation activity. For technology-intensive businesses, this is not a marginal benefit: it can materially alter the economics of locating R&D functions in Armenia versus higher-cost jurisdictions. Companies should, however, note that the list of qualifying job positions and activities remains subject to government approval, and careful structuring will be essential to ensure eligibility.

The high-tech registry also facilitates tracking of sectoral growth and investment levels for future policy development. Registered entities are eligible for specific exemptions and support running until 31 December 2031 – a seven-year horizon that provides the legislative predictability capital-heavy technology projects require. We anticipate that this long-term commitment, combined with Armenia's EU accession trajectory, will accelerate interest from European and international technology firms seeking a stable, well-regulated, and fiscally attractive base in the South Caucasus.

### Labour Market Transformation: Digitalisation and Contracts

Armenia is modernising its labour market by passing a significant compliance threshold regarding how employment is documented. From 1 January 2027, all employment contracts in Armenia must be executed through a digital system using an electronic digital signature. This requirement also applies to any amendments or terminations of existing employment relationships. This shift reflects a broader trend of digitalisation aimed at improving the efficiency of the domestic labour market.

The mandatory use of the digital system for employment contracts with foreigners is set to follow, with a full implementation target in July 2027. This digital platform will streamline the tracking of legal residency and work permissions for foreign staff. It is intended to reduce administrative burdens for both employers and the state migration services. Businesses must now ensure they have the necessary electronic signatures and system access to remain compliant with the Labour Code.

The Labour Code has also been updated to provide clearer protections for vulnerable workers and clarify

intellectual property rights. For instance, there are strict prohibitions on employing minors in heavy or hazardous work environments. Regarding intellectual property, the law generally vests property rights for works created during employment with the employer unless otherwise agreed. These updates are essential for companies in the creative and technology sectors, where human capital is the primary asset.

### A Digital Shift in Migration Management

The regulatory framework for migration in Armenia is set for a major overhaul with the adoption of Law HOOH-11-NOW (HO-11-N) in early 2026. Entering into force on 1 November 2026, these reforms transition migration management into a fully digital era. Central to this transformation is the launch of the Electronic Unified Platform, which will centralise all residency and work permit proceedings. This platform is designed to streamline communication between state bodies, employers, and foreign citizens, significantly reducing the reliance on traditional paper-based applications.

A significant legal shift under the new law is the introduction of the "One Status" rule, which prohibits foreigners from holding multiple residency categories simultaneously. The law also begins the process of phasing out the previous "special residency status" (ten-year passports) for new applicants, integrating these categories into a more standardised temporary and permanent residency framework. Furthermore, temporary residency permits will now be granted for durations of up to one year, aligning closely with specific employment or study contract dates. These changes provide a more structured and transparent hierarchy for legal residence within the jurisdiction.

To manage regional labour market dynamics more effectively, the government has introduced an annual quota system for residency statuses based on type and quantity. Additionally, a new "Work Visa" category has been established, allowing foreigners to enter for short-term employment or to finalise residency applications for up to 120 days. This visa is non-extendable and can only be issued once per calendar year, providing a clear path for short-term expertise. However, any residency or work status remains fragile if a formal employment contract is not registered within 15 working days, as this failure can trigger a revocation of the status.

The 2026 reforms also emphasise automated data verification by integrating the migration platform with other national registers. This allows for real-time validation of applicant data against tax records, the state population register, and the cadastre of real estate. Such integration ensures that residency grounds, such as legitimate employment or property ownership, are continuously monitored against official state records. This digital rigour is intended to enhance the overall integrity of the migration system while improving efficiency for international businesses operating in Armenia.

### Modernising Corporate Finance: Convertible Notes

A targeted but highly significant corporate law reform was enacted in 2025 through amendments to both the Civil Code and the Law on Joint-Stock Companies. These reforms enable international-standard investment structures, such as convertible notes, which were previously difficult to implement under Armenian law. A convertible note is now explicitly recognised as a loan that can be converted into equity upon certain triggers or dates. In our view, this is one of the more consequential changes for the local startup ecosystem in recent years: founders and investors now have a familiar early-stage financing tool that no longer needs to be artificially engineered around gaps in the prior legal framework.

Under the new rules, the process for issuing shares upon conversion is streamlined to reduce legal friction. The law ensures that the rights of existing shareholders are balanced against the needs of new investors during these conversions. This reform is a direct response to the needs of the burgeoning Armenian tech ecosystem and venture capital market, and we expect it to lower the transaction costs and legal risk that previously made Armenian entities less attractive vehicles for early-stage rounds. In practical terms, it allows local firms to attract international funding using instruments that global investors already understand and trust, removing a recurring point of friction in cross-border deal negotiations.

Furthermore, the amendments clarify the corporate approval processes required for issuing such instruments. Boards and shareholder meetings now have clear guidelines on how to authorise convertible loans and manage subsequent equity increases. This added transparency meaningfully reduces the risk of legal challenges to financing rounds and cap table management – a risk that, in our experience, was a genuine deterrent for foreign venture investors prior to this reform. For foreign investors, this reform brings Armenian corporate law significantly closer to international best practices, and we expect it to be a key reference point as Armenia continues to position itself as a venture-friendly jurisdiction in the region.

### Comprehensive Gambling Sector Reform

The Armenian gambling landscape underwent a fundamental transformation with the enactment of the Law on Regulation of Gambling Activities in 2024, set to enter into force by the end of 2026. This reform is designed to move the sector away from legal ambiguity and into a highly controlled, electronic management framework. Central to this shift is the appointment of a "Gambling Sector Regulation Operator" tasked with implementing a centralised monitoring system. This system provides real-time oversight of bets, payouts, and player activities, significantly enhancing the state's ability to combat money laundering and ensure fair play. In our view, this centralised oversight model signals a clear policy intent: Armenia is positioning itself to retain gambling as a legitimate revenue-generating sector while closing off the compliance and reputational risks that have historically made the industry difficult for institutional investors and banks to engage with.

The new regulatory regime places a significant emphasis on "Responsible Gaming" to mitigate the social risks associated with gambling. It introduces mandatory player identification in a "designated" lobby before entry into any physical gambling hall is permitted. The legislation also establishes strict age thresholds, requiring participants to be at least 21 years of age for casino and internet games, and 18 years for lotteries. Furthermore, the law enables citizens to voluntarily restrict their own participation or allows family members to seek a court-ordered restriction for those in financial distress. For operators, we expect these requirements to translate into a material compliance build-out – identification systems, age-verification infrastructure, and self-exclusion registries will need to be operational well before the 2026 deadline, and businesses should begin budgeting for this now rather than treating it as a late-stage implementation step.

Territorial restrictions continue to be a primary tool for regulating physical gambling locations, confining casinos to specific zones such as Jermuk, Tsaghkadzor, and Sevan. An innovative exception exists for large-scale investment projects approved by the government that exceed AMD40,000,000,000. Such projects may be permitted to operate gambling facilities in other locations, provided they meet rigorous criteria. In our assessment, this carve-out is a deliberate lever to attract major resort-scale capital – it effectively trades geographic flexibility for significant committed investment, which should be of particular interest to large international gaming and hospitality groups evaluating entry into the Armenian market. This balanced approach aims to leverage the sector for economic growth while maintaining strict social safeguards and geographic control.

### Enhanced Protections for Minority Shareholders

A landmark development in Armenian corporate law introduces new safeguards for minority shareholders within the Law on Joint-Stock Companies. This legislation significantly expands the rights of non-controlling shareholders to demand that a company purchase their shares at a fair market price. These "buyback" rights are now triggered by a broader range of circumstances designed to prevent the marginalisation of small investors by dominant interests.

The amendments provide critical protection against the "controlling shareholder", defined as an individual or group acting in concert that holds 50% or more of the voting shares. Shareholders can now demand a buyback if the actions or inactions of the company or a controlling shareholder result in obvious disadvantageous consequences for them. This specifically includes instances where a controlling shareholder receives a disproportionate advantage at the expense of non-controlling participants.

Furthermore, the reforms address systemic corporate governance failures that previously left minority investors with little recourse. A buyback right is now triggered if a company fails to convene an annual general meeting or approve essential financial reports and dividend distributions for at least three out of the last five years. Protection is also extended to cases where a shareholder is simply not notified of the annual meeting.

Investment liquidity for minority holders is further secured through new rules regarding dividend distributions. If a company fails to distribute dividends for at least five out of the last ten years, or if the distributed amounts are considered insignificant compared to the market yield based on net asset value, minority shareholders may exit the company via a mandatory buyback. This ensures that capital is not trapped in unproductive or unfairly managed entities.

Significantly, it removes the traditional fiscal barrier to these specific protections. While standard share buybacks are typically capped at 10% of a company's net assets, this limit does not apply when the buyback is triggered by these new minority protection grounds. To ensure fairness in the exit process, the law mandates that the share price must be determined by a qualified evaluator meeting strict government criteria, providing an objective basis for the transaction.

### Strengthening the Regulatory Oversight: The Competition and Consumer Protection Commission

An important shift in Armenia's regulatory environment occurred in 2025 with the significant expansion of the mandate of the autonomous regulatory body, now renamed the Competition and Consumer Protection Commission. This reform establishes the Commission as the jurisdiction's central authority for the protection of consumer interests, moving beyond its traditional focus on market competition. It now possesses explicit powers to prevent and eliminate practices that harm either consumer groups or an indefinite range of consumers.

A core component of this reform is the introduction of a dedicated legal framework for addressing offences against consumer interests. This includes the regulation of unfair commercial practices, misleading advertising, and systemic violations of mandatory trade and service rules. The Commission is now empowered to evaluate these practices against international principles of integrity, honesty, and fair dealing to ensure a balanced marketplace.

To increase administrative efficiency, the updates introduced simplified proceedings for specific retail violations. For example, if a business fails to comply with mandatory price display rules, the Commission's General Secretary can issue a formal notification. This procedure allows the business to rectify the issue and pay a nominal fixed penalty, thereby avoiding a full-scale administrative inquiry while ensuring rapid compliance.

Furthermore, the Commission's enforcement toolkit has been enhanced with the ability to impose significant financial penalties for more serious infractions. Fines for unfair competition or consumer-related offences can now be calculated as a percentage of the entity's annual turnover, reaching up to 5% or 10% depending on the nature of the violation. This ensures that sanctions remain proportional and act as a genuine deterrent for large market participants.

The reforms also prioritise international co-operation in the field of consumer protection. The Commission is now explicitly authorised to collaborate with international organisations and foreign state bodies to exchange information and implement global best practices. For international businesses, this means that Armenia's consumer protection standards are increasingly converging with those of its European and regional partners.

### European Union Accession

On 26 March 2025, Armenia's National Assembly adopted the Law on Launching the Process of Armenia's Accession to the European Union. For foreign investors, this carries three immediate practical implications regarding the stability and future of the Armenian legal framework. The direction of Armenian regulatory reform is now predictable in a way it has never previously been. Businesses familiar with EU-standard frameworks in corporate governance, data protection, competition law, and procurement can

reasonably expect Armenian law to converge with those frameworks over time.

The integration into the European legal space provides a significant psychological and legal safety net for international capital. This process is supported by the Republic's commitment to democratic institutions and the rule of law, as stated in the accession process preamble. This convergence reduces the perceived risks traditionally associated with operating in the Caucasus region.

### Future Outlook

As Armenia looks toward the remainder of 2026 and into 2027, the focus remains on deepening these reforms. The ongoing digitalisation of government services and the implementation of international standards for financial and non-financial reporting are set to continue. While challenges remain, the clear trajectory is toward a more modern, transparent, and investor-friendly environment. For clients wishing to do business in the jurisdiction, these trends represent a significant opportunity to engage with an economy that is increasingly integrated into the global legal and financial system.

The combination of robust legal protections for foreign investment, forward-looking regulations for digital technologies, and a commitment to international transparency makes Armenia a compelling choice for regional operations. By understanding and adapting to these developments, businesses can navigate the Armenian market with confidence and contribute to its ongoing economic transformation. The Republic's journey toward legal excellence and European integration is a defining feature of its current socio-economic context.

# AUSTRALIA




## Law and Practice

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**Archer Scott Lawyers** is an independent Australian corporate and commercial law firm with offices in Melbourne, Sydney and Adelaide. The globally connected, results-driven practice combines big-firm expertise with the focus, agility and value of a boutique firm. Archer Scott advises businesses, investors, founders and organisations across areas including mergers and acquisitions, corporate advisory, projects and construction, franchising, start-ups and venture capital, employment, intellectual property, commercial real estate, and sports law. Its approach is centred on practical commercial outcomes, efficient value creation and long-term client relationships. The firm emphasises clear risk management rather than unnecessary complexity, helping clients understand, categorise and manage legal and commercial risks. With experience drawn from significant Australian corporate transactions and global networks, Archer Scott aims to deliver strategic, innovative and client-focused legal advice that supports business growth, protects brand value and helps clients realise long-term commercial opportunities.

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## 1. Legal System

### 1.1 Legal System and Judicial Order

Australia is a common law jurisdiction whose legal tradition derives from England. It is a federation comprising six states and two self-governing territories, operating under a written federal Constitution that distributes power between the Commonwealth (national) and the states.

Law is sourced from legislation enacted by the Commonwealth and state parliaments and from the common law and equity developed by the courts, applied through the doctrine of precedent. The Commonwealth Parliament legislates within enumerated heads of power: the corporations power is the foundation of nationally uniform company, competition and consumer laws, while areas such as real property, conveyancing, stamp duty and retail leasing remain principally matters of state law.

The High Court of Australia sits at the apex of the judicial system as the final court of appeal and the arbiter of constitutional questions. Federal jurisdiction is exercised mainly by the Federal Court of Australia, which hears corporations, competition, consumer, intellectual property, taxation and administrative matters, and by the Federal Circuit and Family Court. Each state and territory has its own hierarchy, headed by a Supreme Court with a Court of Appeal, beneath which sit intermediate and lower courts, and merits review of many government decisions lies with the Administrative Review Tribunal and its state equivalents.

For foreign investors, the practical consequence is that the rules most relevant to acquiring and operating a business – ie, company, competition, consumer, foreign investment, intellectual property and tax law – are federal and apply uniformly across the country. State-based differences in property, duty and leasing matter chiefly to multi-site and franchised operations, which may need to account for variation between jurisdictions.

## 2. Restrictions on Foreign Investments

### 2.1 Approval of Foreign Investments

Foreign investment is regulated by the Foreign Acquisitions and Takeovers Act 1975 (Cth) and the Foreign Acquisitions and Takeovers Regulation 2015, supported by Australia's Foreign Investment Policy and published guidance. The Foreign Investment Review Board is a non-statutory body that advises the Treasurer, who is the decision-maker; the Treasury's Foreign Investment Division administers the regime, and clearances are given as a no objection notification.

A foreign person must generally notify, and obtain a decision, before taking certain actions. The most common triggers are acquiring a substantial interest (20% or more) in an Australian entity, or acquiring interests in Australian land or businesses, where the relevant monetary threshold is met. A national security overlay applies separately: acquiring a direct interest (10% or more, or any interest conferring control or influence) in a national security business or national security land is notifiable regardless of value, as is starting such a business.

Monetary thresholds are indexed annually on January 1st. For 2026, the principal thresholds are as follows.

- Business acquisitions: a threshold of AUD347 million applies to investors from non-agreement countries. For private investors from certain free trade agreement partners (such as the United States, the United Kingdom, New Zealand and Japan), a higher threshold of AUD1.498 billion applies to entities not carrying on a sensitive business, while the AUD347 million threshold continues to apply where the target carries on a sensitive business.
- Agribusiness: AUD75 million. Agricultural land: a cumulative AUD15 million.
- Media businesses and residential land: notifiable at any value.
- National security businesses and national security land: notifiable at any value. Foreign government investors are screened at a nil threshold for all direct interests.

Approval must be obtained before the action is completed, so the regime is suspensory in effect. The Treasurer assesses each proposal against the national interest and, where relevant, national security; neither term is exhaustively defined, and the factors considered include security, competition, tax, the impact on the economy and the community, and the character of the investor. Where a transaction is also notifiable under the merger control regime, foreign investment approval does not substitute for Australian Competition and Consumer Commission (ACCC) approval or a waiver, and the two assessments should be managed as parallel workstreams.

## 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

Applications are lodged electronically through the Foreign Investment Portal, which the government launched in 2025, and a fee is payable on lodgement. Fees generally range from AUD1,125 to AUD1,205,200 for non-residential actions, depending on the acquisition type and value. The statutory decision period is 30 days, with a further short period to notify the applicant; it can be extended by an interim order of up to 90 days, and applicants are frequently asked to agree to a voluntary extension. Foreign investors should build the Foreign Investment Review Board timetable into conditions precedent and long-stop dates in their transaction documents, particularly where ACCC approval is also required.

The outcome is either a no objection notification, which may be unconditional or subject to conditions, or, in rare cases, a prohibition. Investing without a required approval, or breaching conditions, exposes the investor to civil and criminal penalties, which for individuals can reach into the millions of dollars and are substantially higher for corporations; investors could also be exposed to divestiture orders, infringement notices and value-based penalties. Foreign persons also have ongoing obligations to notify holdings to the Register of Foreign Ownership of Australian Assets.

## 2.3 Commitments Required From Foreign Investors

The Treasurer routinely attaches conditions to a no objection notification, calibrated to the national interest and national security risk presented by the particular investment. Standard tax conditions are common, requiring the investor to comply with Australian tax law, co-operate with the Australian Taxation Office and refrain from arrangements that shift profits offshore.

Other conditions may address:

- data security and access for sensitive or critical assets;
- development timeframes for vacant land;
- ongoing reporting and audit requirements; and
- in some cases, undertakings as to Australian directors, local management or continuity of operations.

Conditions are negotiated in practice, and early engagement with the Treasury helps investors understand and shape the likely conditions before a binding decision is made.

## 2.4 Right to Appeal

A decision of the Treasurer on the national interest or national security is an exercise of executive discretion, and there is no merits review of such a decision by a tribunal. An affected investor may seek judicial review of the legality of the decision, under the Administrative Decisions (Judicial Review) Act 1977 (Cth) or under

Section 39B of the Judiciary Act 1903 (Cth) and Section 75 (v) of the Constitution.

Judicial review is confined to questions of legality, such as jurisdictional error, denial of procedural fairness or taking into account irrelevant considerations, and does not allow the court to substitute its own view of the merits. Applications are subject to time limits, and reasons may be requested under the judicial review legislation. In practice, formal challenges are uncommon; investors generally manage risk through early and co-operative engagement rather than litigation.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

The principal vehicle is the company, incorporated and regulated under the Corporations Act 2001 (Cth) and administered by the Australian Securities and Investments Commission (ASIC). The liability of shareholders is limited to any amount unpaid on their shares, and there is no general minimum share capital requirement. The most common forms are as follows.

- Proprietary company (Pty Ltd): a private company limited by shares, with at least one shareholder and a maximum of 50 non-employee shareholders, at least one director ordinarily resident in Australia, and no ability to raise capital from the public. It is the usual vehicle for an inbound subsidiary, a holding company or a joint venture.
- Public company (Ltd): able to have unlimited shareholders and to list on the Australian Securities Exchange, requiring at least three directors (two ordinarily resident in Australia) and a company secretary. It is used for public fundraising and listed groups.
- Registered foreign company: a foreign company may register with the regulator and carry on business through a branch, which does not create a separate legal entity.
- Trusts: discretionary and unit trusts, usually with a corporate trustee, are widely used for investment, holding and family or small-business structuring, and stapled structures are common in property and infrastructure. Partnerships and limited partnerships are available under state law, and incorporated limited partnerships are used for venture capital.

The choice of vehicle is driven mainly by tax treatment, asset protection and liability, and by the commercial purpose. In transactions, a proprietary company is the standard acquisition or bid vehicle, while trusts frequently sit above operating entities as holding vehicles.

### 3.2 Incorporation Process

A company is registered with the corporate regulator, and is issued an Australian Company Number on registration. The company then obtains an Australian Business Number and registers for goods and services tax and pay-as-you-go withholding where required, and each director must first obtain a director identification number.

The company needs:

- a registered office in Australia;
- a principal place of business in Australia;
- at least one Australian resident director;
- at least one member; and
- either a constitution or reliance on the replaceable rules in the legislation.

Registration is inexpensive and is typically completed within one to two business days. A foreign company that prefers to operate through a branch instead registers as a registered foreign company and receives an Australian Registered Body Number.

### 3.3 Ongoing Reporting and Disclosure Obligations

All companies must keep their details current with the regulator, notifying ASIC of prescribed changes, including changes to officeholders, the registered office, the share structure and, where applicable, ultimate holding company details, within the prescribed periods, and confirming their details and paying an annual review fee each year. Public companies, and some companies in particular circumstances, must also lodge special resolutions or changes to their constitution. Financial reporting and audit obligations then depend on size and ownership.

Public companies, and large proprietary companies that meet two of three thresholds for revenue, gross assets and employees, must prepare, have audited and lodge annual financial reports. Small proprietary companies are generally exempt, but a small proprietary company that is controlled by a foreign company must usually lodge audited accounts, unless relief applies. These obligations are relevant in transactions because they determine the financial information available on a target.

Companies must maintain a register of members, while substantial-holding disclosure applies principally to listed companies and registered schemes rather than to private companies generally, and a broader beneficial ownership transparency reform is in progress. Customer due diligence under anti-money laundering law, which from 1 July 2026 extends to certain designated services provided by lawyers, conveyancers, accountants and real estate agents, is increasing scrutiny of ultimate beneficial ownership in dealings and acquisitions.

Disclosure (typically via a prospectus or other disclosure document) is required when raising capital. There are exemptions and short-form disclosures where the capital raise is limited to sophisticated investors.

Where the company operates a franchise system, complex franchising disclosure documents are required.

Australia is a highly regulated environment, and industry-specific registrations, permits and disclosures are typically required.

### 3.4 Management Structures

Australian companies have a single-tier board; there is no separate supervisory board or two-tier structure, but the company may adopt an informal advisory committee-style body. The directors are responsible for managing or supervising the management of the company, and day-to-day operations are usually delegated to officers and senior management.

A public company must have at least three directors and a company secretary, while a proprietary company needs only one director and is not required to appoint a secretary. Shareholders exercise residual powers in general meetings, including amending the constitution and approving certain related-party and major transactions. Listed companies are additionally subject to the Listing Rules and the corporate governance recommendations of the Australian Securities Exchange.

### 3.5 Directors', Officers' and Shareholders' Liability

Directors and officers owe statutory duties under the Corporations Act, including the duty of care and diligence (protected by the business judgement rule), the duty to act in good faith and for a proper purpose, and the duty not to misuse their position or information, alongside equivalent general law and fiduciary duties. Directors may also be personally liable for insolvent trading where a company incurs debts while insolvent, subject to the safe harbour available where they pursue a course of action that is reasonably likely to lead to a better outcome for the company.

Personal exposure can arise under tax law through director penalty notices, and under work health and safety, environmental, competition (including as an accessory) and franchising laws. Breach can lead to civil penalties, compensation, disqualification and, for dishonest conduct, criminal liability.

Limited liability is the governing principle, and Australian courts only rarely pierce the corporate veil, generally where there is fraud or a sham or a genuine agency, with specific statutory exceptions such as insolvent trading. In acquisitions, directors' and officers' insurance, indemnities and run-off cover are standard, and buyers assess director penalty and accessorial exposure as part of diligence.

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

Most private sector employment is governed by the national workplace relations system established by the Fair Work Act 2009 (Cth). The National Employment Standards set a floor of minimum entitlements; modern awards set additional industry and occupation minimums; and enterprise agreements, individual

contracts and the common law operate above that floor.

The Fair Work Commission is the national workplace tribunal and the Fair Work Ombudsman is the regulator, while work health and safety is governed by largely harmonised state and territory laws, and anti-discrimination obligations arise under both Commonwealth and state legislation. The framework has recently been reshaped by:

- the Secure Jobs, Better Pay reforms, including limits on fixed-term contracts; and
- the Closing Loopholes reforms, which:
  (a) changed the rules on casual employment, labour hire, gig and road transport work;
  (b) introduced same job, same pay;
  (c) criminalised intentional wage underpayment; and
  (d) introduced a right to disconnect.

### 4.2 Characteristics of Employment Contracts

There is no requirement for an employment contract to be in writing; a contract may be made orally, although written contracts are standard practice. Whatever the contract says, the National Employment Standards, the applicable modern award and any enterprise agreement apply and cannot be displaced by agreement, so an employer cannot contract below the statutory floor.

Contracts commonly deal with duties, remuneration, hours, leave, confidentiality, intellectual property assignment and post-employment restraints. The use of fixed-term contracts is now limited, with a general maximum of two years including renewals and some exceptions, and casual employment has a statutory definition together with a pathway by which eligible employees may choose to convert to permanent employment. Probationary periods are common, although the qualifying period for unfair dismissal protection is six months, or 12 months for small business employers.

### 4.3 Working Time

The National Employment Standards set maximum weekly hours of 38 for a full-time employee, plus additional hours where reasonable. There is no single statutory overtime rate; overtime, penalty rates and loadings are set by the applicable modern award or enterprise agreement, and casual employees receive a loading (commonly 25%) in lieu of paid leave.

Employees now have a right to disconnect, allowing them to refuse to monitor or respond to unreasonable out-of-hours contact, which, following a later commencement date, now applies to small business employers as well. The national minimum wage is reviewed annually by the Fair Work Commission, and paid leave entitlements (including annual leave, personal and carer's leave, parental leave and long service leave) arise under the National Employment Standards and state legislation.

### 4.4 Termination of Employment Contracts

Australia is not an employment-at-will jurisdiction. An employer must have a lawful basis to terminate and must give the minimum notice set by the National Employment Standards (scaled by length of service) or pay in lieu, unless the employee is summarily dismissed for serious misconduct.

Several statutory protections apply. Eligible employees may bring an unfair dismissal claim if a dismissal is harsh, unjust or unreasonable, with remedies of reinstatement or compensation capped at six months' pay. The general protections regime prohibits adverse action taken for a prohibited reason, such as the exercise of a workplace right, carries no compensation cap and reverses the onus of proof; separate protections address unlawful termination and discrimination.

A genuine redundancy is a defence to an unfair dismissal claim, and redundancy pay is provided for under the National Employment Standards, with consultation obligations arising under awards and agreements. Where 15 or more employees are to be made redundant, the employer must notify Services Australia and any relevant registered employee association, with consultation obligations arising mainly under the applicable award, enterprise agreement or workplace instrument. In transactions, the transfer of business rules can transfer employees and entitlements to a buyer. Acquirers plan for redundancies, accrued leave and transferring instruments, while post-employment

restraints are enforceable only to the extent they are reasonable.

### 4.5 Employee Representations

There is no general system of mandatory works councils or board-level employee representation. Trade unions represent their members and may exercise rights of entry, and the Fair Work Commission oversees enterprise bargaining, which may be conducted at a single enterprise or, in defined streams, across multiple employers.

Consultation obligations arise under modern awards and enterprise agreements, particularly in relation to major workplace change and redundancy. Employees enjoy freedom of association, and adverse action taken because of union membership or activity is prohibited. Health and safety representatives may be elected under work health and safety laws.

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/ Employers

An individual's liability to Australian income tax depends on residency: residents are taxed on worldwide income and non-residents on Australian-source income. Personal income tax is progressive, with a top marginal rate of 45% plus a 2% Medicare levy, and is collected from employees through pay-as-you-go withholding by the employer.

Employers must:

- withhold and remit pay-as-you-go amounts;
- pay the superannuation guarantee, which is set at 12%, into the employee's superannuation fund; and
- pay fringe benefits tax on non-cash benefits provided to employees.

From 1 July 2026, under the Payday Super reforms, the superannuation guarantee must be paid at the same time as salary and wages, rather than quarterly, and is calculated on an employee's qualifying earnings. Employers are also liable for state payroll tax on wages above the relevant state threshold, with rates and thresholds varying between the states and territories.

### 5.2 Taxes Applicable to Businesses

A company is subject to Australian tax on its income if it is resident in Australia (by incorporation, or by having its central management and control in Australia) or derives Australian-source income. The main taxes are as follows.

- Corporate income tax at 30%, reduced to 25% for a base rate entity (broadly, a company with aggregated turnover below AUD50 million and no more than 80% passive income). Distributed profits carry franking credits under the dividend imputation system, which relieves double taxation for resident shareholders.
- Goods and services tax at 10% on most supplies, and withholding tax on unfranked dividends, interest and royalties paid to non-residents, subject to relief under Australia's tax treaties.
- Capital gains tax, as part of the income tax, on the disposal of assets. Non-residents are taxed on taxable Australian property, and a foreign resident capital gains withholding obligation applies to acquisitions of taxable Australian real property and related interests from foreign residents, at 15% since 1 January 2025 following the removal of the former value threshold. Stamp duty is imposed by the states on land and certain transactions, including landholder duty on dealings in land-rich entities.

Australia has implemented Pillar Two of the OECD and G20 Two-Pillar Solution. The Taxation (Multinational—Global and Domestic Minimum Tax) Act 2024 and its rules establish a 15% global minimum tax for large multinational groups with consolidated annual revenue of at least EUR750 million, comprising an income inclusion rule and a domestic minimum tax for fiscal years beginning on or after 1 January 2024, and an undertaxed profits rule from 1 January 2025. Australia's domestic minimum tax is recognised as a Qualified Domestic Minimum Top-up Tax with QDMTT safe harbour status on the OECD central record, effective from 1 January 2024.

### 5.3 Available Tax Credits/Incentives

The principal broad-based incentive is the Research and Development Tax Incentive, which provides a refundable or non-refundable offset depending on the company's turnover. A range of more targeted concessions is also available, including:

- the small business capital gains tax concessions;
- the instant asset write-off (subject to settings reviewed each year);
- concessions for early-stage innovation companies and for venture capital investment through early-stage and other venture capital limited partnerships; and
- incentives for build-to-rent housing.

The government has also introduced production incentives in priority areas, such as clean energy and critical minerals. Eligibility criteria apply to each measure, and the states and territories offer their own payroll tax and investment incentives to attract particular industries or projects.

### 5.4 Tax Consolidation

Tax consolidation is available for wholly owned Australian groups. A consolidated group, made up of a head company and its wholly owned Australian resident subsidiaries, is treated as a single taxpayer, so that intra-group transactions are generally disregarded and the group lodges a single income tax return.

Tax cost-setting rules apply when entities join or leave the group, and a multiple entry consolidated group can be formed by certain foreign-owned groups. The election to consolidate is irrevocable, and the head company is primarily liable for the group's income tax.

### 5.5 Thin Capitalisation Rules and Other Limitations

Thin capitalisation rules apply. The earnings-based rules that took effect from 1 July 2023 limit debt deductions for multinational entities, with a default fixed-ratio test that caps net debt deductions at 30% of tax earnings before interest, taxes, depreciation and amortisation, and alternative group-ratio and third-party debt tests.

A separate debt-deduction-creation rule disallows deductions arising from certain related-party arrangements that lack genuine commercial substance. The rules apply to both inbound and outbound investors above a de minimis level of debt deductions.

### 5.6 Transfer Pricing

Transfer pricing rules apply. Division 815 of the Income Tax Assessment Act 1997 (Cth) requires cross-border dealings between associated enterprises to be priced on an arm's length basis, consistent with the OECD transfer pricing guidelines.

Taxpayers must keep contemporaneous documentation to access penalty protection, and large multinational groups are subject to country-by-country reporting. The Australian Taxation Office actively reviews transfer pricing, and advance pricing arrangements are available to provide certainty for significant cross-border dealings.

### 5.7 Anti-Evasion Rules

Australia has a general anti-avoidance rule in Part IVA of the Income Tax Assessment Act 1936 (Cth), under which the Commissioner of Taxation may cancel a tax benefit obtained from a scheme entered into for the dominant purpose of obtaining that benefit. Part IVA includes the multinational anti-avoidance law and the diverted profits tax, which imposes tax at 40% on profits diverted offshore, and the goods and services tax has its own anti-avoidance rule.

There is a promoter penalty regime for those who promote tax exploitation schemes, together with specific integrity rules addressing matters such as hybrid mismatches and debt deductions. Enforcement is supported by a well-resourced tax avoidance taskforce within the Australian Taxation Office.

### 5.8 Tariffs

Customs duties are imposed under the Customs Tariff Act 1995 (Cth) and are generally low, with many goods entering duty-free and a standard rate of 5% applying to some categories. Australia maintains an extensive network of free trade agreements, including with China, the United States, Japan, the United Kingdom and the parties to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership

and the Regional Comprehensive Economic Partnership, which provide preferential or zero rates for qualifying goods.

Anti-dumping and countervailing measures provide targeted protection for some domestic manufacturing, such as steel, aluminium and certain chemicals. Tariffs are not a significant protectionist instrument in Australia; the more material current sensitivities arise from global trade tensions and from supply chain and critical-minerals policy rather than from tariff barriers.

## 6. Competition Law

### 6.1 Merger Control Notification

A new mandatory and suspensory merger control regime commenced on 1 January 2026 under the Competition and Consumer Act 2010 (Cth), as amended by the Treasury Laws Amendment (Mergers and Acquisitions Reform) Act 2024 (Cth). The ACCC is the sole first-instance decision-maker, replacing the former voluntary and informal clearance model and the separate authorisation process. This is the most significant change to Australian merger control in five decades.

An acquisition of shares or assets that has a connection to Australia must be notified, and must not be completed if it meets a monetary threshold or falls within a designated class. The principal thresholds, measured by Australian revenue, are as follows.

- Large merged firm: the combined Australian revenue of the merger parties is at least AUD200 million, and either the target's Australian revenue is at least AUD50 million or the global transaction value is at least AUD250 million.
- Very large acquirer: the acquirer group's Australian revenue is at least AUD500 million and the target's Australian revenue is at least AUD10 million.
- Serial or creeping acquisitions: separate cumulative thresholds aggregate Australian revenue from acquisitions of the same or substitutable goods or services over the previous three years. Very small acquisitions, broadly those with target Australian revenue below AUD2 million, are excluded.
- From 1 April 2026, further thresholds capture certain asset acquisitions and acquisitions that cross voting power levels of 20% or 50%, even without a change of control.

The regime covers acquisitions of shares, units and interests in managed investment schemes and acquisitions of assets, and brings joint ventures and certain land and development acquisitions within scope, subject to exemptions, while small acquisitions are excluded. Because the thresholds are objective and financial, many transactions that previously raised no competition concern now require notification, so deal timetables and conditions must build in clearance, and the competition assessment that was once considered within the foreign investment process is now conducted separately by the regulator.

### 6.2 Merger Control Procedure

An acquisition is notified through the regulator's acquisitions portal. Pre-notification engagement is encouraged but not mandatory, and a filing fee applies, from which small businesses are exempt. The regulator publishes notified acquisitions on a public register and publishes its reasons for decisions, which over time will give the market greater visibility of its approach.

For suitable acquisitions that plainly raise no competition concern, a party may instead apply for a notification waiver, which, if granted, removes the obligation to notify. Where no waiver is sought or available, the notified acquisition proceeds through the regulator's phased review. A first phase, with a statutory timetable, is expected to resolve the substantial majority of matters by clearance, while transactions that raise concerns proceed to a more detailed second phase, with a longer timetable and the ability to consider remedies and undertakings; a public benefit pathway also exists, and decisions are subject to limited review by the Australian Competition Tribunal.

The substantive question is whether the acquisition would have the effect, or be likely to have the effect, of substantially lessening competition, which now expressly includes creating, strengthening or entrenching a substantial degree of market power. Completing a notifiable acquisition without approval, a waiver or an applicable exemption can have serious

consequences, including the risk that the transaction is void and significant penalties, as follows:

- for corporations up to the greater of AUD50 million, three times the benefit, or 30% of Australian turnover during the period of the breach; and
- for individuals up to AUD2.5 million.

Premature integration or co-ordination between the parties before clearance also carries risk.

### 6.3 Cartels

Part IV of the Competition and Consumer Act 2010 (Cth) prohibits cartel conduct, including price fixing, restricting outputs, allocating markets or customers and rigging bids, both as criminal offences and as civil contraventions, with the Commonwealth Director of Public Prosecutions prosecuting serious cases. The Act also prohibits anti-competitive agreements and concerted practices, and exclusive dealing, that have the purpose or effect of substantially lessening competition.

The prohibitions have extraterritorial reach, applying to conduct engaged in outside Australia by bodies corporate carrying on business in Australia, and to conduct affecting a market in Australia. Penalties mirror those for the merger regime, and an individual convicted of a criminal cartel offence may be imprisoned for up to ten years, in addition to receiving fines. An immunity and co-operation policy is available to the first participant in a cartel to come forward.

### 6.4 Abuse of Dominant Position

Australia prohibits the misuse of market power under Section 46 of the Competition and Consumer Act 2010 (Cth): a corporation that has a substantial degree of power in a market must not engage in conduct that has the purpose, effect or likely effect of substantially lessening competition. There is no separate prohibition on abuse of dominance, and no general prohibition on the abuse of economic dependence of the kind found in some civil law systems.

Imbalances in commercial dealings are instead addressed through other tools, including:

- the prohibitions on unconscionable conduct in the Australian Consumer Law;
- the regime for unfair contract terms in standard-form consumer and small business contracts; and
- prescribed industry codes such as the Franchising Code.

The regulator continues to advocate for a general prohibition on unfair trading practices to capture conduct that distorts decision-making but is not presently unlawful. Contraventions of the unilateral conduct prohibition attract the same penalties as other competition contraventions.

## 7. Intellectual Property

### 7.1 Patents

Patents are governed by the Patents Act 1990 (Cth) and registered by IP Australia. A standard patent protects an invention that is novel, involves an inventive step and is useful, for a term of 20 years, extendable to 25 years for certain pharmaceutical patents. New innovation patents are no longer available, although innovation patents granted before the phase-out continue until they expire.

Protection is obtained by application and examination leading to grant. Infringement is enforced by proceedings in the Federal Court, and remedies include injunctions, damages or an account of profits, and delivery up or destruction of infringing articles.

### 7.2 Trade Marks

Trade marks are governed by the Trade Marks Act 1995 (Cth) and registered by IP Australia. A sign that distinguishes goods or services may be registered for an initial period of ten years and renewed indefinitely, giving the owner the exclusive right to use the mark, and to authorise others to use it. Registration is enforced by infringement proceedings, and unregistered marks and get-up are protected by the tort of passing off and by the misleading-conduct provisions of the Australian Consumer Law.

Trade marks are central to franchising, because the brand is the core asset of a franchise system. Franchisors register their marks and license them to fran-

chisees on controlled-use terms, and protect their get-up, domain names and social media handles. In inbound and master-franchise arrangements, registering the marks early guards against brand squatting. Security can be granted over registered intellectual property to support financing.

### 7.3 Industrial Designs

Designs are protected under the Designs Act 2003 (Cth) and registered by IP Australia. Registration protects the overall visual appearance of a product, comprising its shape, configuration, pattern or ornamentation, where the design is new and distinctive.

A registered design is protected for an initial period of five years, renewable to a maximum of ten years, and must be both registered and certified before it can be enforced. Remedies for infringement are consistent with those available for other intellectual property rights. A reform to align Australian design protection more closely with international practice has been under consideration.

### 7.4 Copyright

Copyright is governed by the Copyright Act 1968 (Cth) and arises automatically on creation, without any system of registration. It protects original literary, dramatic, musical and artistic works, as well as films, sound recordings, broadcasts and published editions, generally for the life of the author plus 70 years, with other terms applying to other subject matter.

The owner has exclusive rights to reproduce, communicate and publish the work, and authors enjoy moral rights of attribution and integrity. Infringement is enforced in the Federal Court, with remedies including injunctions, damages or an account of profits, and additional damages for flagrant infringement.

### 7.5 Others

Software is protected as a literary work under copyright law. There is no separate database right; a database or other compilation is protected only to the extent that copyright subsists in the originality of its selection, arrangement or compilation, rather than in the underlying data as such. Trade secrets and confidential information are protected not by registration but by the equitable action for breach of confidence and by contract, through non-disclosure agreements and the duties owed by employees.

Other rights include protection for circuit layouts under the Circuit Layouts Act 1989 (Cth) and for plant varieties under the Plant Breeder's Rights Act 1994 (Cth), and the protection of unregistered get-up and reputation through passing off and the Australian Consumer Law. Domain names are administered by the national domain authority.

## 8. Data Protection

### 8.1 Applicable Regulations

Data protection is governed principally by the Privacy Act 1988 (Cth) and the 13 Australian Privacy Principles, which regulate how entities handle personal information. The Act applies to Australian government agencies and to private sector organisations – generally those with annual turnover above AUD3 million together with certain others. The Notifiable Data Breaches scheme requires eligible data breaches to be reported to the regulator and to affected individuals.

The regime was significantly strengthened by the Privacy and Other Legislation Amendment Act 2024 (Cth), which introduced:

- a statutory tort for serious invasions of privacy from 10 June 2025;
- a tiered civil penalty regime;
- a doxxing offence;
- enhanced security obligations;
- a Children's Online Privacy Code to be in place by December 2026; and
- transparency obligations for automated decision-making from December 2026.

A further tranche of reform is being progressed, which may include a fair and reasonable test for the handling of personal information. Sector and state laws on matters such as health records, surveillance and unsolicited communications operate alongside the Act.

### 8.2 Geographical Scope

The Privacy Act has extraterritorial reach. It applies to organisations that carry on business in Australia, including foreign organisations, even where personal information is collected or held outside the country, so a foreign business that targets or deals with customers in Australia can be subject to the Australian Privacy Principles.

The disclosure of personal information overseas is regulated by Australian Privacy Principle 8, under which an entity generally remains accountable for the handling of information by an overseas recipient unless an exception applies, such as comparable protection or informed consent. The statutory tort for serious invasions of privacy may also be relevant to cross-border conduct affecting individuals in Australia, although questions of jurisdiction and applicable law will need to be considered case by case.

### 8.3 Role and Authority of the Data Protection Agency

The Office of the Australian Information Commissioner, led by the Privacy Commissioner, regulates privacy at the federal level. It investigates complaints and conducts own-motion investigations, accepts enforceable undertakings, makes determinations and issues guidance, and can seek civil penalties in the Federal Court.

The 2024 reforms expanded the regulator's toolkit, adding tiered penalties, infringement notices for specified breaches and a mid-tier penalty for interferences with privacy that are not serious, and the Commissioner has signalled a more enforcement-focused approach. In addition, individuals can now bring proceedings directly under the statutory tort, without relying on the regulator to act.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

Several reforms across the fields above are expected to remain prominent through 2026 and beyond.

#### Merger Control

The new mandatory merger regime commenced on 1 January 2026, and further thresholds capturing certain asset acquisitions and voting power changes came into effect from 1 April 2026. The regulator's guidance and its decision-making practice will continue to develop as the market adjusts to the new system.

#### Franchising

Australia has the most comprehensive and complex franchising regulation in the world. The remade Franchising Code, made as the Competition and Consumer (Industry Codes—Franchising) Regulations 2024, commenced on 1 April 2025 with a grace period to 1 November 2025, implementing recommendations of the independent review by Dr Michael Schaper. It expands civil penalties, extends protections relating to a reasonable opportunity to make a return on investment and to early termination, and gives the small business ombudsman a power to name franchisors who do not engage in dispute resolution. The government has consulted on, but not yet legislated, a possible franchisor licensing scheme.

#### Foreign Investment

In May 2026, the government announced a package of reforms to streamline and strengthen the foreign investment framework. From 1 January 2027, it will aim to decide all low-risk applications within 30 days, remove mandatory notification for selected low-risk acquisitions, and extend the default validity of approvals from 12 to 24 months, while strengthening its tools to scrutinise sensitive sectors and to enforce compliance. Where a transaction also requires ACCC clearance, foreign investment approval will continue to follow the regulator's decision.

#### Privacy, Data and Anti-Money Laundering

A second tranche of privacy reform is being progressed, with the Children's Online Privacy Code and transparency obligations for automated decision-making to take effect by December 2026. Anti-money laundering and counter-terrorism financing obligations extend to certain designated services provided by lawyers, accountants, conveyancers and real estate agents from 1 July 2026, which is significant for professional advisers and for property and corporate transactions.

### Tax, Superannuation, Climate and Consumer Law

Australia's Pillar Two global and domestic minimum tax is bedding in, with its domestic minimum tax recognised as having QDMTT safe harbour status on the OECD central record, alongside public country-by-country reporting and continuing multinational integrity measures. The Payday Super reforms, requiring the superannuation guarantee to be paid each payday, take effect from 1 July 2026.

Mandatory climate-related financial disclosure is being phased in for large entities and financial institutions, with thresholds expanding through 2026 and 2027. The government is considering a general prohibition on unfair trading practices, while enforcement of the unfair contract terms regime, which has carried civil penalties since November 2023, remains a regulator priority.

# Trends and Developments

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**Archer Scott Lawyers** is an independent Australian corporate and commercial law firm with offices in Melbourne, Sydney and Adelaide. The globally connected, results-driven practice combines big-firm expertise with the focus, agility and value of a boutique firm. Archer Scott advises businesses, investors, founders and organisations across areas including mergers and acquisitions, corporate advisory, projects and construction, franchising, start-ups and venture capital, employment, intellectual property, commercial real estate, and sports law. Its approach is centred on practical commercial outcomes, efficient value creation and long-term client relationships. The firm emphasises clear risk management rather than unnecessary complexity, helping clients understand, categorise and manage legal and commercial risks. With experience drawn from significant Australian corporate transactions and global networks, Archer Scott aims to deliver strategic, innovative and client-focused legal advice that supports business growth, protects brand value and helps clients realise long-term commercial opportunities.

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## Doing Deals in Australia in 2026: Merger Reform, Franchising and the New Compliance Frontier

2026 is a landmark year for anyone investing in, acquiring or franchising a business in Australia. Several structural shifts have arrived more or less together: a mandatory merger control regime, a recalibrated foreign investment framework, a comprehensively remade Franchising Code, and a tighter cross-cutting compliance environment spanning employment, privacy, financial crime, climate reporting and tax. Each alone would reshape deal practice; together they change how transactions are planned, priced and executed.

These reforms did not appear in isolation. They reflect a broader policy direction that has brought Australia closer to the practice of its international peers and that responds to public concern about market concentration, the fairness of dealings with small business, and the protection of personal information. For international investors and their advisers, the headline is not that Australia has become harder to do business in; it remains an open, rule-of-law market with transparent institutions and a deep professional and financial services sector. What has changed is that the sequence and certainty of deal execution now demand earlier and more integrated planning.

This article looks past the black-letter detail to the commercial consequences:

- how the new competition gateway affects deal certainty and structuring;
- how foreign investment review now sits alongside it;
- what the reset of the franchising framework means for brand owners and network transactions;
- how an expanding compliance perimeter is reshaping diligence, warranties and integration; and
- how tax considerations affect the way acquisitions are financed.

The common thread is that 2026 rewards preparation and penalises improvisation.

### *The merger gateway becomes mandatory, and strategic*

The most consequential change is the move away from a voluntary and informal clearance culture, from 1 January 2026, to a mandatory and suspensory regime in which the competition regulator is the gatekeeper for transactions that meet objective financial thresholds. For decades, parties could close many deals without ever engaging the regulator, and even contentious matters were handled through an informal, often confidential process. That optionality has gone.

The practical effect is felt first in deal certainty and timing. Where a transaction is caught, completion is conditional on Australian Competition and Consumer Commission (ACCC) approval. A notifiable acquisition completed without that approval, or without an applicable waiver or exemption, carries serious consequences, including the risk that it will be declared void and significant penalties will be imposed. Acquirers can no longer treat competition as a residual risk to be managed after signing; it becomes a gating condition that shapes the timetable from the outset.

The substantive question the regulator asks is whether a transaction would substantially lessen competition – a test that now expressly extends to acquisitions that create, strengthen or entrench a substantial degree of market power. That formulation signals particular attention to consolidation in already concentrated sectors, and to the acquisition by large incumbents of smaller or emerging rivals. Investors in areas that have drawn regulatory interest – including digital platforms, supermarkets and retail, healthcare and essential services – should expect closer review, and should prepare a competition narrative that addresses entrenchment as well as any direct overlap.

A central feature of the new system is the notification waiver. For acquisitions that clearly raise no competition concern, parties can apply to the ACCC for a waiver that, if granted, removes the obligation to notify, offering a faster and less burdensome route than a full notification. Choosing between a waiver application and a Phase 1 notification has quickly become one of the first strategic decisions in a deal. The early figures bear this out: in the regime's first quarter, to 31 March 2026, the ACCC reported receiving 50 notifications and 108 waiver applications, clearing 39 matters in Phase 1 and moving two to Phase 2, while meeting its commitment to decide around 80% of acquisitions within 20 business days.

A second effect is on deal structuring and risk allocation. Conditions precedent, long-stop dates and the allocation of regulatory risk between buyer and seller are now central negotiating points in Australian share and asset sale agreements, as they have long been in larger cross-border deals. Parties are debating who bears the risk of a clearance that is delayed or refused, whether the buyer must accept remedies through so-called "hell or high water" obligations, and how break fees and reverse break fees should be calibrated. Sellers in competitive auctions increasingly screen bidders for regulatory deliverability, not merely on price.

In practical terms, this changes how deals are run from the very first conversation.

- Earlier competition analysis: a credible view on whether a deal is notifiable or a candidate for a waiver, and on its substantive risk, is now needed at the term-sheet stage rather than after signing.
- Tighter conduct discipline: integration planning and information exchange before clearance, sometimes called "gun-jumping", carry real risk, so clean-team protocols and conduct guidelines matter.
- Aggregation awareness: serial and "creeping" acquisitions and bolt-on roll-ups can be captured even where any single transaction looks small, which bears directly on buy-and-build strategies.
- Co-ordinated approvals: an ACCC approval or waiver is a separate requirement from foreign investment approval, so inbound investors must run the two workstreams in parallel, since one does not substitute for the other.

At the level of transaction documents, the regime is driving more elaborate regulatory provisions. Sale agreements increasingly specify the standard of effort a buyer must use to obtain clearance, the extent to which it must accept divestitures or behavioural commitments, and the consequences if clearance is not obtained by the long-stop date. Ticking fees that compensate a seller for a prolonged clearance period, reverse break fees payable if approval fails, and detailed co-operation and information-sharing covenants are becoming familiar features. Allocating these risks well at the drafting stage is now a core part of protecting deal value.

Private equity and roll-up acquirers feel this most acutely. Buy-and-build strategies (a staple of mid-market private equity and of franchising consolidation) depend on executing a series of smaller acquisitions quickly. The aggregation rules mean that a programme of bolt-ons can attract scrutiny that no individual transaction would, so sponsors are now mapping their pipeline against the regime before the first deal rather than after the third.

The change is also felt well beyond large, obviously contentious mergers. Because the thresholds are financial and objective, mid-market transactions that raise no real competition concern can still require notification, adding cost and time to deals that would previously have closed without regulatory contact. For acquirers pursuing several transactions, the cumulative compliance burden is material, and building noti-

fication capability and budget into the deal model is now part of disciplined planning. The publication of decisions and reasons on the public register will, over time, give the market a clearer sense of how the regulator approaches particular sectors, but in the first year the prudent course is to treat clearance as a project to be managed from day one.

### *Foreign investment: open, but security-conscious*

For inbound investors, foreign investment review sits alongside merger control as the second approval gateway, and the two must be planned together. Australia continues to welcome foreign capital, and the Treasury's stated direction is a framework that is faster for low-risk, passive investment and more demanding where national security is engaged. A streamlined pathway for clearly low-risk proposals is being developed, while sensitive areas attract closer scrutiny, including critical infrastructure, critical minerals, defence-related capability, and data and technology.

The practical consequences for deal makers are about sequencing and conditionality. A foreign investment approval is not a substitute for an ACCC approval or waiver, so the two workstreams run in parallel, and the transaction timetable must accommodate both. Acquirers in sensitive sectors should expect conditions and should engage early, while those in non-sensitive sectors can increasingly expect a more predictable and faster path. Identifying which category a deal falls into, at the outset, is now a core part of deal planning.

### *The Franchising Code, reset*

Australia has one of the most developed franchising sectors in the world, spanning food and beverage, retail, health and fitness, and a wide range of service businesses, and it is a common route for international brands to enter the market. That prominence is precisely why the sector attracts close regulatory attention, and why the remade Franchising Code, which took effect in 2025 following an independent review, is significant to inbound investors as much as domestic operators.

For franchisors, whether established domestic networks or international brands expanding into or within Australia, the reset is best understood not as a technical compliance update but as a shift in the balance of the franchisor and franchisee relationship, and in the consequences of getting it wrong. The most commercially significant features are the expanded penalty exposure and the strengthened protections for franchisees. A wider range of obligations now carries civil penalties, and the regulator and the small business ombudsman have sharper tools, including the ability to publicise franchisors who decline to participate in dispute resolution. For brand owners, the reputational dimension of that power can be as material as the financial one, particularly for consumer-facing brands.

Enhanced protections around a franchisee's reasonable opportunity to make a return on investment, and around compensation for early termination and exit, change network economics. Franchisors are revisiting their unit economics, disclosure practices and termination pathways, because arrangements that once shifted most of the risk onto franchisees are now more closely scrutinised. The Code also sharpens transparency around marketing and other co-operative funds, requiring franchisors to administer and account for them more rigorously, and it reinforces the pre-contract disclosure process on which prospective franchisees rely. The practical message is that a franchise system must be able to demonstrate, not merely assert, that its model is fair and sustainable.

The minimum requirements in Australia require a franchisor to provide a comprehensive disclosure document and independent advice certificates in a proscribed format prior to a franchisee making an investment decision to purchase a franchise or master franchise.

For transactions, this reshapes diligence on both the buy side and the sell side.

- Buying a franchise network: diligence now extends well beyond the disclosure document to the network's penalty exposure, dispute history and termination practices, and the robustness of its unit economics, because these drive both value and post-completion risk.
- Selling or restructuring a network: vendors should expect closer examination of compliance posture,

and should prepare disclosure and any remediation accordingly.
- Inbound brand and master-franchise deals: international brand owners entering Australia through master-franchise or area-development structures must align their global systems with the Australian Code, and should register and protect their trade marks early, since the brand is the core asset and the value of the system depends on it.

Looming over the sector is the prospect of a franchisor licensing scheme. The government has consulted on, but not yet legislated, such a regime; if introduced, it would represent a further step-change, moving franchising closer to a regulated-entry model. Even as a possibility, it is prompting well-advised franchisors to professionalise their governance and compliance now, both to reduce present risk and to be ready if the regulatory perimeter expands. Franchising in Australia remains attractive and well supported, but the margin for casual compliance has narrowed.

### *An expanding compliance perimeter shapes deal value*

Beyond competition, foreign investment and franchising, a cluster of reforms in employment, privacy, financial crime and sustainability is quietly reshaping how deals are valued and integrated. Individually, these are compliance developments; collectively, they have become factors in price, warranties and completion planning.

#### *Employment*

Recent workplace reforms have changed the cost and risk profile of the workforce that comes with a business. The Secure Jobs, Better Pay changes limited the use of fixed-term contracts, and the later Closing Loopholes reforms addressed casual employment, labour hire, "same job, same pay" and the criminalisation of intentional wage underpayment. Acquirers must now diligence workforce classification and pay compliance carefully, because historical underpayment is not only a financial liability but, where intentional, a potential criminal exposure, and it features increasingly in warranties, indemnities and purchase price adjustments. In franchise conversions and multi-site businesses, where workforces are large and award-covered, this is a first-order issue.

#### *Privacy and data*

Australia's privacy regime has been materially strengthened, with a new statutory cause of action for serious invasions of privacy that commenced in June 2025, tougher penalties and a more enforcement-minded regulator. Data assets and data-handling practices are now a standard part of diligence, and exposure for historical breaches is a live warranty topic. For technology-, consumer- and data-rich targets in particular, the quality of a target's privacy compliance has become a value and risk issue in its own right.

#### *Financial crime and gatekeeper reforms*

From 1 July 2026, anti-money laundering and counter-terrorism financing obligations extend to certain designated services provided by lawyers, conveyancers, accountants, trust and company service providers, real estate professionals and dealers in precious metals and stones. For transactions, the practical effect is likely to be more formal customer due diligence, beneficial ownership checks and source-of-funds processes around property, corporate structuring and related deal services. Advisers and their clients should expect these steps to become a routine part of deal execution.

#### *Climate and sustainability*

Mandatory climate-related financial disclosure, which is a sustainability reporting obligation under the Corporations Act, is being phased in for large entities and financial institutions, with the largest entities reporting for periods from 1 January 2025 and the net widening over the following years. For deal makers, this elevates climate and sustainability information from a reputational consideration to a disclosure obligation, with consequences for representations, warranties and ongoing reporting in transactions involving larger targets.

The cumulative effect is that diligence is broader and deal documents are doing more work. Buyers are pricing compliance risk, sellers are preparing more thorough disclosure, and integration plans are accounting for obligations that did not exist a few years ago. The advisers who add the most value are those who can connect these threads across competition, foreign investment, franchising, employment, privacy, finan-

cial crime and sustainability into a single coherent transaction strategy.

### *Financing and structuring: the tax overlay*

Tax is rarely the first thing international investors consider when they look at Australia, but it increasingly shapes how acquisitions are structured and financed. Three features in particular warrant early attention in any inbound deal.

First, the earnings-based limits on debt deductions, which broadly cap net debt deductions by reference to 30% of tax EBITDA for multinational groups, constrain how much benefit a buyer can extract from leveraging an Australian acquisition. Highly geared structures that once delivered substantial interest deductions may now see those deductions capped, which affects after-tax returns and the choice between debt and equity funding. Acquisition structures and shareholder loan arrangements should be modelled against these limits at the outset rather than assumed.

Second, for large multinational acquirers, the global and domestic minimum tax, which underpins a minimum effective rate of 15%, adds a layer of analysis to any structure that touches low-taxed jurisdictions, and it is now a standard item in structuring and diligence for groups above the relevant size. Third, on the disposal side, a foreign resident capital gains withholding obligation applies to acquisitions of certain Australian property and relevant interests from foreign residents, at a rate of 15% since 1 January 2025, so buyers and sellers alike now build clearance and withholding mechanics into completion. None of this is prohibitive, but each rewards early, joined-up tax and legal planning.

Entrants into Australia should also be aware of proposed changes to the taxation of Australian trusts (formerly a common corporate vehicle). The government has proposed a minimum 30% tax on trusts, which would see trusts taxed at the same effective rate as many Australian private companies, lessening their use case in many circumstances.

### *Outlook for 2026 and beyond*

None of this diminishes Australia's appeal. It remains an open economy with transparent institutions, a sophisticated professional and financial services sector, and deep connections to both Asia and the major Western markets through an extensive free trade network. Capital continues to flow into infrastructure, the energy transition, resources, healthcare, technology, and consumer and franchised businesses, even against a softer regional deal backdrop.

What has changed is the premium on preparation. The mandatory merger regime rewards parties who plan competition and foreign investment strategy together and from the outset; the remade Franchising Code rewards franchisors who can demonstrate fair and sustainable systems; and the wider compliance frontier rewards buyers and sellers who diligence and document thoroughly. The transactions that struggle in 2026 will be those that treat these elements as afterthoughts.

For international investors, the practical takeaway is straightforward: engage early, build realistic timetables and risk allocation into transaction documents, and choose advisers who can integrate the competition, foreign investment, franchising, employment and tax dimensions of a deal into one strategy. Approached that way, Australia in 2026 is as attractive a place to do business as ever, and a more predictable one for those who come prepared.

# BAHAMAS




## Law and Practice

**Contributed by:**
Judith Whitehead KC, Michaela Sumner-Budhi, Sean McWeeney Jr., Charisma Romer-Cartwright and Hubert Edwards
**GrahamThompson**

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**GrahamThompson** has been one of the pre-eminent law firms in The Bahamas since 1950. The firm operates four offices conveniently located throughout The Bahamas. It is well regarded for its work with high-net-worth private clients. GrahamThompson's key practice areas include: private clients, trusts and estates (estate and trust structuring, foundations, trust company licensing, and private trust companies); banking and finance (real estate financing, asset leasing and financing, corporate finance, restructuring, financial services law and regulation, loans, debentures and mortgages, and receivership); corporate, commercial and securities (capital markets, M&A, pension schemes, private equity funds, unit trusts, investment funds and IPOs); property and development (hotels, resorts and mixed-use developments, condominiums and timeshares, government approvals and exchange control, private and commercial mortgages, real property taxes, subdivision planning and structuring, second-home acquisitions and sales, and title insurance and opinions); and insurance (captive insurance, and domestic and external insurance).

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## 1. Legal System

### 1.1 Legal System and Judicial Order

As a former colony under British rule, the foundation of Bahamian law and the legal system of The Bahamas is the common law of England.

The Bahamas is a parliamentary democracy based on the Westminster system of government consisting of three branches: the executive, a bicameral parliament, and the judiciary. The relationship between each branch is governed by the principle of separation of powers and the operation of each branch is enunciated in a written constitution.

The judiciary of The Bahamas comprises the Magistrates' Court, the Supreme Court, the Court of Appeal, and the Judicial Committee of His Majesty's Privy Council.

The Magistrates' Court is presided over by stipendiary and circuit magistrates who exercise summary jurisdiction in criminal matters and civil matters involving amounts not exceeding BSD20,000. Currently, there are 17 Magistrates' Courts throughout The Bahamas, with most located in New Providence (the most populous island in The Bahamas).

The Supreme Court bench consists of a Chief Justice and not more than 20 additional justices. The Supreme Court has unlimited original jurisdiction in civil and criminal matters and such appellate jurisdiction as may be conferred upon it by law.

The Court of Appeal, the highest resident court within The Bahamas, is made up of not more than six justices of appeal, inclusive of its President, and has jurisdiction in criminal, constitutional, and civil matters.

The Judicial Committee of His Majesty's Privy Council is the highest court for The Bahamas, which sits in England to hear appeals from the Court of Appeal.

## 2. Restrictions on Foreign Investments

### 2.1 Approval of Foreign Investments

The prior approval of the government of The Bahamas is required before a foreign investor invests in The Bahamas. All non-Bahamians are required to submit a formal investment proposal to the Bahamas Investment Authority (BIA), which serves as the secretariat of the National Economic Council and The Bahamas Investments Board.

#### Investment in Bahamian Business

The current investment policy reserves certain sectors of the Bahamian economy for investment by Bahamians, as follows:

- wholesale and retail operations;
- commission agencies engaged in the import/export trade;
- real estate and domestic property management agencies;
- domestic newspapers and magazine publications;
- domestic advertising and public relations firms;
- security services;
- domestic distribution of building supplies;
- construction companies, except for special structures for which international expertise is required;
- personal cosmetic/beauty establishments;
- commercial fishing within the exclusive economic zone of The Bahamas;
- auto and appliance service operations;
- public transportation inclusive of locally solicited charter boat tours;
- landscaping; and
- commercial motorised watercraft/commercial leisure boating activity.

(International investors may engage in the wholesale distribution of any product the investor produces locally.)

The following sectors are open to foreign investment; the list is non-exhaustive, and investors are encouraged to communicate their intended investment activity to the BIA:

- touristic resorts;
- upscale condominium, timeshare, and second-home development;
- information and data processing services;
- assembly industries;
- hi-tech services;
- ship repair and other services;
- light manufacturing for export;
- agro-industries;
- food processing;
- mariculture (the salt-water farming of fish, other animals, and plants, with the purpose of human consumption);
- banking and other financial services;
- captive insurance;
- aircraft services;
- pharmaceutical manufacture; and
- offshore medical centres.

In addition to BIA approval, Exchange Control Regulations and policies may bear upon a particular transaction and in certain instances may require that foreign investment inflows are granted approval, that entities wholly or partially owned by foreign investors are appropriately designated, and that "Approved Investment Status" is granted to foreign investors or lenders with respect to their investment or loans. Over recent years (including in early 2024), the Central Bank of The Bahamas has taken various steps to simplify or "relax" the Exchange Control regime and administrative arrangements, or to delegate authority for certain matters to local financial institutions, and a prudent investor or lender would want to obtain advice regarding what approvals may be required (or now dispensed with or delegated to local banks) in respect of their transaction.

#### Investments in Property

Subject to any exceptions in the International Person's Landholding Act, non-Bahamians acquiring real property or having an interest in real property must first apply for a permit from the Investment Board. Eligibility for a permit includes a due diligence review of the intended purchaser.

## 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

### Steps to Obtain Approval

A foreign investor interested in undertaking a significant development project or commercial enterprise would, as a first step be required to obtain BIA approval to invest in a business within The Bahamas. Such application must be supported, in addition to routine due diligence materials on the applicant, by a detailed investment proposal to the BIA. The proposal should include explicit details regarding the nature of the investment, the island on which the investment/business would take place, due diligence and financial details regarding the beneficial owners, employment projections for Bahamians and non-Bahamians, whether work permits or any concessions under the relevant legislation are required, and whether the investment will include the acquisition of land.

The proposal is reviewed by the BIA and, where required, based on internal administrative policies, referred to the National Economic Council for a decision. This process may take between one and six months, depending on the nature and complexity of the investment.

Following approval from the BIA, the investor will be directed to:

- comply with any other relevant legislation;
- make applications to the relevant ministries and departments to obtain the relevant approvals to undertake the proposed venture; and
- apply for a business licence under the Business Licence Act.

A business licence may be approved within 10 to 12 business days of receipt of an application with supporting information, though longer timelines are common for more complicated applications.

In addition to BIA approval, the investor must obtain the approval of the Central Bank of The Bahamas (the "Bank"), pursuant to the Exchange Control Regulations, to make the required investment for recognition of the beneficial owners of the enterprise and, in certain instances, be granted Approved Investment Status in relation to their foreign currency investment.

The timeframe for this process is between two and eight weeks.

### Consequences of Investing Without Approval

In as much as the prior approval of the BIA and the Bank are respectively required before a foreign investor makes a capital investment within The Bahamas, a major consequence of investing without the requisite approvals is that the investor cannot receive returns on capital.

The Bank, via the Exchange Control Regulations Act and the Exchange Control Regulations, has wide powers to make orders to prevent capital transactions involving the movement of funds to and from The Bahamas. The Bank also regulates and may restrict the conversion of Bahamian dollars to a foreign currency to make capital returns to non-Bahamians, where the underlying transaction/investment did not receive required approvals.

A failure to obtain from the Investments Board a Landholding Permit or Certificate, where such approval is required pursuant to the International Persons Landholding Act, may also result in the relevant transfer instrument or deed being null and void for all purposes of law.

### Sanctions

Sanctions under the Exchange Control Regulations Act for non-compliance with the Exchange Control Regulations include:

- imprisonment for one year upon summary conviction; and/or
- a fine ranging from BSD4,000 to a fine not exceeding three times the amount or value of the currency, security, payment, property, etc, in question.

Where a foreign investor fails to obtain a business licence under the Business Licence Act, they may be liable upon summary conviction to a fine of BSD5,000 and a sum of BSD100 for each day the offence continues subsequent to the date to which the conviction relates.

### 2.3 Commitments Required From Foreign Investors

Generally, the conditions attached to the approval of foreign investors are found within a Heads of Agreement (setting out key terms that form the basis on which two parties intend to form a contract) executed between the government of The Bahamas and the foreign investor. In this regard, certain factors such as the sector of the economy being considered for foreign investment, the environment or infrastructure of the area or island being considered, the nature and scope of the foreign investment, the number of jobs expected to be created and any applicable government concessions will help to determine the type of conditions for a particular foreign investment project.

For example, it is often the case that the government of The Bahamas will require within a Heads of Agreement that a certain number of jobs be filled by Bahamians, continuing education and training be made available to employees, suitable infrastructure and essential services be put in place, and safety measures implemented to protect a particular area or environment, just to name a few.

### 2.4 Right to Appeal

There is no specific legislative framework in place that gives investors the ability to challenge decisions if a particular investment is not authorised by the government of The Bahamas.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

The most common forms of legal entity within The Bahamas are companies incorporated under the Companies Act and the International Business Companies Act.

Some of the main characteristics of each type of company are outlined below.

#### Companies Incorporated Under the Companies Act

- minimum number of persons required to incorporate – two;
- minimum number of shareholders – two;
- minimum number of directors – two for private companies, three for public companies;
- minimum share capital – no;
- liability of members – limited by shares, limited by guarantee, limited by both shares and guarantee, or unlimited;
- share classes – multiple classes allowed;
- uses – local businesses, landholding, non-profits, and private trust companies;
- registered office – yes;
- registered agent – no;
- management and governance – outlined in the constitutional documents but otherwise subject to any unanimous shareholder agreement and legislative framework; and
- filing with the public registry – amongst other requirements pursuant to the legislation, an annual return that includes a list of the shareholders and a list of the directors and officers of the company is filed.

#### Companies Incorporated Under the International Business Companies Act

- minimum number of persons required to incorporate – two;
- minimum number of shareholders – one;
- minimum number of directors – one;
- minimum share capital – no;
- liability of members – limited by shares, limited by guarantee, limited by both shares and guarantee, or unlimited;
- share classes – multiple classes allowed;
- uses – local businesses, landholding, non-profits, and private trust companies;
- registered office – yes;
- registered agent – no;
- management and governance – outlined in the constitutional documents but otherwise subject to any unanimous shareholder agreement and legislative framework; and
- filing with the public registry – amongst other requirements pursuant to the legislation, a register of directors and officers is filed.

### 3.2 Incorporation Process

Within 48 hours from receipt of the relevant documents, a company may be incorporated under the

Companies Act and the International Business Companies Act. The main steps under both Acts are:

- reservation of the company name with the Registrar of Companies;
- filing of a memorandum of association with the Registrar of Companies;
- filing of the articles of association with the Registrar of Companies;
- filing of a statutory declaration with the Registrar of Companies; and
- payment of requisite stamp duty and incorporation fees.

## 3.3 Ongoing Reporting and Disclosure Obligations

### Companies Incorporated Under the Companies Act

Companies incorporated under the Companies Act are subject to annual reporting and disclosure requirements. The following lists must be submitted to the Registrar of Companies.

- A register of the managers and directors, and amendments thereto, along with their addresses and occupations.
- A listing of the shareholders of the company, their names and addresses, and the number of shares held by each person must be submitted to the Registrar following the annual ordinary general meeting of the company. A separate register containing the names and addresses of each shareholder as well as the names and addresses of persons who hold shares in a nominee capacity must be filed with the Registrar.
- A declaration of whether 60% of the shares of a company are beneficially owned by Bahamians must be made to the Registrar of Companies on an annual basis.
- A copy of a resolution of the members altering a company's memorandum or articles of association must be submitted to the Registrar.
- A written notice of the execution or termination of a Unanimous Shareholder Agreement must be filed with the Registrar of Companies within 15 days of the execution or termination of the agreement.

### Companies Incorporated Under the International Business Companies Act

Companies incorporated under the International Business Companies Act are subject to the following reporting and disclosure requirements.

- A written notice of the execution or termination of a Unanimous Shareholder Agreement must be filed with the Registrar of Companies within 15 days of the execution or termination of the agreement.
- A copy of the register of directors and officers of the company and a notice of a change in officers must be filed with the Registrar within 12 months of such change.
- The requisite resolutions amending the memorandum or articles of association of an international business company must be submitted to the Registrar within 28 days after such amendment.

### Recent Updates to Reporting and Disclosure Obligations

The Financial Action Task Force (FATF) adopted revisions to Recommendation 24 to reinforce global standards on the transparency of nominee shareholders and nominee directors. These revisions require jurisdictions to ensure that nominee arrangements are not misused to conceal beneficial ownership. The Bahamas, in adopting the provisions of Recommendation 24, amended the International Business Companies Act ("IBC Act"), the Companies Act (CA), and the Register of Beneficial Ownership Act ("ROBO Act") by the International Business Companies (Amendment) Act 2025, the Companies (Amendment) Act 2025, and the Register of Beneficial Ownership (Amendment) Act 2025, respectively, to impose restrictions concerning nominee director and nominee shareholder arrangements.

The recent amendments to the IBC Act and the CA require (i) disclosure of both the nominee and the person(s) on whose behalf the nominee holds the shares in the company's share register, and (ii) maintenance of declarations of trust in respect of the nominee relationship. The ROBO Act was amended such that both the nominee and the person(s) on whose behalf the nominee holds the shares are required to be disclosed in the Beneficial Ownership Secure System. Additionally, the CA and IBC Act were amended

such that the use of nominee directors is prohibited. Note, however, that the authors have taken the view that this restriction does not apply to the provision of directorial services where such directors are acting independently of the instructions of others and in the best interest of the company.

## 3.4 Management Structures

The directors of companies incorporated under the Companies Act and the International Business Companies Act are charged with the responsibility of managing the company. Generally, this rule is subject to any limitation as provided for in any unanimous shareholder agreement and the constitutional documents of the company.

### Companies Act

The typical management structure of a company is based on a single-tier system and consists of a board of directors responsible for appointing officers. However, subject to any limitation in the company's articles of association or a unanimous shareholder agreement, the directors may delegate their powers to a single director, a committee of directors, or officers, and specify their duties to manage the business and affairs of the company to them.

The officers are, however, restricted from issuing shares, declaring dividends, purchasing or redeeming shares, approving financial statements, or amending the company's articles of association.

### The International Business Companies Act

The usual management structure of an international business company is also based on a single-tier system and consists of a board of directors responsible for the appointment of officers. Subject to any limitations in the memorandum or articles of association or in a unanimous shareholder agreement, each officer or agent has similar powers and authority to the directors, except the power to fix emoluments of directors with respect to services provided to the company.

Directors of an international business company are also permitted to designate one or more committees, each consisting of one or more directors. The only limitations of such committees are the powers to fill a vacancy in the board of directors and appoint and remove officers or agents of the company.

## 3.5 Directors', Officers' and Shareholders' Liability

The directors owe a fiduciary duty to their companies and should avoid situations where their duty conflicts with their personal interests. In accordance with the Companies Act and the International Business Companies Act, directors, officers and agents must act honestly and in good faith with a view to the best interest of the company and exercise the care, diligence, and skill that a reasonably prudent person would exercise in comparable circumstances in performing their functions.

Where a current or former director or officer has acted in good faith with a view to the best interest of the company and, in certain cases, had reasonable grounds to believe that their conduct was lawful, the company may indemnify such person.

Section 58 of the International Business Companies Act provides that subject to any limitations in its memorandum or articles of association or any unanimous shareholder agreement, a company may indemnify against all expenses, including legal fees, and against all judgments, fines and amounts paid in settlement and reasonably incurred in connection with legal or administrative proceedings, any person who:

- is or was a party, or is threatened to be made a party, to any threatened, pending, or completed proceedings, whether civil or administrative, by reason of the fact that the person is or was a director or an officer of a company; or
- is or was, at the request of the company, serving as a director or officer, or in any other capacity is or was acting for another company or a partnership, joint venture, trust, or other enterprises, provided that such person acted honestly and in good faith with a view to the best interests of the company.

Also, under the common law of The Bahamas, there is the concept of piercing the corporate veil based on English common law principles.

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

Employment relationships are governed principally by the implied and expressed terms of the employment relationship. In The Bahamas, these terms (where applicable) may be gleaned from the following sources:

- the employment contract;
- industrial agreements;
- common law (case law);
- the Employment Act and the Employment (Amendment) Act;
- the Health and Safety at Work Act;
- the Minimum Wages Act; and
- relevant provisions of the following pieces of legislation:
  (a) the Industrial Relations Act; and
  (b) the National Insurance Act.

In particular, where an employment relationship has been created by oral agreement, the terms of the employment relationship are espoused principally from English common law (as applicable), local common law, and local statute (in particular, the Employment Act and the Employment (Amendment) Act).

The privileges associated with the freedom to contract exist in The Bahamas. This freedom, however, is subject to the relatively inalienable rights of the parties created under the Employment Act. These basic rights represent and dictate the minimum standard of behaviour and expectations between an employer and employee.

### 4.2 Characteristics of Employment Contracts

The termination of employment relations is governed by Sections 26 to 28E of Part VI (redundancy, lay-offs, and short-time) of the Employment Act as amended, Sections 29 and 30 of Part VII (termination of employment with notice), Sections 31 to 32 of Part VIII (summary dismissal) and Sections 34 to 48 of Part X (unfair dismissal) of the Employment Act.

Although there are no minimum requirements for the duration of an employment relationship, the employer's duty upon the termination of a contract without cause varies depending upon the employee's tenure of service with the employer.

Generally, when terminating the employee without cause, the employer is required to give the employee reasonable notice of the termination. The Employment Act establishes the minimum notice requirements and provides the employer with the power to elect whether to give notice or to give a payment in lieu of such notice. For example, an employee who has been employed at least six months but less than 12 months is entitled to one week's notice or pay in lieu thereof, and an employee who was employed for 12 months or more is entitled to two weeks' notice or pay in lieu thereof if such employee does not hold a managerial or supervisorial position, or one month's notice or pay in lieu thereof if such employee does hold such a position.

In addition to this notice period (or payment in lieu thereof), the Employment Act places an obligation on the part of the employer to pay to the employee a sum representing the product of the dismissed employee's bi-weekly or monthly salary (depending on their role) and the number of years of such employee's service. This additional sum is usually referred to as "severance pay". Severance pay acknowledges the dismissed employee's years of service and is capped at six years for a non-managerial/non-supervisorial employee and 12 years for a managerial/supervisorial employee.

It is significant to note that the Employment Act does not confer an obligation on the part of the employer to give notice to an employee of less than six months' tenure.

Notice of termination can be given verbally. However, the employer must ensure that the notice of termination was properly and unequivocally communicated to the employee and that they exercised their complete obligations upon termination. Thus, the parties' conduct immediately after termination has been made orally may be evidence of the nature of the notice given.

Where notice is not properly given or is insufficient, an employee is entitled to claim damages for wrongful dismissal.

Where the employment contract confers a greater benefit on the employee regarding the duration of the notice period or the value of the pay in lieu of notice, then such provisions and/or benefits will apply. Where no notice period is provided for under the contract of employment, the calculation set out in the Employment Act will apply.

The Employment Act also mandates that employees have a right not to be unfairly dismissed. Whilst the question of whether the dismissal of an employee was fair or unfair is to be determined in accordance with the substantial merits of each case the Employment Act provides instances in which a dismissal will be deemed to be unfair which include dismissal:

- due to trade union membership, involvement in trade union activities or the refusal to become involved in a trade union/engage in trade union activities;
- due to pregnancy; and
- due to redundancy, but other employees were not similarly dismissed.

These categories are not closed and it is important to note that the rules of natural justice should be applied when seeking to terminate an employee.

### 4.3 Working Time

Under the Employment Act, the maximum number of daily work hours is eight, and weekly work hours is 40, except for employees who hold managerial or supervisorial positions or work in any industrial, construction, manufacturing or transhipment enterprise, or essential service. Employees are also entitled to 48 hours of rest, with at least 24 of such hours being consecutive.

Where the relevant employee is required or is permitted to work in excess of their daily work hours, they are entitled to overtime pay, which is calculated at 1.5 times their regular rate of wages and two times the regular rate of wages if the overtime is performed on a holiday.

### 4.4 Termination of Employment Contracts

Contracts of employment may be terminated by either party upon giving the other party reasonable notice of the termination, by the employer without notice as detailed previously or by the employer "for cause" when an employee commits a fundamental breach of the contract such that the nature of the breach is repugnant to the interests of the employer.

An employment contract may also be terminated on the grounds of redundancy. An employee's position is lawfully made redundant in the following circumstances:

- where the employer has ceased or intends to cease to carry on the business for the purposes of which the employee was employed;
- where the employer has ceased or intends to cease to carry on the business for the purposes of which the employee was employed in the place where the employee was employed; and
- where the requirements of the business for employees to carry out work of a particular kind, whether in the same place where they were employed or at all, have ceased or diminished or are expected to cease or diminish.

Except where an employee is terminated for cause, the employer is required to either give notice or pay in lieu of notice (see **4.2 Characteristics of Employment Contracts**).

Before the employer can lawfully terminate an employee or employees on the grounds of redundancy, the employer must:

- inform the relevant trade union, if applicable, or the employees' representative of the grounds for the redundancy and provide a written statement containing the reasons for the dismissal, the number and category of persons likely to be affected, and the period over which such dismissals are likely to be carried out;
- consult with the trade union, if applicable, or the employees' representative on the prescribed matters concerning the dismissal and the particulars of the grounds for the redundancy; and

- consult with the Minister of Labour in writing and provide the Minister with the information contained in the said written statement.

### 4.5 Employee Representations

Generally speaking, the role of an employee representative is not required by law.

Where the workforce is unionised, industrial agreements provide for the appointment of a representative, which would include, at a minimum, the purpose and functions as prescribed in the Industrial Relations Act. However, the extent of the rules and practices regarding employee representation depends on the terms negotiated between the relevant parties and thus may vary.

For those employment relationships to which an industrial agreement applies, a workplace representative is appointed who shall generally safeguard the interests of the employees and hear the collective views of the staff with a view of forwarding the same to the employer for their/its attention.

Trade unions are required by law to co-operate in ensuring effective communication and consultation with the employer regarding the employees' views and the problems they face in meeting the employer's objectives. The trade union is also obligated to keep all employees adequately informed of the main terms and conditions of the employment, job requirements, reporting requirements, disciplinary and grievance procedures, safety and health rules, and the conclusions reached through negotiations and consultation with the employer.

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/ Employers

Contributions to the National Insurance Board (the Bahamian equivalent to social security) are the only taxes that must be paid on behalf of employees. Employees currently contribute the equivalent of 4.65%, and employers contribute the equivalent of 6.65% of an employee's salary up to the employable wage ceiling. New contribution rates anticipated from 1 July 2026 but not yet announced. The employable wage ceiling is BSD810 per week, from a previous ceiling of BSD740 per week.

### 5.2 Taxes Applicable to Businesses

#### Business Licence Tax

All persons (inclusive of companies) conducting business within The Bahamas must be granted a business licence. Although certain activities are exempt from the licence requirements under the Business Licence Act, generally, there is a modest business licence tax (calculated based on a percentage of the turnover for the preceding year) for companies conducting business within The Bahamas.

#### Value Added Tax (VAT)

All goods and most services supplied by a VAT-registered business in The Bahamas that are neither subject to the zero rate nor exempt from VAT are subject to VAT at the standard rate (presently 10%) or such other rate as prescribed by law for certain goods and services (eg, real estate transactions). Effective 1 April 2026, unprepared food items were exempted from VAT and the VAT charged on essential non-food items was reduced to 5%. The VAT charged on prescription and non-prescription drugs is also 5%. VAT is also charged on goods and some services that are imported from outside The Bahamas.

#### Stamp Duty

Stamp duty is payable in respect of certain transactions (namely transfers of personal property). A Stamp Duty may also arise on the conversion of funds from Bahamian dollars to United States dollars where such funds are to be used for remittance or transferred out of The Bahamas.

#### Qualified Domestic Minimum Tax Top-Up

The Domestic Minimum Top-Up Tax Act, 2024 came into force on 1 January 2024, applying to fiscal years of a Multinational Enterprise ("MNE Group") that began after 31 December 2023. However, the Act does not apply to a fiscal year of an MNE Group beginning before 1 January 2025, unless that Group is affected by an Income Inclusion Rule or an Undertaxed Profits Rule of a jurisdiction outside The Bahamas.

This Act incorporates into domestic law the Global Anti-Base Erosion Model Rules established by the OECD/G20 BEPS Project. In effect, in-scope MNE Groups with Constituent Entities in The Bahamas will be liable to pay a corporate tax of 15%, referred to as a domestic minimum top-up tax, as calculated under the GloBE Model Rules. The first filings are expected to occur within 18 months after 31 December 2025.

An agreement between the OECD and the United States of America (USA), which became effective in January 2026, resulted in the USA being recognised as a Qualified Side-by-Side (SbS) Regime. The agreement provides that MNE Groups headquartered in the USA are not subject to the application of the Income Inclusion Rule (IIR) or Untaxed Profit Rule (UTPR). As a result, where the UPE (ultimate parent entity) of a Group is located in the USA (or other Qualified SbS Regimes), there are two safe harbours, SbS Safe Harbour and UPE Safe Harbour, applicable for fiscal years commencing on or after 1 January 2026. The former eliminates top-up-tax by deeming any excess profits taxable under the IIR or UTPR, which is ordinarily available outside of the application of the SbS Regime, to be zero. The latter eliminates top-up-tax by deeming any excess profits taxable under application of the UTPR to be zero. The agreement has no effect on DMTT liability in The Bahamas. QDMTT continues to apply in The Bahamas with the need for a top-up-tax eliminated. QMDTT liability paid in The Bahamas is credited against the MNE Group's tax liability in the Qualified SbS Regime.

The Department of Inland Revenue (DIR) published notification requiring each Bahamas Constituent Entity in an MNE Group, which is in-scope for fiscal years 2024 and 2025, to complete and submit Form DMTT-24/25 with a deadline of 31 March 2026, and 30 April 2026, respectively.

### The Common Reporting Standard

The Automatic Exchange of Financial Account Information Act, 2016 was recently amended by the Automatic Exchange of Financial Account Information (Amendment) Act, 2026 (the "Amendment Act").

Pursuant to the Amendment Act, all Financial Institutions are now required to register as either a Reporting or Non-Reporting Financial Institution, no later than 90 days after the date on which it became a Financial Institution. An existing Financial Institution, which has not previously registered, is required to register as a Financial Institution no later than 15 June 2026.

Moreover, a Non-Reporting Financial Institution is required to notify the Competent Authority when it becomes a Reporting Financial Institution and vice versa, within 30 days of such change. A Financial Institution must also de-register within 90 days from the date on which it ceased to be a Financial Institution.

If a Reporting Financial Institution did not maintain any reportable accounts for a reporting period, it must also file a Nil return with the Competent Authority. This change applies to information returns that are to be submitted in respect of the 2025 calendar year.

It is of note that pursuant to the Automatic Exchange of Financial Account Information (Order) 2025, certain compliance and enforcement powers and functions were delegated to the Securities Commission of The Bahamas, the Central Bank of the Bahamas, and the Insurance Commission of The Bahamas (the "regulators"). The Amendment Act also introduced more stringent penalties for non-compliance (including an administrative fine of up to BSD300,000), and empowered the regulators to impose such penalties on their licensees and registrants for non-compliance.

The new reporting deadline is 30 June of the year immediately following the calendar year to which the information return relates. This accelerates the prior reporting deadline, which was previously 31 July. The reporting period is 1 May to 30 June of each year. The portal is accessible between 1 October and 31 August in any year.

## 5.3 Available Tax Credits/Incentives

The following is a non-exhaustive list of various pieces of legislation that provide tax concessions to persons who engage in business in The Bahamas.

### The Hotels Encouragement Act

The Hotels Encouragement Act allows duty-free entry within The Bahamas of approved materials for, inter

alia, the construction, rehabilitation, remodelling, equipping, and furnishing of a new or existing hotel or resort (taking into account both large and small-scale projects) together with a concession from real property taxes for a prescribed period.

Moreover, any entertainment facility, nightclub, restaurant, and shop within a designated area (described by an order of the responsible minister) is also afforded the same concessions.

The concessions under the Hotels Encouragement Act are geared towards any person or company or any group of persons or companies who are (acting in conjunction) prepared to undertake the construction or remodelling of a new or existing hotel or resort.

#### The Family Island Development Encouragement Act

The Family Island Development Encouragement Act allows persons to receive duty concessions on the importation of building materials (inclusive of plumbing, electrical, mechanical, and construction materials of all kinds) for residential and/or commercial development on certain islands within The Bahamas.

#### The Industries Encouragement Act

The Industries Encouragement Act allows for duty-free concessions for the importation of machinery, building, and other materials or appliances for an approved manufacturer who is manufacturing an approved product together with an exemption from real property tax for 15 years concerning any relevant factory premises.

The concessions under the Industries Encouragement Act are geared towards such manufacturers and products approved by the responsible minister to encourage the establishment and development of certain industries within The Bahamas.

#### Hawksbill Creek, Grand Bahama (Deep Water Harbour and Industrial Area) Act

The Hawksbill Creek, Grand Bahama (Deep Water Harbour and Industrial Area) Act allows for the Port Area known as Freeport, a free trade zone, to be free from certain taxes (eg, excise tax, stamp duties, and most customs duties) until 2054.

#### The City of Nassau Revitalisation Act

The City of Nassau Revitalisation Act allows incentives and duty concessions for owners of property situated in the city of Nassau (located on the island of New Providence) who are desirous of restoring, repairing, and upgrading the buildings, both commercial and residential.

#### The Bahamas Vacation Plan and Time-Sharing Act

The Bahamas Vacation Plan and Time-sharing Act allows duty-free concessions for persons who have been granted a developing owner's licence with respect to building supplies for the construction of timeshare facilities.

### 5.4 Tax Consolidation

This is not applicable in The Bahamas as there are no laws governing the same.

### 5.5 Thin Capitalisation Rules and Other Limitations

In The Bahamas this is not applicable as there are no laws governing the same.

### 5.6 Transfer Pricing

Transfer pricing is not applicable in The Bahamas as there are no laws governing the same.

### 5.7 Anti-Evasion Rules

There are no anti-evasion rules in The Bahamas as there are no relevant laws.

### 5.8 Tariffs

The Bahamas' tariff regime is in the form of taxes imposed on goods imported into the country. Most of the goods purchased by Bahamian residents are imported. These import duties are a significant source of income for the Bahamian government, and in some instances, provide a level of protection for Bahamian businesses. Items imported into the country that compete with locally produced goods are typically taxed at a higher rate.

The government has lowered or eliminated tariffs in the construction, agriculture, fisheries and renewable sectors to encourage economic activity.

The Bahamas is directly impacted by global developments and the levying of tariffs on goods imported into the United States increases the costs of those goods. The United States is The Bahamas' principal trading partner. Approximately 83.3% of the country's total imports in 2024 were from the United States, valued at an estimated BSD5 billion.

Any slowdown in the economy of the United States as a result of concerns around inflationary pressures and increased cost of living may impact The Bahamas' tourism industry.

## 6. Competition Law

### 6.1 Merger Control Notification

Merger control notification is not applicable in The Bahamas as there are no laws governing the same.

### 6.2 Merger Control Procedure

There is no merger control procedure in The Bahamas.

### 6.3 Cartels

The topic of cartels is not applicable in The Bahamas as there are no relevant laws.

### 6.4 Abuse of Dominant Position

Abuse of dominant position is not relevant in The Bahamas.

## 7. Intellectual Property

### 7.1 Patents

For the most part, the legal regime applicable to IP rights as outlined below includes:

- the Industrial Property Act and related rules;
- the Trade Marks Act and related regulations; and
- the Copyright Act and related amendments/regulations.

A patent for an invention is the title granted by the government to protect an invention. The right conferred by a patent excludes others from making, using, or selling the invention.

A patent is granted by the Bahamian government through the Intellectual Property Office through the following process:

- complete the relevant forms with the necessary supporting documents;
- file the completed forms at the Intellectual Property Office; and
- pay the applicable fees.

The entire process, from the date of submission to obtaining the Letters of Patent, could take up to one year.

Generally, the term of every patent shall be 20 years from the date of the application. However, an annual maintenance fee, in an amount as prescribed by the Intellectual Property Office, must be paid before the expiration of the first year from the date of filing the application and thereafter before the expiration of each successive year during the term of the patent. The failure to pay the annual maintenance fee will result in the lapse of the patent.

Unless provided for to the contrary, a holder of an exclusive licence under a patent (as similarly a patentee; ie, a person entered on the register of patents) has a right to take proceedings in respect of any infringement of the patent committed after the date of the licence and, in awarding damages or granting any other relief in such proceedings, the Supreme Court shall take into consideration any loss suffered or likely to be suffered by the exclusive licensee as such or, as the case may be, the profits earned by means of the infringement so far as it constitutes an infringement of the rights of the exclusive licensee as such.

### 7.2 Trade Marks

A trade mark is a mark, symbol or picture, or a combination used to distinguish goods to indicate that they are goods of the proprietor separate from the goods of others in the marketplace. A registered trade mark gives a proprietor exclusive rights to use the mark for the designated services of the mark.

The registration of the trade mark is governed by the Trade Mark Act, regulations (to be promulgated) and the policies set by the Intellectual Property Office.

To register a trade mark, the process is as follows:

- complete the relevant forms with the necessary supporting documents;
- file the completed forms at the Intellectual Property Office; and
- pay the applicable fees.

The entire application process – inclusive of the publishing of the mark in the official gazette, and the final approval and registration of the mark – can take up to 18 months.

A person who has filed an application for protection of a trade mark in a Convention country (any country that is a member of the World Trade Organization; the Convention of the Union of Paris; or any other treaty the Minister responsible for trade marks may by Order designate) has a right to priority, for the purposes of registering the same trade mark under the Trade Marks Act, for a period of six months from the date of filing of the first such application.

The registration of a trade mark is for ten years but may be renewed from time to time in accordance with the provisions of the Trade Marks Act.

Under the Trade Marks Act, persons shall only be entitled to institute proceedings to prevent or recover damages for the infringement of a registered trade mark.

In any legal proceeding in which the validity of the registration of a registered trade mark comes into question and is decided in favour of the proprietor of such trade mark, the Supreme Court may certify the same, and if it so certifies, then in any subsequent legal proceeding in which such validity comes into question, the proprietor of the said trade mark, on obtaining a final order or judgment in their favour, shall have their full costs, charges, and expenses as between attorney and client, unless in such subsequent proceedings the court certifies that they ought not to have the same.

Similarly, in addition to the statutory penalties of a monetary fine or the forfeiture of all goods in respect of which an offence was committed, the Supreme Court can make such order as it sees fit with respect to suitable remedies.

### 7.3 Industrial Designs

The definition of "design" for the purposes of the Industrial Property Act means features of shape, configuration, pattern or ornament of an article, or features of a pattern or ornament applicable to articles insofar as such features appeal to and are judged solely by the eye.

Generally, design copyright in a design exists for five years from the date of deposit. However, applications for extensions can be made under the Industrial Property Act.

Every claim for design copyright in a design must be accompanied by a representation or, at the Registrar General's option, a specimen of the design, and must include certain information as specified by the Industrial Property Act. It is anticipated the Industrial Property Act will be amended to reflect applications the new regime and for applications to be made to the Industrial Property Office

Similarly, there are various remedies available through the Supreme Court and applicable to patents under the legislation.

### 7.4 Copyright

A copyright is a property right that, unless specifically excluded by the Copyright Act, may subsist in the following categories of work of authorship:

- literary works;
- musical works inclusive of any accompanying words;
- dramatic works inclusive of any accompanying music;
- artistic works;
- motion pictures and other audio-visual works;
- choreographic works; and
- sound recordings.

Generally, copyright in any work expires after 70 years from the end of the calendar year in which the author dies, save for those limited exceptions outlined in the Copyright Act when the period varies.

Although there is no formal system for copyright registration, this is usually made by the owner of the copyright or of any exclusive right in the work, together with the application and the applicable fee for examination and consideration.

An infringement of copyright shall be actionable at the suit of the copyright owner, and, subject to the Copyright Act, any action for such infringement includes all such relief by way of damages, injunctions, accounts, or otherwise.

### 7.5 Others

The government has signalled its intention to continue to modernise the country's approach to addressing copyright, trade mark and patent protections, including areas like geographical indications, false trade descriptions, and new plant varieties, and join 11 new international conventions in the near future. It is anticipated that additional legislation will follow.

## 8. Data Protection

### 8.1 Applicable Regulations

The Data Protection (Privacy of Personal Information) Act, 2003 (DPA 2003) remains the primary legislation governing the protection of a living individual's personal data in The Bahamas.

The Act applies to data controllers, defined as persons that determine the purpose for which and the manner in which any personal data is used or is to be used.

The Minister with responsibility for information privacy and data protection may make regulations to:

- provide additional safeguards to protect sensitive personal data;
- prescribe offences or penalties with respect to contravention or non-compliance with the DPA 2003;
- modify the application of an individual's right of access to personal data; and
- prescribe circumstances in which prohibition, restriction or authorisation ought to prevail over listed exceptions to the right of access to personal data.

Though for the purposes of this section the DPA 2003 will be the legislation referenced as it is the one currently in force, it should be noted that in December 2025, parliament enacted the Data Protection Act 2025 (DPA 2025). Once it is brought into force, the DPA 2025 will repeal and replace the DPA 2003.

The DPA 2025 substantially modernises the Bahamian data protection framework and brings it in line with its regional counterparts such as Jamaica and the Cayman Islands, as well as the EU's General Data Protection Regulation. Key changes under the DPA 2025 include, inter alia:

- expanded categories of sensitive personal data including financial, sexual orientation, medical, genetic, and biometric data;
- new statutory concepts of pseudonymisation, and profiling in the context of automated decision-making;
- explicit lawful bases for processing personal data (eg, consent, contract, legal obligation, vital interests, public function, and legitimate interests);
- expanded data subject rights including a right to data portability and a right to compensation;
- registration and record-keeping obligations on data controllers and processors (where applicable);
- data breach reporting obligations;
- extraterritorial reach over foreign data controllers offering goods or services to, or monitoring, data subjects in The Bahamas;
- establishment of a Data Protection Appeal Tribunal and Data Protection Oversight Committee;
- a prohibition on the unlawful selling or renting of personal data; and
- increased administrative penalties for data breaches.

### 8.2 Geographical Scope

A foreign company targeting customers within The Bahamas will be governed by the provisions of the DPA 2003 where it is deemed a data controller and establishes a legal presence within The Bahamas for the purpose of processing personal data in the context of that establishment or, where no legal presence is established within The Bahamas, such data controller uses equipment in The Bahamas for processing

data otherwise for the purpose of transit through The Bahamas.

### 8.3 Role and Authority of the Data Protection Agency

The office of the Data Protection Commissioner (DPC) is established by the DPA 2003 as a corporation solely to enforce data protection rules as enacted by the DPA 2003. Its function is to regulate data controllers and processors and provide internationally accepted rules to ensure that the personal information of citizens is collected, kept up to date, stored, used, disclosed, and disposed of lawfully.

The DPC is also empowered to encourage trade associations and other bodies to prepare codes of practice for dealing with personal data and to approve such codes of practice.

Under the DPA 2003, the DPC has the authority to do the following:

- receive complaints of possible contraventions to the Act;
- investigate contraventions to the Act;
- issue enforcement notices to data controllers;
- issue prohibition notices to prevent the transfer of personal data from The Bahamas to a place outside The Bahamas;
- issue notices to third parties to provide information to it that would assist it in performing its functions;
- upon receipt of a warrant from the Magistrates' Court, empower authorised persons to:
  (a) enter the premises of data controllers and data processors to inspect the premises and any data therein and to inspect, examine, operate, and test any data equipment therein;
  (b) require any person on the premises of a data controller or a data processor to disclose and produce data or data material under their control;
  (c) inspect and copy or extract information from data, or inspect and copy or take extracts from data material; and
  (d) require persons to give any of its authorised officers information regarding the procedures employed for complying with the provisions of the Act; and
- prosecute summary offences committed under the DPA 2003.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

See the 2026 Trends and Developments article of the Chambers Global Practice Guide for Doing Business In... The Bahamas.

# Trends and Developments

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**GrahamThompson**

**GrahamThompson** has been one of the pre-eminent law firms in The Bahamas since 1950. The firm operates four offices conveniently located throughout The Bahamas. It is well regarded for its work with high-net-worth private clients. GrahamThompson's key practice areas include: private clients, trusts and estates (estate and trust structuring, foundations, trust company licensing, and private trust companies); banking and finance (real estate financing, asset leasing and financing, corporate finance, restructuring, financial services law and regulation, loans, debentures and mortgages, and receivership); corporate, commercial and securities (capital markets, M&A, pension schemes, private equity funds, unit trusts, investment funds and IPOs); property and development (hotels, resorts and mixed-use developments, condominiums and timeshares, government approvals and exchange control, private and commercial mortgages, real property taxes, subdivision planning and structuring, second-home acquisitions and sales, and title insurance and opinions); and insurance (captive insurance, and domestic and external insurance).

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## Moving The Bahamas Forward

The Bahamas has been a well-established destination from the 1950s and continues to enjoy a stable government and a parliamentary democracy based on the Westminster model. Investors rely on a seasoned and experienced legal infrastructure underpinned by a well-regarded court system with ultimate appeal to the Privy Council in the UK. World-class housing, internationally accredited education and medical facilities, and easy accessibility to the United States make it an attractive destination for ultra-high-net-worth homeowners and investors. Immigration and residency options include permanent residence and annual residence. For business owners, the Commercial Enterprises Act facilitates expedited approvals for a variety of entrepreneurial ventures that can be operated both within and outside of The Bahamas.

On 28 May 2025, the Prime Minister of The Bahamas, the Hon. Philip Davis KC, tabled "Budget 2025/2026: Expanding Opportunities Island by Island" in the House of Assembly. The government's budget communication has made it clear that the government's focus during this budget cycle is on security, opportunity, affordability and reform with the aim of allowing The Bahamas, its citizens and residents to exploit new opportunities and usher in a new era of progress and renewal.

A general election was held on 12 May 2026. The government's 2026/2027 budget communication is expected to be tabled in the House of Assembly in a few weeks.

## *Real property*

### *Overview*

The most significant recent development in Bahamian land law is the introduction of two complementary pieces of legislation: the Land Adjudication Act, 2025 and the Registered Land Act, 2025. Together, these Acts create the statutory framework for the new system of land adjudication and registered title in The Bahamas.

Both Acts were brought into force and deemed effective from 1 January 2026.

The new regime is intended to operate in two stages. Firstly, the Land Adjudication Act provides the process for identifying and determining the rights and interests in land, and secondly, the Registered Land Act provides the framework for registering those rights and regulating future dealings with registered land.

### *The Land Adjudication Act, 2025*

The Land Adjudication Act provides for the systematic adjudication of rights and interests in land in The Bahamas, the demarcation of boundaries, and related matters.

The Act applies where the Minister declares an area to be an adjudication area. That declaration must be published in the Gazette and must also be publicised more broadly, including through newspapers and an official government website. For Family Islands, notice must also be posted in the relevant administrator's office. Lands held in common under the Commonage Act cannot be declared adjudication areas.

An adjudicator (a Bahamian counsel and attorney of at least seven years' standing with relevant experience) is appointed, along with local assessors. The area is divided into sections and claimants are required to submit claims within specified timeframes and to identify boundaries.

Once adjudication begins, civil proceedings relating to interests in land in the section generally cannot be commenced without the adjudicator's written consent, and existing proceedings may be stayed.

Key roles include the demarcator (boundaries and rights of way), surveyor (demarcation index map), and records officer (investigates claims and prepares the adjudication record).

The Act distinguishes absolute title (good documentary title or sufficient open and peaceful possession) from provisional title (where absolute title is not established). Relevant possession periods are 12 years (private land), 30 years (Crown land), and 60 years (foreshore). After inspection and objections are dealt with, the adjudicator certifies the record as final and delivers it to the Registrar of Lands to support first registration under the Registered Land Act. Appeals to the Supreme Court are limited to errors of law or procedural non-compliance.

### *The Registered Land Act, 2025*

The Registered Land Act 2025 supports the second stage of the framework. It provides for the registration of titles to land and dealings in registered land and applies to parcels adjudicated under the Land Adjudication Act.

The Act establishes the Land Registry, which is responsible for maintaining the new land registration system. The Registry is to keep the following items.

- The Land Register.
- Registry Map.
- All mutation forms (alterations to maps).
- All parcel files (documents supporting entries in the Land Registry, including instruments and plans).
- An alphabetically organised index of names of all proprietors of land, leases and charges showing the numbers of the parcels in which they are interested.
- A register and a file of powers of attorney.

The Land Register is the central record. It will contain a register for every parcel adjudicated under the Land Adjudication Act and for every lease required to be registered. Each register will state whether the land is private land or Crown land and, where the land is private land, whether title is absolute or provisional.

Each register has three sections.

- Property – identifies the land or lease and refers to the Registry Map and filed plans.
- Proprietorship – records of the proprietor and any inhibition, caution or restriction.
- Encumbrances – records encumbrances and adverse rights.

First registration occurs once the adjudication record is final and delivered to the Registrar, who prepares and signs the register for each parcel and registrable lease.

Registration with absolute title vests ownership in the registered proprietor, subject to registered interests and overriding interests. Provisional title remains subject to the recorded qualification but may later be upgraded.

Overriding interests can bind registered land even if not noted on the register (for example, certain easements, short leases, statutory rights, limitation or prescription rights, and rights of persons in actual occupation or receiving rents and profits).

The Act regulates dealings in registered land, so the register is continuously updated, reducing reliance on repeated historical title investigations once land is on the register. The Act also provides protections such as inhibitions, cautions and restrictions. A caution may be lodged by certain claimants and generally prevents inconsistent dealings without consent or a court order. Finally, the Act includes rectification and indemnity provisions for specified errors, omissions, fraud or mistakes, subject to statutory limits and protections.

*Registrar of Lands*

The Registered Land Act provides for the appointment of a Registrar of Lands, who is responsible for the administration of the Land Registry. The Registrar may be assisted by a Deputy Registrar or Assistant Registrars and Registration Officers as required.

Following the passage of the Acts, a Registrar of Lands was appointed effective 19 January 2026. This role includes responsibility for the administration of the new Land Registry and the systematic adjudication of land throughout The Bahamas.

*The previous unregistered land system*

Prior to these reforms, The Bahamas operated an unregistered land system derived from the conveyancing laws of England and Wales prior to 1925.

Under that system, the seller of land must deduce title extending to a root title being no less than 30 years in date, unless title begins with a Crown grant, Crown lease or a certificate of title granted by the court under the Quieting Titles Act, whichever period is shorter.

As a result, purchasers customarily instruct counsel to investigate titles, review the chain of ownership, identify defects or encumbrances and issue a title opinion confirming whether the seller has good and marketable documentary title. Instruments affecting land are filed for record in the Registry of Records to establish priority under the Registration of Records Act 1928.

### *Conclusion*

The reforms mark a major shift from The Bahamas' historically unregistered land system, under which purchasers generally rely on documentary title investigations, title opinions and, where required, title insurance. While the Acts are in force, practical implementation appears to be ongoing, and further operational guidance will be needed to confirm how and when the new system will be fully functioning in practice. Once fully implemented, the new system should improve transparency, certainty and efficiency in land transactions. It should also reduce reliance on repeated back-title investigations for registered parcels, since the Land Register will become the central record of ownership and registrable interests.

### *Estate planning*

*Usufruct and the evolution of estate planning in The Bahamas*

The enactment of the Usufruct Interest Act, 2026 is one of the more interesting developments to emerge from The Bahamas' private client sector in recent years. Not necessarily because usufruct itself is new – civil law jurisdictions have used the concept for centuries – but because of what its enactment says about the direction of international wealth planning and how The Bahamas sees its role within that evolving landscape.

For a long time, offshore estate planning was largely built around common law structures. Trusts became the cornerstone of cross-border wealth preservation, succession planning and asset protection, particularly for families connected to the United Kingdom, North America and other common law jurisdictions. The Bahamas continues to maintain an exceptionally strong reputation in the trust space and remains one of the leading trust jurisdictions internationally.

What has changed over the past decade is the profile of international wealth itself. Private wealth is increasingly global, increasingly mobile and increasingly concentrated in jurisdictions that do not necessarily share common law traditions. Latin America is perhaps the clearest example. Families from Brazil, Mexico, Colombia and elsewhere are often sophisticated users of offshore structures, but they frequently approach ownership, succession and family wealth through an entirely different legal lens.

One of the recurring challenges in cross-border estate planning is not whether a structure works technically, but whether the family itself is comfortable with it conceptually. Many civil law clients understand direct ownership intuitively. They understand splitting economic rights from ultimate ownership. They understand family succession through retained lifetime benefits. Trusts, while highly effective, can sometimes feel less natural because they require a different way of thinking about ownership altogether.

By introducing the usufruct interest into this jurisdiction, The Bahamas enhances its competitiveness in global wealth structuring, providing an additional

mechanism for succession planning, asset protection, and intergenerational wealth transfer.

In particular, the legislation responds to a clear market demand, especially from civil law regions such as Latin America, where usufruct is a familiar and widely used planning tool. Its introduction positions The Bahamas as a jurisdiction capable of bridging common law and civil law legal traditions, thereby attracting a broader client base without displacing its existing strengths, particularly the strength and flexibility of its trust regime.

*What is a usufruct?*

To understand why this matters, it is necessary to begin with the concept of ownership itself. Under Roman and civil law traditions, ownership has historically been viewed as comprising three distinct rights:

- usus – the right to use property;
- fructus – the right to enjoy the fruits or income generated by the property; and
- abusus – the right to dispose of or ultimately consume the property.

In common law jurisdictions, these three rights are generally consolidated into full ownership. Civil law systems, however, permit these rights to be separated and allocated between different persons.

In a usufructuary arrangement, the usufructuary retains the rights of usus and fructus, namely the ability to use the asset and derive economic benefit from it, while another party, often referred to as the bare or naked owner, retains the right of abusus, residual ownership interest and ultimately receives full ownership once the usufruct terminates. In practical terms, usufruct allows a person to transfer underlying ownership while continuing to enjoy the economic benefits of the asset during their lifetime.

This concept has long been familiar in many civil law jurisdictions, where usufruct structures are commonly used in succession planning. A parent, for example, may transfer ownership of shares, real estate or investment assets to children while retaining the right to occupy the property, receive dividends or maintain economic control during their life.

*Does the usufruct replace the trust?*

One of the most important questions arising from the introduction of usufruct legislation is whether it diminishes the relevance of trusts in The Bahamas. The answer is unequivocally no. Trusts continue to occupy a central role in sophisticated estate planning and remain one of the most effective tools available for asset protection, intergenerational succession, confidentiality and governance.

Indeed, many of the core advantages of trusts cannot be replicated by usufruct alone. Trusts allow for discretionary distributions, fiduciary oversight, complex family governance arrangements and long-term wealth preservation across multiple generations. They remain particularly valuable where family dynamics are complex or where asset protection considerations are paramount.

Usufruct serves a different purpose and rather than replacing trusts, it introduces an additional planning layer that may be used independently in some cases or integrated into broader structures in others. The most interesting developments are therefore likely to emerge through hybrid planning arrangements.

For example, a Bahamian trust may continue to hold family real estate while usufruct rights are granted to the settlor, allowing the settlor to retain the use and economic benefit of the property during their lifetime. Upon the termination of the usufruct, the trust would thereafter hold the asset free from those retained rights for the benefit of the next generation in accordance with the terms of the trust.

Similarly, ownership of underlying shares or investment assets may be transferred into trust for the benefit of future generations while senior family members retain usufruct rights over dividend income or other economic returns during their lifetime. Such structures can facilitate gradual succession planning while preserving continuity, economic security and, in some cases, a degree of family control during transitional periods.

*Bridging civil law and common law concepts*

For common law practitioners, the closest comparison to usufruct is often a life interest trust, sometimes

referred to as an interest in possession trust. Under a traditional life interest trust structure, one beneficiary, commonly a surviving spouse or parent, is entitled to benefit from trust assets during their lifetime, usually through a right to receive income generated by the trust or to occupy trust property. Another beneficiary, often children or future generations, holds the residual entitlement to the trust capital once the life interest comes to an end.

A common example would involve a family home or investment portfolio being settled into trust for the benefit of a surviving spouse during his or her lifetime, with the underlying assets ultimately passing to the children upon the spouse's death. The surviving spouse retains the economic enjoyment of the assets, while the next generation effectively holds the future ownership interest.

The similarity to usufruct is immediately apparent. In both cases, economic benefit and ultimate ownership are separated between different people. However, a life interest trust operates through fiduciary relationships and the separation of legal and beneficial ownership, whereas usufruct creates a direct proprietary division of rights in the asset itself.

Historically, offshore planning has often required civil law families to adapt themselves to entirely common law structures. While trusts remain highly effective, they can sometimes feel conceptually unfamiliar to families accustomed to direct ownership models or civil law succession principles. Usufruct provides a framework that many international families intuitively understand while still allowing them to benefit from the stability, sophistication and flexibility of The Bahamas as an international financial centre.

The introduction of usufruct should also be viewed in the context of The Bahamas' broader track record of successfully integrating civil law concepts into its common law framework. The enactment of the Foundations Act in 2004 represented a similar moment of legal convergence. While foundations are traditionally associated with civil law jurisdictions, The Bahamas was able to incorporate the concept into its legislative framework in a way that preserved the integrity of its common law system while expanding its attractiveness to international clients. That earlier development demonstrated both the jurisdiction's willingness and ability to adapt civil law constructs for use within a common law offshore environment. Usufruct follows a similar trajectory, reinforcing the idea that The Bahamas is not constrained by legal tradition and can accommodate multiple conceptual approaches to wealth structuring.

### *Usufruct and digital assets*

The legislation is not confined solely to traditional forms of property such as real estate or shares in private companies. Rather, it contemplates application across a wide range of asset classes, including financial assets and intellectual property. This flexibility is significant because modern wealth itself is increasingly diverse.

The legislation is particularly interesting because it contemplates the application of usufruct arrangements to digital assets. That is a notable development and one that reflects how seriously The Bahamas is engaging with modern wealth structures. Increasingly, large estates include cryptocurrency holdings, tokenised investments, intellectual property, online businesses and other digital assets that derive value less from physical possession and more from access rights, governance rights and economic participation.

The real value of digital wealth often lies not in holding the asset itself, but in controlling the income or benefits generated from it. Staking rewards, licensing income, governance participation and token economics are all examples of rights that can potentially be separated from ultimate ownership. One can easily envisage structures where ownership of digital assets passes to the next generation while senior family members retain economic participation during their lifetime. Equally, governance rights connected to decentralised projects or tokenised ecosystems may eventually become divisible in ways that resemble traditional usufruct principles. Although usufruct is rooted in ancient Roman law concepts, it may ultimately prove highly adaptable to modern digital wealth precisely because it focuses on separating use, economic benefit and ultimate ownership.

### *Conclusion*

More broadly, the introduction of usufruct says something important about the direction of the Bahamian private client industry itself. International financial centres are increasingly competing on tax neutrality or technical expertise, as well as their ability to accommodate different legal traditions and different types of international families. The jurisdictions likely to remain competitive over the next decade are those capable of operating comfortably across both common law and civil law concepts. The Bahamas is positioning itself accordingly.

Importantly, this does not represent a departure from the jurisdiction's traditional strengths. The usufruct does not replace trusts. It is expanding the language of estate planning in The Bahamas. The trust industry remains central to Bahamian private wealth planning and will continue to be for the foreseeable future. What has changed is that advisers now have greater flexibility in how they structure succession arrangements for internationally connected families. As wealth becomes increasingly international, increasingly digital and increasingly multi-generational, that flexibility is likely to become far more valuable than rigid adherence to any single legal tradition.

# BULGARIA




## Law and Practice

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**G&P Law**

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**G&P Law** was founded in 2018 by Georgi Georgiev and Dimitar Petrov, and has since grown into a full-service legal consultancy. In December 2025, Petya Norova joined the firm as a partner. A total of 17 professionals are based in G&P Law offices in Sofia, Plovdiv and Varna. The firm advises clients on corporate and commercial matters, M&A, employment, compliance, dispute resolution, real estate, energy and renewable projects, and provides legal services for medical and aesthetic centres. The lawyers also have expertise in tax, regulatory matters, intellectual property, data protection, and the legal aspects of innovative and technology-driven businesses, delivering integrated legal solutions for complex projects. Recent work includes advising Go Group Consultancy (Italy), Photomate s.r.o. (Czech Republic), SM-ecar Ltd, Scandia Invest JSC, Next DC, Sofia Chamber of Commerce, Serpact, MINA Sofia, Doka, Adverity, Synergon Energy, as well as many other local and international clients.

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## 1. Legal System

### 1.1 Legal System and Judicial Order

The Bulgarian legal system belongs to the continental (civil) law tradition. The most significant distinction between the legal system of Bulgaria and those of other common-law jurisdictions is the absence of a doctrine of binding judicial precedent. This means that, in the event of a dispute brought before a court, the court is not legally bound by previous judicial decisions rendered in identical or similar cases. While courts may take existing case law into consideration, they are under no obligation to follow it.

Bulgaria follows the principle of separation of power among the branches of government with judicial power comprising the courts, the prosecution service, and the investigative authorities.

Judicial proceedings are generally subject to a three-tier court system, as follows:

- District court – acts as the court of first instance for cases with a monetary value (generally) below EUR12,500.
- Regional court – acts as an appellate court for the district court, or as the court of first instance for cases with a monetary value (generally) over EUR12,500.
- Court of Appeal – acts as an appellate court in cases where the regional court has acted as the court of first instance in higher-value disputes.
- Supreme Court of Cassation – the highest judicial authority exercising supervisory jurisdiction to ensure the uniform and correct application of the law.

In certain cases, judicial proceedings are limited to two instances: (i) claims with a value not exceeding approximately EUR2,500; and (ii) administrative cases. Administrative disputes are adjudicated within a separate two-tier system of administrative courts, structured as follows:

- administrative court – as first-instance court; and
- supreme administrative court – the highest judicial authority in administrative matters.

For businesses, disputes may also be resolved outside the state court system through arbitration. However, arbitration is available only where the parties have expressly agreed to submit their disputes to arbitration. The parties enjoy substantial procedural autonomy, determining (i) the rules governing the arbitration proceedings; (ii) the procedural framework itself; and (iii) the applicable law.

Court proceedings may occasionally be prolonged. However, where the parties co-operate effectively with the court, disputes can often be resolved within a relatively short timeframe.

## 2. Restrictions on Foreign Investments

### 2.1 Approval of Foreign Investments

Foreign investment in Bulgaria can fall in a specific approval regime, including Foreign Direct Investment Screening (FDI Screening) under Regulation (EU) 2019/452.

FDI Screening became operational in Bulgaria in July 2025, through the Bulgarian Investment Promotion

Act (BIPA), which enforces that, in some cases, investors' endeavours need to undergo prior approval.

An investment must undergo FDI screening when the following conditions under BIPA are met.

- The investor must qualify as a "foreign investor" by being:
  - (a) a non-EU individual and legal entity established outside the EU; or
  - (b) an EU-based entity that is directly or indirectly controlled by a non-EU person or that acts on behalf of a non-EU person in relation to the investment; and
- the transaction must qualify as a "foreign direct investment", ie:
  - (a) be an investment that establishes or maintains lasting and direct links between the investor and a Bulgarian enterprise, not just a "one time" deal with no actual after-effect on the economy; or
  - (b) be an expansion of an existing investment, eg, by increasing production capacity, diversifying production, or establishing a new place of business; and
- it must fall within sectors or activities that may affect security or public order, eg:
  - (a) critical infrastructure, whether physical or virtual, including energy, transport, water, etc; or
  - (b) critical technologies and dual-use items including, artificial intelligence, etc; or
  - (c) supply of critical inputs, including energy or raw materials, as well as food security; or
  - (d) access to sensitive information, including personal data, or the ability to control such information; or
  - (e) the freedom and pluralism of the media; and
- at least one of the following quantitative or structural thresholds must be met:
  - (a) the investment results in the acquisition of at least 10% of the capital of a company operating in Bulgaria, or the value of the investment exceeds EUR2 million; and/or
  - (b) the investment results in the acquisition of at least 10% of the capital of a Bulgarian undertaking that performs hi-tech activities, regardless of the investment amount; and/or
  - (c) the investment qualifies as a "new investment" (eg, establishment of a new enterprise, greenfield-related expansion of an existing enterprise, diversification of production, or a major change in production processes, and the amount of the investment exceeds EUR2 million).

FDI screening may still be triggered in certain special circumstances even where the thresholds are not met, such as for investments:

- from Russia or Belarus; or
- relating to critical oil-related infrastructure; or
- cases where national security authorities request or propose screening due to potential security concerns.

Some investors, such as those from countries that are part of the EU or the European Economic Area, enjoy a more favourable regime and are treated as low risk.

### 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

If the above criteria are met, the investor should file an application and supporting documents at the Bulgarian Investment Agency, being the point of contact for the matter.

The application is reviewed by the Interagency Screening Council (ISC) at the Bulgarian Council of Ministers in a statutory 45 calendar-day period (extendable once by up to 30 days).

The ISC may either:

- approve the investment;
- initiate a comprehensive review; or
- reject the approval altogether.

What happens if the investment is rejected? In the case of a rejection, the investment is prohibited because it is considered to pose a risk to national security or public order.

Depending on the timing of the rejection, if it is issued:

- before the transaction is finalised – then the transaction cannot be legally finished and is not binding; or
- after the transaction is finalised – then the authorities may order measures to unwind or neutralise the investment.

In the case of non-compliance in the procedure (eg, by providing inaccurate and/or misleading information), the investor can be subject to a fine of 5% of the investment value (but no less than approximately EUR25,500), and additional restrictions may be imposed to ensure public order and national security.

### 2.3 Commitments Required From Foreign Investors

The Bulgarian FDI screening regime expressly allows the competent authority to approve a transaction subject to some conditions (commitments) where risks are identified but can be adequately managed.

Although BIPA does not provide an exhaustive list of the types of commitments, these can include:

- governance and control commitments –
  (a) restrictions on the percentage of shares that may be acquired; and/or
  (b) certain strategic decisions remain subject to approval by Bulgarian-resident directors; and
- information and data security commitments –
  (a) data localisation to be done within Bulgaria or the EU; and/or
  (b) restrictions will be imposed on cross-border data transfers, etc.

### 2.4 Right to Appeal

The authority's decision can be challenged by the investor before the Bulgarian administrative court in cases of:

- a refusal;
- challenging the conditions imposed by the authority; and
- certain procedural irregularities affecting the review process, as a fair procedure is guaranteed for all.

The scope of the legal challenge here lies in proving and providing evidence that there are no risks to national security or public order, or that they can be adequately mitigated.

Even though the courts are usually deferential on national security assessments, placing them above all else, they can annul unlawful or insufficiently reasoned decisions.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

While Bulgarian legislation provides for several forms of legal entities, the most common types of corporate vehicles are:

- the limited liability company (LLC);
- the joint stock company (JSC); and
- the newly implemented variable capital company (VCC).

#### Limited Liability Company (LLC)

Best use scenario:

- small-to-medium enterprises;
- family-owned businesses; and
- project companies involving a single holding parent company.

When to avoid:

- for investment capital endeavours;
- for heavily regulated business activity and licensing; and
- for project companies when more participants are involved.

The LLC was the conservative "go-to" option for most small and medium-sized enterprises. This was mainly for lack of a better option in the past, and is now a tradition, regardless of its faults.

An LLC is a capital corporate form consisting of the traditional: (i) decision-making body (a general meeting (GM) of shareholders/a sole owner); and (ii) an executive management body (be it singular or collective).

The shareholders' liability is limited to the extent of paying in the amount for subscribing to shares in the capital. After that, shareholders are practically free from monetary liabilities – after the LLC is fully incorporated, it becomes liable for each and all relations it is a party to, living its separate corporate life.

The minimum number of shareholders for an LLC is practically one, with a minimum capital amount of EUR1, while each share cannot be less than EUR0.01. In the case of several shareholders, comprising a GM, internal rules for decision-making are adopted in the form of the articles of association (AoA), which become public when the LLC is established. Major decisions are made via convening a general meeting (GM) and voting. Structural decisions require a shareholders' majority of three quarters of the capital, while other topics usually require 50% + 1 vote for validity. Shareholders can additionally sign an internal shareholders' agreement to arrange for other topics like task distribution, deliverables, etc.

What to watch out for:
Although this is the most common form, its old legal framework and operative issues make it less than ideal for a big business and this can often lead to a deadlock situation, such as:

- participation of new shareholders (investors) is dependent on the other shareholders' confirmation, making it uncertain and remedied only by internally imposed penalties;
- share transfers require a special form of notarisation in Bulgaria (or legalisation procedures for foreign notarisations) and subsequent filings at the registry;
- deals concluded by management without the respective GM authorisation are still considered valid and binding for the company, creating risk of unauthorised and damaging deals; and
- inheritance of shareholding is largely dependent on the confirmation of the other shareholders, which can leave the heirs of founders out of the company.

### Joint Stock Company (JSC)

Best use scenario:
- big enterprises with IPO perspectives;
- public companies in large industries;
- project holding companies; and
- for a specialised/licensed activity – banking, insurance, etc.

When to avoid:
- for small enterprises or low starting funds; and
- when the aim is flexibility in management and speed of decision-making over structure.

The JSC remains the most well-regulated (but constrictive and slow-to-use) option for big businesses and IPO endeavours. In some cases, this is the only option for public companies and specialised enterprises (eg, banks).

Its corporate structure includes a GM as the decisions-making body and a board of directors in a one-tier system; or a GM as the decisions-making body and a management board and supervisory board in a two-tier system. The management tier system is freely chosen upon incorporation.

The minimum number of shareholders is one, but the minimum capital is in the amount of EUR25,000 making the entry point a bit higher to reach. Specialised enterprises (pension funds, insurance companies, hospitals, banks, etc) need starting capital of at least EUR4–5 million.

Shares in the JSC can be either registered (materialised, hard copy) or dematerialised (virtual, kept at a specialised authority, eg, a central depository). Shares can also be issued in different classes, with different rights and obligations assigned to each class – like a voting veto or extra dividends. Shareholding must be duly reflected in the shareholders' book, making it a central document on calculating majority rights for voting. Pre-emptive rights, like right of first refusal (RoFR), drag along, tag along, etc, if implemented, must be fully described in the company's AoA.

What to watch out for:
The JSC offers a mix of pros and cons, such as:

- a simple share-transfer form, not needing a notary, but RoFR restrictions may apply and the shareholder's book entry is subject to the executive director's support;

- the management body must be a collective (at least three persons), which is safer for decision-making, but not ideal for fast decisions;
- depending on the types of shares, dematerialised shares make the JSC eligible for IPO and stock-market participation, but the shareholders will always be dependent on an investment broker to accommodate the transaction; and
- reporting standards are higher, with the necessity of a third-party audit over financial reports, making running costs higher.

### Variable Capital Company (VCC)

Best use scenario:
- a start-up;
- for venture capital participation with several investment rounds;
- for fintech, or other fast-growing industries where the product is key; and
- where flexibility on management and control is required.

When to avoid:
- when an LLC/JSC is needed to meet statutory requirements;
- for an IPO listing – the company must first be transformed into a JSC; and
- for small-to-medium and family-owned businesses, where an LLC works better.

The VCC's aim is to service the start-up scene, offering a mix of both LLC and JSC characteristics. Venture companies, start-ups and scalable enterprises are the intended target for this legal form. The capital, being labelled as "variable", is not fixed but always changing, with a view to constant growth because of investments.

The VCC has only been in use since 2025 and Bulgarian business is still somewhat hesitant to engage, as better understanding of corporate and financial affairs is required.

The emphasis in the VCC is on speed, servicing the market and flexibility. The AoA of the VCC can be "moulded" to best suit the needs of the shareholder while, of course, remaining within the confines of the law.

Intended only as a "start-up" vehicle, there are two thresholds at which the VCC should be transformed either into an LLC or JSC:
- when the annual turnover (or assets) exceed approximately EUR2,050,000; and
- when there are more than 50 persons on the staff.

The minimum number of shareholders is again one. There is no explicit minimum starting capital stated in the law, and no requirement for opening a bank account to begin with. As with other corporate entities, however, the single share amount should not be less than EUR0.01.

No shareholders will be visible in the Commercial Register; only the management body is.

The VCC uses the conveniences of the other corporate forms in:
- low starting costs (like an LLC);
- choosing the best management approach – either singular, board (as in a JSC) or a mix;
- avoiding notary certifications of share transfers and implementing a shareholders' book (like a JSC); and
- vesting, employee stock ownership plans (ESOPs) and other employee incentives.

What to watch out for:
- loss of controlling rights on the part of the founder(s) when investors buy in;
- passing both statutory thresholds (staff number and EUR2,050,000 annual turnover/assets); and
- maintaining proper vesting policies for staff and executive members.

## 3.2 Incorporation Process

### LLCs

LLC incorporation can take between a week and 1.5 months depending on several factors.

The LLC's incorporation consists of:
- signing several documents (resolutions, AoA, statutory declaration);
- opening a bank account at a Bulgarian bank to pay in capital; and
- filing and review at the Commercial Register (CR).

The main delay comes with the bank, as all company-related participants must satisfy statutory know-your-customer (KYC) requirements, which can sometimes take up to three weeks, even when the prep work is done beforehand.

After that, all documents are filed at the CR for review, which takes around two business days.

#### JSCs

The timing is similar with a JSC, but with caveats in case of licensed activity.

JSC establishment requirements are similar to those of LLCs, including the need for a capital bank account.

Where specific activities (banking, insurance, etc) are practised, the respective licensing is required, which can take up to six months, depending on the regulator.

#### VCCs

VCC incorporation is the fastest.

Since there is no formal requirement for a bank account to pay the capital into, the establishment of a VCC depends mostly on document preparation and filing at the CR, which takes approximately two business days.

The preparation required in finding the best solutions to implement in the AoA is the more difficult and time-consuming task.

### 3.3 Ongoing Reporting and Disclosure Obligations

#### All Companies

All company forms must follow basic corporate housekeeping.

Any changes in structure must be filed at the CR, for example, changes:

- in the company's name or address;
- to the AoA;
- to the capital;
- to the shareholders; and
- in management.

Additionally, companies must file the name of their ultimate beneficiary under the local anti-money laundering legislation, especially when foreign companies participate.

Each company must file its approved annual financial report and, in some cases, this must be audited.

All of the above are applicable to LLCs, while JSCs and VCCs have extra obligations.

#### *JSCs*

JSCs are subject to higher reporting standards and must, in most cases, present third-party audited reports.

Internally, the management body undertakes to provide timely reporting on operational matters when requested by the GM (and/or the supervisory board in a two-tier system).

In the case of a licensed activity being carried out, the regulators usually require more frequent reporting and can carry out activity inspections.

#### *VCCs*

VCCs borrow the best practices from JSCs, but require "bullet-proof" accounting.

The accounting team, engaged in servicing the VCC, is central to operations. It will be obliged to reflect how shareholding and monetary contributions are distributed in the company, while the shareholders' book states who owns what.

### 3.4 Management Structures

#### LLCs

LLCs can have either one or several managers.

It is advisable for relations between the company and the appointed manager(s) to be strictly governed and laid out in a management agreement, supplementing the legislative framework. Basic limitations on financial thresholds, authorisations and internal liability matters can be described therein.

Where several managers are appointed, the company can be represented (i) by each manager individually;

(ii) jointly by all; or (iii) in another mixed form (eg, by two out of three managers).

There are no prohibitions for management members to be shareholders or vice versa.

### JSCs

A JSC can be managed either in a single- or two-tier style.

However, a JSC is managed by a board, whichever system is chosen. Board members are appointed for a mandate of up to five years, with no prohibition on being reappointed.

#### *Single-tier system*

In the case of a single-tier system, the company is managed and represented by a board of directors (BoD) consisting of three to nine persons. The BoD's members are elected and appointed by the GM, while the BoD itself adopts internal rules and regulations for its work. The BoD may appoint a single executive director, who takes on the responsibility of representing the company before third parties.

#### *Two-tier system*

When using a two-tier system, the management body consists of a:

- management board; and a
- supervisory board, which observes the work of the management board and sets the standards.

Here, the supervisory board's members (three to seven persons) are elected by the GM, while the management board's members (three to nine persons) are elected by the supervisory board. To avoid a conflict of interests, no board member can be part of both the supervisory and management boards at the same time. It is either one or the other.

### VCCs

A VCC can use either a single or group of managers, as chosen by the founder/shareholder(s).

Choices vary between:

- appointing a single manager;
- having multiple managers who work independently; or
- having a collective board with collective liability, or any mix of the above.

Supervisors, observers, secretaries, etc, can also be appointed.

All management types and work rules must be duly reflected in the AoA.

## 3.5 Directors', Officers' and Shareholders' Liability

Until the implementation of the VCC, Bulgarian corporate entities worked on the principle that the managing body was only internally liable to the company (shareholders), while all deals with third parties concluded by said management without the GM's authorisation, were considered valid and binding. In any case, creditors of the company may pose their claims only before the company itself, not its management.

### LLCs

#### *Managers and officers*

The above rule for only internal liability of the manager works in full force in an LLC.

Legislation makes little differentiation between officers and managers, CEOs, COOs, CFOs, etc (the latter are internal differentiations based on a contractual level). The important distinction is who is registered as a company representative at the CR.

Managers' liability towards third parties and authorities is severely limited under the legal framework, which does state, however, that managers can be fined for non-compliance of financial reporting. In some cases, managers can be personally liable for certain tax breaches.

#### *Shareholders*

Once shareholders have subscribed for shares, they are free from other monetary obligations.

All shareholders do have basic statutory operative obligations towards the company, such as, (i) to participate in the GM/management and to follow its resolutions; and (ii) to provide support for the company's activity realisation, etc.

Shareholders can be penalised and/or outright removed if they damage the company in any way or work against its interests, all subject to a GM resolution.

### JSCs

#### *Managers*

Management responsibilities and liabilities in JSCs are stricter.

Members of the BoD (or management board) are expected to present a guarantee in the form of a monetary sum in the amount of three times their gross annual salary.

Being a collective body, the liability itself is distributed equally between BoD members by default, regardless of internal distribution of roles as CEO, COO, CFO, etc, unless appealed before the GM.

Board members have strict rules imposed over confidentiality, non-competition, and carrying out their duties in a professional manner.

#### *Shareholders*

JSC shareholders are obliged to pay the respective share subscription price and participate in the company's affairs by voting at the GM and following its resolutions, much like the shareholders of an LLC.

### VCCs

#### *Managers*

Management of a VCC is a fairly new concept in terms of Bulgarian corporate liability standards.

While the above rules for LLCs and JSCs are applied respectively, the VCC introduces the concept of "piercing the corporate veil" in Bulgarian legal practice. This means that the appointed manager may be personally responsible before third parties for misconduct in the company affairs.

The law provides that the appointed manager (or BoD member) will be assessed on how they:

- perform their duties with the care of a prudent businessperson, balancing the risks of the business with the expected return for the company; and
- avoid any conflict of interest between their own interests and those of the company.

At the same time, managers and/or shareholders exercising control, who have acted intentionally, will be jointly and severally liable to creditors for damages suffered as a result of the transactions and actions of the company.

#### *Shareholders*

Shareholders' liability is to pay the respective share subscription price and participate in the company's affairs by voting at the GM and following its resolutions, much like for the other company forms, unless there are additional stipulations in the AoA. If, as a result of their intentional actions, shareholders cause damage to the company, they may be liable to the company's creditors.

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

Employment relationships in Bulgaria are primarily governed by specific pieces of legislation passed by the Bulgarian parliament, reflecting Bulgaria's civil law tradition. The Bulgarian Labour Code establishes mandatory minimum standards regarding the formation, performance and termination of employment relationships. The legal framework is supplemented by the Social Security Code, the Health and Safety at Work Act, the Labour Migration and Labour Mobility Act in relation to third-country nationals and certain cross-border employment situations, the Protection Against Discrimination Act, and various secondary legislation, mainly ordinances, regulating specific aspects of employment conditions.

As an EU member state, Bulgaria has implemented the principal EU directives governing employment law matters. Consequently, Bulgarian employment legislation reflects common European standards in areas such as working time, fixed-term and part-time work, transparent and predictable working conditions, gender equality, etc.

Bulgarian employment law is predominantly statutory and is characterised by a high degree of mandatory

regulation. The parties may agree on terms that are more favourable to the employee than those prescribed by law, but contractual provisions that reduce the statutory level of protection are generally unenforceable (even null and void).

Although judicial decisions do not constitute a formal and generally binding source of law, the case law of the Bulgarian Supreme Court of Cassation and the Bulgarian Supreme Administrative Court plays an important role in ensuring the consistent interpretation and application of employment and social security legislation.

Employment relationships are established through individual written employment contracts, which must comply with the mandatory requirements of the Labour Code. Collective bargaining agreements may also apply where concluded at enterprise, sectoral, industry or municipal level. Such agreements regulate matters including remuneration, working conditions and benefits, and bind employers that are parties to the agreement or otherwise become bound under the applicable statutory rules. Internal workplace rules and employer internal policies may further regulate the organisation of work, provided they comply with mandatory legislation and any applicable collective bargaining agreement.

## 4.2 Characteristics of Employment Contracts

### Specific Requirements

Employment contracts must be concluded in writing before the employee commences work. The written form is mandatory under the Bulgarian Labour Code and cannot be replaced by an oral agreement. Before the employee starts work, the employer must provide the employee with a signed copy of the employment contract and a copy of the notification submitted to the Bulgarian National Revenue Agency (NRA) as evidence that the employment agreement was registered with the NRA. Failure to comply with these requirements may expose the employer to administrative sanctions.

The Bulgarian Labour Code prescribes the mandatory minimum content of an employment contract. The contract must specify, among other things:

- the parties;
- the place of work;
- the job position and nature of the work;
- the date of signing the employment agreement and the date of commencement of work;
- the duration of the contract (indefinite period or fixed-term employment); and
- the paid annual leave and additional paid annual leave (if any) entitlement.

Employment contracts may be concluded for either an indefinite or a fixed term (permitted only in the expressly provided circumstances).

#### *Probation*

The parties may also agree on a probationary period of up to six months for the benefit of the employer, the employee or both.

#### *Amendments*

Employment contracts may generally only be amended by mutual written agreement between the employer and the employee. Unilateral amendments by the employer are permitted only in the limited circumstances expressly provided for by Bulgarian labour legislation.

#### *Restrictive covenants*

Post-termination restrictive covenants are recognised only to a limited extent under Bulgarian law. While confidentiality obligations and, in appropriate circumstances, carefully drafted non-solicitation clauses may remain enforceable after the termination of employment, non-compete obligations are considered unenforceable (even null and void). Restrictive covenants are generally permissible during employment.

## 4.3 Working Time

### Standard Terms

Bulgarian employment law prescribes both normal and maximum working time. The standard working week is 40 hours, organised as an eight-hour working day over a five-day working week. Part-time employment arrangements are also recognised and may be agreed by the parties. Depending on the nature and organisation of the work, Bulgarian legislation also permits shift work, flexible working hours, aggregated calculation of working time, open-end working time

and on-call duties, subject to the statutory conditions applicable to each arrangement. Bulgarian employment legislation also provides for reduced working hours for certain categories of employees, including those performing work under hazardous or otherwise harmful working conditions, as well as in other cases expressly provided for by operation of the law.

#### *Rest periods*

Employees are entitled to statutory minimum rest periods. As a rule, employees are entitled to a minimum uninterrupted daily rest period of 12 hours between two working days and a minimum uninterrupted weekly rest period of 48 consecutive hours in a five-day working week.

#### *Regulation of night work*

Night work is subject to specific statutory regulation. Night working hours are shorter than daytime working hours, and employees performing night work are entitled to additional remuneration, enhanced health and safety protection and periodic medical examinations. Special restrictions apply to certain categories of employees, including minors and pregnant employees.

#### *Overtime*

Overtime work is generally prohibited unless it falls within the limited exceptions expressly provided for by the Labour Code, such as work required for national defence, the prevention or mitigation of disasters, etc.

### 4.4 Termination of Employment Contracts

#### Grounds for Termination

Bulgaria is not an "employment at will" jurisdiction. Employment contracts may be terminated only on the grounds and in accordance with the procedures expressly provided for by the Labour Code. Depending on the applicable legal basis, an employment contract may be terminated:

- by mutual agreement, by either party upon notice;
- without notice in the circumstances prescribed by law;
- upon expiry of a fixed-term contract; or
- by operation of law.

#### Dismissals

Employer-initiated dismissals are permissible only on statutory grounds, which broadly fall into business-related reasons (eg, closure of the enterprise, redundancy, reduction in workforce, etc).

Bulgarian employment law imposes strict substantive and procedural requirements on dismissals. Depending on the legal ground relied upon, the employer may be required to apply statutory selection criteria and conduct a statutory selection process where only part of the workforce is affected, or obtain prior approval from the Labour Inspectorate or consult the competent medical authorities in cases involving employees entitled to protection against specific unilateral termination grounds (eg, pregnant female employees or employees in advance in-vitro treatment, etc). Failure to comply with the applicable legal requirements may result in the dismissal being declared unlawful by the courts.

Employees may challenge the lawfulness of their dismissal before the competent court. Where a dismissal is found to be unlawful, the court may order the employee's reinstatement and award compensation of up to six months' gross remuneration for the period during which the employee was unemployed as a result of the unlawful dismissal.

#### Severance

Bulgarian law does not provide for a general statutory entitlement to severance pay upon termination of employment. However, employees are entitled to receive all outstanding remuneration accrued up to the termination date, including compensation for any unused paid annual leave and payment in lieu of notice (if applicable).

#### Collective Redundancies

Collective redundancies are specifically regulated by Bulgarian labour legislation, which implements the relevant EU legislation. Where the statutory thresholds are met, employers must initiate prior information and consultation procedures with employee representatives and trade unions, where such representatives exist, with a view to discussing measures to avoid or reduce the proposed redundancies and mitigate their consequences. The employer must also notify

the competent Employment Agency. Non-compliance with the strict collective dismissal legal framework may result in material administrative sanctions for the employer but does not affect the lawfulness of each individual termination of employment.

### 4.5 Employee Representations

Bulgarian employment law recognises several forms of employee representation but does not require employers to establish a permanent employee representative body comparable to a "works council" (popular in other EU countries). Employee representation is primarily exercised through trade union organisations and employee representatives.

#### Trade Unions

Trade unions have statutory rights to represent and protect the collective interests of their members, conduct collective bargaining, negotiate and conclude collective bargaining agreements, and monitor employers' compliance with employment legislation and collective bargaining agreements. In parallel, employees may elect representatives for information and consultation purposes, who represent all employees and their interests, irrespective of trade union membership.

#### Employee Representatives

The Labour Code requires employers to provide information and conduct consultations with employee representatives in the cases prescribed by law, particularly where proposed measures are likely to affect employees' interests. These include, among others, collective redundancies, transfers of undertakings, etc.

Employees also elect health and safety representatives, who participate in monitoring compliance with occupational health and safety requirements, workplace risk assessments and the development of preventative measures, while co-operating with the employer and the competent public authorities on occupational health and safety matters.

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/ Employers

In the context of employment relationships under Bulgarian law, the following public receivables must be paid:

- income tax;
- social securities contributions;
- health insurance contributions; and
- contributions to the Guaranteed Workers' and Employees' Receivables Fund – not applicable for 2026, until the adoption of the State Budget Act for 2026 by the National Assembly.

Income tax is withheld and paid by the employers. It represents 10% of the remuneration paid to the employee, deducted with the contributions for health insurance and social securities owed by the employee, and the tax benefits, if any. Since documentation and payments are made by employers, employees are not obliged to declare their incomes to the NRA, unless they receive any payments on the basis of other relations. Other taxes may also apply to employees if they work and receive remuneration or other payment on the basis of other contracts different from employment agreements.

The following social contributions (charges) are usually paid in the context of employment relationships:

- pension contributions – between 12.8% and 20.8% of the insurance income depending on several factors, eg, date of birth;
- general illness and maternity contributions – 3.5% of the insurance income;
- unemployment contributions – 1% of the insurance income; and
- work-related accident and professional illness contibutions – defined in the State Budget Act.

The insurance income is defined by the gross wage. If the gross wage is below the minimum for the state, payments will be made on the basis of the minimum gross wage. The State Budget Act usually defines a maximum insurance income, and for any payments received over that maximum, no social charges will be paid.

Social securities contributions are usually divided between employees and employers in a certain ratio. Employers pay all social charges for work-related accidents and professional illnesses.

Health insurance charges amount to 8% of the insurance income and they are divided 60:40 between employers and employees.

## 5.2 Taxes Applicable to Businesses

Companies doing business in Bulgaria could be liable for the following taxes if they qualify as local entities:

- corporate income tax;
- value added tax;
- withholding tax on dividends and liquidation shares;
- taxes on interests for some foreign companies; and
- qualified domestic minimum top-up tax on large multinational companies.

### Corporate Income Tax

The corporate income tax rate is 10% of the annual profits of a company. The income of a company according to its accounts is transformed by the application of different components, eg, permanent tax differences, temporary tax differences, etc, to define company profits. Local entities and foreign entities that have branches and places of economic activity in the territory of Bulgaria will be liable for corporate income act on the income of those branches/places of economic activity.

### Value Added Tax

The standard VAT rate is 20% of the price of transactions or services provided. It is applicable for any taxable supply, import of goods, and some intra-community acquisitions in Bulgaria, including new vehicles and excise tax goods. Certain supplies could be charged a zero rate, eg, export of goods, international transport services, etc.

Any company performing independent economic activities in the territory of Bulgaria, having turnover amounting to more than EUR51,130 for the previous 12 months is obliged to register for VAT purposes. The registration could also be voluntary prior to reaching a turnover of EUR51,130. Registered companies are entitled to tax credit.

### Withholding Tax

Taxes on dividends and liquidation shares distributed by local entities to foreign companies could be withheld in the territory of Bulgaria. The tax rate is 5% of the gross amount of the dividends and liquidation shares. These taxes do not, however, apply to companies which are local entities in another EU or EEA member state.

### Minimum Top-Up Tax

Bulgaria has introduced the qualified domestic minimum top-up tax on large multinational companies in its Corporate Income Tax Act, as implementation of the OECD Pillar Two Safe Harbours. However, this does not provide a blanket "guaranteed safe harbour" to corporate taxpayers under the OECD framework.

## 5.3 Available Tax Credits/Incentives

In Bulgaria, VAT must be declared and paid to the NRA by the seller of goods or services who is registered for VAT purposes. Almost any seller who is registered for VAT purposes is entitled to VAT credit. This means that sellers are entitled to deduct the VAT they were charged for supplies to them from the VAT they declare, and pay the difference to the NRA.

Certain exceptions to this rule are listed in the VAT Act, for example, entities which perform intra-community acquisitions or which are voluntarily registered for VAT purposes, etc, will not benefit from VAT credit.

VAT credit should also not be used for certain transactions, for example, VAT-exempt supplies, acquisitions or imports of motorcycles and lightweight cars, as well as the supply of any goods or provision of services for maintenance, repair, improvement and operation of motorcycles and cars.

The Bulgarian Corporate Income Tax Act provides for several tax incentives to encourage specific economic activities, for example:

- tax relief for conducting manufacturing activities in municipalities with unemployment rates higher than the national average;
- tax relief as a state aid to farmers – this could be applied via income tax credit of up to 60% on the taxable income of the farmer;

- for income tax purposes, accounting expenses for donations; and
- in order to avoid double taxation, income derived from dividend distribution from other entities registered under Bulgarian law or in another member of the EU or the EEA, is not recognised as company income.

The aforementioned tax incentives are the most common examples, but do not represent the complete list.

### 5.4 Tax Consolidation

This is not applicable in Bulgaria.

### 5.5 Thin Capitalisation Rules and Other Limitations

The Bulgarian Corporate Income Tax Act regulates thin capitalisation as a means to restrict recognition of interest expenses when a company is financed through a disproportionately high amount of debt compared to its equity. These rules aim to limit the risk of distributing the profits of the company through interest, resulting in the deduction of the tax base for corporate income tax.

These rules do not apply for bank credit and financial leasing, unless the parties to the financing are related parties or the financing was guaranteed with the participation of related parties.

Thin capitalisation rules apply in cases where the capital raised exceeds the equity of the respective company three times.

### 5.6 Transfer Pricing

Transfer pricing rules are applicable in the territory of the Republic of Bulgaria to serve as a guarantee for market prices in transactions between related, including affiliated, parties.

In cases of audits by the NRA, it is the companies that bear the burden of proof that the terms, and especially the price of a transaction, meet the requirements to be defined as market price.

Several methods to define market price can be used – for example, the comparable uncontrolled prices method, market prices method, value-added method, net transaction profit method, or allocated profit method.

In cases of groups of companies, transfer pricing policies must be introduced.

### 5.7 Anti-Evasion Rules

The rules for anti-evasion of taxes under Bulgarian law include several institutes, besides the transfer pricing rules described above. The anti-evasion measures under the Corporate Income Tax Act include, for example:

- the general prohibition of anti-evasion transactions or sets of transactions – when one or more supply transactions, including those between unrelated parties, are entered into under terms that could result in tax avoidance;
- the identification of specific cases as tax avoidance transactions, eg, when there is a significant excess of quantities of materials, raw materials, and other production costs compared to what is customary for a business, and there are no objective reasons for this, etc; and
- the definition of sham transactions as tax avoidance schemes per se.

These rules could also apply to individuals and personal income tax (eg, when transactions are between related parties).

The burden of proof in cases of audits by the NRA is borne by the taxable entity or person.

### 5.8 Tariffs

Bulgaria is a member state of the EU and applies the EU tariff rules, including the Union Customs Code (UCC) and the Common Customs Tariff (CCT).

The tariff rates and policies are defined by the EU's Common Commercial Policy and CCT, WTO agreements and bilateral agreements with other states, the EU's free trade agreements and preferential trade arrangements, the EU's general preferential scheme, EU anti-dumping and anti-subsidy investigations, geopolitical and economic measures, etc.

The most unfavourable or more stringent tariff treatment applies to:

- goods from Russia and Belarus – to mitigate the EU's economic dependency on these states;
- agricultural products – as part of the protection rules for the agricultural sector; and
- the import of steel and aluminium from China, Russia and Brazil – as anti-dumping measures.

## 6. Competition Law

### 6.1 Merger Control Notification

Merger control in Bulgaria is governed by the Bulgarian Competition Protection Act (CPA) and administered by the Bulgarian Commission for Protection of Competition (CPC). Concentrations meeting the statutory jurisdictional thresholds are subject to mandatory prior notification and may not be implemented before obtaining clearance from the CPC.

#### What Constitutes a Concentration?

A concentration arises where a transaction results in a lasting change of control over an undertaking. This includes mergers between previously independent undertakings, acquisitions of direct or indirect sole or joint control over one or more undertakings or parts thereof, and the establishment of a full-function joint venture performing, on a lasting basis, all the functions of an autonomous economic entity. The acquisition of a minority shareholding does not, in itself, constitute a notifiable concentration.

#### When is Notification Required?

Bulgarian merger control applies not only to domestic transactions but also to foreign-to-foreign transactions, provided that the statutory thresholds are met. Notification is mandatory where the aggregate Bulgarian turnover of all undertakings concerned exceeds EUR12.78 million (BGN25 million) during the preceding financial year and either:

- the Bulgarian turnover of each of at least two undertakings concerned exceeds EUR1.53 million (BGN3 million); or
- the Bulgarian turnover of the target undertaking exceeds EUR1.53 million (BGN3 million).

Turnover is assessed at group level in accordance with the CPA.

Since November 2025, the CPA has also permitted voluntary notification in respect of concentrations that fall below the mandatory thresholds. In addition, the 2025 amendments introduced a call-in power enabling the CPC to require notification of a below-threshold transaction within six months of its completion, where the combined Bulgarian turnover of all participants exceeds EUR12.78 million (BGN25 million) and the transaction raises concerns that effective competition may be significantly impeded, in particular as a result of the creation or strengthening of a dominant position.

The CPA imposes a standstill obligation on notifiable concentrations. Transactions requiring notification may not be implemented before the CPC grants clearance. Failure to notify, or implementation of a transaction prior to clearance (gun-jumping), may result in fines of up to 10% of the aggregate group turnover of the acquiring undertakings for the preceding financial year.

### 6.2 Merger Control Procedure

#### Notification

Merger control proceedings are conducted before the CPC. A notification must generally be submitted after the transaction documents have been executed, a public tender offer has been announced, or control has been acquired, but before any steps are taken to implement the transaction. Exceptionally, upon request of the parties, the CPC may assess a concentration prior to signing where the parties can demonstrate a genuine intention to conclude the transaction or have publicly announced an intention to make a tender offer.

In cases of a merger or the acquisition of joint control, the notification must be filed jointly by the parties. In cases of sole control, the obligation falls on the acquirer alone.

The notification must be submitted in the standard form approved by the CPC and include comprehensive information regarding the parties and their corporate groups, the ownership and control structure, the nature and legal basis of the transaction, the relevant markets, etc.

A filing fee of EUR1,022.58 applies upon submission, together with an additional fee of 0.1% of the combined Bulgarian turnover of all participating undertakings for the preceding year – capped at EUR30,677.51 (BGN60,000) – payable if the concentration is cleared.

### Review

The proceedings are initiated within five working days of receipt of the notification if all the required documents and information are provided. Following receipt of a complete notification, the CPC will carry out a "Phase I" preliminary review, lasting for 25 business days. If the CPC concludes that the concentration does not raise competition concerns, it issues an unconditional clearance decision or, where appropriate, clears the transaction subject to commitments offered by the parties.

Where the transaction gives rise to serious doubts as to its compatibility with effective competition, the CPC will open a "Phase II" in-depth investigation, to be completed within 90 business days (although this can be slightly extended).

A notifiable concentration may not be implemented before clearance is granted, subject only to the limited statutory exceptions provided by the CPA. Clearance decisions do not carry an expiry date under Bulgarian law but remain valid only for as long as the circumstances on which the CPC based its assessment have not materially changed prior to actual closing.

Final decisions of the CPC are subject to judicial review before the Administrative Court – Sofia Region, the judgments of which may be appealed on points of law before the Supreme Administrative Court (the decisions of which are final).

## 6.3 Cartels

### Prohibition

The CPA prohibits agreements between undertakings, decisions of associations of undertakings and concerted practices that have as their object or effect the prevention, restriction or distortion of competition on the relevant market. These rules largely mirror the legal framework set out in Article 101 of the Treaty on the Functioning of the European Union (TFEU). Where the relevant conduct can affect trade between EU member states, the CPC applies both the CPA and Article 101 TFEU in accordance with Regulation (EC) No 1/2003.

The prohibition applies to both horizontal and vertical arrangements, irrespective of whether co-ordination results from a written or oral agreement, a decision of an association of undertakings or a concerted practice. It covers, among other practices, direct or indirect price-fixing or the fixing of other trading conditions, the allocation of markets or sources of supply, limitations or control of production, etc. Agreements infringing the prohibition are null and void to the extent of the restriction.

The CPA applies on the basis of the effects doctrine. Accordingly, it applies to agreements and practices implemented both within and outside Bulgaria where they have the object or effect of preventing, restricting or distorting competition on the Bulgarian market.

### Exemptions

The CPA recognises exemptions corresponding to those under EU competition law. Agreements that contribute to improving the production or distribution of goods or promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits, may benefit from exemption where all statutory conditions are satisfied.

### Investigations and Sanctions

The CPC is responsible for investigating and sanctioning infringements of the prohibition. It has extensive investigative powers, including the power to require information, conduct unannounced inspections, obtain oral explanations and seize evidence. Undertakings participating in prohibited agreements may be fined up to 10% of their total turnover for the preceding financial year.

### Judicial Review

Final decisions of the CPC are subject to judicial review before the Administrative Court – Sofia Region, the judgments of which may be appealed on points of law before the Supreme Administrative Court (the decisions of which are final).

### 6.4 Abuse of Dominant Position

#### Legislation

The CPA prohibits the abuse of a monopoly, dominant or collective dominant position. The rules are contained in Chapter Four of the CPA and largely correspond to Article 102 of the TFEU. Significant legislative amendments regarding the abuse of a monopoly, dominant or collective dominant position entered into force on 26 June 2026. Where the conduct is capable of affecting trade between EU member states, the CPC applies both the CPA and Article 102 TFEU in accordance with Regulation (EC) No 1/2003.

#### Definition of Dominant Position and Abusive Conduct

A dominant position exists where an undertaking, having regard to factors such as its market share, financial resources, access to the market, technological advantages and commercial relationships, is able to behave independently of its competitors, suppliers or customers. Following the June 2026 amendments, an undertaking holding a market share of at least 50% is presumed to be dominant, unless it demonstrates that it does not possess the characteristics of dominance prescribed by the CPA. The burden of rebutting the presumption rests on the undertaking. Prior to the June 2026 amendments, however, the burden of establishing the existence of a dominant position rested on the CPC.

The 2026 amendments also introduced a statutory concept of collective dominance. Two or more undertakings may be found jointly dominant where economic interdependence or other factors enable them to act, to a significant extent, independently of their competitors, suppliers and customers, and thereby restrict competition.

The CPA prohibits abusive conduct capable of preventing, restricting or distorting competition and harming consumers. Examples include the direct or indirect imposition of unfair purchase or selling prices or other unfair trading conditions, limiting production, etc. The amendments of 26 June 2026 also introduced a separate prohibition on the imposition of excessive prices by undertakings holding a monopoly, dominant or collective dominant position.

The CPA applies on the basis of the effects doctrine. Accordingly, it applies to unilateral conduct carried out both within and outside Bulgaria where it has the object or effect of preventing, restricting or distorting competition on the Bulgarian market.

#### Investigations and Sanctions

The CPC is responsible for investigating and sanctioning infringements of the prohibition on abuse of monopoly, dominant and collective dominant positions. It may conduct inspections, require information, order the cessation of the infringement, impose behavioural or structural remedies, and levy fines of up to 10% of the undertaking's total turnover for the preceding financial year.

#### Judicial Review

Final decisions of the CPC are subject to judicial review before the Administrative Court – Sofia Region, the judgments of which may be appealed on points of law before the Supreme Administrative Court (the decisions of which are final).

## 7. Intellectual Property

### 7.1 Patents

Under Bulgarian law, a patent is an exclusive right granted for an invention that is new, involves an inventive step, and is industrially applicable. Patent protection is governed primarily by the Patent and Utility Model Registration Act.

The patent holder has the exclusive right to the invention, which includes the right to use the invention, the prohibition on third parties using it without the patent holder's consent, and the right to dispose of the patent.

Patent protection is obtained through registration with the Patent Office of the Republic of Bulgaria. The application undergoes a formal examination and a substantive examination to determine whether it meets the requirements for patentability. The term of protection is 20 years from the filing date, provided that annual maintenance fees are paid.

Patent rights may be enforced through civil proceedings and, in certain circumstances, criminal proceedings.

Available legal remedies include interim relief and court claims through which one may seek a declaration and/or cessation of the infringement, compensation for damages, seizure and destruction of the infringing goods, publication of the court decision, and reimbursement of legal costs. Customs measures against infringing goods are also possible.

## 7.2 Trade Marks

A trade mark is any sign capable of distinguishing the goods or services of one person or undertaking from those of others that is capable of being represented in the State Register of Trademarks in a manner that enables the clear and precise determination of the subject matter of the protection afforded by the registration. Such signs may consist, for example, of words, including personal names, letters, numerals, drawings, figures, the shape of goods or their packaging, colours, sounds, or any combination of such signs.

### Protection

Trade mark protection is governed by the Marks and Geographical Indications Act (MGIA). Trade mark rights are acquired through registration before the Patent Office of the Republic of Bulgaria (PORB). The registration process includes both a formal examination and a substantive examination. If the trade mark complies with the requirements set out in the MGIA, it is published in the next issue of the official bulletin of the PORB. From the date of publication, a three-month opposition period begins to run. If no opposition is filed within this period, the trade mark proceeds to registration.

Protection is granted for an initial period of ten years from the filing date and may be renewed indefinitely for successive ten-year periods. Registered trade marks become vulnerable to revocation if they are not put to genuine use within a continuous period of five years following registration.

### Enforcement

Trade mark ownership may be enforced through civil proceedings and, in certain circumstances, criminal proceedings, and customs intervention against counterfeit goods may also be sought.

Available legal remedies include:

- interim relief and court claims through which one may seek a declaration and/or cessation of the infringement;
- compensation for damages;
- seizure and destruction of the infringing goods;
- hand-over of the items involved in the violation;
- publication of the court decision; and
- reimbursement of legal costs.

## 7.3 Industrial Designs

Under Bulgarian law, a design protects the visible appearance of a product or part of it, as determined by the characteristics of its shape, lines, design, ornamentation, colour scheme, or a combination thereof. Design protection is governed by the Industrial Design Act.

Protection is obtained through registration before PORB. To be registrable, a design must be new and possess individual character (be original). The registration process includes both a formal examination and a substantive examination. If it is determined that the design applied for is eligible for registration, the applicant is sent a notice granting a one-month period to pay the fees for registration, issuance of the registration certificate, and publication. Once the applicant pays the fees, the design is registered.

The initial term of protection is five years from the filing date and may be renewed for additional five-year periods up to a maximum term of 25 years.

Design rights may be enforced through civil proceedings and, in certain circumstances, criminal proceedings. The same legal remedies are available as for trade mark infringement (see **7.2 Trade Marks**).

## 7.4 Copyright

Under Bulgarian law, copyright protects original literary, artistic, musical, audio-visual, photographic and other creative works, including computer software

and databases that satisfy the originality requirement. Databases may benefit from copyright protection where they constitute original intellectual creations and may also be protected through the sui generis database right where a substantial investment has been made in terms of both quantity and quality. Copyright protection is governed by the Copyright and Related Rights Act.

Copyright arises automatically upon creation of the work and does not require registration or any other formalities. In principle, only individuals can be copyright holders, while legal entities can be copyright holders only in cases specified by law.

As a general rule, copyright protection lasts for the lifetime of the author and for 70 years after their death. For certain works, such as anonymous works, computer databases, and films, the 70-year term begins at different points in time.

Copyright may be enforced through civil proceedings and, in certain circumstances, criminal proceedings.

The same legal remedies are available as for trade mark infringement (see **7.2 Trade Marks**).

### 7.5 Others

Under Bulgarian law, other intellectual property rights and related assets may include trade secrets, know-how, domain names and confidential business information.

#### Trade Secrets

Trade secrets are protected under the Trade Secret Protection Act. A trade secret is any commercial information, know-how, or technological information that simultaneously meets all of the following requirements:

- it is secret in the sense that, as a whole or in the precise configuration and assembly of its components, it is not generally known or readily accessible to persons within the circles that normally deal with this type of information;
- it has commercial value because it is secret; and
- reasonable measures have been taken to keep it secret by the person who lawfully controls the information.

A trade secret holder is any natural or legal person who lawfully controls a trade secret.

Enforcement mechanisms include interim relief and court claims through which one may seek a cessation or prohibition of use; prohibition of the production, offering for sale and use of the infringing goods; destruction of the infringing goods; prohibition of the provision of services that have significantly benefited from the trade secret; as well as an award of damages for the losses suffered and reimbursement of legal costs. Contractual confidentiality obligations and unfair competition rules may provide additional protection.

#### Know-How and Business Information

Know-how and business information may be protected through previously executed contractual arrangements. Their protection may be enforced through legal proceedings for breach of contractual obligations.

#### Domain Names

Domain names may be protected through their registration with the relevant registrars. Protection of domain names may be enforced by initiating proceedings before the World Intellectual Property Organization (WIPO) or in accordance with the dispute resolution procedures established by the relevant registrar.

## 8. Data Protection

### 8.1 Applicable Regulations

The protection of personal data in Bulgaria is primarily governed by Regulation (EU) 2016/679 or the General Data Protection Regulation (GDPR), which applies directly and without the need for national implementing legislation, and the Bulgarian Personal Data Protection Act (PDPA), which has very limited application and supplements the GDPR in areas where EU member states are permitted to adopt national rules. The Bulgarian legal framework also includes sector-specific legislation governing the processing of personal data in particular fields, such as electronic communications, healthcare, financial services and employment (primarily the legal basis for processing of such personal data).

The GDPR's core principles – lawfulness, fairness and transparency, purpose limitation, data minimisation, storage limitation, integrity and confidentiality, and accountability – apply in full.

The Commission for Personal Data Protection (CPDP) is the national supervisory authority responsible for monitoring and enforcing compliance with data protection legislation. It exercises the full range of investigative and corrective powers conferred by the GDPR, including the power to conduct inspections, issue warnings and reprimands, order corrective measures and impose administrative fines.

The PDPA supplements the GDPR by regulating matters left to national law.

### 8.2 Geographical Scope

The GDPR applies in Bulgaria on the basis of both the establishment and the targeting criteria, giving it broad extraterritorial effect.

Under the establishment criterion, the GDPR applies to the processing of personal data carried out in the context of the activities of an establishment of a controller or processor in the EU, irrespective of whether the processing itself takes place within the EU.

Under the targeting criterion, the GDPR also applies to controllers and processors not established in the EU that process the personal data of data subjects in the EU, where the processing activities relate to the offering of goods or services to those individuals – irrespective of whether payment is required – or the individuals' behaviour is monitored, in so far as that behaviour takes place within the EU.

The GDPR also applies to the processing of personal data by a controller that is not established in the EU where the law of a member state applies by virtue of public international law.

Controllers and processors subject to the GDPR solely by virtue of the targeting criterion are generally required to designate a representative established in a member state of the EU, unless one of the exemptions provided for in the GDPR applies.

### 8.3 Role and Authority of the Data Protection Agency

The CPDP is the independent national supervisory authority responsible for monitoring and enforcing compliance with the GDPR and PDPA. It is established as an independent public authority and performs its functions free from external influence, in accordance with the requirements of the GDPR.

The CPDP is entrusted with supervising the application of data protection legislation across both the public and private sectors.

The CPDP exercises the full range of investigative, corrective, authorisation and advisory powers conferred by the GDPR. In particular, it may carry out planned or ad hoc inspections, investigate complaints submitted by data subjects, require controllers and processors to provide information and documentation, conduct audits, etc, during investigations. Following an investigation, the CPDP may issue warnings and reprimands, ordering controllers or processors to comply with the GDPR.

The CPDP also has extensive enforcement powers. It may impose administrative fines in accordance with the GDPR, taking into account factors such as the nature, gravity and duration of the infringement, etc.

As a member of the European Data Protection Board (EDPB), the CPDP co-operates with the supervisory authorities of other EU member states through the GDPR's consistency and co-operation mechanisms.

Decisions of the CPDP are subject to judicial review before the Bulgarian administrative courts. In addition to the supervisory proceedings before the CPDP, data subjects may seek judicial protection and compensation for material and non-material damages arising from infringements of data protection legislation in accordance with the GDPR and Bulgarian law.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

Since Bulgaria joined the Eurozone in January 2026, much of its legislation is being adapted.

So far, Bulgaria has managed to maintain its position as a favourable investment location due to its:
- EU presence;
- low corporate tax; and
- investor-friendly reforms.

However, fast-paced industries such as fintech and crypto still rely on the approval of government regulators (even after the Markets in Crypto-Assets Regulation (MiCA) entered into force), which are generally conservative.

In detail, the following legislative reforms are expected:
- Both FDI screening and merger control remain dynamic topics, being the latest spheres to undergo legislative amendments.
- Corporate law is expected to expand by implementing the EU-Inc form, but the timing of this is uncertain.
- Employment law-related legislative developments are likely to continue to be driven by the implementation of EU initiatives and evolving labour market practices, particularly in relation to platform work and pay transparency.
- Tax is not expected to change much, other than in terms of annual increases in the amounts of social, pension and health securities due.
- The Bulgarian competition law framework has recently undergone significant reform following amendments to the Bulgarian Competition Protection Act, which came into force on 26 June 2026. The principal developments are expected to arise from the interpretation and application of the new provisions by the Commission for Protection of Competition and the Bulgarian courts.
- The intellectual property sphere is to undergo further legislative amendments due to the heavy usage of AI in all spheres of business.
- Principal developments in personal data protection are expected to result from the evolving European digital regulatory framework, including the progressive application of the AI Act, the Data Act and the Data Governance Act.

# CABO VERDE




## Law and Practice

**Contributed by:**
Nelson Raposo Bernardo, Joana Andrade Correia, Manuel Esteves de Albuquerque and Júlio Martins Júnior
**Raposo Bernardo & Associados**

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**Raposo Bernardo & Associados** is an international full-service law firm, with practices in Africa (Angola, Cabo Verde, Guinea Bissau, Mozambique, and São Tomé and Príncipe) and Europe (Portugal and Spain). In Cabo Verde, the firm has a team of 12 lawyers based both locally and abroad, offering more than 20 years' experience of participating in the most innovative and relevant projects. They regularly represent the interests of national and international players – including investment and commercial banks, investment funds, financial intermediaries, government entities, and public sector and private agents – in legal matters concerning banking, energy, aviation, pharmaceuticals, tourism and leisure, and construction and infrastructure. The firm's expertise includes advising on operations such as corporate finance and major project finance, large M&A transactions, privatisations, PPP projects, large infrastructure projects and drafts of banking, financial markets and insurance legislation. It also works closely with major international law firms.

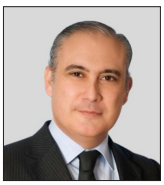
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## 1. Legal System

### 1.1 Legal System and Judicial Order

Cabo Verdean law is based on the civil law system. The Constitution of Cabo Verde and relevant legislation provide for a judiciary independent from the executive. The judicial system in Cabo Verde is based on three levels of appreciation by different courts:

- First Instance Courts (trial court);
- Courts of Appeal; and
- the Supreme Court.

As a rule, any case shall be presented at the First Instance Courts and, depending on several factors (such as the value of the case or the subject matter), the party that loses the case may appeal to the Court of Appeal, and subsequently (as a second level of appeal) to the Supreme Court, which only analyses questions of law.

## 2. Restrictions on Foreign Investments

### 2.1 Approval of Foreign Investments

There are no restrictions on the entry of foreign investments. All investors have the same rights, regardless of their nationality, and are subject to the same duties and obligations under the laws of Cabo Verde. A national partner is not required, and there are no limitations on the distribution of profits or dividends abroad.

The rules governing foreign investment are similar to those applicable to domestic investment. No special registration or notification to any authority regarding foreign investment is required. However, there may be mandatory registration/approvals for specific activities – such as in the banking, finance, aviation, maritime and telecommunications sectors – that are applicable for both foreign and domestic investment.

### 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

There are no restrictions on the entry of foreign investments, and the rules governing foreign investment are similar to those applicable to domestic investment.

### 2.3 Commitments Required From Foreign Investors

See **2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance**.

### 2.4 Right to Appeal

The law recognises the right of an investor to challenge any decision of the administrative authorities in court. The scope of the legal challenge depends on the nature of the decision by the administrative authority.

As a rule, the First Instance Court has a mandatory deadline of three years to issue a decision.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

The following types of company are the most relevant provided for in the Cabo Verde Companies Code, and are frequently chosen by foreign investors aiming to start their own enterprise structure in Cabo Verde. The choice of one of these structures depends on many factors, such as:

- the type of business to be implemented;
- the simplicity or size of the operations;
- the amount of capital to be invested;
- the possibility to transfer ownership freely; and
- disclosure rules about the aforesaid ownership.

The most commonly used forms are public limited companies and limited companies, since they are more operational.

#### Public Limited Companies (Sociedade Anónima)

A public limited company (*sociedade anónima*, or SA) is the form traditionally adopted by larger companies. It is primarily characterised by the fact that it has a more complex organisational structure than, for example, the limited company. The public limited company form also provides greater flexibility when it comes to share capital insofar as no special procedure is required for the transfer of shares.

This type of company has the following characteristics.

- Minimum share capital of EUR0.01.
- A minimum of two shareholders. A single-shareholder public limited company incorporation is permitted if the single shareholder is another company.
- As a general rule, public limited companies are incorporated by means of a private document (articles of association). Additional formalities may apply if the shareholders perform contributions in kind.
- As a rule, the transfer of shares is free and may be carried out by means of an agreement between the parties.
- The governing bodies of a public limited company are as follows.
  - (a) A management board, generally with a minimum of three members. Management can be entrusted to one director if the turnover for two consecutive years is expected to be less than CVE10 million. In addition to the election of the effective members of the board of directors, substitute directors must be elected in numbers not exceeding one third of the effective directors – this means three effective members and one substitute member, or one effective member and one substitute.
  - (b) A shareholder meeting.
  - (c) A supervisory board (three members) or one auditor – a member of the supervisory board or the auditor must be certified.
  - (d) An auditor (for large companies).
- Shareholders' liability is limited to capital subscribed, but shareholders are jointly and severally liable for all contributions contained in the by-laws.
- Flexibility of capital – only registered shares are allowed, which are transferred by endorsing the share certificate in the name of the transferee. Notice must be given to the company for the purposes of registration in the share book. Book-entry shares are transferred by registration in the transferee's bank account. The only limit on the free transfer of shares may arise from any pre-emption rights that have been established by the shareholders in the articles of association.

#### Limited Companies (Sociedade por Quotas)

This type of company has the following characteristics.

- A minimum share capital of EUR0.01.
- A minimum of two shareholders as a rule, although single-shareholder limited liability company incorporation is permitted.
- As a general rule, limited companies are incorporated by means of a private document (articles of association). Additional formalities may apply if the shareholders perform contributions in kind.
- The transfer of shares may be carried out by means of an agreement between the parties, except when the incorporation has been made through public deed.
- The company is governed by management, with one or more directors. An auditor is not manda-

tory, but companies that do not have a supervisory body must appoint a certified auditor to carry out the statutory audit if their turnover is greater than CVE10 million and/or the number of employees is more than ten.
- Shareholders' liability is limited to capital subscribed, but shareholders are jointly and severally liable for all contributions contained in the by-laws.
- The transfer of shares must be made by written agreement between the parties. The articles of association may set limits or conditions on the transfer of shares or pre-emptive rights in favour of other shareholders or the company itself.

### 3.2 Incorporation Process

The procedural steps to set up a company are as follows.

- Approval of name – the first step in this type of process is to gain approval for the name of the company to be set up, and to indicate what type of company it will be.
- Head office of the company – the company must indicate the location where it will carry out its commercial activity.
- Corporate structure – the identification documents or commercial certificates, according to whether individuals or legal entities are involved, of the shareholders or quota-holders who will make up the corporate structure of the company are required. If the individuals or legal entities are foreign, the above documents must be legalised at the Cabo Verdean consulate in the country of origin, or apostilled. If the shareholders or quota-holders are legal entities, it will also be necessary for the written resolution approving the setting up of the Cabo Verdean company and the shareholding to be held by the legal entity in question.
- Powers of attorney – if the share/quota-holders are not available to travel to Cabo Verde to sign the documentation necessary for the process of incorporating the company, they will have to execute powers of attorney granting powers to representatives in Cabo Verde to deal with the respective legal steps of incorporation.
- The articles of association – this document establishes the rules that will govern the operation of the company.
- Composition of the corporate bodies – the members who will form the first board of directors must be indicated at the moment of incorporation.
- Commercial licence – after dealing with the deed of incorporation and respective commercial registration, an application must be made requesting the issue of the commercial licence.
- Commercial representation – foreign branches of commercial companies may choose to be represented in Cabo Verde through branches, agencies, delegations or other forms of representation. Representations are authorised to carry out activity in Cabo Verde in accordance with the applicable time limit.

### 3.3 Ongoing Reporting and Disclosure Obligations

The ongoing reporting and disclosure obligations depend on the company's sector of activity. Companies that operate in finance, banking, insurance and communications are subject to different levels of ongoing reporting and disclosure obligations.

Companies that are not subject to special legal regimes must report the following:

- annual accounts, which are to be filed annually with the commercial registry and must be publicly available;
- a statement of commencement of activity from the tax authorities;
- a statement of commencement of activity for social security purposes; and
- any amendment to the articles of incorporation.

### 3.4 Management Structures

For a *sociedade anónima*, the management must be structured as a board of directors, with a minimum of three members or an executive board of directors. Where the share capital does not exceed EUR90,691, the board of directors can be replaced by a single director.

For *sociedades por quotas*, management is discharged by one or more managers, who must be individuals, designated by the shareholders.

### 3.5 Directors', Officers' and Shareholders' Liability

Directors can face civil and criminal liability.

#### Directors' Civil Liability

Members of the board of directors can be held liable towards the company for damages caused by acts or omissions resulting from disrespect of their legal or contractual duties, unless the directors can prove that they did not act wilfully or maliciously.

As an expression of the business judgement rule, liability is waived if directors can prove that they acted in an informed manner, free of any personal interest and using the criterion of corporate rationality. A director who does not exercise the right of opposition conferred by law, when able to do so, will be jointly liable for the acts they could have objected to.

Directors are not liable towards the company if the act or omission is part of a resolution of the general meeting, even if that resolution is voidable. However, directors will not be released from liability on the favourable opinion or consent of the supervisory body.

#### Directors' Criminal Liability

Under Cabo Verdean law, only crimes expressly provided for in the law can be punishable. Companies and individuals can be held criminally liable.

Directors can be liable for any action wilfully performed on behalf of the company whenever such action qualifies as a crime, and even if the relevant type of crime requires (to qualify as such) certain elements that can only occur in the company or if an agent acts in its own interest and the director acted in the company's interest.

#### Misdemeanour Proceedings

Certain actions of the directors can qualify as misdemeanours and incur fines and accessory penalties applicable to the relevant agent (either a company or generally a director acting on behalf of the company).

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

The employment relationship is regulated by the Labour Code (Legislative Decree No 5/2007 of 16 October). Several other laws regulate important issues, such as work-related accidents and sickness.

Nevertheless, the parties may agree some special situation conditions for the employment relationship in employment agreements, provided such conditions do not violate the Labour Code. It is also possible to have collective bargaining agreements with more favourable conditions for employees.

Civil servants or public employment relationships are subject to special regulation.

### 4.2 Characteristics of Employment Contracts

As a rule, no written document is required and the employment relationship can be proved by any means.

Some types of contract must be in writing – ie, fixed-term or part-time and certain top management contracts. The contract not being in writing does not render it invalid, but it can lead to the contract being requalified as a full-time, permanent contract.

### 4.3 Working Time

The minimum and maximum working times are regulated by the Labour Code. The normal working period may not exceed eight hours per day and 44 hours per week, and a minimum of 12 consecutive hours of rest must be respected.

The Labour Code provides that, by a unilateral decision of the employer, a single schedule of seven hours of daily work may be established during the months of July to September, between 6am and 3pm on the same day. During daylight saving time, the employee shall be allowed an interval of not less than 15 minutes. The employer may also choose to maintain normal working hours by extending rest time between the morning and afternoon periods, but in such case the afternoon period may not pass 7.30pm each day. As a rule, the daily working period shall be interrupted by an interval with a maximum duration of one hour

so that the employee does not work more than five consecutive hours.

Overtime hours are also regulated by the Labour Code. Such hours are considered to be work outside the normal period of work to which the employee is bound, and can only be done in the following circumstances:

- in the case of an increase in work that does not justify the recruitment of other employees;
- in the case of force majeure; or
- if there are serious reasons that make it necessary in order to prevent serious harm.

## 4.4 Termination of Employment Contracts

The employment contract is extinguished by:

- mutual agreement of the parties;
- expiry;
- collective dismissal;
- individual dismissal for just cause; or
- termination by the employee.

### Mutual Agreement of the Parties

It is always lawful for the employer and the employee to terminate the employment contract by mutual agreement, which must be executed in writing. The parties are free to enter into an agreement with or without compensation and to fix the date of termination – ie, to establish that the termination will be immediate or in the future. However, if the parties intend to give immediate effect to the termination agreement, the employer shall agree compensation with the employee, taking into consideration the type and duration of the employment contract, remuneration and the possibility of finding a new job. The compensation to be agreed between the parties may be paid in cash or in goods, in a single instalment or in several instalments.

The employee can always claim cancellation of the agreement or any of its clauses, by judicial proceedings, if they consider that there has been an error, malicious act or coercion in its conclusion.

### Expiry

The employment contract expires as follows:

- once the period has expired;
- if there is a supervening, absolute and definitive impossibility of the employee performing the work for which they were hired;
- by the occurrence of any extinctive facts, not dependent on the will of the parties; or
- upon the retirement of the employee.

The expiry of the contract due to the expiry of the initial or renewal period gives the employee the right to compensation of the following amounts:

- 21 days of basic remuneration if the contract lasts one year;
- 15 days of basic remuneration for each full year of the contract, in addition to the first year; and
- 1.75 days of basic remuneration for each month of the contract term up to one year.

In undetermined-duration and fixed-term contracts with a duration of more than five years, the employee is entitled to compensation in the amount of ten days of basic remuneration for each full year after the first five years and one day of compensation for each month of duration of the contract up to one year.

### Collective Dismissal

The employer may terminate the employment contracts of two or more employees on the grounds of reduced business or permanent closure of the company, establishment or part of the company structure for economic, conjectural or technological reasons.

The employer intending to make a collective dismissal shall communicate its intention in writing to the unions representing the employees. If the employees are non-unionised, the company shall notify the employees directly. The communication shall include the following information:

- the grounds for collective dismissal;
- the expected date for the termination of the contracts;
- the criterion for the selection of employees; and
- the number and professional category of the employees covered by the collective dismissal.

The employees covered by the collective dismissal are entitled to compensation, the amount of which depends on the date the employee was hired.

### Individual Dismissal for Just Cause

Under certain circumstances, the employer can terminate the contract for just cause. The concept of just cause includes disciplinary dismissal and other forms of dismissal, provided that they are justified according to the law.

For dismissal based on unlawful conduct of the employee, the concept of just cause is the centrepiece of the matter and consists of the impossibility in practice of continuing the employment relationship due to the seriousness of the employee's misconduct. When dismissed with disciplinary cause, the employee is not entitled to any compensation.

If the dismissal is not justified according to the law or if the employer does not comply with the proper proceeding, the termination of the contract can be considered null and void. The contract remains in force, which can lead to reinstatement or compensation.

### Termination by the Employee

The employee may terminate the employment contract at any time without any reason or explanation, but is obliged to give prior notice to the employer, which varies between 15 days and two months depending on the duration of the contract.

## 4.5 Employee Representations

The right to form an employee representative body in any company, regardless of its size, is guaranteed by the Cabo Verdean Constitution. The initiative depends completely on the employees, which means that employers are under no obligation to implement this form of representation.

# 5. Tax Law

## 5.1 Taxes Applicable to Employees/ Employers

Employees are subject to personal income tax (PIT) under two tax methods:

- the declarative (self-assessment) method; and
- the final withholding method.

Employees are taxed according to category A (employment income), based on their residence or non-residence status. For PIT purposes, an employee is deemed resident in Cabo Verde if they:

- spend more than 183 days in aggregate in Cabo Verde during a calendar year; or
- stay fewer than 183 days therein and maintain a residence said to be the habitual residence in Cabo Verde with reference to December 31st of a given year.

### Declarative Method

Under the declarative method, individuals are taxed according to their annual income statement. This method is mandatorily applicable to taxpayers taxed under category B (business and professional income) with standard organised accounting, and to taxpayers taxed under category C (rental income). This method is also applicable to dependent workers (category A) who opt to file their tax return on income obtained abroad by resident taxpayers, and on income obtained in Cabo Verde by non-resident taxpayers that could not be taxed at flat rates.

Income will be subject to taxation at rates ranging between 16.5% and 27.5%, as follows:

- up to CVE960,000 – 16.5%;
- CVE960,000 to CVE1.8 million – 23.1%; and
- over CVE1.8 million – 27.5%.

An exemption from taxation applies to net income of up to CVE220,000 annually.

### Final Withholding Method

The final withholding method is used to collect taxes when taxpayers are not obliged to submit their annual income statement in the following cases.

#### *Category A – employment and pensions*

This income is generally subject to monthly withholding tax (WHT). Employment income is specifically defined in the PIT Code and covers all payments in connection with work (employment contract), such as

salary, bonuses, commissions, pensions, allowances (eg, cost-of-living and housing allowances) and benefits in kind (eg, company cars), regardless of where the payment originates. Board members' remuneration is taxed as employment income.

The following types of income are exempt from PIT:

- per diems for national and international trips, for the portion that does not exceed the limits set for the public services;
- lunch allowance, up to CVE250 per day;
- the use of a personal car, up to CVE120,000 per year;
- a cash shortage allowance, of up to 15% of the monthly salary;
- a family allowance, of up to CVE500 per month, for each dependant or equivalent and ancestors; and
- redundancy payments, which are taxable on the portion that exceeds one and a half times the average remuneration paid during the last months of employment, multiplied by the number of years of employment.

As a rule, the monthly WHT is levied as final taxation, unless the taxpayer opts to file the tax return, in which case the tax withheld has the nature of an advance payment on account of the final annual income tax liability. The monthly tax withholdings due are calculated by applying the following progressive WHT rates and the corresponding deduction to the taxable income:

- up to CVE80,000 – WHT is 15% with a CVE5,500 deduction;
- CVE80,000 to CVE150,000 – WHT is 21% with a CVE10,300 deduction; and
- over CVE150,000 – WHT is 25% with a CVE16,300 deduction.

Employees and managers or directors of the company are liable to social security contributions of 8.5% on their gross remuneration. Employers are liable to social security contributions of 16% on the same gross remuneration received by employees and managers or directors of the company.

### *Category B – business and professional income*

Business and professional income earned by individual entrepreneurs is taxed under the following regimes:

- standard organised accounting;
- Special Regime for Small and Micro-Sized Companies (SRSMC); and
- single act (*ato isolado*).

Business and professional income earned by individual entrepreneurs under standard organised accounting is subject to WHT at the rate of 20% as an advance payment on account of the final annual income tax liability.

Net income is computed under the rules applicable to companies, with the adjustments provided for in the PIT Code and subject to income tax at the applicable PIT rates.

Net income is computed according to the declaration-based method (*método declarativo*), where tax is levied on the aggregate base of the relevant income categories in the household, minus personal deductions and allowances.

Business and professional income earned by individual entrepreneurs under the SRSMC is subject to a flat rate of 4%. Under this regime, micro and small-sized companies are subject to a Single Special Tax (SST) of 4% levied on the gross amount of sales obtained in each taxable year, to be paid quarterly. SST replaces the corporate income tax (CIT), fire brigade surtax and VAT, as well as the contribution to social security due from the company.

Under the PIT Code, a single act is considered a taxable operation performed twice during the tax year.

### *Category C – rental income*

Rental income is subject to WHT at the rate of 20% as an advance payment on account of the final annual income tax liability. To compute the net income, taxpayers may deduct maintenance and repair expenses of up to 30% of gross rental income.

*Category D – investment income*

In general, investment income is subject to a flat rate of 20%, although dividends and interest on bonds are subject to a flat rate of 10%.

A special tax regime contained in the Tax Benefits Code provides for the following:

- an exemption from taxation on interest on term deposits received by Cabo Verdean emigrants;
- income derived from bonds or similar products (except debt securities listed in the securities market) obtained before 31 December 2017 benefits from a 5% flat rate; and
- dividends from shares listed in the stock exchange, placed at the disposal of their holders before 31 December 2017, are exempt from PIT.

*Category E – capital gains*

Capital gains earned by individual taxpayers are subject to a flat rate of 1% in the case of gains on the disposal of immovable property, intellectual property or shareholdings. A flat rate of 20% applies in the case of gains on gambling, lottery participation, betting, and prizes awarded in sweepstakes or contests.

## 5.2 Taxes Applicable to Businesses

Cabo Verde's corporate income tax (CIT), called *imposto sobre o rendimento das pessoas colectivas*, is levied on profits obtained within the Cabo Verdean territory and those obtained outside by resident companies (worldwide principle). Non-resident companies with a permanent establishment (PE) in Cabo Verde are also subject to CIT on Cabo Verdean-source income attributable to the PE.

Taxable profit is computed according to the local accounting rules and adjusted for tax purposes. For the purposes of determining taxable income, CIT payers can be taxed under two methods/regimes, as follows.

- A special regime for micro and small-sized companies:
  (a) micro-sized companies are entities that employ up to five persons, with an annual turnover (gross amount of sales and services) that does not exceed CVE5 million;
  (b) small-sized companies are entities that employ between six and ten persons, with an annual turnover of between CVE5 million and CVE10 million; and
  (c) micro and small importers import goods with a customs value that does not exceed the value of turnover on an annual basis for the purpose of qualifying under the simplified scheme for micro and small-sized companies.
- A standard organised accounting regime – the standard/normal regime under which the computation of profits follows the local accounting rules.

Resident companies are subject to a tax rate of 20%, where taxable income corresponds to the profit minus any tax benefits and any losses carried forward, as stated in the tax return. The tax rate of 20% is also applicable for PEs of non-resident companies.

Micro and small-sized companies are subject to SST of 4% levied on the gross amount of sales obtained in each taxable year, to be paid quarterly. The SST replaces the CIT, fire brigade surtax and VAT, as well as the contribution to social security attributable to the company.

Non-resident companies without a PE are subject to WHT rates applicable for each income category stipulated in the Tax Code, which range between 1% and 20%. The CIT rate is increased by a fire brigade surcharge, called *taxa de incêndio*, of 2% on the tax due, leading to a final tax rate of 20.40%. This surcharge is levied in the municipalities of Praia (Island of Santiago) and Mindelo (Island of São Vicente).

### Permanent Establishment

Non-resident companies deemed to have a PE in Cabo Verde are also subject to tax in Cabo Verde. Under Cabo Verdean tax law, a non-resident company is deemed to have a PE if one of the following applies:

- it has any fixed installation or permanent representation located in Cabo Verde through which activities of a commercial, industrial or agricultural nature, fishing or the rendering of services, among others, are carried out (including agricultural, fishing and cattle-raising explorations);

- quarries or any other places of natural resource extraction are involved; or
- it carries out its activity in Cabo Verde through:
  (a) employees, or any other personnel hired for that purpose, for a period (continuous or not) of not less than 183 days within a 12-month period;
  (b) a person (a dependent agent) who is not an independent agent acting in the Cabo Verdean territory on behalf of a company, with powers to intermediate and conclude binding contracts for that company, within the scope of its business activity; or
  (c) a building site or a construction installation if it lasts for more than 183 days, as well as activities of co-ordination, supervision and inspection related to the building site or its construction installation.

A PE is also recognised in the case of:

- commissionaire arrangements;
- preparatory or ancillary activities carried out by closely related enterprises through a fixed installation; and
- independent agents acting exclusively, or almost exclusively, on behalf of one or more closely related enterprises.

A PE of a non-resident is taxed as a resident company.

## 5.3 Available Tax Credits/Incentives

### Foreign Investor Status (Estatuto do Investidor Externo)

Foreign Investor Status previously granted some tax benefits at the level of the investor (eg, exemption from WHT on distribution of profits and on interest related to the financing of the investment), but was revoked by the New Investment Law effective as of 1 January 2013. Those tax benefits already granted, or for which recognition has been requested prior to the entry into force of the Tax Benefits Code and the Investment Code, are maintained. Investment projects submitted for analysis and approval to the competent authorities prior to the entry into force of the Tax Benefits Code continue to be regulated under the legislation in force at the date of their respective submissions.

### Contractual Tax Benefits

There are exceptional incentives – regarding customs duties, CIT, PIT, property tax and stamp duty – for investments that fulfil all of the following conditions.

- The promoter of the investment possesses technical and managerial capacities.
- The invested amount exceeds CVE3 billion (EUR27,207,183). The relevant amount is CVE1.5 billion (EUR13,603,591) for investments located in a municipal area where the average GDP per capita is lower than the national average (with reference to the last three years).
- They create, directly, at least 20 qualified jobs (ten in the case of investments located in a municipal area where the average GDP per capita is lower than the national average, with reference to the last three years). A qualified job requires professional or higher education, or specialised technical training, certified by a national or foreign entity, including management positions.

The concession of contractual tax benefits is subject to approval by the Council of Ministers upon agreement.

### Differentiated Merit Projects (DMP)

DMP status was established by Law 80/IX/2020, of 26 March, and is granted to investments that cumulatively meet the following requirements, among others:

- represent an investment equal to or higher than CVE1.5 billion (EUR13,603,591);
- contribute, in net terms, to the improvement of the balance of payments;
- use technology, production and commercialisation processes that minimise environmental impacts or promote environmental sustainability; and
- have a recognised productive social effect, particularly in the creation of at least five qualified jobs (those that require specialised technical training, either professional or of higher education, including management positions).

Investment projects with DMP status are granted the following benefits:

- a reduced customs duty rate of 5% on the importation of materials, goods and equipment mentioned in Article 15 of the Tax Benefit Code;
- customs duty exemption on the importation of raw materials, consumables, finished and semi-finished materials and other products to be incorporated in products manufactured by the company – in the case of industrial investment (ie, projects of companies registered in the Cadastro Industrial), the exemption is also applicable to packaging and wrapping materials used in products manufactured by the company;
- CIT tax credit of 30% of the eligible investments effectively made (capped at 50% of the CIT assessed);
- stamp tax exemption on the borrowing of funds for the investment;
- property tax (IUP) exemption on the acquisition of real estate aimed exclusively at the installation of the investment project; and
- other non-tax incentives established in specific legal diplomas.

DMP investment projects implemented in municipal areas where the GDP per capita is lower than the national average have the following additional benefits:

- CIT credit of 40% of the eligible investments effectively made (capped at 50% of the CIT assessed); and
- IUP exemption on the acquisition of real estate used in the development of the company's main activity, including any developing needs arising throughout the first five years following the acquisition.

### Direct Investment Made in Cabo Verde by Emigrants

Direct investment made by emigrants shall benefit from the following tax incentives, as established by Law 73/IX/2020, of 2 March:

- exemption from taxation (as contained in the CIT Code) of dividends and profits distributed to the emigrant investor arising from authorised foreign investment; and
- exemption from customs duties on the acquisition of materials for construction, extension or refurbishment of a first residential house, including furniture, appliances and other imported goods, under certain conditions.

The regime applies to emigrant investors permanently living abroad, and to former emigrant pensioners and retired people receiving pensions and similar income from their country of immigration.

Investment in tangible assets or intangibles in Cabo Verde is eligible under the conditions contained in the regime – eg, the incorporation of entities or branches in Cabo Verde, the acquisition of shareholdings, or the granting of loans or other forms of financing of entities in which a shareholding is held.

### Industrial Activity

The following tax and customs benefits are provided for industrial activity.

#### *CIT benefits*

A CIT credit is available for up to 20% of the eligible investments made in an industrial activity. Any unused tax credit may be carried forward for ten years, subject to certain limitations. Eligible investments include the acquisition of new fixed assets, patents and licences regarding technologies.

#### *IUP benefits*

Industrial activities may benefit from an exemption from IUP on the acquisition of immovable property used exclusively for industrial purposes; however, the recognition of such tax exemption should be approved by the municipality.

#### *Customs duty benefits*

Industrial activities benefit from an exemption from customs duties on the importation of construction materials, machines, utensils, semi and fully finished materials, products and raw materials used in the production of goods.

#### *Stamp duty benefits*

Financing transactions of industrial projects are exempt from stamp duty.

### International Business Centre (IBC) of Cabo Verde

The Cabo Verdean Agency for Foreign Investment is the entity responsible for granting licences to operate within the IBC, upon previous proposal of the Zona Franca Comercial S.A. The following tax benefits are applicable to entities licensed to operate in the IBC on income from industrial or business activities and services (note that these tax benefits are not applicable to entities engaged in tourism, banking, insurance, real estate or construction).

#### *CIT benefits*

Reduced CIT rates of 5%, 3.5% or 2.5% are applicable, respectively, to entities that create ten, 20 or 50 jobs. The CIT rate is 2.5% in the case of the creation of four jobs for entities licensed to operate within the IBC. Entities licensed to operate within the IBC will benefit from reduced CIT rates until 2030.

#### *Shareholders' benefits*

Shareholders of entities licensed to operate within the IBC are exempt from taxation on dividends and interest received.

#### *VAT and customs duty benefits*

All the exemptions contained in the VAT regulation and customs law apply. An exemption from customs duties applies with respect to certain goods, equipment and materials used within the scope of the activity developed and licensed under the IBC.

### Maritime Transport (Tonnage Tax)

Cabo Verdean tax legislation contains a special regime for the assessment of the taxable profit applicable to maritime transport activities (tonnage tax).

Entities licensed in the IBC that carry out activities related to the international maritime transport of persons or goods may opt for a special regime for the assessment of taxable profit, provided that they fulfil the following conditions:

- all the ships and vessels owned by the taxpayer must be registered in the International Register of Ships of Cabo Verde (further regulation shall be published), and all the activity carried out must be eligible; and
- at least 85% of the total income derives from activities carried out with other entities licensed and operating in the IBC or with non-resident entities.

Under the tonnage tax regime, the taxable profit shall be determined by applying the following daily amounts to each eligible ship or vessel:

- up to 1,000 net tonnes – the daily taxable income for each 100 net tonnes is CVE646;
- from 1,001 to 10,000 net tonnes – CVE566;
- from 10,001 to 25,000 net tonnes – CVE307; and
- above 25,000 net tonnes – CVE103.

No tax credits are available.

If there is a change from the tonnage tax regime to the general CIT regime, the tax value of the assets held corresponds to the value resulting from the application of the general rules contained in the CIT Code, as if the taxpayer had not applied the special regime. In addition, tax losses or any tax credits carried forward that originated during the taxable periods to which the special regime applied are disregarded.

### Internationalisation of Cabo Verdean Companies

A regime that provides for tax and financial incentives for investment projects in order to promote the internationalisation of Cabo Verdean companies is in force. The following incentives, to be granted under a contract of not more than three years, apply to internationalisation projects undertaken before 31 December 2020 by companies whose head office and place of effective management are in Cabo Verde.

#### *CIT benefits*

Investments that are eligible for the regime of tax benefits for internationalisation may benefit from:

- a reduction in their CIT rate of up to 50%, applicable until the term of the investment contract; and
- an exemption from CIT on income obtained by qualified expatriate employees.

In addition, a deduction for the creation of employment ranging between CVE26,000 and CVE35,000 for each new job created may apply.

*IUP benefits*
An exemption from IUP may be available on the acquisition of immovable property for the establishment or expansion of the activity of the investor.

*VAT and customs duty benefits*
Exemptions provided for in the VAT Code apply, as well as customs duties incentives as provided for in the general applicable legislation.

*Stamp duty and other benefits*
An exemption from stamp duty is available on the incorporation of companies or an increase of share capital of existing companies, and on financing transactions.

An exemption from notary and registration fees is available on the incorporation and registration of companies.

### Touristic Utility Status (Estatuto de Utilidade Turística)
Cabo Verde may grant Touristic Utility Status to the following types of touristic projects:

- installation, granted to new tourist resorts and facilities;
- operation and exploitation, granted to existing tourist resorts and facilities; and
- refurbishment, granted to existing tourist resorts and facilities in connection with improvements and expansions.

Touristic Utility Status generally allows for the following tax incentives and benefits:

- CIT credit of up to 30% of the eligible investments made in tourism, touristic promotion activities and real estate tourism project investment;
- an exemption from IUP on the acquisition of real estate used for the construction and installation of touristic projects, if granted by the municipality;
- a reduced rate of 5% of customs duties on the importation of materials and equipment used in touristic projects; and
- exemptions from stamp duty on the financing of tourism investments.

### Tax Incentives for Renewable Energies
There is a regime for the promotion of independent production and self-production of electricity based on renewable energy sources, which are considered to include water, wind, solar, biomass, biogas or industrial, agricultural or urban waste, oceans and tides, and geothermal. Under the regime, renewable energy producers may benefit from the following.

*CIT benefits*
A CIT credit is available for up to 20% of the eligible investments made in renewable energies projects.

*Customs duty benefits*
A reduced rate of 5% of customs duties and other customs charges applies on the importation of capital goods, raw materials and supplies, finished and semi-finished products, and other materials that are incorporated or used in the production of goods or services involved in the production of electrical energy from renewable sources.

*IUP and stamp duty*
Exemptions from IUP and stamp duty are granted on the acquisition of immovable property and other assets related to the investment project or its financing.

*Interest rate support for micro production of renewable energies*
Interest rate support of 50% is granted on the interest on loans borrowed from financial institutions by families and by duly incorporated micro and small companies for the acquisition of equipment and installation services aimed at the micro production of renewable energy in accordance with the applicable legislation. This support shall apply to final consumers covered by the normal low voltage category.

### Shipping Transport Industry Incentives
*CIT benefits*
A CIT credit is available for up to 30% of the eligible investments made in shipping, air and sea transportation projects.

*Customs duty benefits*
A reduced rate of 5% from customs duties applies on the importation of shipping material for the mainte-

nance, production and repair of shipping and respective equipment.

### *IUP and stamp duty*

Exemptions from IUP and stamp duty are granted on the acquisition of immovable property and other assets related to the investment project or its financing.

### Job Creation Incentives

Entities taxed under the verification method are entitled to deduct the following amounts for each permanent job created:

- CVE26,000 for each job created in the municipalities of Boa Vista, Praia and Sal;
- CVE30,000 for each job created in the remaining municipalities; and
- CVE35,000 in the case of a disabled person.

### Media, Telecommunications and the Internet

The importation of goods, materials, equipment, vehicles and other equipment exclusively for the purpose of telecommunications and media is exempt from customs duties.

### Incentives for the Importation of Vehicles

The importation of the following heavy vehicles for the collective transport of passengers is exempt from VAT and excise duty if such vehicles are not aged more than six years, and is subject to a reduced rate of 5% of customs duties:

- heavy passenger vehicles for the collective transport of passengers comprising more than 30 seats, including the driver, when imported by duly licensed companies operating in the respective sector;
- heavy passenger vehicles for the collective transport of passengers comprising more than 12 seats, including the driver, when imported by a public transporter with the respective permit that is in the process of replacing licensed vehicles, as contained in the General Legal Regime of Transport in Motor Vehicles (*Regime Jurídico Geral de Transportes em Veículos Motorizados*);
- heavy passenger vehicles intended for school transport, duly equipped, comprising more than 23 seats, including the driver, when imported by an educational entity duly authorised by the competent ministry, local authorities and public transporter, provided that those vehicles are duly licensed and authorised by the competent authorities; and
- heavy goods vehicles with three or more axles, as well as heavy vehicles with two or three axles, intended solely for towing trailers and semi-trailers for the carriage of goods (in this specific case, there is no limitation regarding the age of the vehicle).

During 2026, the import of heavy passenger vehicles, properly equipped, with more than 30 seats, including the driver's seat, exclusively intended for the transportation of tourists and luggage is exempt from excise duties and VAT. This exemption applies when the importation is carried out by public carriers duly licensed by the Directorate General of Road Transport. This incentive does not apply to vehicles aged more than six years.

These imports are also subject to customs duties at the reduced rate of 5%.

During 2026, the import of light passenger vehicles, in new condition, intended exclusively for the operation of taxi services is exempt from excise duties and subject to a reduced import duty rate of 5%.

The import of four-by-four (4x4) vehicles for adventure tourism is also exempt from excise duties for 2026 when imported by companies operating in the adventure tourism sector and duly licensed by the competent authorities.

### Incentives Under the Young Start-Ups Programme

#### *Incentives for corporate finance*

Resident or non-resident entities with a PE in Cabo Verde that make cash capital contributions to companies eligible under the Young Start-Ups Programme, or to companies based in municipal territories where the average GDP per capita in the last three years is below the national average, as well as to micro and small companies, can deduct part of these contributions up to 2% of the tax assessed in the previous tax year, provided that:

- there are no overdue wages;
- their tax and contributory situation is regularised;
- they are not taxed under indirect tax methods; and
- authorisation is granted to all their bank accounts.

The deduction cap shall apply even if the company makes capital contributions in more than one eligible company. This benefit is not cumulative with the tax benefit regarding the conventional remuneration of share capital.

*Other incentives*

The following incentives are applicable to entities that carry out, an economic activity eligible under the Young Start-Up Programme directly and as their main activity, approved by Resolution No 34/2017 of 25 April:

- a CIT rate of 5%, applicable in the first five years of activity, starting 1 January 2019, except in the case of information, communication and technology and research and development enterprises, whose rate is 2.5% regardless of the location of the head office or place of effective management;
- an exemption from customs duties, excise duty and VAT on the importation of one vehicle, with a maximum age of five years, for the transport of goods, comprising up to three seats in the cabin, including the driver, intended exclusively for the respective activity;
- an exemption from import duties on the importation of raw and subsidiary materials, materials and finished and semi-finished products intended for incorporation into products manufactured within the scope of industrial projects – the incentive shall apply if the entities are certified and registered at the Industrial Registry during the installation, expansion or remodelling phase;
- financial incentives, support for capacity-building, and other institutional support provided for in the legislation of micro and small companies;
- an exemption from stamp duty on financing agreements for the development of the respective activities; and
- a reduction of 50% of the fees due on notarial acts and registrations due on the purchase and sale of real estate for the respective installation.

Eligible companies whose places of effective management are located outside the municipalities of Praia, São Vicente, Sal and Boa Vista shall benefit from a tax credit of 50% of the CIT assessed (not applicable to ICT and R&D activities). Eligible companies shall benefit from the incentives provided for in Article 13 (exemption from property tax), Article 15 (exemption from customs duties) and Article 332 (training, internships and scholarships) of the Tax Benefits Code, and from the incentives for employers hiring young people.

Eligible companies shall be subject to the payment of autonomous taxation under the general terms contained in the CIT Code.

### Incentives for Electric Mobility

The importation of electric vehicles, including two-wheel vehicles, is exempt from VAT, customs duties and excise duties. The exemption from VAT and customs also applies to the importation of new rechargeable batteries for electric vehicles, including their connectors, shields, connecting cables and meters, intended exclusively for charging.

Parking fees for such electric vehicles are also exempt from VAT.

### Incentives for the Industrial Production of Inerts

During 2026, the import of machines, equipment and their accessories and separate parts for the industrial production of inerts, as well as all types of materials intended for the industrial production of inerts, are exempt from customs duties and VAT, including the extraction of minerals, applicable to projects located in the islands of Brava, Fogo, Maio, São Nicolau and Santo Antão.

### Tax Benefits Regarding the Recovery of Business and Insolvency

There are CIT, PIT, stamp duty and property tax benefits for companies under recovery of business and insolvency procedures.

### Foreign Tax Credit

Cabo Verdean tax law allows a foreign tax credit to mitigate the double taxation on foreign income taxed in another jurisdiction. The tax credit is equal to the lesser of the income tax paid abroad or the CIT frac-

tion calculated before the deduction is given, corresponding to incomes that may be taxed in the country concerned, net from any costs or losses, directly or indirectly incurred, for the purposes of its realisation. Foreign tax credit cannot exceed the tax outlined in the tax treaty, if applicable.

## 5.4 Tax Consolidation

The group taxation regime may apply if one of the companies directly or indirectly holds at least 75% of the statutory capital of the others and more than 50% of the voting rights. The option to apply this special taxation regime for groups of companies can only be made when such groups meet the following cumulative requirements:

- tax resident in Cabo Verde;
- subject to the normal regime of taxation at the highest corporate tax rate;
- maintain a minimum holding participation of 75%;
- all companies have been held by the parent company for more than one year (excluding newly incorporated companies);
- not dormant for more than one year;
- not dissolved or insolvent;
- no tax losses in the three years prior to the regime application, unless the companies have been held by the parent company for more than two years; and
- the tax period is not different from that of the parent company.

Furthermore, the parent company must not be controlled by any other Cabo Verde-resident company that meets the criteria to be a parent company, and should not have opted out of this regime in the past three years.

## 5.5 Thin Capitalisation Rules and Other Limitations

There is a limitation on the tax deductibility of net financing expenses, which are only deductible up to the higher of the following limits:

- CVE110 million; or
- 30% of earnings before depreciation, net financing expenses and taxes.

## 5.6 Transfer Pricing

There is a transfer pricing regime which establishes that commercial transactions between associated enterprises should be subject to identical terms and conditions to those that would be accepted and agreed between independent entities (the arm's length principle).

Taxpayers must keep information and documentation regarding their transfer pricing policies on hand. The following taxpayers must prepare a transfer pricing documentation file:

- entities classified as "Large Taxpayers";
- entities considered to be taxed under a privileged tax regime, as defined in the General Tax Code;
- PEs of non-resident entities; and
- other entities designated as such by the tax authorities.

## 5.7 Anti-Evasion Rules

Cabo Verdean law provides for anti-evasion rules.

## 5.8 Tariffs

Cabo Verde's tariff regime is fairly open and liberal, with its customs regime based primarily on the Economic Community of West African States (ECOWAS) Common External Tariff (TEC), although the nation has not yet fully adopted all of its regional components. The regime of national tariffs and customs is regulated by the Customs Code (*Código Aduaneiro*), complemented by specific taxation tools like Import Duty (*Direitos de Importação*) and other indirect taxes like VAT (IVA).

### Structure of Import Duties

Import duties in Cabo Verde tend to range between 0% and 50% of the goods' value, depending on their nature and classification. The standard structure has the following layers:

- Import Duty (*Direito de Importação*) is an ad valorem tax on the cost, insurance and freight value;
- Environmental Tax (*Taxa Ecológica*) is applied to some products – eg, cars, plastics or second-hand electrical goods;

- Consumption Tax (*Imposto sobre Consumos Especiais* – ICE) is applied to items such as alcohol, tobacco and luxury items; and
- VAT (IVA) at an overall rate of 15% is applied to imports, unless exempt.

Cabo Verde also provides tariff relief or exemptions under specific conditions, such as for:

- basic necessity foodstuffs and medicines;
- equipment and materials for development projects or investment under tax incentive laws; and
- products of countries with which Cabo Verde has preferential trade arrangements, specifically the European Union under the EU–Cape Verde Special Partnership, and selected African nations under AGOA and ACP-EU.

Tariffs are at a maximum on goods that are aimed at sustaining local industry or non-essential or luxury goods, including:

- vehicles (second-hand ones in particular), with heavy taxes and green charges;
- alcoholic beverages and tobacco products, with ICE and other import duties;
- textiles and apparel, at times to sustain local capacity; and
- plastic goods and electronics, notably second-hand, to protect the environment.

## 6. Competition Law

### 6.1 Merger Control Notification

The Competition Authority (*Autoridade da Concorrência*, or AdC) in Cabo Verde regulates or controls mergers between companies or entities.

Certain sectors also have specific entities that may regulate certain operations, as follows:

- the Central Bank of Cabo Verde for the finance and insurance sectors;
- the Civil Aviation Authority for the aviation sector; and
- the Multisectoral Regulatory Agency for the Economy for the telecoms sector.

### 6.2 Merger Control Procedure

Mergers that meet the criteria set out in the Cabo Verde Competition Act are subject to prior notification to the AdC.

### 6.3 Cartels

See **6.2 Merger Control Procedure**.

### 6.4 Abuse of Dominant Position

See **6.2 Merger Control Procedure**.

## 7. Intellectual Property

### 7.1 Patents

A patent is an exclusive right that can be granted to any type of invention in any field of technology, whether it is a product or a process, or to new processes for obtaining products, substances or compounds that already exist. There are three patentability requirements in the Industrial Property Code:

- novelty;
- inventive step; and
- industrial application.

A patent shall confer the exclusive right to use the invention anywhere in the national territory, and shall also confer on its owner the right to prevent third parties from manufacturing, offering, stocking, trading or using the product that is the subject of the patent without their consent, and from importing or holding it for any of these purposes.

The registration of a patent is filed with the Institute of Quality Management and Intellectual Property (IGQPI).

Generally, patent rights will be enforced and validated before the First Instance Courts. Whoever illegally violates the industrial property rights of another person, with criminal intent or by mere blame, must pay compensation to the injured party for the damages resulting from the violation. For this purpose, the IP right-holder must prove the causality of the infringement for the damages calculation. The injured parties can also resort to criminal courts for criminal cases.

The length of protection is 20 years.

### 7.2 Trade Marks

Trade marks are signs used in trade to identify products and services, and can consist of a sign or set of signs capable of being represented graphically – ie, words (including names of people), designs, letters, numbers, sounds, and the shape of the product or its packaging. A trade mark may also consist of advertising slogans for goods or services to which they refer, irrespective of copyright protection afforded to them, provided they are of distinctive character.

The registration of the trade mark grants the right-holder the ownership and exclusive use of the trade mark for the products and services that the mark designates.

The registration of a trade mark is filed with the IGQPI.

Generally, trade mark rights will be enforced and validated before the First Instance Courts. Anyone who illegally violates the industrial property rights of another person, with criminal intent or by mere blame, must pay compensation to the injured party for the damages resulting from the violation. For this purpose, the IP right-holder must prove the causality of the infringement for the damages calculation. The injured parties can also resort to criminal courts for criminal cases.

Protection lasts for ten years from the date of the respective concession and can be renewed indefinitely for equal periods.

### 7.3 Industrial Designs

A design shall mean the ornament or aesthetic aspect of an article, including the appearance of the whole, or part, of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture or materials of the product itself and its ornamentation. Designs that are contrary to public order, public health or morality cannot be registered.

The registration of an industrial design is filed with the IGQPI. The scope of the protection conferred by the registration shall cover all designs that do not give a different overall impression to an informed user. Registration of a design shall confer on its holder the exclusive right to use it, and shall prohibit its use by third parties without the holder's consent, if such acts are carried out for commercial purposes.

Generally, industrial design rights will be enforced and validated before the First Instance Courts. Anyone who illegally violates the industrial property rights of another person, with criminal intent or by mere blame, must pay compensation to the injured party for the damages resulting from that violation. For this purpose, the IP right-holder must prove the causal relationship between the infringement and the injury for the damages calculation. The injured parties can also resort to criminal courts for criminal cases.

### 7.4 Copyright

Copyright is defined as the exclusive right of authors of literary, artistic and scientific works to enjoy, use and exploit such works or to authorise their enjoyment, use or exploitation by third parties, either in whole or in part. Copyright shall comprise economic rights and personal rights, with the latter being known as moral rights. As a rule, copyright is recognised regardless of registration of the work, its deposit or any other formality.

Copyrighted works are enforced before the First Instance Courts. If the right-holder has their right infringed, they can request compensation. Whoever illegally violates the copyright of another person, with criminal intent or by mere blame, must pay compensation to the injured party for the damages resulting from the violation. For this purpose, the copyright-holder must prove the causality of the infringement for the damages calculation. The injured parties can also resort to criminal courts for criminal cases.

Non-patrimonial damages may also be compensated if caused by the infringer's acts.

Generally, protection is for the lifetime of the author plus 50 years following their death, even if it is a posthumous work. The length of protection for copyright in works of photography or applied arts is 25 years after such works are produced.

### 7.5 Others

Software, databases and trade secrets are protected under the regime of industrial and intellectual rights.

## 8. Data Protection

### 8.1 Applicable Regulations

In Cabo Verde, the personal data protection legislation currently in force is the Constitution of the Republic of Cabo Verde and Law 133/V/2001, of 22 January.

The Constitution establishes that all citizens shall be guaranteed the right to personal identity, the development of personality and civil capacity, which may only be limited by a judicial decision and in the cases and terms established in the law, and that all citizens shall have the right of access to computerised data that affects them and for the same to be rectified and updated, as well as the right to be informed about the purposes of the data, in the terms of the law.

The Constitution also grants the right of habeas data to ensure knowledge of the information contained in files, computer archives and registers that affects subjects, and to be informed about the purposes of the data and for the same to be rectified or updated.

Law 133/V/2001, of 22 January, establishes the general legal framework for the protection of individuals with regard to the processing of personal data. It applies to the processing of personal data wholly or partly by automated means, and to the processing of personal data other than by automated means contained in manual files or part of manual files. The law shall also apply to the processing of personal data carried out:

- in the context of the activities of an establishment of the controller situated within the national territory;
- outside the national territory in places where the Cabo Verdean law applies by virtue of international public law; and
- by a controller who is not established on the national territory, who, for purposes of processing personal data, makes use of automated or other types of equipment situated in the national territory, except where such equipment is used only for purposes of transit.

### 8.2 Geographical Scope

Law 133/V/2001, of 22 January, applies in an international context where there are any international treaties in place.

### 8.3 Role and Authority of the Data Protection Agency

The competent authority is the *Comissão Nacional de Protecção de Dados* (the National Commission of Data Protection, or CNPD), which is an independent administrative entity that exercises its authority throughout the national territory.

Generally, the CNPD is the national authority endowed with the power to supervise and monitor compliance with the laws and regulations in the area of personal data protection, with strict respect for human rights and the fundamental freedoms and guarantees enshrined in the Constitution and the law.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

Some reforms are expected in relation to the Recovery of Business and Insolvency Code.

# Trends and Developments

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**Raposo Bernardo & Associados** is an international full-service law firm, with practices in Africa (Angola, Cabo Verde, Guinea Bissau, Mozambique, and São Tomé and Príncipe) and Europe (Portugal and Spain). In Cabo Verde, the firm has a team of 12 lawyers based both locally and abroad, offering more than 20 years' experience of participating in the most innovative and relevant projects. They regularly represent the interests of national and international players – including investment and commercial banks, investment funds, financial intermediaries, government entities, and public sector and private agents – in legal matters concerning banking, energy, aviation, pharmaceuticals, tourism and leisure, and construction and infrastructure. The firm's expertise includes advising on operations such as corporate finance and major project finance, large M&A transactions, privatisations, PPP projects, large infrastructure projects and drafts of banking, financial markets and insurance legislation. It also works closely with major international law firms.

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## Minority Shareholders' Protection and the Balance of Powers in the Commercial Companies Code of Cabo Verde

### *Introduction*

The protection of minority shareholders constitutes one of the fundamental pillars of modern corporate governance. In commercial companies, especially those where share capital is concentrated, the relationship between majority and minority shareholders tends to generate tensions inherent to the distribution of decision-making power. One of the main challenges is ensuring that the majority principle – indispensable for the efficient operation of the company – does not turn into an instrument of oppression against shareholders who do not control the majority of votes.

The Commercial Companies Code of Cabo Verde, approved by Legislative-Decree No 2/2019, demonstrates a clear concern with this matter. The preamble of the statute itself expressly identifies the reinforcement of minority shareholders' protection as one of the core objectives of the corporate reform, highlighting the need to increase transparency, strengthen the right to information, and expand the accountability mechanisms for directors.

The protection of minorities is not merely a matter of internal justice among shareholders. It is also an essential requirement for attracting investment, developing the capital market, and strengthening investor confidence. The Corporate Governance Principles of the Organisation for Economic Co-operation and Development (OECD) recognise that the effective protection of minority shareholders is an indispensable condition for the existence of efficient and transparent markets.

In this context, it is important to analyse how the Cabo Verdean legal framework seeks to ensure the balance between the legitimacy of majority power and the protection of the rights of corporate minorities.

### *The principle of equality of shareholders*

The first guarantee of minority shareholders is found in the very principle of equal treatment of shareholders.

Although the Code recognises contractual freedom in the organisation of the company, it simultaneously establishes limits intended to prevent arbitrary discrimination among shareholders. Article 22 establishes a minimum set of fundamental rights for all shareholders, including:

- the right to participate in profits;
- the right to vote;
- the right to information; and
- the right to participate in the appointment of corporate bodies.

This principle is particularly important because it prevents the majority from using its position to exclude certain shareholders from participating in corporate life.

Protection is reinforced by Article 23, which declares null and void any clauses that exclude a shareholder from participating in profits or completely exempt them from corporate losses. The underlying logic is simple: whoever participates in the business risk must benefit proportionally from the results obtained by the company.

The model adopted by the Cabo Verdean Commercial Companies Code demonstrates that modern corporate governance not only demands business efficiency: it also demands transparency, accountability and respect for the rights of those who, despite not holding control of the company, remain its legitimate owners.

### *The right to information as an instrument of supervision*

Among all the protection mechanisms for minority shareholders, the right to information assumes a central importance. No shareholder can properly exercise their rights without knowing the economic and financial situation of the company.

In limited liability companies (*sociedades por quotas*), Article 181 recognises the right of shareholders to obtain information on corporate business, consult company books and documents, and inspect its assets. The legislator goes even further by prohibiting the articles of association from excluding or unjustifiably limiting this right. Information cannot be refused when there is suspicion of practices capable of gen-

erating liability for the directors or when it is necessary to assess the company's accounts.

In joint stock companies (*sociedades anónimas*), the protection is even more robust. Article 248 grants any shareholder the right to consult management reports, accounts from recent financial years, minutes of general meetings, remuneration of corporate bodies, and other essential elements to understand the company's reality.

Furthermore, shareholders holding at least 5% of the share capital, or 2% in listed companies, may request additional information on specific corporate matters. This reduction of the threshold to 2% in companies issuing securities reflects the legislator's clear concern with the shareholder dispersion typical of companies open to the market.

The solution is aligned with the OECD principles, which advocate for the timely and transparent disclosure of relevant information to investors.

Ultimately, the right to information assumes an instrumental function relative to all other protection mechanisms for minority shareholders. The exercise of voting rights, the challenging of corporate resolutions, the promotion of liability actions against directors, or the supervision of corporate activity inevitably presuppose prior access to adequate, complete and reliable information. For this reason, modern corporate governance tends to consider transparency not just as a duty of the company, but as a structural guarantee of balance between the majority and the minority. The regime established by the Cabo Verdean Commercial Companies Code reflects this concern, providing shareholders with effective instruments to reduce information asymmetries that traditionally favour those who hold control of the company, and thereby reinforcing trust, accountability and the integrity of corporate life.

### *The judicial inquiry as a protection mechanism*

The right to information would be ineffective if there were no mechanism capable of reacting to its violation. For this reason, the Code provides for the possibility of recourse to the court whenever requests for information are refused, or when the information provided is incomplete or false.

In limited liability companies (*sociedades por quotas*), Article 182 allows the shareholder to request a judicial inquiry. In joint stock companies (*sociedades anónimas*), the regime is even more developed, with Article 250 allowing any shareholder to judicially request an inquiry into the company when the requested information is refused or provided inadequately.

The court may order the provision of the information, appoint an independent investigator, dismiss directors responsible for irregularities, appoint a judicial administrator, or even dissolve the company in extreme situations.

From a corporate governance perspective, the judicial inquiry plays an essential role in the external supervision of corporate activity. The OECD Principles recognise that shareholders must have effective mechanisms to obtain redress when their rights are violated and to hold those exercising management or control functions accountable. The regime established by the Cabo Verdean Commercial Companies Code implements this guidance by granting minority shareholders a procedural instrument capable of overcoming information blockages and situations where corporate bodies are captured by the majority.

The possibility of judicial intervention does not protect individual interests alone. It also contributes to promoting a culture of transparency, integrity and good governance, strengthening investor confidence and the long-term sustainability of commercial companies.

### *Protection against the abuse of the majority*

One of the greatest risks for minority shareholders is the possibility of the majority using its voting power to approve resolutions that are favourable to the majority's private interests.

The Code combats this challenge through the legal concept of the abuse of the majority. Under the terms of Article 67, resolutions are voidable if they create special advantages for certain shareholders or third parties to the detriment of the company or other shareholders, when such advantages represent a

manifest excess of the limits imposed by good faith or by the economic purpose of the voting right.

The rule constitutes a general clause for the protection of minorities and allows the court to review situations in which a resolution, although formally valid, is substantially unfair. The legislator goes even further by establishing that the shareholders who formed the abusive majority are jointly and severally liable for the damages caused to the company or to the other shareholders.

Ultimately, the regime of the abuse of the majority represents a mechanism of balance between two fundamental values of corporate law: the decision-making efficiency inherent to the majority principle and the protection of the legitimate interests of minorities. The Code recognises that the majority must govern the company, but rejects the idea that it can do so without limits. In this sense, the concept of abuse by the majority plays a central role in the architecture of Cabo Verdean corporate governance, functioning as a guarantee that controlling power will be exercised in a responsible, transparent manner compatible with the interests of the company and all of its shareholders.

### *The right to challenge corporate resolutions*

The protection of minorities also requires the possibility of judicially contesting illegal decisions. The Code provides for a complete regime of nullity and voidability of corporate resolutions.

Article 65 identifies the situations of nullity, including resolutions whose content violates mandatory rules or that were adopted in irregularly convened meetings. In turn, Article 68 grants standing to challenge voidable resolutions to any shareholder who did not vote in favour of the decision in question.

This possibility represents an essential guarantee of judicial supervision over the exercise of majority power.

### *The liability of directors as an instrument for protecting minorities*

In commercial companies, directors occupy a central position in the corporate governance structure. Although they are frequently elected with the support of majority partners or shareholders, their function does not consist of representing private interests, but rather of ensuring the pursuit of the company's interest, acting with independence, diligence and loyalty.

Article 77 of the Commercial Companies Code establishes that directors must perform their duties with the diligence of a prudent and orderly manager and with loyalty to the company, taking into account the interests of the company itself, the shareholders and the employees. These duties constitute true legal standards of conduct intended to guide the exercise of management power and to prevent situations of abuse, undue favouring, or private appropriation of corporate opportunities.

The duty of loyalty assumes particular relevance, as it requires directors to place the interests of the company above their personal interests and the interests of the shareholders who nominated them for the position. Consequently, directors must avoid conflicts of interest and refrain from using inside information for their own benefit, and cannot divert business opportunities belonging to the company nor favour certain shareholders to the detriment of the rest.

From this perspective, the liability of directors constitutes a central element of the corporate governance architecture adopted by the Cabo Verdean Commercial Companies Code.

### *The derivative action (ação social ut singuli)*

One of the most relevant innovations of the Code is the strengthening of the so-called derivative action (*ação social ut singuli*).

Under the terms of Article 83, shareholders holding at least 5% of the share capital can directly bring a liability action against directors for the benefit of the company itself, when the company fails to do so. In listed companies, this threshold is reduced to just 2% of the share capital.

By granting procedural standing to minority shareholders to act in defence of the corporate interest, the legislator recognises that the supervision of management should not be a monopoly of the majority. On the contrary, all shareholders must be able to con-

tribute to the protection of corporate assets and to the accountability of directors who violate the duties inherent to the exercise of their functions.

From this perspective, the derivative action for liability not only protects the individual interests of minority shareholders; it plays a broader function of reinforcing transparency, management integrity and the accountability of board bodies, contributing to a culture of greater responsibility in the conduct of corporate affairs. This is a solution that finds a clear parallel in the OECD Principles of Corporate Governance, according to which shareholders must have effective mechanisms to demand the accountability of directors and to react to behaviours capable of harming the company or compromising investor confidence.

### *The participation of minorities in corporate governance*

Another relevant aspect is the possibility of direct participation by minority shareholders in the composition of corporate bodies. Article 316 provides for special election mechanisms for directors, designed to ensure minority representation.

Under certain circumstances, a minority representing at least 10% of the share capital may directly appoint a director. In the area of supervision, Article 339 allows shareholders holding at least 10% of the share capital to judicially obtain the appointment of special auditors to sit on the audit board (*conselho fiscal*). These solutions seek to ensure that the minority has an effective voice within the corporate bodies.

By ensuring that minorities have institutional channels to make their voices heard and to monitor the management of the company, the Cabo Verdean legislator has promoted a model of balance of powers more consistent with the principles of transparency, accountability and equitable treatment of shareholders enshrined by international best practices of corporate governance.

### *Conclusion*

The reform introduced by the Commercial Companies Code of Cabo Verde represents a relevant step in the process of modernising Cabo Verdean corporate law and reinforcing the guarantees granted to minority shareholders. Far from questioning the legitimacy of the majority principle as the foundation for corporate decision-making, the legislator sought to frame it within a system of checks and balances intended to ensure that the exercise of corporate power remains compatible with the principles of good faith, loyalty, transparency and the pursuit of the corporate interest.

The various mechanisms analysed throughout this article reveal a consistent concern with preventing situations of abuse of power and promoting a governance model based on accountability and the equitable treatment of shareholders. Their articulation demonstrates that the protection of minority shareholders does not constitute an isolated concern of the legislator, but rather a structuring element of the corporate governance architecture established by the Code.

On the other hand, the increasing internationalisation of markets and the consolidation of international standards of corporate governance show that the quality of the legal framework for investor protection constitutes a determining factor for attracting investment, developing the private sector and strengthening economic institutions. In this field, the Cabo Verdean regime reveals a significant convergence with the principles advocated by the OECD, particularly regarding transparency, the protection of shareholder rights, and the accountability of management bodies.

It is in this balance between authority and control, between power and responsibility, that one of the essential foundations of modern corporate governance and the trust necessary for the sustainable development of business activity resides.

# CAMEROON




## Trends and Developments

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**Amadagana & Partners** (A&P) is a leading business law firm headquartered in Yaoundé, Cameroon, with a secondary office in Paris and a presence in Central Africa. The firm advises international investors, development finance institutions, lenders, sponsors, public entities and multinational corporations on complex transactions across Cameroon and the OHADA region. A&P has developed a strong reputation in the energy, mining, infrastructure, project finance and corporate sectors, where it regularly assists clients with project development, regulatory compliance, public-private partnerships, mergers and acquisitions, financing transactions and strategic investments. The firm's lawyers combine deep knowledge of local legal and regulatory frameworks with the best international practices, acquired in leading global law firms and institutions. A&P is known for providing commercially focused legal advice and acting as a long-term strategic partner to clients undertaking high-impact projects throughout Africa.

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Often referred to as "Africa in miniature", Cameroon has a relatively diversified economy and significant structural strengths. These include abundant natural resources (forests, oil, gas, minerals and fertile agricultural land), a strategic geographic position in Central Africa with direct access to the Atlantic Ocean, and a young and rapidly growing population of approximately 30 million. Taken together, these advantages position Cameroon as the leading economic power within the CEMAC region.

For its economic and social development, Cameroon adopted a long-term vision in 2009 with the aim of becoming "an emerging, democratic and united country in its diversity by 2035". This ambitious vision seeks to achieve near double-digit economic growth, to reach the threshold of 25% as the share of manufacturing output in GDP (*Produit Interieur Brut* – PIB), to significantly reduce poverty to below 10% by 2035, and to further consolidate democratic governance while strengthening national unity in the context of diversity. The first phase of implementation of this vision was through the Growth and Employment Strategy Paper (GESP) (*Document de Strategie pour la Croissance et l'Emploi* – DSCE), which served as the country's overarching policy framework for the period 2010–2019.

With the GESP reaching its term on 31 December 2019, the Cameroonian government adopted a new strategic framework on 1 January 2020: the National Development Strategy 2021–2030 (NDS30). This sets out the key aspects of the structural transformation of the economy, with 18 priority sectors identified by the government.

According to the IMF Staff Report No 26/81 for the 2026 Article IV Consultations, published in May 2026, Cameroon's economy has demonstrated notable resilience to external economic shocks in recent years. Growth in 2025 was estimated at 3.1%, which was below expectations due to election-related unrest that disrupted trade, services and investment. However, inflation declined to an average of 3.4% by end-December 2025, driven by moderation in food and transport prices.

### Investment Incentives

By virtue of Ordinance No 2025/002 of 18 July 2025, Cameroon has adopted a new regulatory framework governing investment incentives. According to the provisions of Article 1, the Ordinance aims to encourage, promote and attract productive investment. It seeks to develop activities geared towards fostering strong, sustainable and inclusive economic growth, as well as employment. The Ordinance applies equally to both domestic and foreign investors. Investment projects initiated by public companies operating in competitive sectors are also eligible under the provisions of the Ordinance.

Pursuant to the provisions of Article 3 of the Ordinance, the investment sectors eligible for the benefits provided under this law are defined on the basis of national strategic priorities, in particular, those relating to the following sectors:

- agriculture, livestock and fisheries;
- heavy industry, automotive and manufacturing;
- education and health;
- air, rail and maritime transport;
- tourism and leisure; and
- digital data storage and processing infrastructure.

The upstream oil, mining and gas sector, as well as the trade and distribution sector, are governed by sector-specific legislation which also offers various incentives.

Moreover, the legislation has extended several targeted customs duty exemptions from 1 January 2026, in particular:

- 24 months for medical equipment;
- 12 months for equipment related to renewable energy and water; and
- extension of these exemptions to digital start-ups and equipment intended for persons with disabilities.

These measures reflect a clear orientation towards the promotion of sectors deemed priorities, namely health, the energy transition and technological innovation. In parallel, there has been a tightening of export taxation, with:

- a 5% tax on the free-on-board (FOB) value of mineral ores; and
- a 10% levy on marble and clinker.

This approach confirms a policy of maximising the local value of natural resources and limiting the export of unprocessed raw materials.

### Taxation

The Finance Law for FY 2026 defines the conditions for budgetary and financial balance, while also improving the business environment and promoting tax compliance.

#### *The concept of significant economic presence*

One of the major innovations lies in the introduction of a digital taxation regime based on the concept of significant economic presence. In accordance with the provisions inserted into the General Tax Code (in particular, Articles 5 bis and 5 ter), non-resident companies providing digital services in Cameroon are now liable to taxation once they exceed certain thresholds, for example:

- local turnover in excess of approximately XAF75,000 (or the equivalent threshold in XAF); or
- more than 1,000 active users, customers or accounts.

Such entities are subject to either:

- a withholding tax of 3% on their gross turnover; or
- failing that, a flat-rate tax equivalent to 10%.

This mechanism brings Cameroon closer to international trends in the taxation of the digital economy, particularly in systems inspired by OECD practices and those of certain other African jurisdictions.

#### *Strengthening of tax audits and digitalisation of the administration*

The 2026 Finance Law also introduces tools to enhance the effectiveness of tax audits:

- a mandatory annual certified tax review for companies with a turnover exceeding XAF1 billion;
- introduction of real-time taxation mechanisms;
- increased use of AI by the customs administration; and
- broader access to beneficial ownership registers.

### Public-Private Partnerships (PPPs)

Law No 2023/008 of 25 July 2023, establishing the general framework for public-private partnership contracts, constitutes the most significant reform of Cameroon's PPP regime in over a decade. It replaces the 2006 framework and introduces a clearer distinction between three categories of PPP:

- publicly funded PPPs;
- concession-based PPPs (build–operate–transfer or BOT, build–own–operate or BOO, concession, lease, etc); and
- mixed-payment PPPs.

This clarification addresses a difficulty long encountered by investors and banks alike: uncertainty sur-

rounding the remuneration mechanisms for private partners. The financing models and revenue streams now have a clearer legal basis, which improves the bankability of projects.

The reform is accompanied by another major change, Decree No 2025/01081/PM of 17 June 2025 on the maturation of public investment projects. This instrument requires that a project obtain a maturity visa prior to any implementation.

For PPPs, this entails, in particular, a prior financial viability study and a comparative analysis of procurement methods. In current practice, investors must therefore engage in discussions with public authorities at a very early stage, in order to anticipate the constraints associated with the maturation process.

Cameroon continues, moreover, to develop several major structural projects. The expansion of the Port of Kribi, the Douala–Ngaoundere railway corridor and the post-Nachtigal energy projects, illustrate this momentum. Going forward, significant needs are anticipated in energy infrastructure, solar mini-grids and medium-sized hydroelectric projects.

In parallel, on 25 February 2025, the Council of Ministers of the Central African Economic Union (*Union Économique de l'Afrique Centrale* – UEAC) adopted a directive establishing the legal and institutional framework for PPPs in the CEMAC Zone. The adoption of this instrument follows the elaboration of a public procurement strategy (Decision No 03/24-CEMAC-UEAC-CM).

## Mining Sector

Cameroon's mining sector, long regarded as underexploited and governed by fragmented and at times outdated legislation, is undergoing a profound transformation following the adoption of Law No 2023/014 of 19 December 2023 enacting the Mining Code, together with its eight implementing decrees issued at the end of 2024. This reform is part of a broader drive to modernise extractive governance, seeking to reconcile economic attractiveness, environmental sustainability and national sovereignty. The new mining legislation marks a departure from previous extractive approaches, placing local communities, transparency and accountability at the heart of the legal framework.

### *Key projects in the starting phase*

Cameroon is launching an investment programme of unprecedented scale for its mining sector. According to the annex to the Finance Law relating to major infrastructure projects, the government plans to mobilise XAF1,748 billion over the period 2026–2030 to develop three strategic iron ore deposits: Mbalam (XAF747 billion), Kribi-Lobe (XAF431 billion) and Bipindi-Grand Zambi (XAF570 billion).

The Mbalam iron ore mining project in Cameroon launched its first exports in February 2026. With regard to the Kribi-Lobe iron ore project, Sinosteel has already invested XAF120 billion, with first exports expected in July 2027. As regards exploitation of the Bipindi-Grand-Zambi iron ore mine in the Océan Division, South Region, operations commenced with a stockpile of over 600,000 tonnes of ore by the end of 2025. However, on a provisional basis, the commencement of actual production operations is scheduled for the second half of 2026.

Furthermore, the advancement of the Minim Martap industrial bauxite project, which is set to produce 6.4 million tonnes of bauxite over a 20-year lifespan, was officially launched on 22 March 2026.

### *State participation and joint ventures*

*Société Nationale des Mines* (SONAMINES), which is mandated to safeguard the State's interests in mining ventures, continues to assert its role as a strategic shareholder in key projects. It holds equity stakes in several mining companies, including Colomine Mining Corporation (Cominicor), Camalco Mining SA, and Sinosteel Corporation.

In accordance with the Mining Code, the State is entitled to a non-dilutable free carried interest of 10% in the share capital of mining companies operating in Cameroon.

## Land Sector

For many years, thousands of Cameroonians have cultivated land without any documentation recognised by the State. Land disputes represent one of the prin-

cipal sources of social tension in the Cameroonian countryside.

### *New rules for large-scale land acquisitions*

In response to these challenges, the State has, since the end of 2025, embarked upon some significant regulatory reforms. Through a series of five circular letters, the Ministry of State Property, Land Tenure and Land Affairs (*Ministère des Domaines*, *du Cadastre et des Affaires Foncières* – MINDCAF) has introduced major new requirements, including the obligation to obtain a "letter of no objection" from first-degree traditional chiefs for any application for land registration or concession exceeding ten hectares, by circular dated 26 December 2025 (Circular Letter No 0003/MINDCAF/CAB/LC of 2 April 2025 instituting a "letter of no objection" from the territorially competent second or first-degree Traditional Authority Chief for the validation, at divisional level, of applications for direct land registration or concession of national domain land for areas equal to or greater than 20 hectares).

### *The creation of new legal instruments for land security*

The reform introduces two new administrative documents intended to constitute "preliminary evidence" of occupation or use of a plot of national domain land – Circular Letter No 0001/MINDCAF/CAB/LC of 20 February 2026 sets out the conditions for the issuance of a Certificate of Recognition of Customary Land Rights ("ARDFC") and a Certificate of Peaceful Enjoyment of Land ("AJPTER"). These documents represent an intermediate step in the process of obtaining a land title, which remains the only official certification of real property ownership in Cameroon. The ARDFC is intended to promote the land rights of customary communities and family groups, while the AJPTER aims to better protect the occupation and use rights of land users.

### *Strengthened sanctions for the non-development of allocated land*

With regard to land forming part of the State's private domain, the 2026 Finance Law introduces a new forfeiture mechanism that more strictly governs the acquisition of such plots. It establishes a direct link between non-compliance with the obligations attached to the allocation instrument, the loss of rights, and the revaluation of the price of plots returned to the market – with a progressive revaluation scale of between 10% and 30% applied to the initial sale value. Forfeiture is declared one year after the date of allocation of the domain plot, by decision of the minister responsible for State property. This mechanism is expressly designed to combat land speculation and to compel beneficiaries of public land to put it to effective use.

## Protection of Personal Data

Cameroon has adopted Law No 2024/017 of 23 December 2024 on the protection of personal data, marking a significant step forward in the structuring of the legal framework governing the digital sector.

Modelled on the European GDPR, this Law requires in particular:

- the explicit consent of the data subjects;
- the securing of data;
- the regulation of international data transfers; and
- in certain cases, the designation of a data protection officer.

### *Progressive compliance*

Article 73 of the Law provides for a transitional period of 18 months from the date of its promulgation, allowing public and private sector actors to comply with the new requirements. This gradual approach reflects a determination to ensure a controlled regulatory transition within an economic environment that was still taking shape until 23 June 2026.

### *Regulatory authority*

This authority, which is expected to be established by decree, will play a central role in national digital governance. Overall, this reform forms part of a broader trend towards digital sovereignty, the protection of sensitive data, gradual alignment with international standards, and the safeguarding of investment in the digital economy. It also introduces new compliance obligations for companies operating in the technology and financial sectors.

### *Intellectual property and personal data*

Cameroon has also undertaken significant reforms in the areas of intellectual property and the digital economy.

The legal framework has been strengthened by Law No 2024/002 of 24 July 2024, authorising Cameroon's accession to the WIPO Copyright Treaty. This development is gradually bringing Cameroonian law in line with international standards regarding the protection of digital content, software and works distributed online.

### Energy and Infrastructure: Strengthening the Strategic Role of the State

Cameroon's energy sector is principally governed by Law No 2011/022 of 14 December 2011 regulating the electricity sector, supplemented by its implementing decree No 2012/2806/PM of 24 September 2012.

Recent developments in the sector, in particular the restructuring of incumbent operators and discussions surrounding new management models, illustrate:

- a strengthening of the State's role in the governance of energy infrastructure;
- a drive to improve the performance of public services;
- a gradual opening towards public-private partnership mechanisms; and
- an increased emphasis on national energy security.

### Employment

To promote job creation, particularly for recent graduates, the financial law 2026 strengthens existing tax incentives and extends the scheme to include work-study contracts:

- Exemption – Tax and employer contributions on the salaries of recent graduates (in their first job or on a work placement) for a period of three years.
- Tax credit – 20% of training and supervision costs incurred, capped at XAF25 million for individuals.
- Exemption from social security contributions and employer's contributions on wages paid to disabled employees.

# CANADA




## Trends and Developments

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**INQ Law**

**INQ Law** is a Toronto-based boutique law firm specialising in health, data, and business law. The firm's data practice spans global privacy, freedom of information, cyber-preparedness, data governance, and artificial intelligence. Its health practice covers clinical practice, privacy, health research, risk management, and regulatory matters. INQ also advises on corporate commercial matters, board governance, charities, not-for-profits, and intellectual property.

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## Evolving AI Regulation in Canada

Canada was an early mover in artificial intelligence. It became the first country to adopt a national AI strategy in 2017, and in 2019 Canada introduced one of the first binding rules for government use of automated decisions, the Treasury Board Directive on Automated Decision-Making.

A general AI law has proved harder to secure. The country's most ambitious attempt, the Artificial Intelligence and Data Act (AIDA), introduced as Part 3 of Bill C-27, did not survive the dissolution of parliament before the 2025 federal election. The privacy bill that followed, Bill C-36, was tabled in June 2026 and deliberately omits AI, though it does include positive obligations for the use of automated decision-making systems in certain circumstances. AI is therefore governed through a combination of federal policy, privacy law, provincial statutes, and sector-specific oversight, and businesses must work within all of them.

### *Federal developments*

The federal government has the longest record of regulating its own use of AI. Under the Treasury Board Directive on Automated Decision-Making, departments must complete a mandatory algorithmic impact assessment that scores each system's risk and attaches matching obligations for transparency, human oversight, and recourse. Separate Treasury Board guidance sets out how institutions may use generative AI responsibly.

For the private sector, the federal approach has so far been voluntary. A 2023 Code of Conduct invites developers of advanced generative AI systems to adopt common measures on safety and accountability until formal regulation arrives. In June 2026 the government also launched a renewed national strategy, AI for All, a signal that AI remains a federal priority even without a dedicated statute.

AIDA itself would have gone much further. Introduced in 2022, it proposed a risk-based framework centred on regulating "high-impact" AI systems, placing obligations on organisations that design and deploy them. Bundled with two privacy statutes in Bill C-27, the AI provisions proved the most contested part of the package, which helps explain why the government later chose to legislate privacy on its own.

Bill C-36 still bears on AI, even though it creates no AI statute. If enacted, it would repeal the private-sector privacy provisions of the Personal Information Protection and Electronic Documents Act (PIPEDA) and require organisations that use automated systems "to make a prediction, recommendation or decision about the individual that could have a legal or similarly significant effect on them, the organisation must, on request by the individual, provide them with an explanation of the prediction, recommendation or decision". The bill was first read in June 2026 and remains before parliament. Privacy law remains a key mechanism for AI accountability by the federal government.

### *Provincial developments*

The provinces have not waited for Ottawa. Quebec has gone furthest: under the reforms to its privacy law known as Law 25, its private-sector privacy statute requires an organisation that makes a decision based exclusively on automated processing to inform the individual concerned. On request, the person must be told which personal information was used and the main factors behind the decision, and must be allowed to submit observations to a member of staff able to review it. These rights have applied since September 2023, and the regime is now backed by significant administrative penalties.

Ontario has concentrated on the public sector. Its Bill 194 received Royal Assent in 2024 and enacted the Enhancing Digital Security and Trust Act, 2024, which lets the government set requirements for public-sector use of AI, including accountability frameworks and risk management. Much of the operative detail is left to future regulations that have yet to be published. Alberta's Protection of Privacy Act, also applicable to public bodies, has provisions governing automated decision-making systems similar to those in Quebec's Law 25. Other provinces, such as British Columbia, have created dedicated AI portfolios and published guiding principles for their own use of the technology.

Alberta, Saskatchewan and Manitoba have each issued, or are considering issuing, guidance to gov-

ernment public sector or government employees in using generative AI.

### *Sector-specific oversight*

Regulators and standard-setting bodies are also weighing in on AI governance. Several developments matter for businesses operating in Canada:

- The Office of the Superintendent of Financial Institutions (OSFI) has finalised Guideline E-23, extending its model-risk expectations to systems built on AI and machine learning, with effect from 2027. In collaboration with other key institutions relevant to financial services, OSFI has also endorsed the EDGE principles (which set out Explainability, Data, Governance and Ethics as four pillars for responsible AI adoption in financial services) and the AGILE Framework (a five-part framework consisting of Awareness, Guardrails, Innovation, Learning, and Ecosystem Resiliency, building on EDGE to capture AI's benefits while managing fast-evolving risks).
- Through the Standards Council of Canada, the country helped develop ISO/IEC 42001, the first international management-system standard for AI.
- Provincial law societies, including those in Ontario, British Columbia, and Alberta, have issued guidance on the use of AI in legal practice, and the federal Privacy Commissioner has published principles for generative AI.

### *Looking ahead*

The best route ahead appears to be a layered approach, built from federal policy, privacy law, provincial statutes, and sectoral rules. Whether the federal government will revive a dedicated AI law is uncertain, but any new bill is unlikely to mirror the 2022 model. A separate consultation on copyright and AI continues, and public trust remains a recognised barrier to wider adoption. In the meantime, organisations should assume that meaningful obligations already exist; the immediate task is to identify where automated decisions are made about individuals and to be ready to explain and contest them.

## Data Governance and Compliance Trends

In Canada, data governance is shifting from policy-based privacy and data compliance to evidence-based accountability. Where businesses were once expected to maintain policies and include key data protection terms in contracts, now, irrespective of what a business does, there is a much weightier expectation from boards, vendors servicing businesses, and customers alike, to demonstrate how personal information is governed across its entire life cycle.

This is particularly crucial as businesses implement analytics tools and processes, and cloud infrastructure, onboard integrated digital platforms, and adopt AI. In this environment, privacy compliance turns on whether the business is able to consistently identify what data it holds, why it is authorised to use it, where it is stored or transferred, who has access to it, whether it remains accurate, and whether it is able to show how decisions about personal information uses are documented and reviewed.

### *Bill C-36*

Bill C-36 aims to modernise the federal private-sector privacy framework by enacting the proposed Protecting Privacy and Consumer Data Act. The bill echoes this evidence-based accountability trend by pointing to a more structured accountability model that requires businesses to maintain a privacy management programme; document their privacy policies, practices, and procedures; and provide those materials to the regulator upon request. It also proposes privacy impact assessment (PIA) requirements for certain higher-risk activities, including transfers or disclosures of personal information outside Canada or when choosing to rely on the proposed legitimate interest exception to consent.

The practical point is that businesses operating in Canada need to show:

- what was assessed;
- what risks were identified;
- what mitigations were chosen; and
- why the business considered the use and mitigations appropriate.

These proposed elements indicate that compliance is becoming less about having the right policy on file and more about being able to demonstrate, through both records and repeatable processes, that risks are

identified, assessed, managed and revisited as the business, technology, and data uses evolve.

### *Vendor and cloud governance*

A related trend is that vendor and cloud governance are now central to data compliance risks. For most businesses, data flows through cloud providers, like software-as-a-service (SaaS) tools and other outsourced services. Recent breach incidents, including the PowerSchool breach, which affected at least 80 Canadian school boards across seven provinces and one territory, illustrate how a single technology vendor incident can create broad, multi-jurisdictional privacy and governance consequences.

These incidents explain why regulators and customers scrutinise third-party vendors, credential controls, breach response, contractual protections, and understanding of where sensitive info sits in vendor ecosystems. Bill C-36 adds to this trend by signalling heightened expectations regarding the personal information of minors, reinforcing the need for businesses to maintain clear records of data flows, service providers, cross-border transfers, and other related data-handling obligations. Age verification methodologies are expected.

Vendor management remains a core part of privacy, security and accountability. Businesses need to flow through appropriate security and data handling requirements to third and fourth party vendors. In addition, they need to show they understand and document how vendors handle sensitive information, because vendor choices increasingly affect legal compliance, breach exposure, customer trust, and a business's ability to show control over its data.

### *AI trends in data governance*

AI is also driving a slowly emerging trend towards stronger data governance. This reflects the operational reality that AI systems depend on accurate, reliable, and well-governed data to produce the insights businesses are seeking. As a result, AI governance is being built not only through AI-specific rules, but through existing privacy laws, regulator guidance, procurement requirements, sector expectations, cybersecurity controls, and contracts that address key privacy considerations, including legal authority for use, retention periods, and oversight.

For businesses adopting AI at scale, the key questions are not just about the tool's legality but also about data use, purpose, authority, safeguards, transparency, and human review. Overall, it is apparent that AI is making data governance harder to avoid. Businesses that cannot explain what data they have, where it came from, how it can be used, and who is accountable for the output will struggle to move AI from experimentation to reliable adoption.

Regulators are also becoming increasingly critical of how AI is developed and used. For example, the federal, British Columbia and Alberta Privacy Commissioners' Offices jointly found that the development of some of OpenAI's ChatGPT models contravened PIPEDA and the Personal Information Protection Acts of British Columbia and Alberta, and Quebec's private-sector Privacy Act. Businesses will need to be increasingly aware of not only their own data practices but stay abreast of the practices of AI developers, to be able to responsibly procure AI tools in a privacy-complaint manner.

Some businesses are pushing ahead with AI pilots despite poor data governance, unclear data ownership, weak retention practices, incomplete inventories, and limited oversight; this helps explain why many pilots are expensive, difficult to scale up, and ultimately unsuccessful.

Other businesses remain stationary: they want to adopt AI, but hesitate to do the unglamorous data-governance work required to make it viable, including mapping and cleaning data, confirming authority for secondary use, reviewing vendor contracts, and assigning accountability for AI-generated outputs.

In practice, businesses that move the fastest will not be the ones that implement the most AI tools, but the ones that recognise that data-governance readiness is the foundation of AI readiness, and invest accordingly.

## Cross-Border Data Considerations

Canada's federal privacy framework was built to be permissive. It does not prohibit transferring person-

al information outside Canada, a flexibility that has suited businesses well. However, federal and provincial privacy laws, as well as the use of AI, do create requirements and considerations organisations should be aware of. For any organisation moving data into or out of Canada, understanding what requirements they are subject to is a necessity.

### *The PIPEDA baseline*

Under PIPEDA, there is no general restriction on transferring personal information outside Canada. Instead, the law follows a principle of accountability: organisations that collect data remain responsible for it, wherever it travels. In practice, a business must ensure that any foreign service provider offers a comparable level of protection to that offered by PIPEDA, and it must be transparent in letting individuals know that their information may be processed and accessed outside the country.

In practice, the limitation of this is enforcement. The federal privacy regulator has historically been able to investigate and make recommendations, but not to issue binding orders or significant penalties. This has led to the real pressure on cross-border transfers increasingly coming from the provinces rather than from Ottawa.

### *Provincial requirements*

Businesses often assume cross-border rules are a federal matter, but that is not exclusively the case. Quebec, Alberta and British Columbia each have their own private-sector privacy laws which supplant PIPEDA, and Alberta is expected to strengthen its regime in 2026 based on their 2025 review of their privacy laws.

Quebec's Act Respecting the Protection of Personal Information in the Private Sector (Law 25) is one of the most stringent privacy laws in Canada. Law 25 treats a transfer from a Quebec office to one in Ontario in much the same way as a transfer overseas, with obligations applying the moment the data leaves the province. Before transferring personal information out of Quebec, an organisation must carry out a PIA and satisfy itself that the receiving jurisdiction offers equivalent protection. For any company with a Quebec footprint, this has become the practical national standard.

### *Cross-border data risks*

A pressing concern for multinational organisations is who can compel access to the data they have. Storage of data or transferring data to other jurisdictions means potentially being subject to foreign access laws. The US CLOUD Act allows American authorities to require disclosure of data in the possession, custody or control of US-based companies, regardless of where that data physically sits. Information stored in a Canadian data centre may still be at risk of access if the provider is a US-parented cloud or technology firm.

This creates a direct, unresolved tension in Canada. An honest assessment of a US-controlled provider may struggle to conclude that "equivalent protection" exists, because the data remains exposed to foreign legal process that Canadian law cannot override. This may add another legal consideration for vendor selection.

### *Artificial intelligence as a cross-border data engine*

Adopting AI is, almost always, a decision to move data, frequently offshore and under foreign jurisdiction. This is the area businesses most often overlook. The questions that matter most are practical:

- Training data – Is Canadian personal information being sent abroad to train a model, and on what legal basis?
- Where the model runs – Processing data through a foreign-hosted system is itself a cross-border transfer, even if the user is in Canada.
- Automated decisions – Where AI informs decisions about individuals, transparency and human-oversight expectations apply, and these are harder to meet when the system is operated abroad.
- Vendor due diligence – The jurisdiction and corporate ownership of an AI provider now carry direct privacy consequences.

Using AI without asking where the data goes, and whose laws govern it, is a compliance problem waiting to happen.

### *Upcoming changes and considerations*

The most significant upcoming change with possible cross-border data implications is the federal govern-

ment's Bill C-36, which aims to strengthen privacy requirements in several key areas, namely the disclosure or transfer of personal information outside of Canada. Organisations will be required to carry out PIAs and implement measures to mitigate any risks they identify. This is a step-up from the accountability principle in PIPEDA, which essentially only required ensuring foreign service providers offered a comparable level of protection.

Businesses will need to be diligent about mapping their data flows to determine if personal information is leaving the country, which would trigger their obligation to conduct a PIA.

Bill C-36 significantly increases the consequences of non-compliance with privacy obligations, creating actual penalties for non-compliance. While the international data transfer provisions are excluded from the penalty structure, Bill C-36 still requires organisations to protect personal information, including against privacy risks from transferring personal information to a service provider. This likely includes risks from cross-border data transfer to service providers, and contravention of that provision is within the scope of the penalty-issuing powers.

### Practical Implications for Businesses Operating in the Digital Economy

Canada's regulatory environment for AI and data protection has changed materially in the past 18 months. Businesses operating in the Canadian digital economy face a more demanding compliance posture than at any prior point under PIPEDA, driven by new federal legislation, active privacy enforcement, provincial reform, and tightening constraints on cross-border data flows. Compliance programmes built to the pre-2024 federal standard are already inadequate.

#### *A fragmented jurisdiction requires jurisdiction-specific analysis*

The compliance landscape governing AI and personal data in Canada is fragmenting rather than converging towards a single framework. Businesses will need to comply with different privacy regimes offering different rights and imposing different obligations.

At the federal level, Bill C-36 proposes the Protecting Privacy and Consumer Data Act (PPCDA) to replace PIPEDA. The proposed legislation recognises privacy as a fundamental right, shifts the default to express consent, conditions any legitimate interest exception on a documented PIA, introduces a private right of action, and introduces rights to deletion and explanation of automated decisions. Enforcement would pass to a new Digital Safety and Data Protection Commission of Canada, with penalties up to CAD25 million or 5% of global revenues.

Quebec's Law 25, already in force since September 2024, applies to any organisation collecting or using the personal information of Quebec residents regardless of where the organisation is incorporated. It requires documented PIAs before deploying any technology involving personal information, designation of a person responsible for personal information protection, and a privacy-by-default governance framework, with penalties reaching the greater of CAD25 million or 4% of worldwide revenues.

Alberta, British Columbia and Ontario are each conducting parallel statutory reviews. Until those processes are resolved, national-level generalisations are an unreliable basis for compliance planning.

#### *Existing law already governs AI*

Previous assumptions that AI governance obligations would crystallise only upon passage of dedicated AI legislation have been discredited by privacy regulators seeking to enforce existing privacy regimes. The joint Office of the Privacy Commissioner of Canada (OPC) investigation into OpenAI's ChatGPT, (findings published 6 May 2026), concluded that ChatGPT's initial training violated Canadian privacy law through over-collection, invalid consent, and inadequate individual redress. The volume of OPC complaints doubled year-on-year to 3,044 filings, and breach reports affected more than 20 million Canadians in the same period. The federal Voluntary Code of Conduct on Responsible Generative AI, though not yet enforceable, is being used by the OPC as a reference standard in complaint proceedings.

PIAs, data minimisation analyses, valid consent architecture, human oversight protocols, and processor

agreements governing AI tools are being treated as already required under existing law. The OPC has designated AI governance a priority enforcement area, and the PPCDA's forthcoming mandatory privacy management programme will codify obligations that well-governed organisations are already meeting.

### *Cloud procurement carries legal exposure*

The most structurally difficult compliance problem arises from the interaction between Canadian privacy law and the US Clarifying Lawful Overseas Use of Data Act (CLOUD Act), which authorises US federal law enforcement to compel American cloud providers to disclose customer data regardless of where it is stored (subject to the signing of a bilateral treaty, which has been under negotiation for some time). A Canadian data residency contractual term will not constitute a legal barrier to a valid CLOUD Act order. The Upper Harbour Canadian Technology Sovereignty Index 2026 found that 80% of tools offering Canadian data residency remain CLOUD Act-exposed because their parent entities are US-incorporated; a growing number of Canadian organisations are therefore actively migrating away from US cloud providers.

Quebec's transfer impact assessment requirement has applied since September 2023, and Bill C-36 would introduce an equivalent federal obligation. Survey evidence suggests most organisations subject to the Quebec requirement have yet to complete even their first assessment. Canada's EU adequacy status, re-confirmed in January 2024, is contingent on maintaining protections broadly equivalent to the GDPR; a prolonged gap between PIPEDA and the PPCDA's coming into force could invite review with material consequences for transatlantic data flows.

### *Practical priorities*

Three steps are recommended under both current and anticipated law. An inventory of AI systems in deployment, classified by risk and jurisdictional exposure, is the necessary first step and prerequisite for the impact assessments Law 25 already requires. Transfer impact assessments for personal information disclosed to US-parented service providers should be completed immediately; the analysis will support the cross-border documentation the PPCDA will require federally. CLOUD Act response protocols should be incorporated into vendor due diligence and master service agreements, addressing what data would be produced, under what process, and with what notice to affected individuals and regulators.

The PPCDA's proposed privacy management programme and documentation requirements for automated decisions are the most reliable design template for governance frameworks being built today. Organisations that align their programmes to the proposed federal standard will satisfy current OPC enforcement expectations and be better positioned when the new legislation comes into force.

# CAYMAN ISLANDS




## Law and Practice

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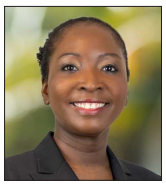
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**Maples Group** advises global financial, institutional, business and private clients on the laws of the British Virgin Islands, the Cayman Islands, Ireland, Jersey and Luxembourg, through its leading international law firm, Maples and Calder. With offices in key jurisdictions around the world, the Maples Group has specific strengths in the areas of corporate commercial, finance, investment funds, litigation and trusts. Maintaining relationships with leading legal counsel, the group leverages this local expertise to deliver an integrated service offering for global business initiatives.

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# 1. Legal System

## 1.1 Legal System and Judicial Order

The Cayman Islands is a common law jurisdiction, which is based on the English model. It comprises statute law and binding case precedents. English and British Commonwealth case authorities are generally persuasive, but not binding, on the Cayman Islands courts.

Cayman Islands law is derived from several sources:

- primary legislation – ie, local statutes passed by the Legislative Assembly of the Cayman Islands or its predecessors, and approved by the Governor of the Cayman Islands; for example, the Companies Act (As Revised) of the Cayman Islands (the "Companies Act") and the Private Funds Act (As Revised) of the Cayman Islands;
- secondary legislation – ie, legislation enacted pursuant to local statutes; examples include the Companies Winding-Up Rules (2023 Consolidation) and the Private Funds Regulations (As Revised) of the Cayman Islands;
- statutes passed by the United Kingdom (UK) Parliament that have been expressly extended to the Cayman Islands;
- Orders of His Majesty's Privy Council that are applicable to the Cayman Islands; and
- any relevant remaining English and British Commonwealth common law and rules of equity established by settlement not having been replaced by local or UK statute.

The Grand Court of the Cayman Islands (the "Grand Court") is the superior court of record of first instance for the Cayman Islands. The caseload of the Grand Court is divided into five divisions: Civil, Family, Admiralty, Financial Services and Criminal. Appeals from the Grand Court are to the Cayman Islands Court of Appeal (which usually sits three times annually). The final court of appeal is the Privy Council in England.

# 2. Restrictions on Foreign Investments

## 2.1 Approval of Foreign Investments

### Foreign Investments in the Cayman Islands

#### *Local operating business*

Approval from the Cayman Islands authorities may be required if foreign investors are investing in a Cayman Islands company that conducts local business (ie, with businesses and individuals located in the Cayman Islands) (a "Local Company"). This is necessary where a foreign investor will hold greater than 40% voting or economic interest in a Local Company. The Local Companies (Control) Act (As Revised) of the Cayman Islands (LCCA) provides that a Local Company must have 60% Caymanian shareholders and directors, who maintain 60% of the economic and voting control. An application must be made to the Trade and Business Licensing Board (the "Board"), established pursuant to the Trade and Business Licensing Act (As Revised) of the Cayman Islands (TBLA), to obtain a special licence under the LCCA or waiver of its provisions to permit greater than 40% foreign ownership and control.

#### *Entities registered or incorporated in the Cayman Islands conducting business outside the jurisdiction*

There is no prohibition on foreign investors investing in Cayman Islands entities that do not fall within the category of a Local Company – ie, entities registered or incorporated in the Cayman Islands but not doing business with businesses and individuals in the Cayman Islands.

Certain categories of entities, such as those registered under the Mutual Funds Act (As Revised), may require minimum investment thresholds, but there are no restrictions on foreign investors making an investment in a Cayman Islands mutual fund.

#### *Property in the Cayman Islands*

There are no restrictions on foreign investors purchasing property in the Cayman Islands.

### 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

#### Local Operating Business

To the extent a Local Company is unable to procure the required 60% local participation, it must apply to the Board for an LCCA licence. The application must be submitted together with supporting due diligence documents and evidence that the Local Company sought local participation (eg, copies of published advertisements in the Cayman Islands newspapers). The Local Company must also disclose any responses received from Caymanians. The Board must consider, among other things, the existing local business in the Cayman Islands and the benefit to the Cayman Islands and Caymanians. The application process generally takes approximately three to six months. An LCCA licence may be issued for up to 12 years and may be subject to such terms and conditions as the Board sees fit. A Local Company holding an LCCA licence must file a return of shareholdings as at 31 December with the Board in January annually. Once expired, the licence cannot be renewed.

Any Local Company with less than 60% local participation that does not hold an LCCA licence and is not otherwise exempted or licensed to operate in the Cayman Islands under another law, commits an offence and is liable (i) on summary conviction to a fine of KYD200 (USD243.90) and (ii) on conviction on indictment to a fine of KYD1,000 (USD1,219.51), in each case, for each day the offence continues.

### 2.3 Commitments Required From Foreign Investors

In respect of Local Companies, the Board does not condition approval on commitments from foreign investors. However, subject to any general directions from the Cabinet of the Cayman Islands, the Board may have regard to certain matters (such as the advantage or disadvantage resulting from the applicant carrying on business in the Cayman Islands) when deciding whether to grant a licence.

### 2.4 Right to Appeal

To the extent a Local Company is dissatisfied with a decision of the Board, it may, within 28 days of the communication of the decision (or such longer period as the Appeals Tribunal may allow), appeal to the Appeals Tribunal established under the TBLA. Any notice of appeal must specify the decision being appealed, the Board's reasons and the grounds of appeal. The Appeals Tribunal may then decide whether to allow the appeal and fix a hearing date.

The Appeals Tribunal's decision will be communicated to the appellant and the Board within 28 days of the hearing. A further appeal may be made to the Grand Court from a decision of the Appeals Tribunal on a point of law only.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

The Cayman Islands has several types of corporate vehicles or legal structures available for conducting business in or outside of the Cayman Islands. Common types of entities are outlined below.

#### Exempted Companies

Exempted companies are incorporated under the Companies Act and are the most common form of Cayman Islands vehicle used when carrying on business mainly outside of the Islands. They offer a flexible and tax-efficient structure for companies to operate in the global market. The main constitutional documents are its memorandum and articles of association that set out the rules for the governance and operation of the company. The issued share capital can be entirely nominal (for example, a single share) and shareholder liability is typically limited to amounts unpaid on shares. There are no restrictions on the number of directors or shareholders.

#### Ordinary Non-Resident and Ordinary Resident Companies

Ordinary companies are incorporated under the Companies Act but, unlike exempted companies, are subject to the LCCA and must comply with local licensing, reporting and disclosure obligations in the Cayman Islands.

Ordinary non-resident companies cannot engage in business activities within the Cayman Islands. Ordinary resident companies may conduct business locally. Both must file a list of shareholders annually with

the Registrar of Companies. Ordinary resident companies must also file an annual list of shares held by Cayman Islands residents with the applicable immigration board to comply with the LCCA's 60% local ownership requirement.

### Overseas Companies

Overseas companies (usually referred to as foreign companies) have been incorporated in another jurisdiction and intend to carry on business in the Cayman Islands. They must register with the Registrar of Companies pursuant to Part IX of the Companies Act, which is necessary to enable them to hold land, carry on business locally, or act as the general partner of a Cayman Islands ELP (for which they are commonly used).

### Segregated Portfolio Companies

A segregated portfolio company (SPC) is a form of exempted company incorporated under the Companies Act, which may create one or more segregated portfolios to segregate the assets and liabilities held within or on behalf of each segregated portfolio from those of other segregated portfolios and from the general assets of the SPC. The SPC remains a single legal entity; any segregated portfolio does not constitute a separate legal entity. SPCs are commonly used for mutual funds and other investment vehicles seeking asset and liability segregation.

### Limited Liability Companies

A limited liability company (LLC) is formed and registered under the Limited Liability Companies Act (As Revised) of the Cayman Islands (the "LLC Act") and combines characteristics of an exempted company and an ELP, similar to a Delaware LLC. LLCs are corporate entities with separate legal personality and limited liability. They offer particular flexibility regarding operation, management, member rights and profit sharing, and can be used for a variety of purposes including as investment vehicles.

### Exempted Limited Duration Companies

An exempted limited duration company (LDC) is a form of exempted company incorporated under the Companies Act. An LDC exists for a fixed period (not exceeding 30 years) specified in its memorandum of association and must have at least two members. LDCs are uncommon but may be used where a project must be completed within a certain timeframe. Upon expiry, the LDC will be deemed to have commenced voluntary winding up.

### Exempted Limited Partnerships

An exempted limited partnership (ELP) is registered under the Exempted Limited Partnership Act (As Revised) of the Cayman Islands (the "ELP Act") and is the most common partnership structure in the Cayman Islands, providing a flexible vehicle for investors to pool capital for investment activities outside the Cayman Islands. It is frequently used as a private equity fund, hedge fund or feeder fund. The respective rights and obligations of the general partner and limited partners are set out in an ELP agreement. Limited partners have limited liability, with all management responsibility vesting in the general partner who is liable for the ELP's debts and liabilities if the ELP's assets are inadequate.

### Limited Liability Partnerships

A limited liability partnership (LLP) is formed and registered under the Limited Liability Partnership Act (As Revised) of the Cayman Islands. It is the preferred structure for professional firms in the Cayman Islands, having a separate legal personality and affording limited liability to its partners. An LLP is not a body corporate and differs from a UK LLP which is structurally more akin to a corporate rather vehicle. The LLP, rather than the partners, is liable for its debts and losses. A partner may be liable for their own negligent acts or omissions where they have assumed an express duty of care and acted in breach of it. An LLP must be established by at least two persons for any lawful purpose. Any person, including natural persons, a body corporate or other partnerships, may be a partner. As there is no requirement to carry on business "with a view to profit", an LLP may be a helpful option for not-for-profit organisations.

### Foundation Companies and Companies Limited by Guarantee

A foundation company is incorporated under the Foundation Companies Act (As Revised) of the Cayman Islands (the "Foundation Companies Act") as a body corporate with legal personality distinct from its members, beneficiaries, directors, officers, super-

visors and founder. Accordingly, it has capacity to sue and be sued and to hold property. Uniquely, it is possible for a foundation company not to have any members, provided that its constitution so permits and it continues to have one or more supervisors. A foundation company may be formed for any lawful object, which need not be beneficial to other persons and must be limited by shares or by guarantee with or without share capital. It is a highly flexible vehicle and can, if so desired, include features of a common law trust within a corporate framework. Foundation companies are typically used for wealth management, estate planning and asset protection, and are often incorporated as companies limited by guarantee to avoid the need for probate.

A company limited by guarantee has members rather than shareholders, whose liability is typically limited to USD1, and can hold property, sue and be sued. Companies limited by guarantee are rarely incorporated for commercial purposes, and are more typically used for non-profit or club scenarios.

#### Trusts (Including Unit Trusts)

Unlike the vehicles described above, a trust does not have separate legal personality and so a trust itself cannot hold property in its own name. Rather, legal title to property held upon the terms of the trust is vested in the trustees of the trust and it is the trustees who enter into transactions in that capacity and who can sue and be sued. The primary legislation is the Trusts Act (2021 Revision) (the "Trusts Act"), which incorporates conflict of laws provisions (the "Trusts (Foreign Element") Provisions") particularly relevant in instances where a trust has been established by a settlor domiciled outside the Cayman Islands in a jurisdiction that does not permit testamentary freedom.

Trusts can be established for various objectives, such as wealth management, estate planning, philanthropic endeavours (Charitable Trusts) and employee incentivisation schemes, much like foundation companies.

Cayman permits the establishment of non-charitable purposes trusts created pursuant to the Cayman Islands Special Trusts (Alternative Regime) Act 1997 (known as STAR Trusts), the purposes of which may be to benefit or carry out, as the case may be, a mixture of persons and purposes so long as they are lawful and not contrary to public policy.

It is also possible to establish a trust for use as an investment vehicle. Such a structure would usually take the form of a unit trust under which the investors (the unitholders) contribute assets to the trustee to be managed and invested in accordance with the terms set out in the trust deed and any accompanying contractual documents.

### 3.2 Incorporation Process

It is necessary to engage a licensed corporate services provider to assist with the incorporation process.

#### Exempted/Ordinary Resident/Ordinary Non-Resident Companies/Other Companies

To incorporate a company, the corporate services provider prepares and files the memorandum and articles of association with the Registrar of Companies, together with the appropriate filing fees. For exempted companies only, a statement confirming that the company's operations will be conducted mainly outside the Cayman Islands is also required. The initial subscriber shareholder is typically an affiliate of the corporate services provider and will transfer the subscriber share after incorporation or it will automatically be repurchased following the issuance of further shares. Once the Registrar has processed the documents, the company is deemed incorporated and a Certificate of Incorporation is issued.

#### Exempted Limited Partnerships

To register a Cayman Islands partnership as an ELP, the corporate services provider, on behalf of its general partner, must submit to the Registrar of Exempted Limited Partnerships in the Cayman Islands a statement setting out certain prescribed information and pay the appropriate filing fees. A Certificate of Registration issued by the Registrar of ELP is conclusive evidence that the requirements of the ELP Act have been complied with in respect of the formation and registration of an exempted limited partnership.

#### Limited Liability Companies

To form and register an LLC, a registration statement must be submitted by the corporate services provid-

er to the Registrar of Limited Liability Companies in the Cayman Islands which sets out basic information regarding the limited liability company and the appropriate filing fees. A Certificate of Registration issued by the Registrar of Limited Liability Companies is conclusive evidence that the requirements of the LLC Act have been complied with in respect of the formation and registration of an LLC.

### Timing

The registration and issue of a Certificate of Incorporation (exempted/resident/non-resident companies) or Certificate of Registration (ELPs, LLC) generally takes three to five business days but can be expedited by paying an express fee to provide the certificate within one business day.

## 3.3 Ongoing Reporting and Disclosure Obligations

### General – Companies Act

Companies in the Cayman Islands are subject to certain disclosure and reporting obligations depending on the type of vehicle and the activities undertaken. The Companies Act governs the formation, operation and dissolution of exempted companies.

Exempted companies must have a registered office in the Cayman Islands with a licensed and regulated corporate services provider and are required to file certain documents and information with the Registrar of Companies.

Exempted companies must notify the Registrar of Companies of the following:

- changes to the company name;
- increase or reduction in the authorised share capital;
- changes of directors and officers;
- changes in the registered office;
- amendments to the memorandum and articles of association of the company; and
- changes to the beneficial ownership register (if any) of the company.

Notices of all special resolutions referenced in the Companies Act that are passed by one or more shareholder(s) of the company must also be filed with the Registrar of Companies within a prescribed timeframe – ie, within 15 days from the effective date of the special resolution.

### Annual Requirements

An annual return (in the case of exempted companies) or an annual list of members and summary of certain specified items relating to share capital (in the case of ordinary companies) must be submitted to the Registrar of Companies in January of the year following incorporation and in each January thereafter, and the appropriate annual fee paid.

### Financial Statements

All companies must keep proper books of account, including material underlying documentation such as contracts and invoices, sufficient to give a true and fair view of the company's affairs and explain its transactions. Books must be retained for a minimum of five years. A company that knowingly and wilfully contravenes these requirements is subject to a penalty of USD6,100. The books need not be kept at the registered office, but the company must provide its registered office with information regarding its books annually or as prescribed. If the company is not a bank, trust company, building society, money services business, credit union, insurance company, corporate manager, mutual fund administrator or regulated fund, its accounts need not be audited as a matter of Cayman Islands law.

### Beneficial Ownership

On 24 November 2023, the Parliament of the Cayman Islands passed the Beneficial Ownership Transparency Act (As Revised) (the "BOT Act") which came into force on 31 July 2024.

The BOT Act modifies the beneficial ownership regime in place since 2017, aligning it with equivalent regimes in other jurisdictions, such as the US Corporate Transparency Act. The BOT Act extends the regime to most Cayman Islands entities and removes a number of exemptions that existed previously.

In-scope entities must identify and monitor changes to their beneficial owners and reportable legal entities (as defined in the BOT Act), establish and maintain a beneficial ownership register with their corporate ser-

vice provider (CSP), and provide certain "required particulars" in a timely manner. The CSP files the register details with the Cayman Islands competent authority (the "Competent Authority") each month. Various administrative fines and sanctions, including restriction notices, apply for non-compliance. The previous regime applied only to companies, LLCs and LLPs. The BOT Act has broader scope and applies to all Cayman Islands "legal persons", including companies, LLCs, LLPs, limited partnerships, ELPs and foundation companies, and any other legal person that may be prescribed ("Legal Persons"). Non-Cayman Islands entities (including those registered as foreign persons in the Cayman Islands, typically to act as the general partner of an ELP) and certain other categories (eg, certain charities and not-for-profits) are carved out.

Under the BOT Act, a "beneficial owner" is an individual who (i) ultimately owns or controls (directly or indirectly) 25% or more of the shares, voting rights or partnership interests in the Legal Person; or (ii) otherwise exercises ultimate effective control over the management of the Legal Person; or (iii) is identified as exercising control of the Legal Person through other means. A person operating solely in the capacity of a "professional adviser" or "professional manager" (both terms defined in the Act) will not be considered a beneficial owner.

Where no natural person is identified as a "beneficial owner", a "senior managing official" (such as a director or CEO) must be named in the entity's beneficial ownership register.

Most exemptions under the previous regime are removed or significantly restricted in favour of certain "alternative routes to compliance", under which the Legal Person need not report beneficial owners or establish a register, but must report limited "required particulars".

Legal Persons able to apply an alternative route to compliance include those that are: (i) listed, or a subsidiary of a listed entity, on the Cayman Islands Stock Exchange (CSX) or an approved stock exchange; (ii) licensed under a regulatory law (note this is limited to certain Cayman Islands regulatory laws); (iii) a fund registered under the Private Funds Act (As Revised) or the Mutual Funds Act (As Revised); or (iv) otherwise exempted by Cabinet (none currently).

Entities falling outside categories (i)-(iv) above (or otherwise opting not to apply an alternative route to compliance) are considered "in-scope" and are required to establish and maintain a beneficial ownership register.

The required particulars are largely unchanged from the previous regime, with two additions: the Legal Person must also report (i) the nationality of all beneficial owners; and (ii) the nature of the individuals or reportable legal entity's ownership or control (whether by economic interests, voting interests, or as a senior managing official).

### Economic Substance Act (As Revised)

The Cayman Islands has enacted economic substance legislation in compliance with the OECD's Inclusive Framework on Base Erosion and Profit Shifting (BEPS). Where an entity conducts a "relevant activity" in a "relevant financial period", it must (i) file an economic substance notification with the Registrar of Companies before 31 January each year, and (ii) file an economic substance return with the Department for International Tax Cooperation no later than 12 months from the last day of the entity's financial year end.

The Economic Substance Act applies economic substance requirements to the following categories of geographically mobile "relevant activities" previously identified by the OECD (and adopted by the EU):

- banking;
- insurance;
- shipping;
- fund management;
- financing and leasing;
- headquarters;
- distribution and service centres;
- holding company; and
- intellectual property.

### Automatic Exchange of Financial Account Information

The Cayman Islands has signed an inter-governmental agreement to improve international tax compliance

and the exchange of information with the United States (US IGA). The Cayman Islands has also signed a multilateral competent authority agreement to implement the OECD Standard for Automatic Exchange of Financial Account Information – Common Reporting Standard (CRS and together with the US IGA, AEOI). In addition, the Cayman Islands has enacted the Crypto-Asset Reporting Framework (CARF) Regulations, which came into force on 1 January 2026, implementing the OECD's framework for the automatic exchange of tax information on transactions in crypto-assets between participating jurisdictions. The Cayman Islands' commitment to commence CARF exchanges begins in 2027.

Cayman Islands regulations have been issued to give effect to the US IGA and CRS (collectively, the "AEOI Regulations"). The CRS regulations were amended with effect from 1 January 2026 by the Tax Information Authority (International Tax Compliance) (Common Reporting Standard) (Amendment) Regulations, 2025, which implement the OECD's amended CRS and bring new financial assets, products and intermediaries within scope, including specific electronic money products and central bank digital currencies. The amendments also strengthen due diligence and reporting requirements and advance the CRS reporting deadline. Pursuant to the AEOI Regulations, the Cayman Islands Tax Information Authority (TIA) has published guidance notes on the application of the US IGA and CRS.

All Cayman Islands "FIs" are required to comply with the registration, due diligence and reporting requirements of the AEOI Regulations, unless they are able to rely on an exemption that allows them to become a "Non-Reporting FI" (as defined in the relevant AEOI Regulations) with respect to one or more of the AEOI regimes, in which case only the registration requirement would apply under the CRS. The different types of Non-Reporting FI under each AEOI regime are specified in the applicable AEOI Regulations.

Cayman Islands FIs are also required to appoint a Principal Point of Contact (PPoC) located in the Cayman Islands who is authorised to liaise with the TIA for CRS purposes. A PPoC may be either a natural person or a legal person, but must maintain a physical address in the Cayman Islands (not merely a mailing or correspondence address). FIs registered with the TIA prior to the commencement of the CRS Amendment Regulations who had not yet appointed a PPoC in the Cayman Islands were given until 31 January 2027 to do so.

### Anti-Money Laundering and Countering of Terrorist and Proliferation Financing

The Cayman Islands has enacted legislation aligned with international principles in preventing and detecting money laundering (AML) and combating terrorist and proliferation financing (CFT and CPF respectively) and breaches of applicable sanctions regimes.

The principal legislation includes the Misuse of Drugs Act (As Revised), the Proceeds of Crime Act (As Revised) (PCA), the Terrorism Act (As Revised) and the Proliferation Financing (Prohibition) Act (As Revised). These statutes create offences relating to the laundering of the proceeds of crime.

The Anti-Money Laundering Regulations (AMLRs) apply to anyone carrying out "relevant financial business in or from the Cayman Islands", forming a business relationship or carrying out a one-off transaction. What constitutes "relevant financial business" is set out under Section 2 of the PCA and includes, among others, the following activities:

- banking or trust business carried out by a person who is licensed under the Banks and Trust Companies Act (As Revised);
- insurance business and the business of an insurance manager, an insurance agent, or an insurance broker within the meaning of the Insurance Act (As Revised);
- mutual fund administration or the business of a regulated mutual fund within the meaning of the Mutual Funds Act (As Revised); and
- various other investment, financial, trading and lending activities falling within Schedule 6 of the PCA.

As a general rule, entities that are registrable under FATCA/CRS will also be subject to the AML Regime.

The AMLRs provide that a financial services provider carrying out relevant financial business in or from the Cayman Islands cannot form a business relationship or carry out a one-off transaction unless they maintain certain AML/CFT/CPF/sanctions policies and procedures, having regard to money laundering, terrorist or proliferation financing and sanctions risks.

### Virtual Assets in the Cayman Islands

The Virtual Asset (Service Providers) Act (as amended, the "VASP Act") provides the framework for the conduct of virtual asset services in the Cayman Islands and for the registration and licensing of entities that provide virtual asset services.

The virtual asset service providers regime, which includes subsidiary and related regulatory and financial services legislation (together, the "VASP Regime") has been implemented in phases. The core phase one provisions of the VASP Act requiring registration came into effect on 31 October 2020, focused on anti-money laundering and countering the financing of terrorism (AML/CFT) measures. Related enforcement provisions and offences came into effect on 31 January 2021.

The VASP (Amendment) Act was published on 19 December 2024 and the legislation enacting Phase 2 of the VASP regime commenced on 1 April 2025. On this date, the licensing provisions of the VASP Act as well as the Virtual Asset (Service Providers)(Amendment) Act, 2024 and the Virtual Asset (Service Providers) (Amendment) Regulations, 2025 also came into force, along with CIMA's Rule – Virtual Asset Custodians and Trading Platforms and Statement of Guidance – Virtual Asset Custodians and Trading Platforms, and the licensing component of CIMA's Regulatory Policy – Registration or Licensing of Virtual Asset Service Providers. In February 2026, CIMA also published the Rule and Statement of Guidance – Market Conduct for Virtual Asset Service Providers, establishing comprehensive requirements on integrity, conflicts of interest, client asset safeguards, marketing and promotions, client onboarding, complaints handling, public disclosures, cross-border transactions and market abuse.

The VASP (Amendment) Act provides the regulatory basis for phase two of the Cayman Islands' VASP Regime, which relates to the introduction of a licensing regime for virtual asset trading platforms and virtual asset custodians. A third phase is also envisioned to address remaining elements of the regulatory framework.

Specifically, a currently registered person who, at the commencement of the VASP (Amendment) Act, is engaged in the provision of virtual asset custody services or the operation of a virtual asset trading platform shall apply for a licence within 90 days of the commencement of the VASP (Amendment) Act.

Additionally, the VASP (Amendment) Act introduces new operational requirements for all VASPs, including:

- Directors: There must be at least three directors, including one independent director.
- Business Plan Changes: Prior written approval from CIMA is required for any changes to the approved business plan or to provide additional virtual asset services not included in the original application.
- Litigation Notification: CIMA must be notified within 30 days of any litigation proceedings brought against them in any jurisdiction.
- Fiat Currency: Fiat currency held on behalf of clients must be in a bank regulated by CIMA or another regulator in a non-high-risk jurisdiction, ensuring segregation from the provider's own funds.
- Misleading Representations: It is now an offence for VASPs to make or permit misleading representations about their virtual asset activities.

In March 2026, the Cayman Islands enacted legislation introducing a regulatory framework for tokenised funds, whereby equity or investment interests in mutual funds and private funds may be represented by digital tokens on a blockchain. The Mutual Funds (Amendment) Act, 2026, Private Funds (Amendment) Act, 2026, and Virtual Asset (Service Providers) (Amendment) Act, 2026, clarify that the issuance of digital tokens by regulated tokenised mutual funds and private funds does not constitute virtual asset issuance under the VASP Act, impose annual record-keeping confirmation obligations on fund operators in respect of digital tokens, require the operator's approval for any transfer of tokenised interests, or mandate spe-

cific risk disclosures in offering documents, including cybersecurity and transferability risks.

### Cayman Islands Removed from FATF Grey List and EU AML List

On 27 October 2023, the Financial Action Task Force (FATF) confirmed that the Cayman Islands had been removed from the FATF's increased "monitoring list" (often referred to as the FATF Grey List). This decision came after the Cayman Islands demonstrated its commitment to international standards by satisfying all FATF Recommended Actions and successfully completing an on-site inspection by the FATF in 2023.

On 12 December 2023, the European Commission published a Delegated Regulation amending its list of "high-risk third countries" (the "EU AML List"), providing for the removal of the Cayman Islands. The removal was made effective on 7 February 2023.

The removal from both the FATF and EU AML Lists affirms that the Cayman Islands has robust and effective AML/CFT/CPF regimes in place, reflecting the jurisdiction's commitment to maintaining a compliant financial sector that aligns with global standards. The Cayman Islands is now preparing for its 5th Round Caribbean Financial Action Task Force Mutual Evaluation, with an on-site visit scheduled for December 2027.

### Cayman Islands Sanctions Regime

Sanctions Orders are extended by Statutory Instrument to the British Overseas Territories, including the Cayman Islands, to give effect to sanctions regimes implemented by the UK government ("Sanctions Orders").

Sanctions Orders apply to any person or body incorporated or instituted in the jurisdiction, as well as any British citizen or subject ordinarily resident. They generally restrain persons from dealing in funds or economic resources owned or controlled by, or making funds or economic resources available to Designated Persons. For example, a fund making a redemption payment to a Designated Person would not be permitted.

Since March 2022, significant sanctions measures with respect to Russia's invasion of Ukraine have been published by the UK, USA and the EU. A number of Cayman Islands vehicles have been impacted as a result of direct or indirect exposure to Russian individuals and/or entities. While these entities have been able to apply to the Governor for a specific licence to permit otherwise prohibited activities, until recently, licences could only be granted under specified licensing grounds, and no ground existed to deal with difficulties regarding frozen investments held in Russia and sanctioned investors on registers. In November 2025, a new sanctions reporting obligation was introduced, requiring any Cayman Islands person holding funds or economic resources owned, held or controlled by a Designated Person to file a frozen assets report with the Financial Reporting Authority annually. In December 2025, the Sanctions (Miscellaneous Amendments) (Overseas Territories) Order 2025 came into force, amending the definition of "relevant firm" under various sanctions regimes to incorporate new categories including crypto-asset exchange providers, custodian wallet providers, high-value dealers, art market participants, insolvency practitioners and letting agents, thereby increasing the scope of AML/CTF compliance related to sanctions across the British Overseas Territories.

On 14 March 2024 a new divestment-specific licensing ground came into force, which may provide an opportunity for entities to apply for a specific licence to exit a frozen shareholder/LP and freeze the redemption/withdrawal proceeds in a frozen bank account in a British Overseas Territory or the UK.

### Cayman Islands Country-By-Country Reporting

The Tax Information Authority (International Tax Compliance) (Country-By-Country Reporting) Regulations (As Revised) (the "CbCR Regulations") implement the OECD/G20's Base Erosion and Profit Shifting Action 13 Report requirements and largely follow the OECD Model Legislation.

The CbCR Regulations apply to any constituent entity ("Constituent Entity") that is "resident in the Islands" and forms part of a multinational enterprise group ("MNE Group"). A Constituent Entity is resident if it is incorporated or established in the Cayman Islands,

has a place of effective management there, or is subject to financial supervision in the Cayman Islands.

An MNE Group is broadly defined as a collection of two or more enterprises required to prepare consolidated financial statements (or that would be so required if equity interests were publicly traded) that (i) includes enterprises "tax resident" in at least two jurisdictions or an enterprise subject to tax via a permanent establishment in another jurisdiction and (ii) had total consolidated group revenue of at least USD850 million in the preceding fiscal year.

Any Constituent Entity resident in the Cayman Islands and forms part of an MNE Group must make a notification to the DITC and, if it is the "Ultimate Parent Entity" or "Surrogate Parent Entity", must file a country-by-country report in the standard OECD form.

The Cayman Islands' Country-by-Country Reporting regime underwent operational changes over 2025 and 2026 following the DITC's migration to a new online portal. The legacy CbCR portal was taken offline in July 2025, with CbCR functions going live on the replacement DITC Portal in stages between August and December 2025. All MNE Groups with Cayman Constituent Entities were required to complete a mandatory one-off re-registration by 30 November 2025. Updated CbCR Guidelines (Version 1.3) were issued in August 2025, consolidating prior guidance on registration, notification, reporting procedures, and technical matters including the treatment of investment funds and partnerships. To accommodate the transition, the DITC extended the filing deadline for MNE Groups with 2024 fiscal year reports due between 31 July and 31 December 2025, granting them until 27 February 2026 to file. The substantive scope of the regime remains unchanged.

## 3.4 Management Structures

### Companies

Companies are generally managed by a board of directors. Subject to the memorandum and articles of association, the board: (i) may be appointed by shareholders, with existing directors able to appoint additional or replacement directors; (ii) can delegate certain powers to committees or individual directors; and (iii) may appoint officers to handle day-to-day operations.

The approval of the company's shareholders is required for certain matters, including:

- changing the company name;
- amending the memorandum and articles of association;
- approving a merger or consolidation in relation to the company;
- altering the company's share capital;
- approving a transfer by way of continuation to another jurisdiction; and
- winding up the company on a voluntary basis.

Board meeting procedures (eg, notice, quorum) are set out in the articles of association, with decisions generally made by simple majority. The articles typically also provide for action by unanimous written resolution of the directors.

### Limited Liability Companies

LLCs are typically managed by their members, or by non-member managers appointed by the members, who shall undertake and have exclusive responsibility for the management, operation and administration of the business and affairs of the LLC, subject to the terms of its LLC agreement.

### Exempted Limited Partnerships

The management and operation of an ELP is typically set out in its ELP agreement. The ELP must have at least one general partner responsible for management and operation of the ELP. Limited partners are typically passive investors and may lose limited liability if they engage in the conduct of the ELP's business (subject to certain "safe harbour" exceptions).

## 3.5 Directors', Officers' and Shareholders' Liability

The main rules regarding the liability of directors and officers are found in the Companies Act and common law, and include the following.

### Directors' Duties

As a matter of Cayman Islands law, a director of a Cayman Islands company is in the position of a fiduci-

ary with respect to the company. Accordingly, directors and officers owe the following fiduciary duties:

- to act in good faith in what the director or officer believes to be the best interests of the company as a whole;
- to exercise powers for the purposes for which those powers were conferred and not for a collateral purpose;
- directors should not improperly fetter the exercise of future discretion;
- to exercise powers fairly as between different sections of shareholders;
- to exercise independent judgement; and
- not to put themselves in a position in which there is a conflict between their duty to the company and their personal interests.

However, the company's articles of association may permit a director to vote on a matter in which they have a personal interest provided they disclose the nature of interest to the board.

Directors also owe a non-fiduciary duty of care, requiring them to act as a reasonably diligent person having both the general knowledge, skills and experience reasonably expected of a person in that role and the actual knowledge, skills and experience of the particular director.

A director (even where appointed by individual shareholders) is obliged to act in a manner that the director believes to be in the best interests of the company as a whole (even though it may not be in the best interests of the appointing shareholder).

### Breach of Duty

In the event of breach, directors may be personally liable to account to the company. Companies often indemnify directors and officers against liability incurred in carrying out their functions, except for liability resulting from actual fraud or wilful default. Articles of association may also exculpate directors from liability for negligence, default or breach of duty, except in cases of actual fraud or wilful default.

### Shareholder Liability

Subject to any express provision in the articles of association of the company to the contrary, a shareholder does not owe any fiduciary duty to the company or to any other shareholder in exercising any rights or authorities, or performing any obligations under the articles of association.

The liability of the shareholders of a company limited by shares is limited to the amount unpaid on the shares held by them.

### Piercing the Corporate Veil

The concept of "piercing the corporate veil" is recognised in the Cayman Islands only in exceptional circumstances, including, as example and without limitation, where a company's separate legal personality has been used:

- for an illegal or improper purpose; and
- for the purposes of fraud.

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

The Labour Act (As Revised) establishes minimum employment standards but does not preclude an employer from setting terms and conditions above the minimum. It also establishes remedies for unfair dismissal and entitlement to severance pay, prohibits discrimination and regulates the employees' health, safety and welfare.

The Labour Act requires employers to:

- register the workplace by written notice to the Director of Labour in the Cayman Islands;
- furnish each employee with a written statement of working conditions containing specific information referenced in **4.2 Characteristics of Employment Contracts**;
- provide reasonable training to employees during their probationary period;
- maintain prescribed employee work accounts where there are ten or more employees;

- safeguard the health, ensure the safety, contribute to the welfare and provide special protective measures for employees as specified;
- notify the Director of Labour of major industrial accidents and any occupational disease involving employees;
- not discriminate; and
- provide certain minimum employee entitlements including:
  (a) an hourly minimum wage of KYD8.75 (USD10.67);
  (b) paid vacation leave (the amount depends on length of service);
  (c) public holiday pay;
  (d) up to ten paid sick leave days annually;
  (e) paid maternity and adoption leave;
  (f) at least 24 consecutive hours of rest in each seven consecutive days;
  (g) overtime pay for hours worked in excess of a standard workday/week; and
  (h) specified advance notice of termination of employment except for certain good causes.

Redress for unfair dismissal may be sought before the Labour Tribunal. An employee is not precluded from bringing a common law action before the courts, though any Labour Tribunal compensatory award would be deducted from any court damages.

The Workmen's Compensation Act (As Revised) provides for the payment of compensation by the employer to any workman who suffers personal injury by accident arising out of and in the course of employment. This is an insurable risk and is normally covered by an employer's insurance.

### 4.2 Characteristics of Employment Contracts

While the Labour Act does not require that an employment contract be entered into between an employer and an employee, the Labour Act requires an employer to furnish each employee with a written statement of working conditions containing the following information:

- job title, a brief statement of the general responsibilities and duties of the employee and of any special requirements or conditions of the job;
- regular hours of work, together with any particular terms or conditions relating to the hours of work;
- rate of remuneration, or the method for calculating it;
- intervals that remuneration is paid;
- in the case of employees whose pay is normally stated on some basis other than hourly, the hourly equivalent save that in the case of persons remunerated wholly or in part by commission, the rate of commission should be stated;
- period of employment, if other than indefinite;
- period of probation, if any;
- employee's holiday entitlement or the method for calculating it;
- employee's entitlement to sick leave; and
- length of notice the employee is obliged to give and is entitled to receive to terminate the contract of employment.

### 4.3 Working Time

There is no minimum or maximum working time applicable to salaried employees.

### 4.4 Termination of Employment Contracts

#### Employer's Notice

Unless the contract of employment is for a fixed term, or the dismissal is for good cause, misconduct, or failure to perform duties in a satisfactory manner, every employer must give advance written notice to an employee whose employment it intends to terminate:

- For an employee still serving a probationary period, at least 24 hours' notice must be given.
- In all other cases, the period of notice must be at least equal to the interval between pay days (eg, if paid every two weeks then two weeks' notice must be given). However, notice need not exceed 30 days in any circumstances, unless the employment contract provides for longer notice.

Once appropriate notice is given, the employer may terminate employment early provided the employee is paid for the notice period. This is subject to severance pay and unfair dismissal provisions.

An employee whose employment is terminated by the employer for any reason shall receive payment

for each day of unused vacation leave accrued at the time of termination.

#### Employee's Notice

The employee must be given notice as specified in the employment contract or, if not stated, notice equal to the interval between pay days or 30 days, whichever is less. If the employee fails to give appropriate notice, the employer may:

- dismiss the employee prior to the date the employee intended to leave by the number of hours or days the notice falls short; and
- forfeit all unused vacation leave accrued by the employee during the current employment year.

### 4.5 Employee Representations

The Cayman Islands currently has no form of employee representation legislation.

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/ Employers

The Cayman Islands currently has no form of income, corporate or capital gains tax and no estate duty, inheritance tax or gift tax.

### 5.2 Taxes Applicable to Businesses

On 1 July 2021, 130 members of the OECD/G20, including the Cayman Islands, signed a historic agreement for a "two pillar solution" to address the tax challenges arising from globalisation and the digitisation of the economy ("Two Pillar Solution").

As the name suggests, the Two Pillar Solution is a two-pronged approach, aimed to bring about "a fairer distribution of profits and taxing rights among countries and jurisdictions with respect to the world's largest Multinational Enterprises (MNEs)".

Pillar One (the first prong) would provide a new right to tax large multinationals in the jurisdictions they operate in ("Pillar One"), while Pillar Two (the second prong) would introduce a new global minimum effective tax rate of 15%, ensuring that large multinationals pay a minimum level of tax in those jurisdictions ("Pillar Two").

Since July 2021, the Inclusive Framework on BEPS has been working towards the implementation of the Two Pillar Solution. While Pillar One is still being developed, Pillar Two is taking shape.

On 11 July 2023, an Outcome Statement was agreed by 138 members of the OECD/G20 Inclusive Framework (including the Cayman Islands), recognising significant progress towards the Two Pillar Solution.

Pillar Two's Outcome Statement says:

"The global minimum tax under Pillar Two establishes a floor on corporate tax competition which will ensure a MNE is subject to tax in each jurisdiction at a 15% effective minimum tax rate regardless of where it operates, thereby ensuring a level playing field. This global minimum tax framework under Pillar Two is already a reality, with over 50 jurisdictions taking steps towards implementation".

While the Cayman Islands was one of the initial signatories to the agreement for a Two Pillar Solution, Pillar Two has not yet been adopted nor has a public announcement been made regarding the introduction of a minimum effective tax rate within the Cayman Islands. The Cayman Islands has, however, been confirmed for a fifth consecutive year under the OECD's BEPS Action 5 review as having introduced economic substance requirements that meet all aspects of the standard, with no issues identified in relation to effectiveness in practice.

Please refer to **5.1 Taxes Applicable to Employees/ Employers**.

### 5.3 Available Tax Credits/Incentives

Please refer to **5.1 Taxes Applicable to Employees/ Employers**.

### 5.4 Tax Consolidation

Please refer to **5.1 Taxes Applicable to Employees/ Employers**.

### 5.5 Thin Capitalisation Rules and Other Limitations

The Cayman Islands currently has no thin capitalisation rules.

### 5.6 Transfer Pricing

The Cayman Islands currently has no transfer pricing rules.

### 5.7 Anti-Evasion Rules

Please refer to **5.1 Taxes Applicable to Employees/ Employers**. Considering the various taxes that are not applicable in the Cayman Islands, the Cayman Islands also has no anti-evasion rules.

### 5.8 Tariffs

The Cayman Islands does not have a tariff regime but Customs & Border Control (CBC) impose customs duties on certain imported goods to generate revenue. Those considering importing goods should consult CBC for current information.

## 6. Competition Law

### 6.1 Merger Control Notification

The Cayman Islands has merger control legislation for the following markets and sectors that are operating and providing services within the Cayman Islands (together, the "Utilities Markets and Sectors"):

- electricity markets, including the generation, transmission, distribution and supply of electricity;
- fuels markets;
- information and communications technology markets, including broadcasting and content services; and
- water sector, including the production, distribution, supply and treatment of water.

The Utility Regulation and Competition Office (OfReg) was established pursuant to the Utility Regulation and Competition Act (As Revised) (URCA), with the responsibility to:

- promote appropriate, effective and fair competition;
- protect the short- and long-term interests of consumers in relation to utility services and in so doing:
  (a) supervise, monitor and regulate any service provider providing any of the referenced utility services;
  (b) ensure that utility services are satisfactory and efficient and that charges imposed in respect of utility services are reasonable and reflect efficient costs of providing the services; and
  (c) publish information, reports and other documents relating to utility services (ie, keep the public informed of the different utilities service providers);
  (d) promote innovation and facilitate economic and national development.

### 6.2 Merger Control Procedure

The utilities service provider must notify OfReg prior to the merger, providing a transaction description and corporate and financial due diligence documents of the entities involved, including any beneficial owners holding 15% or more voting interest.

To approve any merger transaction, OfReg must consider whether such merger transaction would have material adverse effects on the consumer and citizens of the Cayman Islands.

If the merger transaction will not have a material adverse effect, OfReg is required under URCA to consent to the merger transaction.

If the merger transaction would have adverse effects, OfReg has the option to:

- declare the merger incompatible and deny consent;
- give consent, subject to an order that certain conditions must be satisfied to avoid or eliminate such material adverse effects; or
- give consent without issuing an order if OfReg is satisfied that the efficiencies put forward by the parties to the merger transaction outweigh any potential harm to consumers and citizens of the Cayman Islands.

### 6.3 Cartels

The Cayman Islands has anti-competitive legislation for the utilities markets and sectors. The URCA prohibits the agreements by service providers in the utilities markets and sectors that prevent, restrict or distort competition.

### 6.4 Abuse of Dominant Position

The Cayman Islands currently has no rules governing unilateral conduct or economic dependency.

## 7. Intellectual Property

### 7.1 Patents

#### Patents

*What may be registered*

The Cayman Islands' patent regime is provided by the Patents Act (2018 Revision) (the "Patents Act"). It provides for the recordal and extension ("extension") of:

- UK-registered patents; and
- UK-designated European Patent Convention (EPC) patents

to the Cayman Islands.

While the Patents Act contemplates that European Patents with Unitary Effect may also be extended, since the UK's departure from the EU, they are unlikely to be properly registrable with the Cayman Islands Intellectual Property Office (CIIPO) or enforceable at law. It is not currently possible to register new patents (subject to an examination process) in the Cayman Islands.

*Rights, subsistence duration*

The owner of an extended patent has equivalent rights and remedies to those available in the UK. Protection is effective from the time the right arose in the UK and subsists while in force in the UK, though no local infringement proceeding may be sustained for actions prior to local extension. Relevant local fees must be paid to maintain the extension.

*Extension process*

A patent owner, through their local registered agent, may apply to the Registrar of Patents to extend their patent rights to the Cayman Islands, by submitting:

- a copy of the certificate issued by the UK or other qualifying registry (such as the details of a patent's particulars as obtained from the UK Intellectual Property Office);
- the form of application as prescribed in the Patents Regulations (As Revised); and
- registration and Cayman Islands Gazette fees.

If the Registrar of Patents is satisfied that the application is in order, they will record the extension of the patent accordingly.

All owners of patents which are (or will be) recorded at the CIIPO must have a registered agent in the Cayman Islands. The CIIPO maintains a list of approved registered agents for this purpose.

*Disputes/enforcement*

Disputes related to patent infringement are heard in the Grand Court. Remedies include declarations, injunctions, damages, or an account of profits.

If a bad faith assertion of patent infringement is made, an aggrieved party may bring a claim for injunctions, equitable relief, or damages (including aggravated and/or exemplary damages). The Cayman Islands is a "costs-shifting" or "loser pays" jurisdiction, where the losing party pays the winning party's legal costs.

### 7.2 Trade Marks

The Trade Marks Act (As Revised) (the "Trade Marks Act") provides for the registration of trade marks, certification marks, and collective marks (collectively the "Marks") in the Cayman Islands.

The Trade Marks Act defines the different types of Marks as:

- "trade mark" any sign capable of being represented graphically which is capable of distinguishing goods or services of one undertaking from those of another undertaking and may consist of words,

designs, numerals, letters or the shape of goods or their packaging;
- "certification mark" a mark indicating that the goods or services in connection with which it is used are certified by the proprietor of the mark in respect of origin, materials, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics; and
- "collective mark" a mark distinguishing the goods or services of members of an association which is the proprietor of the mark from those of other undertakings.

Applications are made to the CIIPO, which maintains the Trade Marks Registry, by a local registered agent. It is no longer possible to extend UK or EU Marks to the Cayman Islands.

Subject to payment of relevant fees, mark registration subsists for ten years from the date of registration, with the ability to renew. Failure to pay the annual fee by 31 March will result in suspended rights until the fee and any penalty fee are paid.

The owner, through their registered agent, may apply to register a Mark by submitting:

- an application in the form set out in the Trade Marks Regulations;
- a copy of the requested Mark;
- the classes and description of the goods to be covered; and
- registration and Cayman Islands Gazette fees.

If the Registrar of Trade Marks is satisfied that the application is in order, they will register the Mark.

All applicants for trade marks, or owners of trade mark rights which are (or will be) recorded at the CIIPO must have a registered agent in the Cayman Islands. The CIIPO maintains a list of approved registered agents for this purpose.

An action for infringement may be brought by the proprietor (and, in certain circumstances, by licensees). Remedies include injunctions, damages, an account of profits, declarations, removal of infringing signs, delivery-up and disposal of infringing goods. Groundless threats of infringement may also give rise to a claim by the aggrieved party.

The Cayman Islands is a "costs-shifting" or "loser pays" jurisdiction; that is, the losing party typically is obliged to pay the legal costs (or a proportion of them) of the winning party.

Cayman Islands law also provides for an action in "passing off", protecting unregistered trade marks. A passing-off action requires: (i) goodwill; (ii) misrepresentation; and (iii) damage. Similar relief to trade mark infringement is available when passing off is established.

## 7.3 Industrial Designs

Designs are protected by the Design Rights Registration Act (As Revised) (the "Design Rights Act"), providing for the extension to the Cayman Islands of existing registered UK and EU design rights. The Cayman Islands does not currently have a registrar of origin, so design rights cannot be registered directly.

### Rights, Subsistence, Duration

The owner of an extended design has equivalent rights and remedies to those in the UK. Protection is effective from the time the right arose in the UK and subsists while in force there, though no local infringement proceeding may be sustained for actions prior to local extension. Relevant local fees must be paid.

In relation to EU-derived rights, caution must be exercised that such rights remain in force or otherwise enforceable in the UK post-Brexit as this will expressly limit their enforceability.

### Extension Process

A design right owner, through their local registered agent, may apply to the CIIPO for extension by paying relevant fees and demonstrating the right is currently held in, and derived from registration in, the UK or the EU.

If the Registrar of Design Rights is satisfied that the application is in order, they will record the extension of the design right accordingly.

All owners of design rights which are (or will be) recorded at the CIIPO must have a registered agent in the Cayman Islands. The CIIPO maintains a list of approved registered agents for this purpose.

### Disputes/Enforcement

Disputes relating to design rights infringement are heard in the Grand Court. Remedies include declarations, injunctions, damages, or an account of profits.

Bad faith assertions of design rights infringement may give rise to a claim for injunctions, equitable relief, or damages. The Cayman Islands is a "costs-shifting" jurisdiction.

## 7.4 Copyright

The Copyright (Cayman Islands) Order, 2015 and the Copyright (Cayman Islands) (Amendment) Order, 2016 (together, the "Copyrights Orders") extend certain provisions of the UK Copyright, Designs and Patents Act 1988 to the Cayman Islands (principally, Part I), subject to modifications.

The copyright regime provides for the protection of:

- original literary, dramatic, musical, or artistic works (LDMA):
  - (a) "literary works" expressly include tables, compilations, computer programs (and their preparatory design materials), and databases;
  - (b) "dramatic works" include works of dance or mime;
  - (c) "musical works" expressly refers to the music (excluding any words or action intended to be sung, spoken, or otherwise performed with the music);
  - (d) "artistic works" include graphic works (paintings, drawings, diagrams, maps, charts, plans, engravings, etchings, lithographs, woodcuts) photographs, sculptures, collages, works of architecture, or works of artistic craftsmanship;
- sound recordings, films, or certain broadcasts; and
- the typographical arrangement of published editions.

The duration of copyright protection varies depending on the type of work and other factors. Protection for original LDMA works is ordinarily 70 years beyond the life of the author; other works vary between 25 and 70 years. It is not currently possible or necessary to register copyright in the Cayman Islands. Copyright may be enforced by court action, generally in the Grand Court. Remedies for copyright infringement include damages, injunctions, delivery-up of the infringing work, right to seizure of infringing work or any other remedy that would be available in respect of any other property right. Criminal sanctions for copyright infringement are also available.

## 7.5 Others

Software and databases are principally protected as copyright works (see **7.4 Copyright**). In certain circumstances, the law of confidential information may provide further protection for computer code or algorithms.

Trade secrets are protected by an action for breach of confidence. An action for breach of confidence classically requires three elements:

- the information itself is properly confidential;
- the information was imparted in circumstances importing an obligation of confidence; and
- there has been an unauthorised use/misuse of that information.

When a breach of confidence action is made out, typical remedies include injunctions, damages or an account of profits, and declarations.

# 8. Data Protection

## 8.1 Applicable Regulations

The Cayman Islands Data Protection Act (As Revised) (DPA) is the main applicable legislation modelled on the UK's Data Protection Act 1998 with elements of the GDPR. Its requirements are broadly similar to the GDPR, but less onerous.

## 8.2 Geographical Scope

Like the GDPR, the DPA has extraterritorial effect, applying to any "data controller" established in the Cayman Islands and to any "data controller" on whose behalf personal data is processed in the Cayman Islands for any purpose other than mere transit.

The DPA could apply to an overseas business marketing goods or services to Cayman Islands residents, and collecting their personal data, but extraterritorial effect requires an indication that the business is actively targeting Cayman Islands residents. Data controllers must comply with the data protection principles, which are broadly similar to Article 5 of the GDPR and provide, for example, that personal data must be processed fairly, only for specified lawful purposes, and must be adequate, relevant and not excessive. Other notable requirements include responding to access/correction requests and notifying personal data breaches.

The DPA does not apply directly to data processors, but those who wish to appoint data processors are required to ensure that data processors give certain contractual assurances with respect to the personal data that they process.

### 8.3 Role and Authority of the Data Protection Agency

The relevant regulator is the Ombudsman. Breach of the DPA can lead to remedial action, penalties and criminal sanctions. The Ombudsman may order rectification, blocking, erasure, destruction or updating of inaccurate data. Monetary penalties are capped at KYD250,000.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

The Cayman Islands Ministry for Financial Services has previously issued consultation papers on proposed amendments to the ELP Act. The proposed amendments intended to introduce additional structural flexibility and efficiencies for ELPs and include:

- provisions to facilitate statutory mergers between one or more ELPs, between one or more ELPs and/or one or more exempted companies or LLCs or between one or more ELPs and one or more foreign entities provided such foreign entities have separate legal personality, consistent with the existing Cayman Islands statutory merger regimes applying to exempted companies and LLCs; and
- a provision to facilitate the conversion of an exempted company or an LLC to an ELP.

The consultation ended on 20 February 2024, and updates are expected in due course.

The Companies (Amendment) Act, 2024, came into force on 1 January 2026, introducing a number of important enhancements to the Companies Act, including streamlined capital reduction procedures (allowing solvent companies to reduce share capital by special resolution supported by a solvency statement without court approval), expanded continuation provisions for overseas bodies corporate, and new procedures for conversion and re-registration between entity types.

The Proceeds of Crime (Amendment) Bill, 2026, published on 31 March 2026, proposes to establish the Inter-Agency Coordination Committee on a statutory footing, introduce statutory definitions for self-laundering and standalone money laundering offences, and require competent authorities to submit annual performance reports.

# CHILE




## Law and Practice

**Contributed by:**
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**Garnham Abogados** is a specialised boutique firm based in Santiago, Chile, comprising six partners and an equal number of associates, supported by a dedicated professional team. This structure enables a genuinely multidisciplinary approach to taxation, corporate and M&A as well as labour and administrative law. Guided by the core principles of innovation, technical rigour and a global outlook, the firm advises on complex, often cross-border matters. Its lawyers act for a diverse client base, including domestic and foreign corporations, SMEs, high-net-worth individuals and investment funds. By preserving its agility and close partner involvement, Garnham Abogados has earned market recognition for its personalised attention and timely responses. The firm also shows a strong commitment to social responsibility through its active membership of the Pro Bono Foundation, having been recognised twice as Pro Bono Firm of the Year.

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## 1. Legal System

### 1.1 Legal System and Judicial Order

Chile's legal framework is built on a civil law tradition, where written legislation is the primary source of legal rules. The main sources of law are the Constitution, statutes enacted by Congress and regulations issued by the executive branch. Court decisions are important in practice, especially decisions of the Supreme Court and appellate courts, but they do not operate as binding precedent in the same way as in common law jurisdictions.

This gives the Chilean system a strong emphasis on formal documents, statutory requirements and procedural compliance. For foreign investors, contracts, corporate documents, permits and regulatory filings should be carefully prepared and consistently maintained. In commercial practice, however, interpretation by regulators and courts can be highly relevant, particularly in regulated sectors such as mining, energy, banking, insurance, telecoms, healthcare and environmental matters.

The country has strong public institutions and sophisticated courts. Indeed, the ordinary court system is headed by the Supreme Court, which has national jurisdiction and supervises the administration of justice. Below it are the Courts of Appeals, which operate regionally and hear appeals and certain constitutional or urgent remedies. At first instance, civil, criminal, labour, family and other courts hear disputes according to their subject matter and territorial jurisdiction.

Separately, Chile has specialised courts for areas that require technical expertise. Many business disputes begin outside the ordinary courts, through regulators, administrative agencies or arbitration. Specialised venues include:

- tax and customs courts
- environmental courts
- the Tribunal for the Defence of Free Competition
- the Public Procurement Court, and
- administrative and regulatory procedures before sector authorities.

Finally, Chile also has a Constitutional Court, which safeguards the supremacy and respect of the Constitution by reviewing the constitutionality of laws.

In practice, foreign companies should plan for a system that is formal and document driven. Early local advice is valuable when structuring transactions, obtaining permits, responding to regulators or choosing dispute resolution mechanisms.

## 2. Restrictions on Foreign Investments

### 2.1 Approval of Foreign Investments

Chile is generally open to foreign investment and does not operate a broad foreign investment screening regime. In most sectors, a foreign investor may incorporate a Chilean company, acquire shares or assets, capitalise a local subsidiary, or enter commercial arrangements without obtaining prior approval merely because the investor is foreign.

The main statute is Law No 20,848 on Foreign Direct Investment in Chile. It is not an authorisation regime. Rather, it creates a framework to promote and facilitate foreign investment and establishes InvestChile, the Foreign Investment Promotion Agency. InvestChile supports foreign investors by providing information, guidance and facilitation services, and by issuing certificates that allow qualifying investors to access certain statutory benefits. In general terms, the law covers transfers of foreign capital or assets into Chile of at least USD5 million, as well as investments that give the foreign investor at least 10% of the voting rights or an equivalent equity interest in a Chilean entity.

In practice, the InvestChile certificate is used to evidence the investor's status and access certain statutory rights and benefits. Once the investor has complied with the applicable legal procedures and tax obligations, these benefits include the right to remit abroad the invested capital and the net profits generated by the investment. They also include the right to access the formal foreign exchange market, made up of banks and authorised financial institutions, to convert the foreign currency used for the investment and to obtain the foreign currency needed to remit capital and net profits abroad.

The certificate may also be relevant to the exemption from sales and services tax, on the importation of qualifying capital goods, where the statutory requirements for that benefit are met. In addition, foreign investors have the right not to be subject to arbitrary discrimination, directly or indirectly. Generally, they are subject to the same ordinary legal regime that applies to Chilean investors. The certificate is therefore useful, but it is not normally a condition to closing the investment.

Chile also benefits from a broad network of international agreements that can be relevant to foreign investors. These include free trade agreements, double tax treaties and investment-related arrangements that may improve legal certainty, reduce tax friction and facilitate cross-border business.

There are, however, sector-specific rules. These apply because the activity is regulated, not because the investor is foreign. Foreign investors should expect ordinary permits and approvals in regulated sectors such as energy, mining, telecoms, banking, insurance, health, infrastructure, environment, utilities, etc.

### 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

Because Chile has no general pre-closing foreign investment approval process, the first step for most investors is not a filing with an investment screening authority. Instead, the practical focus is usually on corporate implementation, tax registration, banking arrangements, foreign exchange reporting, competition clearance if applicable, and sectoral permits.

Where the investor wants to obtain the InvestChile certificate under Law No 20,848, it must submit information showing that the investment has been made and describing its amount, destination and nature. InvestChile must issue the certificate within 15 days after receiving the complete application.

Foreign capital transfers are also subject to Central Bank reporting rules. Transfers connected with loans, deposits, investments or capital contributions above the relevant threshold must generally be made through the formal foreign exchange market and reported under the Central Bank's foreign exchange regulations.

Sanctions depend on the rule that has been breached. Failure to obtain an InvestChile certificate does not invalidate the investment, but it may prevent the investor from relying on the specific benefits linked to that certificate. Failure to comply with foreign exchange reporting rules may trigger consequences under Central Bank regulations.

The most serious exposure arises where a business operates in a regulated sector without the required sectoral permit, as each sector is governed by its own statutes and regulatory authorities.

### 2.3 Commitments Required From Foreign Investors

Chile does not usually require foreign investors to make special commitments as a condition for investing. The ordinary principle is that foreign investors operate under the same legal framework as Chilean investors, subject to the rules that apply to the relevant industry.

Obtaining an InvestChile certificate is a documentary and does not involve the investor negotiating commitments with the authority. This is different from foreign investment regimes in some other jurisdictions where approval may be conditioned on behavioural undertakings or national security commitments.

In practice, commitments may still arise in specific contexts. They usually come from sector regulation, concession contracts, public procurement rules, environmental approvals, tax or customs benefits, financing arrangements or agreements with public authorities. For example, a regulated energy or infrastructure project may have construction milestones, service obligations, environmental mitigation measures, reporting duties and performance guarantees.

Chile does not generally impose commitments because capital is foreign. However, a foreign-owned project may still be subject to extensive conditions because the underlying business is regulated, uses public resources, requires environmental approval, or receives a public benefit.

### 2.4 Right to Appeal

Since Chile does not have a general foreign investment screening system, there is usually no investment approval decision to appeal. Disputes are more likely to arise in relation to a specific administrative act, such as the denial of a sectoral permit, a refusal to grant a benefit, a sanction imposed by a regulator, or a disagreement over the InvestChile certificate.

If InvestChile does not issue the certificate within the statutory 15-day period after receiving a complete application, the general rules of Chilean administrative procedure apply. Depending on the circumstances, judicial review may also be available where the decision is unlawful, arbitrary or affects protected rights.

Sectoral regimes may contain their own appeal procedures and deadlines. Foreign investors should not assume that appeal rights are uniform across sectors. The correct route depends on the authority involved, the type of decision, the wording of the applicable statute and whether the decision has already been formally notified.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

#### Sociedad por Acciones(SpA)

The *sociedad por acciones* (SpA) is the most flexible and commonly used vehicle for foreign investors entering Chile. It may be formed by one or more shareholders, whether individuals or legal entities, Chilean or foreign. Shareholder liability is generally limited to the amount of their capital contributions, and Chilean law does not impose a general minimum capital requirement.

It is principally governed by Articles 424 et seq. of the Commercial Code and its by-laws, and, on a supplementary basis, the provisions applicable to *Sociedades Anónimas Cerradas* (closely held corporations).

SpAs are especially suitable for start-ups, private equity investments, holding companies and wholly owned subsidiaries. Its by-laws may provide a simple management structure, such as one or more managers, or a more formal structure, such as a board of directors. Shares are generally transferable, although the by-laws may include restrictions, rights of first refusal or other shareholder protections.

#### Sociedad de Responsabilidad Limitada (Limitada)

The *sociedad de responsabilidad limitada* (*limitada*) is a traditional private company governed mainly by Law No 3,918 and, on a supplementary basis, by the Commercial Code and Civil Code. It is a partnership-style company, commonly used for closely held businesses, professional services, family-owned companies and joint ventures where the participants want control over the admission of new partners.

A *limitada* requires at least two partners and, in general, no more than 50. Partners may be individuals or legal entities, Chilean or foreign. Their liability is usually limited to the amount of their agreed contributions, unless the by-laws provide for a higher level of responsibility. The company name must include the word *limitada*. If it is omitted, the partners may become jointly and severally liable for the company's obligations.

There is no general minimum capital requirement for a *limitada*. Contributions may be made in cash, assets or, in some cases, work or services contributed by the partners. The by-laws may also define the company's business purpose, management powers and internal control mechanisms with considerable flexibility.

In practice, a *limitada* is less flexible than SpAs when ownership changes are expected. Amendments to the by-laws and transfers of partnership interests usually require the consent of all partners. This makes the structure less efficient for venture capital or fast-growing businesses, but useful where the partners want a stable and closed ownership structure.

#### Sociedad Anónima (SA)

The *sociedad anónima* (SA) is a capital company governed mainly by Law No 18,046 and, on a supplementary basis, by the Commercial Code and Civil Code. It has its own legal personality, separate from its shareholders, and is commonly used for larger companies, regulated businesses and entities that may seek institutional financing or access to capital mar-

kets. An SA requires at least two shareholders, who may be individuals or legal entities, Chilean or foreign.

The capital of an SA is divided into shares, and shareholder liability is generally limited to the amount subscribed or paid for those shares. There is no general minimum capital requirement. Contributions may be made in cash or assets, but shares may not be issued in exchange for personal work or services.

An SA is managed by a board of directors. Closed corporations must have at least three directors, while open corporations must have at least five. Directors must be natural persons, may be Chilean or foreign, and are removable by the shareholders.

There are three main types of SA

- open corporations, whose shares are traded or registered with the Financial Market Commission;
- special corporations, which are subject to specific statutory regimes; and
- closed corporations, whose shares are not traded on a stock exchange.

For foreign investors, an SA is usually appropriate where a more formal governance framework, external financing, institutional shareholders or a future listing is expected.

## 3.2 Incorporation Process

Companies in Chile may be incorporated through the traditional notarial and registry route. This involves preparing a public deed or notarised instrument and, within 60 days after the signing, registering an extract with the relevant Commercial Registry and publishing the extract in the Official Gazette (*Diario Oficial*). The same route is used for many amendments, including changes to by-laws or corporate form.

In practice, the traditional process often takes one to three weeks, depending on the complexity of the by-laws, the availability of signatories and the timing of tax and bank procedures. Foreign shareholders usually need Chilean tax identification numbers and powers of attorney if they will not sign in Chile. Documents executed abroad normally need apostille or legalisation and, where applicable, Spanish translation.

## 3.3 Ongoing Reporting and Disclosure Obligations

### Private-Company Filings

Private Chilean companies are not subject to the same ongoing public disclosure regime as listed companies. However, key corporate changes must be formally documented and registered or published when required. This includes amendments to by-laws, changes to capital, transformations, mergers, divisions and dissolution.

### Tax, Accounting and Ownership Information

Private companies must keep accounting records, file tax returns and comply with electronic invoicing and tax reporting obligations. They are also expected to keep updated corporate books or electronic records showing shareholders, partners, capital and corporate decisions. Financial statements of purely private companies are generally not filed publicly, but they are relevant for tax, banking, financing and shareholder purposes.

Chile has increased the practical importance of ownership transparency, particularly for tax, banking, anti-money laundering and compliance checks. Companies may be asked to identify their controllers, ultimate beneficial owners and politically exposed persons when dealing with banks, notaries, public authorities, regulated counterparties or public procurement processes.

## 3.4 Management Structures

### Flexible Management in SpAs and Limitadas

The SpA offers the most flexible management structure. It may be managed by one or more managers, a board of directors or another structure set out in the by-laws. This flexibility is one reason why foreign investors often choose SpAs for subsidiaries, holding companies and joint ventures.

A *limitada* is usually managed by one or more partners or by appointed managers. The articles of association should clearly state who may bind the company, whether they may act individually or jointly, and whether their powers are limited.

### Board Structure of an SA

An SA has a more formal one-tier board structure. The board of directors manages the company, and the board appoints a general manager to handle day to day operations. Shareholders exercise their powers mainly through shareholders' meetings, including approval of major corporate matters and, in many cases, election of directors.

Chile does not use a classic two-tier board system with a separate supervisory board and management board. Instead, oversight is built into directors' duties, shareholder rights, external auditors or inspectors of accounts, and regulatory supervision for listed or regulated companies. Public companies are subject to more detailed governance rules and market supervision by the Financial Market Commission.

## 3.5 Directors', Officers' and Shareholders' Liability

### Duties of Directors and Officers

Directors and officers must act with diligence, loyalty and in the company's interest. In an SA, the legal framework is more developed and includes duties relating to conflicts of interest, related-party transactions, use of corporate information and responsibility for damage caused by breach of duty. Directors may face civil liability, regulatory sanctions and, in serious cases, criminal exposure depending on the conduct involved.

Managers of SpAs and *limitadas* are also exposed to liability if they exceed their authority, breach the by-laws, act negligently or misuse company assets. In practice, liability risk often arises in areas such as tax compliance, labour obligations, insolvency, environmental matters, consumer protection and regulated activities. Foreign investors should ensure that local managers have clear delegated powers, reporting lines and compliance controls.

### Shareholder Liability and Veil Piercing

Shareholders and partners are generally protected by limited liability. This protection is strongest when the company has a real separate existence, proper accounts, documented decisions and arm's-length dealings with related parties. Routine undercapitalisation, poor record-keeping or confusion between company and shareholder assets can create litigation and tax risk.

Chilean law recognises the possibility of disregarding the corporate form in exceptional cases, often described as piercing the corporate veil. Courts tend to apply this concept cautiously, usually where the company is used for fraud, abuse of rights, simulation, evasion of legal obligations or harm to creditors. Limited liability is reliable, but it should not be treated as a shield for sham structures or improper conduct.

# 4. Employment Law

## 4.1 Nature of Applicable Regulations

### Main Sources of Employment Law

Employment relationships in Chile are governed mainly by the Chilean Labour Code, which sets mandatory minimum standards for contracts, wages, working time, termination, collective bargaining, unions and workplace protections. The Constitution and international treaties ratified by Chile also form part of the broader framework, especially on non-discrimination, freedom of association, procedural fairness and fundamental rights at work.

Generally, Chilean labour law applies to work performed in Chile, regardless of the nationality of the employer or employee. Choice-of-law clauses or foreign contract templates will not usually override mandatory Chilean labour protections where the work is performed in Chile.

Employment agreements, internal workplace regulations, company policies and collective bargaining agreements are also relevant, but must operate within mandatory labour law. Recent reforms, including Law No 21,643, known as "*Ley Karin*", have increased the practical importance of workplace policies, prevention protocols, and investigation procedures for sexual harassment, workplace harassment,and workplace violence.

### Administrative and Judicial Practice

The Labour Directorate is central in day-to-day employment matters. It conducts inspections, may impose fines, and issues administrative opinions on

labour rules. Its criteria are not equivalent to court judgments, but they are highly influential in practice and are commonly considered when assessing compliance, preparing internal policies, or responding to inspections.

Labour courts decide disputes such as unfair dismissal, unpaid benefits, workplace harassment, anti-union practices and fundamental rights claims. Although Chile is a civil law jurisdiction, Supreme Court case law is relevant in practice, particularly through the special appeal for unification of case law, a mechanism specific to Chilean labour procedure that seeks to align conflicting interpretations by higher courts. Statutory rules, administrative criteria, and evolving court practice should therefore be monitored together when managing a workforce in Chile.

## 4.2 Characteristics of Employment Contracts

### Written Contract and Essential Terms

An employment contract may exist even if it has not been signed in writing. If a person provides services personally, under subordination and dependence, and receives remuneration, Chilean law may treat the relationship as employment regardless of the label used by the parties. In practice, direction, control, supervision, or integration into the organisation may be relevant.

The employer must normally put the contract in writing within 15 days from the employee's start date. For contracts for a specific task, work or service, or for contracts lasting less than 30 days, the period is generally five days. Failure to document the contract on time may create evidentiary problems and expose the employer to administrative fines.

The contract must include minimum terms such as identification of the parties, start date, nature and place of services, remuneration and payment terms, working time and distribution, contract duration, and any other agreed covenants. Remote work and telework are regulated under Law No 21,220. Remote, hybrid, cross-border management, or digital supervision arrangements should therefore be documented carefully.

### Duration and Types of Contracts

Employment contracts are commonly indefinite, fixed-term, or for a specific task, work or service. Indefinite contracts are the standard form for ongoing roles. Fixed-term contracts are permitted, but their duration and renewal are regulated, and misuse may cause the relationship to be treated as indefinite.

Companies should be careful when using contractor or consultancy arrangements for individuals who, in practice, work like employees. Chilean authorities and courts look at the reality of the relationship, not only the contract title. This is particularly relevant for managers, sales representatives, technical staff and remote workers.

## 4.3 Working Time

### Ordinary Working Hours

As of 26 April 2026, the ordinary weekly working limit in Chile is 42 hours for most employees subject to working time restrictions. Law No 21,561 introduced a gradual reduction of the working week, from 45 to 44 hours in 2024, to 42 hours in 2026, and finally to 40 hours in 2028.

As a general rule, ordinary working hours may not exceed ten hours per day. Employees are also entitled to a daily meal break, which is generally not treated as working time, and to weekly rest, usually on Sundays and public holidays, subject to statutory exceptions for certain industries and shift systems.

Certain employees may be excluded from working time limits, especially senior managers or employees who work without immediate supervision. However, this exception is interpreted restrictively in practice. Employers should not assume that remote work or a senior title automatically removes working time protections.

### Overtime and Practical Controls

Overtime is permitted only in limited circumstances and must generally be agreed in writing. It is capped at two hours per day and is usually paid with a 50% surcharge over the ordinary hourly wage, unless a more favourable arrangement applies. Employers must also maintain reliable attendance and working time records.

In practice, overtime exposure is a common issue in labour inspections and dismissal disputes. Companies should review timekeeping systems, remote work arrangements and managerial exemptions carefully. Electronic attendance systems must meet Labour Directorate requirements, including technical, security, reliability and data protection standards. Employers should verify that the system is authorised for use in Chile before implementing it. Certain sectors, such as interurban freight transport, are subject to special attendance and working-time control rules.

## 4.4 Termination of Employment Contracts

### Individual Termination

Chile is not an "employment at will" jurisdiction. Employers must rely on legal grounds and comply with formalities, including written notice stating the cause and supporting facts. If challenged, the employer must prove both the legal ground and the facts described in the dismissal letter.

Common grounds include mutual agreement, resignation, expiry of a fixed term, completion of the agreed work, employee misconduct, and the company's "business needs". Business needs may include economic, organisational, technological, or restructuring reasons, but must be real, consistent, and properly documented.

Where dismissal is based on business needs, the employee is generally entitled to severance for years of service, subject to statutory caps, plus payment in lieu of prior notice if notice is not given. Accrued salary, unused holidays, and other pending amounts must also be paid. Employers should verify that social security contributions are fully paid, as unpaid contributions may trigger liability under Chile's dismissal nullity rules.

If a court finds the dismissal unjustified, severance may be increased by statutory surcharges. Poor documentation, inconsistencies in the dismissal letter, or weak evidence can materially increase termination costs and risks.

### Collective Redundancies

Chile does not have a general statutory collective redundancy procedure comparable to other jurisdictions. There is no universal requirement to file a collective redundancy plan or obtain prior approval simply because several employees are dismissed.

However, collective dismissals are not informal. Each employee must be dismissed under an individual legal ground, usually business needs, and must comply with notice, severance, documentation, and payment requirements. Employers should also identify protected employees, such as union representatives, pregnant employees, or employees on protected leave.

Where unions are present, consultation may reduce conflict and manage anti-union or fundamental rights risks. In practice, planning, evidence of the business rationale, consistent selection criteria, and careful communication are critical.

## 4.5 Employee Representations

### Unions and Collective Bargaining

Employee representation in Chile is mainly organised through trade unions. Union membership is voluntary, but unions have important statutory rights once formed, including representation of members, collective bargaining, information rights, and protection for certain union leaders.

Collective bargaining is regulated by the Labour Code and may result in a collective bargaining agreement covering wages, bonuses, benefits, working conditions and other matters. For employers, it is a structured process with formal timelines, negotiation stages, and rules on strikes and employer conduct.

### Health and Safety Committees

Chile does not impose a general works council system for all employers. However, under Law No 16,744, workplaces or companies with more than 25 employees must generally have a joint health and safety committee, known as a c *omité paritario de higiene y aeguridad*. This committee includes employer and employee representatives and plays a practical role in accident prevention, workplace risk management, and health and safety compliance.

### Information, Consultation, and Workplace Practice

Employers may also have information and consultation duties in specific contexts, particularly in collec-

tive bargaining, internal workplace rules, health and safety, and dealings with unions. In practice, the level of employee representation depends on the workforce profile, union presence, sector, and company history. Companies should assess representation requirements early, maintain consistent communication, and train local management on lawful interaction with employees, unions and mandatory committees.

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/ Employers

#### Employee Taxation

Individuals domiciled or resident in Chile are generally taxed on worldwide income, while non-residents are taxed only on Chilean-source income. Residence is usually triggered by spending more than 183 days in Chile within any twelve-month period. Domicile turns on intention and factual links such as family, business or economic interests.

Foreigners who become resident or domiciled in Chile are taxed only on Chilean-source income for their first three years, a period the Chilean Tax Authority (SII) may extend under special circumstances upon request. This matters for expatriate executives and is worth weighing before relocation packages are agreed.

Employment income is subject to payroll tax (*impuesto único de segunda categoría*). It is a progressive monthly tax on salaries and similar employment income, rising through brackets from an exempt band to a top rate of 40%, and is charged after mandatory social security and health contributions are deducted. The employer withholds and remits it.

#### Social Security and Employer Costs

Employees make mandatory social security contributions, which the employer withholds. These mainly cover pension, health and unemployment insurance, up to statutory caps.

Employers also bear their own mandatory costs, including unemployment insurance, work-accident and occupational-disease cover, and disability and survivorship insurance. These are not income taxes, but they add materially to hiring costs in Chile.

### 5.2 Taxes Applicable to Businesses

#### Corporate Taxation and Residence

A Chilean company is resident and generally taxed on its worldwide income; a foreign company is taxed only on Chilean-source income unless it operates through a permanent establishment or other taxable presence in Chile. Such income includes local assets or activities, shares or rights in Chilean entities, certain royalties and services connected with Chile and, in some cases, indirect transfers of foreign entities whose value derives substantially from Chilean assets.

Business profits are subject to corporate income tax (i *mpuesto de primera categoría*). Under the general regime that applies to most medium and large companies, including most foreign corporate investors, the rate is 27%. It is charged annually on net taxable income — broadly, accrued income less costs and expenses connected with the business, reasonable and properly supported.

Chile has simplified regimes for small and medium enterprises (p *equeñas y medianas empresas*, PYMEs) and presumptive income regimes for specific small-scale activities. These are generally not designed for foreign corporate investors and are often unavailable to holding companies or to businesses earning a relevant part of their income passively.

#### Profit Distributions and Withholding Tax

Dividends and profit remittances paid to non-residents are generally subject to additional tax or withholding tax (*impuesto adicional*) at 35%, subject to the integration rules and any applicable treaty. Profits passing between Chilean companies are generally not taxed again at corporate level, though tax attributes must be tracked for later distribution to individuals or foreign owners.

For example, a Chilean subsidiary earning USD100 of profit pays USD27 of corporate income tax. On distribution to a foreign shareholder, additional tax is charged at 35% on the gross. If the shareholder is tax resident of a country with which Chile has a double taxation treaty, the USD27 credit is generally available

in full, leaving USD8 to pay and a combined burden of 35%; regarding countries without a double taxation treaty, only 65% of the credit applies under the semi-integrated regime, raising the total to maximum of 44.45%.

Interest is generally subject to 35% additional tax, though a 4% rate can apply to interest paid to qualifying foreign banks or financial institutions. Royalties, technical services, software and other cross-border payments may attract different domestic rates, often modified by treaties.

### VAT, Services and Other Taxes

Chile applies value added tax (VAT or IVA) at 19%. It generally applies to sales of goods, some sales of real estate, services provided or used in Chile, and imports. Foreign investors should watch services supplied from abroad. Payments to foreign consulting firms supporting a local project may be subject to additional tax. Where an exemption applies, such payment will normally be subject to VAT instead. Treaty relief can reduce withholding tax, but does not reach VAT, if applicable.

VAT cash flow matters in capital-intensive projects. Imports are generally subject to VAT, but qualifying foreign investment projects can apply to the Ministry of Finance for an exemption on imported capital goods. Exporters are generally exempt from VAT on exports and may recover related input VAT, subject to formal procedures.

Other business taxes can include municipal business licences, stamp tax on loans and credit documents, real estate tax, environmental taxes, a mining royalty or specific mining tax and customs duties. Chile has not enacted the OECD's Pillar Two global minimum tax (the GloBE rules) or an equivalent domestic top-up tax. Even so, multinational groups operating in Chile should take specialist advice, as they may be affected indirectly where the ultimate parent's jurisdiction has adopted Pillar Two.

## 5.3 Available Tax Credits/Incentives

Chile's tax incentives are narrowly targeted and form-heavy, usually requiring advance certification, supporting evidence, specific filings and strict deadlines. An incentive does not apply automatically simply because the activity is economically worthwhile.

For foreign corporate investors, the most useful incentives often relate to VAT and investment cash flow. Exporters may recover input VAT linked to their export operations, and capital-intensive projects may seek VAT relief on imported capital goods, subject to Ministry of Finance approval and the applicable requirements.

Chile also offers an R&D tax incentive: eligible taxpayers can credit part of certified research and development spending against corporate income tax, provided a competent public agency certifies the project and the statutory requirements are met. It can suit technology, mining, energy and life-sciences investors carrying out genuine R&D in Chile.

Further benefits exist for specific industries, regions or activities, including export mechanisms and customs or free-zone rules, each reviewed case by case as the SII scrutinises substance, documentation and compliance.

## 5.4 Tax Consolidation

Chile has no general tax consolidation or fiscal unity regime. Each Chilean company is a separate taxpayer that files its own returns, and a Chilean parent generally cannot offset one subsidiary's profits against another's tax losses.

Tax losses can generally be carried forward by the company that generated them, subject to limits and anti-avoidance rules. Reorganisations designed mainly to transfer or monetise losses may be challenged. For groups, this makes the initial choice of vehicles, financing and structure especially important.

## 5.5 Thin Capitalisation Rules and Other Limitations

Chile's thin capitalisation rules discourage excessive debt financing, especially where cross-border lending benefits from reduced withholding rates. They rest on an excess-indebtedness test usually described as a three-to-one debt-to-equity ratio.

As a general rule, they apply whenever a Chilean borrower carries significant foreign related-party debt, including guarantees, back-to-back financing or other arrangements that may count as related under the Income Tax Law. If that debt exceeds the permitted ratio, interest and similar payments linked to the excess may face an extra tax charge.

Thin capitalisation is only one limit, as deductions generally must relate to the business, be incurred to earn income, reasonable, and be properly documented and not barred by special rules.

### 5.6 Transfer Pricing

Chile has a developed transfer pricing regime broadly aligned with the OECD arm's-length principle. It covers dealings between Chilean taxpayers and foreign related parties, including goods, services, loans, guarantees, royalties, cost-sharing, restructurings and dealings with entities in low-tax jurisdictions.

Taxpayers must show that related-party terms match what independent parties would have agreed in comparable circumstances. Depending on size and group profile, reporting may include annual sworn statements, local and master files and country-by-country reporting.

The SII can adjust prices, margins or deductions where it considers the arm's-length standard has not been met, so transfer pricing should be built into the operating model from the outset – particularly for management services, technical assistance, financing, distribution margins and intellectual property.

### 5.7 Anti-Evasion Rules

Chile has both a General Anti-Avoidance Rule and several specific ones. The general rule, in the tax code, lets the tax authority challenge abusive or simulated arrangements that reduce, avoid or defer tax contrary to the purpose of the law. Taxpayers may choose lawful, efficient structures, but their arrangements should have commercial substance and a defensible rationale.

Specific rules include controlled foreign company rules for certain passive income, indirect-transfer rules for Chilean assets, transfer pricing adjustments, SII valuation powers, thin capitalisation and the disallowed expenses regime (*régimen de gastos rechazados*), under which some non-deductible expenses trigger extra tax, especially where they benefit owners or related parties.

Foreign investors should also weigh beneficial ownership, treaty-shopping, substance, documentation and local representation. Any foreign person or entity that invests, holds assets or carries out taxable activities in Chile generally needs a Chilean tax identification number (*Rol Único Tributario*, RUT) and, often, a representative resident in Chile.

### 5.8 Tariffs

Chile has an open, trade-oriented customs regime. As a general rule, imports carry a 6% ad valorem customs duty on the cost, insurance and freight (CIF) value of the goods. But Chile's extensive network of free trade agreements means many goods enter duty-free or at reduced rates where origin requirements and documentation are met, so the effective average tariff is often well below the headline rate.

Imports are also generally subject to 19% VAT on the CIF value plus any customs duties. A VAT-registered importer carrying out taxable activities can usually recover this as input VAT, though the timing creates a cash-flow cost – so capital-goods exemptions and customs planning may matter at the investment stage.

Chile does not generally use tariffs as a broad protectionist tool for particular domestic sectors. Special rules, surcharges or restrictions can apply to used, regulated, agricultural, hazardous, pharmaceutical and food products, and to items under technical, sanitary or environmental controls. Customs treatment should be checked before shipment, especially where timely import of machinery or specialised equipment is critical.

## 6. Competition Law

### 6.1 Merger Control Notification

Chile has a mandatory merger control regime under Decree Law No 211 of 1973 (DL 211), which is the main statute governing competition law. Certain merg-

ers, acquisitions and joint ventures must be notified to the *Fiscalía Nacional Económica* (FNE) before they are completed.

A transaction must be notified when two cumulative conditions are met. First, the transaction must qualify as a concentration operation under DL 211. This includes mergers, acquisitions of rights that allow decisive influence over another business, acquisitions of assets or contracts that transfer a business activity, and the creation of an independent and permanent joint venture.

Second, the transaction must meet the Chilean sales thresholds set by the FNE. Notification is required where:

- the combined sales in Chile of the parties reached at least UF (*Unidad de Fomento*, an inflation-indexed Chilean unit of account) 2.5 million (USD107.6 million) in the financial year before notification; and
- at least two of the parties each generated sales in Chile of at least UF 450,000 (USD19.4 million) in that same period.

There is no market share threshold for mandatory notification. However, market shares are important in the FNE's substantive review. Foreign-to-foreign transactions may also be caught if they produce effects in Chile and the sales thresholds are met.

Transactions below the thresholds may be notified voluntarily. This can be useful where the parties expect competition concerns or want greater certainty before closing.

## 6.2 Merger Control Procedure

Merger filings are submitted to the FNE. Chile allows ordinary and, in certain cases, simplified notifications. The applicable route depends on the complexity of the transaction and whether the parties overlap in their activities in Chile.

In practice, preparing the filing can take several weeks, especially where the parties need to collect Chile-specific sales data, market information, internal documents and details of competitors, customers and suppliers.

Once the FNE accepts the filing as complete, the review proceeds in two phases.

- Phase I: the FNE has 30 business days to approve the transaction unconditionally, approve it subject to remedies offered by the parties, or open an extended investigation.
- Phase II: if the FNE considers that the transaction may substantially reduce competition, it may extend the review for a maximum of 90 additional business days.

At the end of Phase II, the FNE may approve the transaction, approve it subject to remedies or prohibit it. A prohibition decision may be challenged before the Competition Tribunal (*Tribunal de Defensa de la Libre Competencia*, TDLC).

Chile's regime is suspensory. The parties cannot close a notified transaction until the clearance decision is final. Closing while FNE approval is still pending is treated as gun jumping (implementation of a transaction prior to clearance).

## 6.3 Cartels

### Anti-Competitive Agreements and Practices

DL 211 prohibits any act, agreement or practice that prevents, restricts or hinders competition, or tends to produce those effects. This broad rule applies to formal contracts, informal understandings and coordinated conduct between competitors.

Cartels are treated as especially serious infringements. Chilean law specifically targets hard-core cartel conduct, including:

- price fixing;
- output or production restrictions;
- market, customer or quota allocation; and
- bid rigging in tender processes.

For these hard-core cartels, the unlawful nature of the conduct does not depend on proving market power, intent or actual anti-competitive effects. Other agreements or concerted practices may also be unlaw-

ful where they give competitors market power and involve commercial conditions or exclusion of actual or potential competitors.

### Enforcement and Penalties

The FNE investigates cartel conduct and may bring cases before the TDLC, representing the general public interest. The FNE has broad investigative powers and may also enter out-of-court settlements where appropriate to protect competition.

Cartel conduct can lead to fines, orders to amend or terminate unlawful agreements, and restrictions on contracting with the state or obtaining state concessions. Individuals may also face criminal penalties. Under the economic crime's framework, cartel conduct is classified as a serious economic offence and may lead to imprisonment and disqualification from holding managerial positions.

Chile has a leniency programme, known as *delación-compensada*, which may exempt or reduce sanctions for parties that provide valuable information to the FNE.

## 6.4 Abuse of Dominant Position

DL 211 prohibits the abusive exploitation of a dominant position by one or more economic agents. The law does not define dominance through a fixed market share threshold. Instead, dominance is assessed case by case, considering the structure of the market, barriers to entry, alternatives available to customers, buyer power and the company's ability to behave independently of competitors.

The law gives examples of abusive conduct, including fixing purchase or sale prices, tying the sale of one product to another, allocating market areas or quotas, and imposing similar abusive practices. In practice, the analysis focuses on whether the conduct harms the competitive process, not merely whether it disadvantages a particular competitor or contractual counterparty.

### Related Exclusionary Conduct

Chile also sanctions predatory practices and certain forms of unfair competition where they are carried out with the purpose of reaching, maintaining or increasing a dominant position. Predatory pricing typically involves selling below a relevant cost benchmark to exclude competitors or deter entry, with the expectation of strengthening market power later.

Unfair competition is also regulated separately by Law No 20,169 on Unfair Competition. Examples may include misleading advertising or improper use of another company's reputation. These acts become competition-law concerns when they are linked to the creation or reinforcement of market dominance.

### Territorial Reach and Economic Dependency

Chile does not have a broad standalone economic dependency regime. However, dependency may be relevant where a dominant supplier, customer or platform uses its position to exclude competitors or distort competition in a Chilean market.

The conduct does not need to occur physically in Chile. Chilean authorities may examine foreign conduct if it produces, or tends to produce, anti-competitive effects in Chile. Companies with strong market positions should therefore document the business justification for exclusivity arrangements, refusals to supply, rebates, tying, pricing policies and distribution restrictions.

# 7. Intellectual Property

## 7.1 Patents

Patents in Chile protect technical inventions that are new, involve an inventive step, and are capable of industrial application. Protection may cover products, processes, machines, chemical compounds and other technical solutions, but not abstract ideas, discoveries, business methods, or medical treatment methods as such.

The main statute is Law No. 19,039 on Industrial Property. A patent lasts 20 years from the filing date and is not renewable. In limited cases, additional protection may be available where there has been an unjustified administrative delay.

Applications are filed with the *Instituto Nacional de Propiedad Industrial* (INAPI), Chile's National Institute

of Industrial Property. The process includes formal examination, publication, possible opposition, technical examination by an appointed expert, responses to objections, and final grant or rejection. Patent prosecution often takes several years, so foreign applicants should file early and coordinate Chilean filings with their international patent strategy, including PCT national phase deadlines.

Patent enforcement is mainly through civil proceedings, with remedies including injunctions, damages, seizure, removal, or destruction of infringing goods and other court-ordered measures. Patent cases are technical and usually require expert evidence. In practice, strong claim drafting, good prosecution records, and early evidence-gathering are critical to effective enforcement.

## 7.2 Trade Marks

Trade marks in Chile protect signs that distinguish goods or services in the market. They may include words, names, logos, labels, slogans, letters, numbers, images, sounds, and other distinctive signs. Chile follows a registration-based system, so foreign businesses should not assume that overseas trade mark rights are enough.

Trade mark registrations last ten years from registration and may be renewed indefinitely for further ten-year periods. Chile also recognises cancellation for non-use, so businesses should keep evidence of real market use, such as invoices, packaging, advertising, distributor materials and Chile-facing online activity.

Applications are filed with the INAPI using the Nice Classification. The process involves filing, formal review, publication, a possible opposition period, substantive examination, and grant or refusal. Straightforward applications may be completed within several months, but oppositions or objections can extend the process significantly.

Enforcement may be civil or criminal, especially in counterfeiting cases. Remedies include injunctions, damages, seizure, destruction of counterfeit goods and orders to stop infringing use. Trade mark disputes are common in Chile, particularly involving former distributors, imitation packaging, online infringement and imported counterfeit goods. Early clearance, registration and market monitoring are therefore essential.

## 7.3 Industrial Designs

Industrial design protection covers the external appearance of a product, such as its shape, configuration, ornamentation, pattern, lines, colours, or visual presentation. It protects how a product looks, not how it works. Functional innovations should be considered under patent or utility model protection instead.

Industrial designs are protected under Law No. 19,039 and generally last 15 years from the filing date. Because novelty is important, businesses should file before publicly disclosing the design through websites, catalogues, trade fairs, product launches, or distributor presentations. Premature disclosure can create avoidable risk.

Applications are filed with the INAPI and must include suitable representations of the design. The process typically involves filing, formal review, publication, possible opposition, examination, and grant or rejection. The quality and clarity of the images filed are important, because they define the practical scope of protection.

Industrial designs are enforced through civil actions and, in some cases, criminal procedures. Remedies may include injunctions, damages, seizure, removal, or destruction of infringing products. In practice, design rights are most useful where the registered design clearly captures the commercial appearance of the product and where infringement can be shown through a close visual comparison. They are often used together with trade mark and unfair competition claims.

## 7.4 Copyright

Copyright in Chile protects original literary, artistic and scientific works, including books, music, photographs, audiovisual works, drawings, architecture, software and some databases. It protects the expression of a work, not the underlying ideas, facts, methods, or concepts.

Copyright is governed mainly by Law No. 17,336 on Intellectual Property. Protection arises automati-

cally when the work is created, so registration is not required for the right to exist. As a rule, copyright lasts for the life of the author plus 70 years, although specific rules may apply to certain categories of works.

Registration is available and is often useful as evidence of authorship, ownership, date, and content of the work. For companies, the key practical issue is ownership. Works created by employees, contractors, designers, software developers or advertising agencies should be covered by clear written assignment or licence provisions.

Copyright may be enforced through civil and criminal actions. Remedies include injunctions, damages, seizure or removal of infringing copies, destruction of unlawful copies, and criminal penalties in serious cases. In practice, many disputes arise from unclear ownership rather than deliberate piracy, so good contracts and record-keeping are as important as enforcement.

### 7.5 Others

Software is protected mainly by copyright in Chile. Source code, object code and related documentation may be protected, but the underlying idea, function, algorithm, or business method is not protected merely because it appears in software. Software-related inventions may be patentable only where they meet the usual technical requirements.

Databases may be protected by copyright where their selection or arrangement is original. Chile does not provide a broad standalone database right equivalent to the EU-style sui generis database right. As a result, valuable datasets are commonly protected through contracts, access controls, confidentiality obligations, technological measures and, where applicable, trade secret rules.

Trade secrets protect confidential technical or business information that has commercial value because it is secret and has been subject to reasonable measures to keep it confidential. No registration is required. Examples include formulas, source code, customer lists, pricing models, business plans and manufacturing processes.

In practice, trade secret protection depends on discipline. NDAs, employment and contractor clauses, restricted access, cybersecurity controls, internal classification and exit procedures are all important. Once information becomes public, protection may be lost.

Foreign companies should also consider whether to register.cl domain names, obtain plant variety rights where relevant, and make use of customs measures for counterfeit goods. A practical Chilean IP strategy should combine early registration, clear ownership contracts, confidentiality controls and active market monitoring.

## 8. Data Protection

### 8.1 Applicable Regulations

#### Current Legal Framework

Data protection in Chile is recognised as part of the constitutional right to privacy and protection of personal data. The main statute currently in force is Law No 19,628 on the Protection of Private Life (commonly referred to as the Data Protection Law or LPD), which regulates the processing of personal data by both private entities and public bodies.

Under the current LPD, the general rule is that personal data may be processed when the data subject has consented or when the processing is authorised by law. The law also grants individuals basic rights to access, correct, cancel or block the use of their data, and it contains specific rules for economic, financial, banking and commercial information, which are particularly relevant for credit reporting and consumer finance.

#### Reform Under Law No 21,719

A major reform which substantially amends the LPD and creates a new institutional framework for data protection in Chile will enter into force on 1 December 2026, giving companies a transition period to adapt their policies, contracts, security measures and internal governance.

Law No 21,719 brings Chile closer to international standards, especially the European Union's General

Data Protection Regulation (GDPR). It strengthens data subject rights, introduces clearer principles for processing, regulates international transfers in more detail, creates obligations relating to security incidents and impact assessments, and establishes a dedicated supervisory authority. For foreign companies, the practical message is that Chile is moving from a relatively light-touch privacy regime to a more active compliance model.

In practice, businesses operating in Chile should use the transition period to map the personal data they collect, review consent and privacy notices, assess vendor and processor arrangements, and prepare procedures for handling data subject requests and security breaches. Companies that already comply with GDPR-type standards will be better positioned, but local review will still be needed because Chilean rules will have their own scope, procedures and enforcement mechanisms.

## 8.2 Geographical Scope

### Application to Foreign Companies

Chile's current LPD is mainly framed around processing activities carried out in Chile and databases or operations connected with the country. In practice, a foreign company will usually need to consider Chilean data protection rules if it collects personal data from individuals located in Chile, contracts with Chilean customers, operates through a Chilean subsidiary or branch, or uses Chilean service providers to process personal data.

The issue is becoming more important because digital business models often allow foreign companies to target Chilean consumers without having a strong physical presence in the country. E-commerce platforms, fintech businesses, software providers, online advertising networks and health or education platforms may all collect personal data from Chilean users. Even where enforcement has historically been limited, contractual, consumer protection and reputational risks can arise if privacy practices are not aligned with Chilean expectations.

### International Transfers and Practical Compliance

Cross-border transfers are common in Chile, especially where multinational groups use regional or global systems for human resources, customer management, cloud hosting, analytics or cybersecurity. Companies should identify where Chilean personal data is stored, who can access it and whether third-party processors are located abroad.

Law No 21,719 will make this analysis more important by introducing a more developed framework for international data transfers and by empowering the new authority to oversee those transfers. Foreign businesses targeting Chile should therefore prepare Chile-specific privacy notices, review intra-group transfer mechanisms and ensure that contracts with processors clearly address confidentiality, security, permitted use of data and incident reporting.

## 8.3 Role and Authority of the Data Protection Agency

### Current Enforcement Position

Chile does not currently have a single public data protection authority with broad supervisory and sanctioning powers comparable to European data protection regulators. Enforcement under the current LPD has therefore been fragmented and, in many cases, dependent on court actions brought by affected individuals.

Some public bodies have limited powers that can touch on privacy issues. The Council for Transparency has a role in relation to public-sector transparency and access to information, including the protection of personal data held by public bodies. The National Consumer Service may also become involved where data practices affect consumers, for example in digital services, marketing, financial products or unfair contract terms.

### New Agency From 2026

Law No 21,719 creates the Data Protection Agency as a specialised public authority responsible for protecting personal data rights and supervising compliance with the amended LPD. The Agency is designed as a technical, decentralised and autonomous public body, linked to the President through the Ministry of Economy, Development and Tourism.

Once the reform enters into force on 1 December 2026, the Agency will become the central regulator for

data protection in Chile. Its functions will include oversight, issuing guidance and instructions, handling certain claims, maintaining compliance-related records, supervising international transfers and imposing sanctions for infringements.

This will be a significant practical change for companies. Businesses should expect more formal regulatory expectations, greater scrutiny of privacy governance and a stronger need to document compliance decisions. Multinational companies should also anticipate that Chilean privacy compliance will become a board-level and operational risk issue, rather than a purely contractual or policy matter.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

Reforms are under way across several of the fields covered above. Some already enacted and being phased in, others still before Congress. The current administration has made a pro-investment, growth-focused agenda its priority, and this shapes much of what follows. The items below set out the direction of travel rather than settled law, and the current position should be confirmed before any decision is taken.

#### Tax

The most significant proposal is the tax bill introduced in March 2026 under the government's National Reconstruction and Economic Development plan (*Plan de Reconstrucción Nacional y Desarrollo Económico*). It would cut corporate income tax gradually from 27% to 23%, move back towards a fully integrated system – so owners could credit the full corporate tax against their final tax – and remove tax on certain capital gains from financial investments. Smaller companies would keep the reduced transitional rate already in force under separate legislation. The bill is at an early stage and may change or be rejected.

#### Investment permits and the Environment

Reducing "*permisología*" – the delay and complexity of obtaining permits – is a central policy theme. The Framework Law on Sectoral Authorisations (*Ley Marco de Autorizaciones Sectoriales*), enacted in 2025, is expected to shorten authorisation timelines (by some estimates between 30% and 70%), and further measures are under discussion to streamline the Environmental Impact Assessment System (*Sistema de Evaluación de Impacto Ambiental*, SEIA), speed up sectoral permits and maritime concessions, and compensate investors where an approval is later revoked by the courts. A reform of the Environment Superintendence is also progressing. Together these aim to unlock a large pipeline of stalled mining, energy and green-hydrogen projects.

#### Employment and Pensions

Two reforms already in force continue to raise the cost of employment. The 2025 pension reform (Law No. 21,735) adds a new employer contribution that rises in steps to 7% of pay, on top of the existing 1.5% disability and survivors' insurance, reaching its full rate around 2033. Separately, the working week is being cut in stages from 45 to 40 hours through 2028. Both should be built into workforce budgeting.

#### Data Protection

Chile's new Personal Data Protection Law (Law No. 21,719) takes full effect on 1 December 2026. Closely modelled on the EU's GDPR, it creates an independent Data Protection Agency, strengthens individual rights, requires breach notification and introduces fines of up to roughly 4% of annual turnover. Any business handling employee, customer or supplier data in Chile should begin compliance work well before that date.

#### Other Developments and Outlook

Investors should also watch the expanding criminal liability of companies, financial-technology (fintech) regulation and various sector-specific rules. Given the tight fiscal position and a divided Congress, the timing and final shape of these reforms remain uncertain, so up-to-date local advice is advisable before any material investment.

# Trends and Developments

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**Garnham Abogados** is a specialised boutique firm based in Santiago, Chile, comprising six partners and an equal number of associates, supported by a dedicated professional team. This structure enables a genuinely multidisciplinary approach to taxation, corporate and M&A as well as labour and administrative law. Guided by the core principles of innovation, technical rigour and a global outlook, the firm advises on complex, often cross-border matters. Its lawyers act for a diverse client base, including domestic and foreign corporations, SMEs, high-net-worth individuals and investment funds. By preserving its agility and close partner involvement, Garnham Abogados has earned market recognition for its personalised attention and timely responses. The firm also shows a strong commitment to social responsibility through its active membership of the Pro Bono Foundation, having been recognised twice as Pro Bono Firm of the Year.

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## The National Reconstruction and Economic and Social Development Bill: A Policy Reset with Regional Significance

Chile is in the middle of its most ambitious economic reset in a decade. The National Reconstruction and Economic and Social Development Bill – tabled by President José Antonio Kast in April 2026 and quickly dubbed the "mega-reform" – gathers more than 40 measures across tax, housing, employment, environmental permitting and institutional reform into a single legislative vehicle. On 20 May the Chamber of Deputies passed it in general (principle stage) and in particular (article-by-article stage). In the Senate, a more fragmented chamber means the debate is likely to run well past the government's original June timetable, with several provisions still under discussion.

For anyone weighing up Chile from abroad, it is not only the tax cuts alone that have grabbed the headlines. Rather, it is the attempt to move several levers at the same time: corporate tax, capital mobility, housing demand, labour costs, permitting timelines and fiscal discipline. And this is not a rescue mission. Chile drew net foreign direct investment of around USD14.5 billion in 2025, up roughly a tenth on the year, with inflows averaging some USD16 billion a year over the past five. The bill is aimed not at an investment drought but at the structural frictions that have stopped solid fundamentals from converting into faster growth.

### *The macro backdrop: why now*

Growth has disappointed since the mid-2010s. Having run comfortably above 4% a year in the previous decade, it has since settled into the low single digits, and the OECD's December 2025 Outlook trimmed its 2026 forecast for Chile to 2.2%, even as it marked up its projection for fixed capital formation. The diagnosis is by now familiar: weak productivity, and too much friction in the path of investment.

The government has been careful to attach a fiscal counterweight to the giveaways. Alongside the bill sit spending cuts of roughly 1.2% of GDP – a 3% across-the-board trim to ministerial budgets plus around USD1 billion in cross-ministry savings – and ministers have leaned hard on the message that consolidation is part of the growth plan rather than an afterthought. The Autonomous Fiscal Council is likely to be quoted often during the Senate stage, while the credibility of the whole package will hinge on whether those savings actually materialise.

### *Why the bill has investors' attention*

None of this happens in a vacuum, and Chile starts from a strong base, underpinned by OECD membership, a rule-of-law record that sits at or near the top of the region, investment treaties with 37 countries, CPTPP membership since February 2023 and vast copper and lithium reserves that all keep international capital interested. The bill's task is to turn those advantages into something investors feel day-to-day: lower rates, clearer rules and less time lost to bureaucracy.

Chile still carries one of the steadier institutional reputations in Latin America. But over the last few years, investors have had to factor in slower growth, glacial permitting and a recurring, occasionally anxious, national conversation about whether the tax system was about to change yet again. The bill tackles these worries head-on, pairing a lighter tax burden with measures meant to reduce administrative bottlenecks and make the rules more predictable.

It is aimed less at one-off deals than at groups thinking about Chile as a base for regional operations. When a capital allocation committee compares jurisdictions, the headline rate is only the start of the conversation. They also want to know how quickly a permit can be secured, how likely the rules are to hold, whether headcount can grow at a cost they can forecast, and whether local capital and property markets offer a clean way out later. This bill seeks to address each of these concerns at once.

It also helps to remember that the measures do not land evenly. Developers and housebuilders are drawn to the VAT relief and the demand-side incentives; labour-heavy operations look hardest at the employment credit; mining and energy groups care most about tax stability and permitting; and financial investors tend to fix on capital-gains treatment and the windows to regularise offshore assets. The same bill may be read very differently depending on where you sit.

### *The bill's architecture: five pillars*

It helps to read the bill as five pillars, each touching a different part of the investment decision.

- Reconstruction – roughly USD400 million flows to the regions worst affected by the 2024-2026 wildfires, chiefly Valparaíso, Biobío and Ñuble. This is mostly a domestic fiscal measure, but it supplies the political urgency and cross-party support that help carry the wider package.
- Construction and housing – a temporary VAT exemption on first sales of new homes, adjustments to the DFL 2 incentive regime (a tax incentive program for economic housing) and a new simplified rental income tax.
- Formal employment – a tax credit of up to 15% of gross wages for lower-paid workers, usable against several tax liabilities.
- Investment-focused tax changes – the headline corporate rate cut, a return to full integration, capital-gains relief and a new 25-year stability statute.
- Regulatory streamlining – reform of the environmental permitting process, building on the Framework Law on Sectoral Authorisations enacted in 2025.

The breadth is intentional. Tax, permits and labour reforms rarely move together, their combined effect is likely to matter more than any single measure in isolation.

### *Tax competitiveness: rate, integration and capital gains*

Tax is the densest part of the bill. The corporate rate – the *impuesto de primera categoría* – would fall from 27% to 23% in a phased reduction: 25.5% for 2027, 24% for 2028 and 23% from 2029, for large companies and SMEs alike. This brings Chile closer to its regional peers and, over time, closer to the average corporate burden across OECD economies.

The less prominent measures within the chapter may matter more. For foreign investors, the rate cut is the obvious draw, but full integration may matter just as much. Chilean tax has long been technically excellent and quietly exhausting to model; the semi-integrated regime introduced in the last decade made the effective burden on distributed profits genuinely hard to explain to a head office, especially if they are within a country with which Chile does not have a double taxation treaty in force. A return to full integration removes some of that friction, which makes pricing a deal – and comparing Chile with Peru, Mexico or Colombia – a far more straightforward exercise.

A third measure carries outsized symbolic weight: scrapping the 10% tax on capital gains from listed securities with stock-exchange presence, restoring their non-taxable treatment where they qualify. For portfolio investors, funds eyeing listed exits and anyone building equity positions locally, this lifts after-tax returns and should help deepen a market that has long been thinner than the economy warrants.

A word of balance is in order. The same bill hands the tax authority sharper teeth, with broader powers to verify information and audit. The compliance climate therefore tightens even as the headline burden eases – an entirely familiar pairing, and a reason to put tax governance in order before, not after, taking up the new reliefs.

### *The 25-year stability statute: echoes of DL 600*

The provision likeliest to move the needle for large investors is a tax-stability mechanism consciously modelled on the old Decree Law 600, which framed foreign investment in Chile for decades until it stopped taking new entrants in 2016. Set out in Article 33 of the bill, the new instrument would let investors – foreign or domestic – committing USD50 million or more sign an investment contract with the state that locks in the applicable tax terms for up to 25 years from the start of operations.

It is deliberately more generous than the current Foreign Investment Law (Law 20,848, 2015). That statute guarantees the essentials – non-discrimination, free repatriation of capital and access to the formal foreign-exchange market – but stops short of contractual tax invariability. The proposed regime reaches further, covering the corporate rate and base, the mining royalty and its calculation, VAT on capital-goods imports and withholding on profit remittances – a wider perimeter than DL 600 ever offered.

For a large copper or lithium development the appeal is plain. A project that needs USD1.5-2 billion of capital, international project finance and a 20-year production life depends on tax assumptions that must survive several elections. Locked-in terms are exactly what credit committees, export credit agencies and multilateral lenders want to see before they close senior debt, and exactly what Chile has struggled to promise in recent years.

One caveat has already emerged. During the Chamber debate the government signalled that it could trim the stability period from 25 to 20 years and raise the minimum investment threshold, leaving the detail to the Senate. The regime is a real opportunity worth building into project planning, but its final shape – duration, threshold, the taxes it covers – is not yet fixed, and investors holding legacy DL 600 or other invariability rights will need to weigh how the old and new frameworks interact before opting in.

### *Permitting reform: from bottleneck to bankable timeline*

If there is one area of the bill likely to resonate with investors and developers in Chile, it is permitting. Two reforms matter here, and they work as a pair.

The first is already law: the Framework Law on Sectoral Authorisations (Law 21,770, LMAS), published in September 2025. It overhauls roughly 380 permits spread across 16 ministries, imposes binding deadlines on the administration and is projected to cut processing times by between 30% and 70%. InvestChile has put the private pipeline under its watch at a record USD56.2 billion across 474 projects at the end of 2024, much of it committed but stalled – capital the reform is meant to release.

The second is the reform of the Environmental Impact Assessment System (SEIA) inside the current bill. Even when sectoral permits come through quickly, environmental review has long been the real source of delay, capable of stranding a major project for years. So, the two reforms compound: faster sectoral permits only translate into faster spending if environmental approvals keep pace. For a greenfield mine, a wind farm or a transmission line, the combination could turn permit risk – for years one of the heaviest discounts in any Chilean valuation – into something a sponsor can plan around, aligning construction with financing rather than guesswork.

The catch is political. Anything that speeds approvals invites the charge of weakening environmental safeguards, and the SEIA provisions have already drawn fire from green groups and several senators; opposition deputies have even floated taking parts of the bill to the Constitutional Court. This is the corner most likely to be reworked, and the one worth watching most closely.

### *Housing, real estate and construction*

Housing is where the bill bites soonest, and is a sector where foreign institutional money – real estate funds, residential platforms and development lenders – has been quietly building a presence. The residential market has had a rough few years: unsold stock piling up, affordability squeezed by higher interest rates and the special construction VAT credit scaled back since 2025.

The proposed twelve-month VAT exemption on first sales of new homes, expected to run from the date the law is published, lets developers reduce effective prices and shift stock. Some analysis suggests the effective discount could land somewhere between 3% and 8%, depending on pass-through and input-VAT treatment – enough, in a price-sensitive market, to get sales moving and to rescue projects that were sitting just short of viable. Developers holding finished or near-finished units stand to gain most; those still early in the pipeline have more time to plan around the window.

There is a technical sting worth flagging. Sales made under the exemption do not allow recovery of input VAT on construction costs, which instead gets capitalised into the cost base. Whether the exemption actually helps a given developer therefore turns on its input-VAT position and how price-sensitive its buyers are – the sort of analysis that rewards running the numbers properly before deciding when to sell into the window.

The bill also adds a flat 5% income tax on rental income from qualifying DFL 2 dwellings from the third

property onwards. In place of today's murkier mix of ordinary taxation and patchy compliance, that points towards a more predictable regime for anyone contemplating residential portfolios or build-to-rent at scale – though the anti-fragmentation and related-party rules, still to be finalised, will decide how those structures really work.

### *Formal employment and labour costs*

For labour-intensive businesses, the formal employment credit is among the most immediately practical measures in the bill. As drafted, it is worth up to 15% of gross wages for workers in a defined band – broadly, from around the minimum wage to roughly one and a half times it – and, crucially, it can be set against monthly provisional income tax, VAT and corporate income tax. That makes it a live operating saving, not a notional incentive.

It bites hardest in construction, logistics, manufacturing, services and tourism, where payroll at those wage levels is the norm and where the gap between formal and informal work creates real compliance risk. A company that expands or formalises headcount within the band can expect a genuine cut in effective labour cost without touching its underlying wage structure – and, at scale, the credit can tip the calculus towards formal, direct employment over looser arrangements.

One drafting detail is worth tracking. The lower house rejected the government's attempt to scrap the SENCE training tax credit, a corporate incentive for employee training; the government is expected to bring back a modified version in the Senate, and how that lands will shape the wider menu of labour incentives, particularly for training-heavy industries.

### *Capital mobility and regularisation windows*

Two temporary mechanisms will interest investors carrying offshore or historically tangled positions. The first is a one-off declaration regime for previously undisclosed foreign assets or income, charged at 10%, or 7% where the assets are repatriated and reinvested in qualifying Chilean instruments. The second is a substitute-tax option for certain accumulated corporate profit balances, offered at a preferential rate in lieu of ordinary treatment.

In a transaction these windows can change the diligence. They alter how legacy tax exposure is priced and indemnified between buyer and seller, and while they remain open, they give a seller the chance to clean up before completion, often trimming indemnity demands and smoothing the mechanics. Once the windows close and the strengthened audit powers are fully in force, unresolved offshore exposure becomes a good deal riskier.

### *The road through the Senate*

The bill is not home yet. It has cleared the Chamber and moved to the Senate, where the governing coalition is just short of a majority and where, by most accounts, passage will turn on courting undecided senators one at a time. Formal Senate debate is set to follow the President's State of the Nation address on 1 June, and the government has openly conceded that the timetable may need to slip beyond June.

If the Senate were to reject the idea of legislating, the action would move to a joint committee (*comisión mixta*) of senators and deputies – a forum where the government would hold a structural six-to-four edge, which is why analysts see that route as politically manageable. The stated aim is enactment before the 30 September budget deadline, though few treat that as a sure thing.

The provisions most likely to change are the pace of the rate cut, full integration – where concerns over who really benefits will generate the most debate – and the SEIA reform; the stability statute and the employment credit appear to enjoy broader cross-party support. The practical lesson is to treat any headline enactment date as provisional until the law is published in the Official Gazette (*Diario Oficial*), and to follow the committee stage rather than the press releases.

### *Outlook: what it means for investors*

Put together, the package is the most ambitious pro-investment signal Chile has sent in a decade. Lower corporate tax, full integration, capital-gains relief, locked-in stability, faster permits and housing incentives all target the frictions that the OECD, the IMF and InvestChile have been pointing to for years.

The practical message for the next couple of years is not that any single measure is transformative, but that several things are being improved at once, and which one matters depends on where an investor sits. Mining and energy investors will focus on the stability statute and permitting; housing and construction on the VAT window and the rental regime; labour-intensive businesses on the employment credit; and financial investors on capital-gains treatment and the regularisation windows. The common thread is predictability, the quality that a regionally compelling but lately hesitant market has most needed to put back on the table.

Whether it delivers depends on the final text and on whether the fiscal arithmetic holds up under scrutiny. For now, the right approach is to follow the Senate committee, not the headlines, and to read the bill as a strong statement of direction rather than a settled outcome.

# CHINA

## Trends and Developments

**Contributed by:**
Jun Gao and Fan Xu
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**Zhong Lun Law Firm** is one of the largest top-notch full-service law firms in China, with more than 2,200 professionals and over 400 equity partners in major offices across Beijing, Shanghai, Shenzhen, Hong Kong, Tokyo, New York, Los Angeles and San Francisco. Its top-tier litigation and arbitration practice is highly regarded for handling complex cross-border disputes, international arbitration and enforcement matters before leading courts and arbitration institutions, supported by deep expertise in compliance and investigations, construction and infrastructure, cross-border M&A, trade and regulatory matters. It has been ranked Band 1 in dispute resolution in Chambers Greater China Region and Chambers Global for consecutive years, and was named China (PRC Firms) Dispute Resolution Law Firm of the Year by Chambers in 2017, 2019, 2023 and 2025. The firm has advised multinational corporations, financial institutions and major Chinese enterprises on complex and challenging civil and commercial disputes that have had significant social impact.

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## Shift in International Commercial Arbitration Amid Global Restructuring

### *Core characteristics of the current global economic and political landscape*

Over the past few years, the underlying dynamics of global business operations have undergone profound changes. The process of economic integration that once characterised the global economy has gradually slowed, with regionalisation and fragmentation emerging as the new dominant trends, and protectionist tendencies continuing to intensify across multiple major jurisdictions. At the same time, ongoing geopolitical conflicts have further accelerated the reshaping of the global economic landscape, leaving businesses operating across borders to face an external environment that is more complex and uncertain than ever before.

### *Current landscape of Chinese enterprises' overseas expansion*

Against this backdrop, the overseas expansion of Chinese enterprises has entered a new phase of development. The internal demand for economic transformation and upgrading within China is driving an increasing number of companies to extend their business operations into emerging markets and high-risk jurisdictions such as South-East Asia, Africa and Latin America. As the scale of overseas investment and trade continues to expand, Chinese enterprises are encountering not only a substantial rise in the volume of cross-border commercial disputes but also a significant surge in their complexity, with the legal and compliance issues involved becoming ever-more diverse.

### *Fundamental transformation of international commercial arbitration*

As the preferred method for resolving cross-border commercial disputes, international commercial arbitration is also undergoing a profound transformation. It is no longer merely a post-dispute adjudication mechanism used to resolve disputes over contract performance, but has gradually evolved into a comprehensive governance platform that integrates the application of law, political considerations, anti-corruption compliance, and public policy balancing. This transformation is both a proactive response to the changing landscape of global business risks and an inevitable result of the arbitration system's own adaptation to the times.

This article focuses on key developments in the field of international commercial arbitration from 2025 to 2026, with a particular emphasis on analysing the core innovations in the International Chamber of Commerce (ICC)'s forthcoming anti-corruption umbrella report ("the Report") and its newly revised arbitration rules. Additionally, the article will explore the industry's reflections on and efforts to address the trend towards the judicialisation of arbitration. It will also provide a targeted analysis of the challenges faced by Chinese enterprises amid this wave of change, and propose feasible response strategies.

## Anti-Corruption: From Peripheral Issue to Core Pillar of Arbitration Proceedings

Anti-corruption was once merely a marginal issue that occasionally arose in international commercial arbitration; arbitral tribunals typically viewed it as a criminal matter unrelated to contractual disputes and did not examine it in depth. However, in recent years, with the intensification of the global anti-corruption movement and the exposure of a series of major corruption arbitration cases, this issue has risen to become a central pillar of arbitration proceedings. The Report marks a significant step forwards for the international arbitration community in combating corruption, providing unified operational guidance to replace the previously fragmented approaches in practice.

### *Shift in arbitral tribunal's role: from passive neutrality to active discharge of duties*

#### *Limitations of traditional practice*

Traditional arbitration practice strictly adheres to the nemo judex sine actore principle, meaning that an arbitral tribunal will only examine relevant issues when a party explicitly raises allegations of corruption. This passive and neutral stance has allowed a vast amount of corruption hidden behind commercial transactions to evade scrutiny – the case of *Nigeria v P&ID* serves as a sobering example of this.

In 2010, the Nigerian government signed a natural gas processing contract without a public tender with P&ID, a shell company based in the British Virgin Islands. After P&ID initiated arbitration in 2012, the proceed-

ings were conducted in secret and with unusual haste. The arbitral tribunal ultimately ruled that Nigeria was liable for compensation, and as of 2023, Nigeria's total debt had risen to approximately USD11 billion.

It was not until 2019 that Nigeria first raised allegations of bribery and sought to have the award set aside. The High Court of England and Wales found that P&ID had committed serious irregularities, including bribing officials, submitting false evidence, and stealing the opposing party's internal legal documents to manipulate the arbitration. Ultimately, the court set aside the award on the grounds that it was contrary to public policy.

In his ruling, Judge Knowles noted that without oversight, the arbitration process would become less reliable and more susceptible to fraud. This inevitably raises the question – does the arbitral tribunal have sufficient tools at its disposal to ensure the fairness of its awards?

### *Highlights of the report*

This landmark case underscores the necessity of the ICC's long-standing efforts to standardise and systematise anti-corruption practices in international arbitration. As early as 2019, the ICC Committee on Arbitration and ADR established the "Task Force Addressing Issues of Corruption in International Arbitration", which spent nearly seven years compiling this Report.

The final guidelines establish a logically coherent three-stage framework for investigating corruption:

- the first stage involves a preliminary review of the issues, focusing on issues such as whether the arbitral tribunal should initiate an investigation sua sponte, and the impact of parallel proceedings;
- the second stage focuses on evidentiary issues, systematically addressing the burden of proof and the assessment of such evidence;
- the third stage clarifies the tribunal-specific aspects of the corruption inquiry, including the legal consequences of a corruption finding and arbitrators' obligations; and
- the Report provides international arbitration practitioners with a comprehensive operational framework for combating corruption.

### *Factors to consider before conducting a sua sponte investigation*

When deciding whether to initiate a corruption investigation of its own motion, the arbitral tribunal may take into account multiple key factors:

- the severity and credibility of corruption risk indicators present in the case;
- the potential impact of the alleged corrupt conduct on the validity of the arbitration agreement;
- the relevance of the conduct to the core dispute in the case;
- the applicable legal framework and fundamental principles of procedural fairness; and
- the impact of the investigation on the cross-border enforceability of the final award.

This balanced approach addresses the expectations that the arbitration system will combat corruption while preventing unnecessary delays and increased costs resulting from procedural abuse. For enterprises, suspicious conduct in transactions will be subject to more rigorous scrutiny. Therefore, it is essential for companies to maintain higher compliance standards throughout the entire transaction process.

### *Integrating experience and evidence: red flag methodology*

Corrupt conduct is inherently covert, and direct evidence is often difficult to obtain. This has long been the greatest challenge in proving corruption in arbitration. To address this critical issue, the ICC Report develops the "red flag methodology", integrating scattered practical experience into a systematic set of tools for evidence evaluation.

### *ICC's three-step assessment framework: Identify–Validate–Assess*

This methodology provides the arbitral tribunal with a clear three-step operational framework, for a more standardised and transparent review of corruption allegations:

- Identification – Comprehensively review all facts and circumstances in the case that may indicate the presence of corruption risks.
- Verification – Verify the authenticity, accuracy and relevance of these risk indicators one by one.
- Assessment – Integrate all verified information and weigh it against counter-evidence to form a comprehensive judgment.

The Report categorises red flags into two main types to help arbitration tribunals conduct more targeted reviews. General red flags are primarily related to environmental factors, including a specific country's reputation for integrity, inherent corruption risks within an industry, and the current government's anti-corruption environment. Specific red flags are more direct, primarily involving the counterparty's background and qualifications, relationships with public officials, and unusual terms and payment arrangements in the transaction itself.

### *Bidirectional evaluation system of red flags and green flags*

The Report also introduces a two-way assessment system based on red flags and green flags. A single serious red flag indicator – such as a large, undisclosed payment made without a legitimate business justification – may carry significant probative value. Conversely, the accumulation of multiple seemingly minor red flag indicators can also be sufficient to raise reasonable suspicion of corruption. Accordingly, the accused party may refute the allegations by providing a legitimate business explanation (ie, a "green flag").

This is vividly illustrated in the case of *Metal-Tech v Uzbekistan*, where the arbitral tribunal identified four mutually corroborating red flags: a consultant of questionable credentials; a service fee of USD4 million with little relation to the actual work performed; the close familial relationship between a consultant and the then-prime minister of Uzbekistan; and fund transfers conducted through opaque offshore shell companies. The claimant failed to present any sufficiently compelling green flags to rebut these suspicions, as it could not produce evidence of the actual consulting services rendered or any other reasonable commercial justification for the anomalous arrangements. Ultimately, the arbitral tribunal dismissed Metal-Tech's claim on the grounds of corruption; however, given that Uzbekistan had also engaged in corrupt practices, it ordered both parties to bear their own costs in accordance with the principle of equity.

### *Practical challenges in applying the red flag methodology*

Although this methodology offers strong practical guidance, it still faces some significant challenges in real-world application:

- the assessment of red flag indicators involves a degree of subjectivity, and there are currently no uniform quantitative standards for determining the weighting of different indicators;
- some parties may abuse this mechanism by intentionally filing a large number of false red flag allegations to delay the arbitration proceedings; and
- arbitral tribunals lack the power to compel discovery, making it difficult to obtain key evidence held by third parties, and differences in business culture across countries may also lead to misjudgments.

## *Co-ordination of parallel proceedings*

In international commercial arbitration cases involving corruption, the emergence of parallel proceedings is a common occurrence. A single act of corruption may trigger various types of legal proceedings – such as, criminal investigations, civil lawsuits and regulatory reviews – simultaneously across multiple jurisdictions.

### *Stay of proceedings*

The primary issue raised by parallel proceedings is whether arbitration proceedings should be stayed pending the outcome of those parallel proceedings. Generally speaking, the threshold for staying arbitration is very high. First and foremost, the tribunal must determine whether there is a mandatory legal obligation to stay the proceedings. In the absence of such mandatory legal obligation, the tribunal will further consider:

- the degree of correlation between the core issues of the parallel proceedings and the arbitration dispute;
- the current stage and estimated duration of the parallel proceedings;

- the potential impact of the parallel proceedings' outcome on the arbitration;
- the procedural fairness of the parallel proceedings, and whether the accused party has been afforded a full and fair opportunity to participate and present its case;
- whether the parallel proceedings are conducted in the arbitral seat – decisions from parallel proceedings in the seat have a decisive impact on the subsequent validity of the award;
- the accessibility of evidence in the parallel proceedings;
- the potential irreparable harm or unfair tactical advantage that a stay may cause to either party; and
- the overall impact of the stay on procedural efficiency and the finality of arbitral awards.

*Criteria for evidence sharing*

In addition to the issue of stay of proceedings, parallel proceedings also involve the co-ordination of evidence sharing. Evidence obtained by law enforcement agencies generally carries significant probative value; however, the arbitral tribunal must still safeguard the opposing party's right to cross-examine such evidence. With regard to evidence transferred from arbitration to parallel proceedings, a balance must be struck between the duty of confidentiality and the statutory duty of disclosure; where necessary, the tribunal should issue detailed confidentiality orders and redact sensitive commercial information.

*Effect of decisions or judgments in parallel proceedings*

Decisions or judgments rendered in parallel proceedings do not automatically have preclusive effect on an arbitration, and the arbitral tribunal retains its independent authority to determine the facts. When assessing the validity of findings from parallel proceedings, the arbitral tribunal focuses on three core criteria:

- due process – whether the parallel proceedings followed due process of law;
- consistency of evidentiary standards – whether the standard of proof applied in the parallel proceedings aligns with the standard used in the arbitration to address corruption issues; and
- territorial connection – whether the location of the parallel proceedings is the same as the seat of arbitration, as this directly impacts the risk of a subsequent judicial review of the award.

### Conflicts of Interest and Disclosure: Changes in the Latest Revised ICC Arbitration Rules

Disclosure of conflicts of interest is the cornerstone of fairness in international commercial arbitration. Particularly in cases involving corruption, undisclosed hidden financial ties can directly serve as channels for the transfer of benefits, undermining the legitimacy of the award. The traditional model, in which the disclosure obligation rests solely with the arbitrator, has resulted in a large number of potential conflicts of interest failing to be identified at an early stage of the proceedings. The newly revised ICC Arbitration Rules ("the ICC Rules"), effective 1 June 2026, have reformed the disclosure regime, establishing a new framework involving multiple parties.

#### *Proactive party participation in disclosure: from unilateral obligation to collective governance*

*Key innovation of the ICC Rules*

The most significant innovation of the ICC Rules is the inclusion of the parties themselves in the conflict-of-interest governance framework. At an early stage following the initiation of arbitration proceedings, each party must submit a list to the secretariat identifying any person or entity that may have a conflict of interest, along with specific supporting reasons. This change helps improve efficiency and reduce the risk of issues arising at a later stage.

*Dual reinforcement of disclosure obligations*

The ICC Rules do not relieve arbitrators of their core disclosure obligations but instead establish a dual safeguard mechanism. On the one hand, arbitrators are still required to independently fulfil their comprehensive disclosure obligations and disclose all circumstances known to them that may affect their independence; on the other hand, the parties are explicitly required to assist the arbitrators in fulfilling their disclosure obligations, thereby assuming a more proactive role in this regard.

*Two critical clarifications*

The ICC Rules also provide two key clarifications. First, they explicitly codify the "when in doubt, disclose" principle, requiring arbitrators and parties to prioritise disclosure whenever there is any doubt regarding the existence of a conflict of interest, rather than making their own judgement as to whether it is material. Second, they clarify that disclosure in itself does not constitute evidence of a lack of independence or impartiality, thereby avoiding undue deterrence of good-faith disclosures and encouraging all parties to make candid disclosures.

*Institutionalisation of the multi-party disclosure principle*

The new rules formally institutionalise a multi-party disclosure mechanism, with the underlying rationale for this reform being that "prevention is better than cure". By comprehensively screening for potential risks early in the proceedings, the system aims to reduce conflicts of interest at their source and prevent parties from subsequently seeking to set aside arbitral awards on these grounds. This not only enhances the efficiency and certainty of the arbitration process but also effectively prevents corruption from infiltrating the proceedings through improper relationships, thereby further strengthening the international credibility of ICC arbitration.

## Structural Reflection: Countering the Judicialisation of Arbitration and Returning to Its Commercial Essence

The core value of international commercial arbitration lies in its flexibility, efficiency, and business-oriented approach. However, in recent years, there has been a clear trend towards judicialisation in arbitration proceedings. At the same time, while strengthened anti-corruption measures and conflict-of-interest regulations are crucial for maintaining the credibility of arbitration, they may also objectively increase the risk of procedural complexity. How to strike a balance between strengthening institutional constraints and returning to the essence of business deserves further exploration.

*Signs and drawbacks of arbitration judicialisation*

The judicialisation of arbitration is primarily manifested in procedural rules aligning with those of court litigation. An increasing number of arbitral tribunals are adopting court-style practices such as discovery, cross-examination during hearings, and document formatting, resulting in protracted and rigid proceedings. The involvement of a large number of former judges and litigation attorneys also leads to arbitration proceedings that tend to overlook commercial and industry practices, thereby diluting the commercial nature of arbitration.

This undermines arbitration's core competitiveness, causing commercial parties to increasingly favour other more efficient dispute resolution methods. For small and medium-sized enterprises in particular, the high costs in terms of time and money create a "barrier to entry". Therefore, arbitral tribunals should prioritise the practical needs of commercial transactions rather than mechanically applying legal rules, which may result in awards that lack commercial logic.

*Global consensus on returning to commercial sense*

Leading international arbitration institutions, represented by the ICC, collectively advocate that arbitral tribunals should move away from pure proceduralism and apply a business-oriented mindset throughout the entire proceedings. The ICC states that the amendments to the Arbitration Rules aim to enhance efficiency, clarity and usability, ensuring that ICC arbitration continues to meet the needs of global entities and to strengthen parties' confidence in the fairness and efficiency of dispute resolution.

In the future, the international arbitration community is expected to advance the arbitration regime in a more business-friendly direction by focusing on the following areas:

- encouraging the participation of practitioners with industry experience, expertise in anti-corruption compliance, and cross-cultural competence;
- streamlining procedures, promoting documents-only proceedings, and optimising the emergency arbitrator mechanism; and
- integrating ADR methods, such as mediation and expert determination, with arbitration to form a multi-tiered dispute resolution system.

## Risks and Proactive Strategies for Cross-Border Arbitration

The number of international arbitration cases involving corruption allegations continues to rise. Corruption allegations not only influence arbitration proceedings as grounds for claims or defences but also directly challenge the basis of arbitral awards; as a result, anti-corruption has become a highly disruptive risk factor in international arbitration.

### *Core risks facing enterprises operating in high-risk cross-border environments*

Specifically, businesses face the following risks.

- Risks of corruption allegations in high-risk jurisdictions: potential conflicts may exist between local business practices and international anti-corruption standards, which could lead to inadvertent involvement in third-party misconduct.
- Risk of the arbitral tribunal conducting a proactive investigation: even if neither party raises the issue of corruption, the arbitral tribunal may still conduct a proactive review if there are evident red flags.
- Risk of the award being set aside: failure to proactively identify and disclose conflicts of interest may lead to avoidable challenges to the award.

### *Key measures for prevention and response*

To avoid the risks mentioned above, companies are advised to proactively take the following measures.

- Contract refinement: incorporate ICC standard anti-corruption clauses and clarify parties' compliance obligations, liability for breach of contract, and audit and inspection rights.
- Due diligence: strengthen background checks on counterparties and third-party intermediaries, and establish a warning mechanism for corruption risks.
- Procedural participation: proactively fulfil disclosure obligations under the Rules and emphasise the selection of arbitrators with relevant business backgrounds or experience.

## Conclusion: Future Direction of International Commercial Arbitration

International commercial arbitration is transforming from purely post-dispute adjudication to preventative risk governance by promoting the proactive participation of all parties. This trend also reflects a central theme in the development of international arbitration – striking a balance between safeguarding the public interest and upholding the commercial nature of arbitration. It is essential to bear in mind that the vitality of arbitration lies in its commercial nature. While strengthening anti-corruption measures, caution must be exercised against the risk of excessive judicialisation, with the core objective always remaining the pursuit of efficient and practical commercial solutions.

For Chinese enterprises, proactively adapting to new international arbitration rules is crucial. On the one hand, businesses must strengthen internal compliance systems to prevent corruption; on the other hand, continuous improvement of cross-border dispute resolution strategies should be prioritised, with a focus on proactively identifying conflicts of interest rather than passively waiting for them to arise.

# COLOMBIA




## Law and Practice

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**Baker McKenzie S.A.S.** was established in 1949 and is recognised as one of the foremost international law firms. With a presence in 45 countries through 75 offices, including in 36 of the top 40 global economies, the firm employs nearly 5,000 lawyers and around 13,000 staff. Renowned for transactional law services, it offers a comprehensive global platform, industry-specific expertise, and profound local market insights allowing seamless co-ordination on complex, multi-jurisdictional matters through deep regional integration. The firm is the preferred choice for multinational corporations and both domestic and international private equity firms, and is valued for its integrated global, Latin American and local Colombian market expertise. Serving a diverse clientele, the firm specialises in advising high-profile multinational companies, particularly in heavily regulated industries such as oil and gas, energy, healthcare, life sciences, automotive, agrifood, chemicals and real estate. In Colombia, the firm is frequently instructed on sophisticated transactions and projects involving cross-border elements and regulatory complexity. With a focus on delivering sector-specific counsel, it is at the forefront of legal services, driving innovation and excellence in a complex global market.

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# 1. Legal System

## 1.1 Legal System and Judicial Order

Colombia's legal system follows the civil law tradition. The branches of government are the legislative, the executive and the judiciary. The ordinary judiciary structure is:

- the *Corte Suprema de Justicia*;
- the *Tribunales Superiores de Distrito Judicial*; and
- the *Juzgados*.

# 2. Restrictions on Foreign Investments

## 2.1 Approval of Foreign Investments

Foreign investments in Colombia do not require approval from the authorities. The country generally has a liberal approach to foreign investment, with a few exceptions.

Foreign investment is not allowed in activities directly related to defence, national security, and the processing or disposal of toxic, dangerous or radioactive waste that is not generated in the country. Colombian companies can also be fully foreign owned, except for those in the national broadcast television sector, where foreign ownership is capped at 40%.

Although foreign investment is not subject to approval from governmental authorities, all investments made by non-residents in Colombia must be registered in a timely way with the Colombian Central Bank, either directly or through the local financial institutions through which the funds are transferred. Foreign investments include, among others, the acquisition of equity interests in Colombian companies and contributions to local joint ventures or trusts.

To complete this process, foreign investors must register the investment by submitting a foreign exchange declaration (*declaración de cambio*).

The registration process requires the submission of certain information, such as:

- the value of the investment;
- the number of shares or membership interests acquired;
- the destination of the investment; and
- the origin of the funds.

Depending on the type of investment, deadlines for registration will vary. Registering foreign investment ensures access, through the formal exchange market, to convertible currency to remit dividends and repatriate the investment.

## 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

Although foreign investment is not subject to approval from governmental authorities, all investments made by non-residents must be registered with the Colombian Central Bank. Failing to properly complete this registration may lead to penalties being imposed. Under the Colombian exchange regime, the *Superintendencia de Sociedades* (Superintendency of Corporations) has the authority to audit international investment records and impose sanctions for non-compliance. Although Decree 1746 of 1991 authorises penalties of up to 200%, the *Superintendencia de Sociedades* typically enforces penalties that reflect the severity of the violation.

## 2.3 Commitments Required From Foreign Investors

This section is not applicable in Colombia.

## 2.4 Right to Appeal

This section is not applicable in Colombia.

# 3. Corporate Vehicles

## 3.1 Most Common Forms of Legal Entity

The most common form of legal entity in Colombia is the simplified stock corporation (SAS) due to its flexible regime and the freedom that its shareholders have to establish the terms and conditions for its functioning and internal governance structure. Corporations (*sociedades anónimas*, or SA) and foreign company branches are vehicles that are also used.

## SAS

### *Benefits and most common uses*

The SAS offers greater flexibility than other types of corporate vehicles in Colombia. Its incorporation process is simple, there are fewer administrative requirements, and shareholders have greater freedom to determine operational terms and internal structure. The SAS is used for almost any business (except those that, by law, require a corporation).

### *Incorporation process*

An SAS can be incorporated by a private document registered with the relevant chamber of commerce or by public deed (if assets contributed for the incorporation of the SAS require transfer by means of a public deed, such as real estate assets, the SAS must be incorporated by means of a public deed granted before a Colombian notary public).

### *Term*

The term can be indefinite.

### *Number of partners/shareholders*

An SAS must have a minimum of one shareholder, and there are no limits on how many shares they can hold. There is also no limit on the maximum number of shareholders.

### *Liability*

Liability is limited to shareholder contributions, except in situations involving company fraud or abuse that harms third parties.

### *Capital requirements*

Shareholders have a maximum term of two years from incorporation to pay for the subscribed shares.

### *Governance*

The shareholders of an SAS appoint managers responsible for the company to represent it before third parties (called legal representatives). Although the SAS may have a board of directors, it is not a requirement.

### *Other relevant matters*

The SAS does not need a legal reserve, and a statutory auditor is only required if their profits are above 3,000 minimum monthly wages.

## SA

### *Benefits and most common uses*

A corporation or SA offers a more traditional structure. Its shares can be registered and traded on the national stock market. Banking institutions and listed companies must be corporations by law.

### *Incorporation process*

An SA can only be incorporated by a public deed granted before a Colombian notary public and registered with the relevant chamber of commerce. By-law amendments would have to be formalised by public deed.

### *Term*

The term must be limited but may be extended by the shareholders.

### *Number of partners/shareholders*

There must be a minimum of five shareholders in an SA. Under Colombian law, no shareholder may have 95% or more of the outstanding capital of the corporation.

### *Liability*

Shareholder liability is limited to the amount of their contributions. However, in cases of fraudulent actions, overvaluations of contributions in kind and wilful misconduct, or actions of a parent company giving rise to the bankruptcy of an affiliate, the liability of shareholders could be extended.

### *Capital requirements*

At the moment of incorporation, shareholders have to subscribe to at least 50% of the authorised capital and make an initial payment of at least one third. The balance must be paid within one year from the date of incorporation.

### *Governance*

An SA must have a board of directors. This must consist of at least three members and their alternates, as well as a legal representative.

### *Other relevant matters*

An SA must have a legal reserve and statutory auditor.

### Foreign Company Branch

#### *Benefits and most common uses*

Branches are a great alternative for foreign companies that want to have a permanent presence in Colombia. A branch office is an extension of the company's home office and is not a separate legal entity. Branches are widely used by investors in the hydrocarbons sector.

#### *Incorporation process*

The home office issues a resolution, which is formalised in a public deed granted before a Colombian notary public and registered with the chamber of commerce.

#### *Term*

The term is limited to the duration of the home office, but can be extended as long as it is within the duration of the home office.

#### *Number of partners/shareholders*

The branch is not a separate entity from the foreign company. The foreign company is therefore the sole owner.

#### *Liability*

As it is not a separate entity from the foreign company, the home office is liable for the assets and liabilities of the branches. They are jointly and severally liable for tax obligations.

#### *Capital requirements*

The allocated capital must be fully paid, and any increase in capital requires an amendment to the by-laws approved by the foreign company's competent corporate body. However, increasing supplementary investment does not need a by-law amendment and can be made in cash from abroad.

#### *Governance*

Branches do not have any separate governance bodies from their home office. A legal representative/general agent acts on behalf of the company.

#### *Other relevant matters*

A branch must have a legal reserve and statutory auditor.

## 3.2 Incorporation Process

Once the shareholders identify the type of corporate vehicle that best suits their needs, the incorporation process is generally simple and expeditious. The incorporation of corporations and branches does not require authorisation from governmental authorities, as a rule. However, there are specific cases where authorisation from governmental authorities would be required.

Companies and branches must be registered in the commercial registry kept by the corresponding chamber of commerce of the municipality where it is to be domiciled.

For purposes of incorporating a corporate vehicle in Colombia, the following main steps must be completed.

- An incorporation document must be prepared containing the company's by-laws and the names of the shareholders and identification documents. If the shareholders are foreign entities, apostille identification documents are needed. Depending on the type of vehicle, this may be completed through a private document or a public deed.
- The new entity must be registered with the corresponding chamber of commerce of the municipality where it is to be domiciled, by filling out the *Registro Único Empresarial y Social* (RUES) form.
- The new entity must be registered with the tax authorities by completing the form to obtain a tax identification number (NIT). The chamber of commerce also handles the processing of the national tax registry (RUT) used for registering entities with the Tax and Customs National Authority (DIAN). The RUT includes general taxpayer information, along with tax and customs obligations. To obtain this registration, the requisite fees and taxes must be paid to the chamber of commerce.
- Acceptance letters for the positions of legal representatives, substitutes and board members must be obtained, if these appointments are made in the incorporation document, along with copies of the ID documents for the appointed positions.

These documents must be filed with the chamber of commerce. Once all documentation is submitted, the

registration process with the chamber of commerce often takes between one and two weeks.

### 3.3 Ongoing Reporting and Disclosure Obligations

Companies are required to report changes in management to the chamber of commerce within a month of the change being completed. Additionally, companies must register if they are under the control of another entity and report any changes to such controlling structure within 30 business days. Any amendments to the company's name, legal address or social activity must be registered. Any changes in capital, whether increases or decreases, must also be reported to the chamber of commerce.

Private companies are required by Colombian law to fulfil the following main periodic obligations.

- Companies, foreign company branches, and commercial establishments must renew their commercial registration (*matrícula mercantil*) with the chamber of commerce by March 31st each year.
- Companies are required to convene an annual meeting of the General Shareholders Assembly to approve the year-end financial statements, annual reports and dividend distribution. The annual meeting must be summoned with at least 15 business days' notice for corporations (SA) and at least five business days' notice for simplified stock corporations (SAS).
- If the company is under permanent supervision or control by the companies regulator (*Superintendencia de Sociedades*), or if the company has received a special request for information, it has to submit the financial statements along with their notes, management report, statutory auditor's report and other required documents to the *Superintendencia de Sociedades*. In addition, companies in a business group must provide consolidated or combined financial statements to the *Superintendencia de Sociedades*, as applicable.
- The financial statements, notes and report must be filed with the chamber of commerce, unless these have already been submitted to the *Superintendencia de Sociedades*.
- The ultimate beneficial owner (UBO) of the company must be registered in the single registry of UBOs administered by the Colombian tax authority. The UBO must be an individual person. Identifying the ultimate parent company alone is not sufficient to meet Colombian regulatory requirements.
- Companies registered in the Public Contracting Register (RUP) must annually renew their registrations.
- Companies that meet certain specific criteria are also required to implement compliance programmes to mitigate the risks of money laundering, financing of terrorism, financing of the proliferation of weapons of mass destruction as well as corruption and transnational bribery.

### 3.4 Management Structures

Companies are operated and managed according to the rules set out in their by-laws, except for foreign company branches, which must follow the rules established in the by-laws of the home office. Except as set out below, there is freedom to establish the conditions for the operation and management of local vehicles.

Legal entities must appoint at least one legal representative, who is an authorised officer and is empowered to act on behalf of the company. Except for simplified stock corporations, all other entities are obliged to appoint an alternative to the legal representative as well. The legal representative is usually appointed by the board of directors; if the company does not have a board of directors, the legal representative is appointed by the shareholders. The by-laws may establish limits to the powers of the legal representative by means of including events in which the legal representative may require prior authorisation of the shareholders or the board of directors to carry out or perform certain actions (ie, entering into contracts exceeding a certain amount).

Simplified stock corporations (SAS) are not required to have a board of directors. However, for corporations (SA), a board of directors is mandatory and must be composed of at least three members, with their alternates. Decisions taken by the board of directors and by the shareholders must be approved according to the majority rules set out in the company's by-laws, and both shareholder and board decisions must be

recorded in minutes, which must also be incorporated into the corresponding company's minutes ledger.

A foreign branch does not have any separate governance bodies from its home office. Instead, a legal representative or general agent acts on behalf of the company, suggesting more centralised control from the parent company.

### 3.5 Directors', Officers' and Shareholders' Liability

Shareholders of corporations (SA) and simplified stock corporations (SAS) are only liable up to the amount of their respective contributions. However, it is possible to pierce the corporate veil if the company is used to defraud the law or to the detriment of third parties. In these cases, the shareholders and administrators who have carried out, participated in or facilitated the fraudulent acts are liable too. However, piercing the corporate veil involves a high burden of proof, and the specialist company court rarely finds sufficient evidence to do so.

The business judgement rule applies to administrators and usually does not interfere with the normal course of business of administrators or companies. However, the law establishes certain duties for administrators that they need to uphold, with the most important being acting with loyalty and diligence and in the interest of the company. If shareholders consider that an administrator has not acted accordingly, they can commence a corporate action for liability (*acción social por responsabilidad*), and an administrator who has breached their duties can be liable for the damages caused to the company.

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

Even though Colombia follows a civil law system, consistent case law can also be binding precedents on the parties to a dispute. Employment relationships are governed by:

- the law;
- the employment contracts;
- the collective bargaining agreements (where applicable); and
- in some cases, by consistent case law (where not expressly regulated by law).

### 4.2 Characteristics of Employment Contracts

Employment agreements in Colombia can be agreed verbally. Although not required by law, for evidence purposes it is advisable to formalise the terms of the employment relationship in writing and ensure that the written agreement contains certain minimum information (eg, initiation date, type of contract and events of termination for cause). Some provisions are only valid if agreed in writing, such as:

- trial period;
- the characterisation of salary as being "comprehensive" (*salario integral*); and
- fixed-term duration of the employment agreement – this type of arrangement can only have a total duration of four years.

### 4.3 Working Time

The ordinary working hours are those agreed by the parties, or, in the absence of an agreement, the established legal maximum, which is currently 44 hours per week (this is being gradually reduced so that, by 15 July 2026, it will be 42 hours).

Overtime work is that exceeding the ordinary working hours of the company and, in all cases, that exceeding the legal maximum working hours. Overtime work may never exceed two hours a day and 12 hours a week. The labour reform, approved by Congress in June 2025, eliminated the requirement for employers to obtain authorisation from the Ministry of Labour for employees to work overtime. Overtime work must be remunerated as follows:

- daily overtime work (between 6.01am and 7pm) – 25% over the value of daily ordinary work;
- nightly overtime work (between 7.01pm and 6am) – 75% over the value of daily ordinary work; and
- regular night work (not overtime) – 35% over the value of daily ordinary work.

Employers and employees may mutually agree on legally defined special flexible schedules or shifts that

are tailored to the business activities of the employer and the duties of the employees. Depending on the types of schedules or shifts, overtime payments may not apply.

Employees classified as direction, trust and/or management personnel are not entitled to receive overtime surcharges.

### 4.4 Termination of Employment Contracts

Generally, Colombia is an employment-at-will jurisdiction, as an employment agreement may be terminated by the unilateral decision of either of the parties, with or without just cause. Employment can also be terminated by mutual consent of the parties, by the termination of the fixed-term agreed upon or by failure to extend the probation period.

For probationary purposes, the employer should provide written notification to the employee in the case of employment termination.

In some cases, the employer must give the employee advance notice of no less than 15 days. These include where the employer terminates the employment agreement due to recognition of a retirement pension if the employee is still providing services. Apart from those very specific cases, employment law does not require advance notice for the termination of employment contracts, except in the case of non-renewal of fixed-term contracts. Notice of non-renewal of a fixed-term contract must be provided at least 30 calendar days in advance of the date of the expiry term. If it is not, the contract will be automatically renewed.

Employers must pay employees amounts due immediately upon termination (eg, salaries, outstanding vacations, accrued social benefits, outstanding commissions, and any other labour benefit owed). The exact amounts vary depending on the agreed salary structure (eg, comprehensive salary (*salario integral*) or ordinary salary plus mandatory benefits structure) and the termination scenario (eg, dismissal without just cause, mutual consent or resignation).

Unilateral termination without cause will give rise to the payment of statutory severance. The formula to calculate the statutory severance upon unilateral termination without cause depends on the employee's monthly salary, whether the labour contract is for a fixed or indefinite period of duration, and the actual time of duration of the employment.

For indefinite-term contracts, the legal severance for dismissal is as follows:

- for employees who earn less than ten minimum legal monthly salaries (for 2026, COP17.509 million or USD4,669), the severance is equivalent to 30 days of salary for the first year of service and 20 additional days of salary for each additional year of service, proportionally per fraction;
- for employees who earn ten minimum legal monthly salaries or more, the severance is equivalent to 20 days of salary for the first year of service and 15 additional days of salary for each additional year of service, proportionally per fraction;
- for employees who had more than ten years of service as of 27 December 2002, the severance is equivalent to 45 days' salary for the first year of service and 40 additional days of salary for each year subsequent to the first, proportionally for fractions of the year; and
- for employees who had ten years of service or more as of 31 December 1990 and are entitled to reinstatement, the severance is equivalent to 45 days of salary for the first year of service and 30 additional days of salary for each year subsequent to the first, proportionally for fractions of the year.

For agreements entered into under a fixed period or for the duration of a specific job or activity, the severance is equivalent to the salaries corresponding to the unexpired period of the contract, or to the term remaining for the completion of the specific job or activity, which cannot be less than 15 days of salary.

Under Colombian law, a collective dismissal occurs when an employer unilaterally and without just cause terminates the employment agreements of a certain percentage of its employees within a period of six consecutive months, without the required authorisation from the Ministry of Labour. These percentages, which are established by law, vary depending on the size of the company's workforce.

To proceed with a collective dismissal, the employer must obtain prior authorisation from the Ministry of Labour. The Ministry can, at its discretion, approve or reject this request. In practice, the Ministry is often reluctant to grant such authorisation, typically taking more than 12 months to review the request and possibly denying it. Mass layoffs conducted without authorisation from the Ministry of Labour, or in cases where such authorisation has been denied, will be considered void. Consequently, employees must be reinstated with back-pay for salaries and labour benefits accrued but not paid during the period of unemployment.

### 4.5 Employee Representations

In Colombia, works councils/employee representative bodies do not exist as such. However, employees have the right to form or join unions.

A union must have a minimum of 25 members, each of whom must be at least 14 years old, in order to be formed. These requirements must be certified at an initial constitution meeting and executed with the intention to become unionised employees, at which time the employees will sign a foundation minute. The foundation minute is one of the requirements that must be fulfilled to register the union with the Ministry of Labour.

To become part of an already existing union, employees must be at least 14 years old and meet the requirements established in the by-laws of the union.

Unions are authorised to enter into collective bargaining agreements on behalf of the affiliated employees. In addition to the provisions agreed upon between the parties, the collective bargaining agreement must indicate:

- the company or establishment;
- industry and trades covered thereby;
- the place or places where it is to govern;
- the date on which it takes effect, its duration, and the causes and methods of its renewal and termination; and
- the responsibility for non-performance.

Irrespective of the kind of union or the number of affiliates working for an employer, negotiation is held primarily by each union within an entity. An employee may belong to more than one union, and unions of the same or a different nature may coexist in the same company.

Recent reforms formally enable multi-level collective bargaining beyond the company level, including negotiations at the level of groups of companies, branches of economic activity, or entire sectors. The new rules mandate unified bargaining agendas and negotiating tables when multiple unions or employers participate above the company. They also introduce criteria to determine representativeness and allow higher-level agreements to set sector-wide minimum standards of protection. While company level agreements remain in force, higher level agreements prevail when they provide more favourable conditions, in line with the principles of favourability, progressivity and non-regressivity.

The new regulatory design leaves several practical and institutional questions unresolved, particularly regarding how employer representativeness will be determined in heterogeneous sectors, how competing employer associations will be co-ordinated, and how differentiated treatment for micro, small and medium-sized enterprises will operate in practice. The new regime also raises issues concerning the extension of sector-level agreements for all employees within the sector, regardless of union membership, coupled with limitations on the ability to renounce benefits. It also gives rise to questions about its economic impact, as well as the absence of clear rules on the exercise of the right to strike in multi-employer or sectoral negotiations.

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/ Employers

Employees are subject to payment of income tax, at rates that depend on the employee's total income and/or compensation earned during the corresponding fiscal year and that range from 0% to 39% of the employee's taxable income.

Employers are required to withhold the applicable income tax when the salary is paid to the corresponding employee.

Both the employee and employer must make contributions to the social security system. For the healthcare system, a contribution of 12.5% of the employee's base salary must be made, of which the employee contributes 4% and the employer 8.5%. For the pensions system, a contribution of 16% of the employee's salary must be made, of which the employee contributes 4% and the employer contributes 12%.

Employers must also make mandatory contributions to certain private and public entities that provide services to the community related to welfare, education and children's rights (locally referred as *parafiscales*), which collectively amount to 9% of the employee's salary.

## 5.2 Taxes Applicable to Businesses

The main taxes applicable to companies, and the current applicable rates, are as follows.

### Corporate Income Tax (CIT)

The general CIT rate for 2026 is 35%. This tax is imposed on the total income (generated or not in Colombia) of the Colombian company (ie, companies incorporated in Colombia, domiciled in Colombia or having their place of effective management in Colombia) and on the income of foreign non-resident companies generated in Colombia. An additional surcharge ranging from 5% to 15% is applicable to companies in the hydrocarbons and mining sectors. Industrial users of a free trade zone (FTZ) are subject to a special CIT rate of 20%. Since the 2023 fiscal year, local companies are subject to a minimum effective tax rate of 15% of accounting profits. If the tax liability calculated on net taxable income results in an effective tax rate of lower than 15% of accounting profits, the taxpayer must increase the tax liability until it reaches the minimum.

### Capital Gains Tax

In Colombia, a company must pay capital gains tax when it sells fixed assets held for two years or more or upon liquidation if the company was incorporated for a term of two years or longer, at a rate of 15%.

### Withholding Tax (WHT)

The WHT system is a general mechanism of advance tax collection. All corporate entities are required to collect or withhold taxes from payments made to third parties. The WHT collection agents must collect the applicable WHT amounts, and every month must deposit the withheld amounts to the tax authority, file monthly WHT returns and issue WHT certificates to the withheld third parties. The withheld third parties, who are also subject to CIT declaration/payment, may credit the withheld taxes in their annual CIT return. The WHT rates vary depending on the nature of the payment. The general WHT rate on payments made to foreign non-residents is 20%.

### Value Added Tax (VAT)

The standard VAT rate in Colombia is 19% of the invoiced amount. This tax is applicable to:

- the sale of movable assets;
- the provision of services in Colombia or from abroad (if the beneficiary is located in Colombia); and
- the importation of assets or goods that have not been expressly excluded – certain services are exempt from VAT, such as medical services, educational services, internet connectivity, and in some cases energy, gas and water utilities.

### Industry and Commerce Tax

This is a municipal tax applicable to all individuals, legal entities and de facto companies who carry out industrial, commercial or service activities within the jurisdiction of the relevant municipality. The rates vary from 0.2% to 0.7% calculated over the gross income for industrial activities and 0.2% to 1.6% calculated over the gross income for commercial and services activities.

### National Stamp Tax

This is an indirect levy triggered by the execution of certain legal acts, documents and contracts that generate legal effects in the country. As a general rule, any private agreement may be subject to this tax, even if does not require the involvement of a notary or public authority. Dormant since 2010 (when its rate was reduced to 0%), the tax was temporarily reactivated by the government at a 1% rate by Decree 175

of 14 February 2025, issued pursuant to temporary exceptional state powers of national commotion. This amendment applied until 31 December 2025. As of 1 January 2026, the rate has reverted to 0%, and the tax is currently not effectively triggered in practice.

According to recent doctrine by the DIAN and consistent with jurisprudence of the Council of State, for contracts with an undetermined amount, the triggering events are the signing, granting or acceptance of the document, while the taxable base is defined by each payment or credit made under the contract. Therefore, payments made before 22 February 2025 – the effective date of the Decree – are subject to a 0% rate while those made from that date through the end of the year will be taxed at 1%. Starting 1 January 2026, the rate should revert to 0%.

## 5.3 Available Tax Credits/Incentives

Colombia offers the following tax incentives to local and foreign companies.

### Double Taxation Treaties

Colombia has entered into an extensive network of double taxation treaties.

### Foreign Tax Credit Applicable to All Colombian Companies

Foreign income taxes may be credited by Colombian companies against their local CIT liability, subject to certain limitations.

### CIT Exemptions

The following income generated locally by a Colombian company is exempt from CIT:

- income obtained from eco-tourism services;
- income related to the sale of social interest or priority housing, provided that the taxpayer obtains the corresponding governmental permit; and
- income of companies incorporated in the departments of La Guajira, Norte de Santander and Arauca (ZESE) until 2024 will have a five-year CIT exemption.

### Tax Credit Applicable to Certain Investments

A 30% tax credit is available for investments made in certain scientific and/or technological projects or in professional training projects of governmental, public or private institutions.

### Special CIT Rate for Free Trade Zones

These are geographically delimited areas in the Colombian territory that have a special tax and customs regime. Companies that have this status can access tax benefits such as the application of a preferential (lower) income tax rate, 0% VAT and tariffs on foreign goods, and 0% VAT on domestic goods, among others.

### Tax Benefits for Investments in Non-Conventional Energy Sources

Tax incentives exist to encourage the generation of energy from clean and renewable sources. The following are the main tax incentives:

- income from the sale of electric power generated from wind, biomass or agricultural waste is exempt from CIT, provided the seller issues and negotiates greenhouse gas reduction certificates;
- income tax deduction of 50% of the value of the investment made in energy generation projects from non-conventional sources;
- VAT exemption on the acquisition of goods and services necessary for the development of non-conventional energy projects;
- exemption from payment of import duties on machinery, equipment, materials and inputs necessary for the production of energy from non-conventional sources; and
- accelerated depreciation incentive for machinery, equipment and civil works necessary for the development of non-conventional energy generation projects.

### The CFC and CHC Regimes

Colombia offers two additional tax incentive regimes that are particularly relevant for multinational structures and cross-border investments: the controlled foreign company (CFC) regime and the Colombian holding company (CHC) regime.

#### *The CFC regime*

The CFC regime is aligned with OECD BEPS Action 3 and targets foreign entities controlled by Colombian tax residents. Under the Colombian tax code, passive

income obtained by such entities may be attributed and taxed in Colombia. However, the regime offers an incentive by excluding active income from taxation. In addition, income effectively distributed is not subject to additional taxation if already reported, allowing for deferral and avoidance of double taxation. These features position the CFC regime as a compliant yet flexible structure for managing offshore investments.

*The CHC regime*

The CHC regime offers a full income tax exemption on dividends and capital gains derived by a CHC from qualifying foreign subsidiaries, as long as the CHC holds at least 10% participation and meets certain substance requirements. Dividends paid by the CHC to non-residents are considered foreign-sourced and may benefit from WHT relief. This regime is a powerful incentive to set up regional holding platforms in Colombia, aiming to boost inbound and outbound foreign direct investment.

## 5.4 Tax Consolidation

Tax consolidation is not allowed in Colombia.

## 5.5 Thin Capitalisation Rules and Other Limitations

Thin capitalisation rules (when the level of debt of a company is much greater than its equity capital) are applicable in Colombia based on the following:

- debt-to-equity ratio – for income tax purposes, a taxpayer generally may not deduct interest paid on loans that are acquired, directly or indirectly, from related parties and that exceed a 2:1 debt-to-equity ratio, considering the taxpayer's net equity on December 31st in the preceding year; and
- loans from third parties – where a related party acts as guarantor or provides a guaranty, participates in a back-to-back operation, or substantially acts as a creditor in any other transaction, loans from third parties are subject to the thin capitalisation limitation.

## 5.6 Transfer Pricing

Transfer pricing rules are applicable in Colombia.

## 5.7 Anti-Evasion Rules

The following are some of the key anti-evasion rules applicable in Colombia.

### Indirect Sales

Colombia has an indirect transfer regime. The regime taxes the indirect disposal of assets located in Colombia, through the transfer, by any means, of shares, participations or rights in foreign entities, as if the Colombian underlying assets were directly transferred. Secondary legislation clarifies the tax basis calculation and WHT obligations on indirect transfers.

### General Anti-Abuse Rule

This rule grants the DIAN the power to recharacterise operations that have no business purpose. This encompasses transactions that are artificial, have no economic or commercial purpose or are aimed at obtaining a tax advantage. The burden of proof for this purpose is on the DIAN.

### Limitation-on-Benefits Rule

Colombia has an anti-abuse clause that contains a limitation-on-benefits rule, whereby only one tax benefit can be applied to a single economic event. Otherwise, a taxpayer will lose the higher benefit applied.

## 5.8 Tariffs

Colombia operates a multi-tiered tariff system based on the Most Favoured Nation (MFN) principle, with the following general structure:

- 0–5% – applied to capital goods, industry inputs and raw materials not (or scarcely) produced domestically;
- 10% – applicable to most manufactured products; and
- 15–20% – imposed on consumer goods and others categorised as "sensitive" products.

In addition, Colombia implements targeted higher tariffs to protect specific sectors:

- automobiles – tariff set at 35% to support local assembly operations;
- agricultural goods (eg beef, rice, dairy) – tariffs can reach as high as 80–98%, drastically limiting imports outside regulated quotas; and

- steel products – a 35% safeguard tariff on imports (specifically from China, Turkey and Russia) was instituted in 2024 to counteract price undercutting and subsidy-driven dumping.

### Preferential Trade Agreements

*Free trade agreement (FTA) with the United States (effective May 2012)*

This involves a gradual elimination of tariffs, currently benefiting about 70% of US agricultural exports, with remaining tariffs phased out over a 19-year period.

*Trade agreement with the EU (active since 2014)*

This involves nearly 100% tariff elimination for EU-manufactured goods and broad agricultural liberalisation, though sensitive products – such as poultry, rice and pork – remain protected via safeguard mechanisms.

## 6. Competition Law

### 6.1 Merger Control Notification

Any transaction, regardless of its legal form (eg, shares or asset purchase, acquisition of IP rights, etc), that meets the requirements below is subject to pre-merger control by the *Superintendencia de Industria y Comercio* (Superintendency of Industry and Commerce; SIC).

- The transaction entails a change of control in one or more undertakings involved in the transaction. "Control" is defined in antitrust law as the possibility of influencing another party's commercial policies and strategies or disposing of key assets. Minority shareholdings may grant control under this definition in certain circumstances (ie, through veto rights).
- The parties to the transaction (eg, buyer and seller) are active in Colombia either in the same economic activity (resulting in a horizontal overlap for the transaction) or on different levels of the same value chain (creating vertical links).
- In the fiscal year immediately preceding the transaction, the parties had revenues in Colombia or total worldwide assets in excess of the value set yearly by the SIC. In 2026, this value is equivalent to COP85.6 billion or USD22.8 million.

If these conditions are met, parties require an authorisation from the SIC prior to closing the transaction. The type of submission for obtaining this clearance will depend on the parties' combined market share. If market shares in all relevant markets in Colombia are below 20%, a short-form notification is available. If the combined share in at least one relevant market in Colombia is equal to or exceeds 20%, a full filing (or pre-assessment request) will be required.

### Joint Ventures

As per SIC precedent, joint ventures (JVs) are economic concentrations (fulfilling the first criteria above) if they:

- are permanent or long-lasting;
- involve the joint development of a non-complementary activity of the parties; and
- are fully functional in terms of financial and administrative capacity.

If the JV meets these requirements and additionally meets the local overlap and thresholds test, it will be subject to pre-merger control.

### 6.2 Merger Control Procedure

For short-form notifications, the SIC has ten business days from the date on which the authority receives all the required information to review it and issue a letter acknowledging receipt of the submission. The authority has up to five years from the date of closing to challenge the implied approval through the short form.

For full filings, the SIC has an initial stage (Phase 1) to review and decide on the submission, which lasts 30 business days from the date the necessary information is submitted. During this phase, the SIC may either approve the transaction or proceed to a more detailed review (in a second phase). During Phase 1, the SIC also posts a notice on its website to inform third parties about the transaction, allowing them ten business days to file any challenges and relevant information.

If the SIC considers that the transaction requires further review and analysis, it will move the submission to Phase 2. This second phase lasts three months from the date the required information is submitted.

The SIC can extend this term at least once. In this phase, the SIC requests additional information from other authorities, competitors, clients and suppliers to perform its market analysis. If the SIC issues a request for further information (RFI) to the parties during Phase 2, this resets the three-month period, but only the first RFI has this effect; subsequent RFIs do not suspend the duration of the review.

### 6.3 Cartels

Colombian competition law generally prohibits anti-competitive agreements between competitors, such as price fixing, bid rigging and market allocation, among others.

Antitrust laws apply to any market agent, whether domestic or foreign, whose conduct has or may have an effect, even if partially, in any market in Colombia.

Penalties for companies engaging in anti-competitive agreements can be of up to 100,000 minimum monthly salaries (COP175 billion or USD46.3 million). Fines against individuals can be as high as 2,000 minimum monthly salaries (roughly COP3.5 billion or USD927,614 at current exchange rates). The SIC can impose fines against corporate officers and employees who executed, authorised or tolerated the conduct.

### 6.4 Abuse of Dominant Position

Colombian competition law generally prohibits anti-competitive behaviour (ie, behaviour that is restrictive regardless of the existence of a dominant position) and abuses of dominance (eg, tying, discrimination and market access obstruction, among others).

Penalties for companies engaging in abusive unilateral conduct can be of up to 100,000 minimum monthly salaries (COP175 billion or USD46.3 million). Fines against individuals can be as high as 2,000 minimum monthly salaries (roughly COP3.5 billion or USD927,614). The SIC can impose fines against corporate officers and employees who executed, authorised or tolerated the conduct.

## 7. Intellectual Property

### 7.1 Patents

A patent is an exclusive right granted to an inventor over their invention. In Colombia, the patent protection period lasts for 20 years from the filing date, and it cannot be renewed.

The registration process begins with the submission of the application to the SIC, along with the required registration fees. Following this, the office carries out formal and substantive examinations to ensure compliance with legal requirements and to assess the invention's novelty, inventive step and industrial applicability. If all criteria are satisfied, the patent is granted.

Enforcement of patent rights may involve cease-and-desist letters and conducting mediation hearings as out-of-court remedies. Judicial remedies include filing for injunctions, ordering seizures and pursuing infringement lawsuits, which enable the patent holder to seek monetary compensation for damages.

### 7.2 Trade Marks

A trade mark identifies goods or services and can be categorised into types such as word, stylised and figurative trade marks, or even other non-traditional ones such as colour or sound marks. Protection is valid for ten years from the registration date and can be renewed indefinitely every subsequent ten years.

The registration process involves filing an application with the Trade Mark Office, paying the required fees and undergoing a formal examination. Following this, the trade mark is published to allow for opposition for 30 days. Afterwards, the office conducts a substantive examination to assess the trade mark's distinctiveness demanding the application for clarifications on claimed products or colours. The Office then issues a resolution granting or denying the registration of the trade mark.

Enforcement activities for trade marks include issuing cease-and-desist letters and holding mediation hearings as out-of-court remedies. Judicial remedies include filing for injunctions, seizures and infringement actions, through which the owner can seek monetary

compensation for damages of unauthorised use of registered trade marks.

### 7.3 Industrial Designs

Industrial design protects the ornamental aspects of a product, focusing on its aesthetic appearance rather than its technical or functional features. The protection for industrial designs lasts for ten years from the filing date and cannot be renewed.

The registration process for industrial designs begins with filing an application and paying the required fees. This is followed by a formal examination and publication of the design for opposition purposes. After the opposition period, a substantive examination takes place, which results in a resolution either granting or denying the registration of the design.

Enforcement of industrial design rights may involve sending cease-and-desist letters and conducting mediation hearings as out-of-court remedies. Judicial remedies include filing for injunctions, seizures and infringement actions, allowing the owner to seek monetary compensation for damages incurred due to the infringement.

### 7.4 Copyright

Copyright protects the original expression of artistic, scientific or literary works. It encompasses both moral and economic rights, with moral rights protected indefinitely and economic rights protected for the lifetime of the author plus 80 years from the work's creation.

In Colombia, registering works with the National Copyright Office (*Dirección Nacional de Derecho de Autor*) has declaratory but not constitutive effects. However, it is advisable to register works to establish evidence of ownership.

Enforcement of copyright involves activities such as cease-and-desist letters and conducting mediation hearings as out-of-court remedies. Judicial options include filing for injunctions, seizures and infringement actions, allowing the owner to seek monetary compensation for damages caused by the infringement.

### 7.5 Others

Other protected IP rights include trade secrets or unlawful and anti-competitive practices between competitors in the market where there are no IP registrations or copyrights, which can be enforced via unfair competition actions. Trade secrets encompass undisclosed information usable in productive, industrial or commercial activities, capable of transmission to third parties.

Software is safeguarded under copyright law in Colombia and follows similar procedures.

## 8. Data Protection

### 8.1 Applicable Regulations

Law 1581 of 2012 is the primary regulation governing data protection in Colombia. It adopts a consent-based approach for the processing of personal data concerning Colombian data subjects. It covers various important matters, including:

- requirements for valid consent for the processing of personal data;
- special treatment and protection of sensitive personal data;
- rights of data subjects regarding their personal data;
- transmission and transfer of personal data to third parties;
- obligations imposed on data controllers and processors; and
- penalties for violations of the data protection regulations.

Additionally, Decree 1377 of 2013 (compiled in Decree 1074 of 2015) supplements these provisions by imposing additional obligations related to the minimum content requirements for privacy policies, notices, data transmission and transfer agreements, and specifications for international data transfers.

### 8.2 Geographical Scope

The SIC has consistently ruled that Colombian data protection laws apply to any company that processes personal data in Colombia. According to the definition of "processing" in Law 1581 of 2012 (which includes

data collection), any company, whether local or foreign, that collects or processes personal data from Colombian residents is subject to the provisions and obligations of Colombian data protection law.

In several cases, the SIC has explicitly stated that even the act of collecting data through cookies from web or mobile browsers falls under the scope of Colombian data protection regulations. Therefore, any foreign entity engaged in online data collection from Colombian individuals must comply with local data protection laws.

### 8.3 Role and Authority of the Data Protection Agency

The data protection authority in Colombia is the SIC.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

#### Tax Reform

Given Colombia's political cycle (presidential elections will be taking place in mid-2026), it is common for new administrations to promote comprehensive tax reforms at the beginning of their term. In this context, it is reasonably expected that a new tax reform may be proposed in the short term, with the objective of adjusting fiscal policy, strengthening government revenues and addressing structural budget needs.

#### Reform to the General Data Protection Regulation in Colombia

A bill of law is currently being discussed in the Chamber of Representatives, which seeks to reform and modernise the personal data protection regime in Colombia. Among other aspects, the bill proposes to:

- incorporate a new legal basis for the processing of personal data, such as the performance of a contract or compliance with a legal obligation;
- expand the definition of sensitive personal data to include geolocation data, genetic data and neurodata;
- reduce the deadline for reporting security incidents or data breaches from 15 business days to 72 hours; and
- establish the obligation for controllers or processors operating on a large scale to enable a contact channel and appoint a representative before the SIC.

#### Consumer Protection Legislative Outlook

A bill of law proposes a comprehensive reform of Colombia's Consumer Protection Statute. The bill aims to modernise and strengthen consumer rights across both traditional and digital markets.

Key proposals include:

- empowering local authorities to impose sanctions;
- requiring transparency in credit offers (eg, disclosing the annual cost of financing);
- mandating the display of product reparability indexes; and
- prohibiting tied sales, deceptive environmental claims (greenwashing) and discriminatory profiling in customer service.

#### Technology

Colombia continues to move towards AI regulation through ongoing legislative initiatives. In July 2025, the government introduced a new AI bill establishing a risk-based regulatory framework, aligned with international standards.

The bill includes specific IP implications, notably:

- AI developers must obtain explicit authorisation to use protected works, images or voices for training models; and
- exceptions may apply only under limited legal grounds, subject to case-by-case assessment.

The proposed system also introduces sanctions (fines and operational suspensions) for misuse of AI systems, reinforcing compliance obligations for companies. These developments reflect a broader shift from policy-oriented governance towards binding regulatory controls, especially concerning data use, training practices and IP protection.

In parallel, the Colombian Criminal Code was amended to classify AI-driven impersonation, such as deepfakes, as an aggravated offence. The amendment will

enter into force in July 2026, marking a key milestone in addressing the misuse of generative AI technologies in Colombia.

### Impact of Global Trade Developments

Colombia was expected to adopt a new customs code – focused primarily on the sanctioning and enforcement framework – before 20 June 2026, in compliance with a Constitutional Court judgment which mandated Congress to replace the current regime. The reform seeks to modernise, simplify and elevate the customs framework to statutory level, introducing clearer definitions of infractions, reducing the number of sanctionable conducts, and embedding principles such as proportionality, good faith and legal certainty. It also aims to strengthen anti-contraband controls while promoting voluntary compliance through mechanisms such as post-clearance audits and more balanced sanctioning rules (including fewer automatic seizures and no double penalties for the same conduct).

# Trends and Developments

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**Baker McKenzie S.A.S.** was established in 1949 and is recognised as one of the foremost international law firms. With a presence in 45 countries through 75 offices, including in 36 of the top 40 global economies, the firm employs nearly 5,000 lawyers and around 13,000 staff. Renowned for transactional law services, it offers a comprehensive global platform, industry-specific expertise, and profound local market insights allowing seamless co-ordination on complex, multi-jurisdictional matters through deep regional integration. The firm is the preferred choice for multinational corporations and both domestic and international private equity firms, and is valued for its integrated global, Latin American and local Colombian market expertise. Serving a diverse clientele, the firm specialises in advising high-profile multinational companies, particularly in heavily regulated industries such as oil and gas, energy, healthcare, life sciences, automotive, agrifood, chemicals and real estate. In Colombia, the firm is frequently instructed on sophisticated transactions and projects involving cross-border elements and regulatory complexity. With a focus on delivering sector-specific counsel, it is at the forefront of legal services, driving innovation and excellence in a complex global market.

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## Colombia's Political Climate

Colombia is currently in the fourth and last year of its first-ever left-wing government, under President Gustavo Petro. This period has been marked by strident announcements by the administration, rather than tangible achievements: President Petro has announced extensive and business-averse reforms in key sectors such as healthcare, pensions, employment, energy and utilities, but has failed to pass most of them through Congress.

Nonetheless, he has managed to pass some of the less disruptive proposals: for example, a comprehensive pensions reform was approved by Congress in June 2024, and a wide-ranging labour reform was approved by Congress in June 2025. Although the pensions reform was supposed to become effective as of 1 July 2025, the Constitutional Court ruled that the reform failed to properly comply with a formal requirement during its approval process. As a result, the reform remains suspended until the Constitutional Court formally decides whether the defect was properly remedied by Congress in a subsequent approval process completed in the second half of 2025.

This pushback in Congress and the courts reflects positively on the Colombian system of checks and balances. However, President Petro's leadership approach has polarised the nation, downplayed security and added an undesirable level of unpredictability to the business climate. Additionally, other adverse factors such as constrained GDP growth and persistently high inflation and interest rates, together with the recent government decision to temporarily suspend the "structural budgetary balance rule" and failure to pass a new tax reform, have further contributed to this instability.

Colombia held parliamentary elections in March 2026, resulting in a new Congress that is expected to remain fragmented, meaning that the approval of major reforms is likely to continue facing political constraints in the coming years. The political landscape is now focused on the upcoming presidential elections, which are scheduled to take place before the end of the first half of 2026. The outcome of these elections will be decisive for businesses in Colombia, as it will shape the direction of policy across several areas, including hydrocarbon exploration, energy transition, and the management and financing of the healthcare and pension systems.

Despite the challenges facing the industry, several significant transactions were executed over the past year. While there was a decline in the number of transactions, the overall value of deals increased. Among the most notable transactions were the completion of Davivienda's acquisition of Scotiabank's retail operations in Colombia, following receipt of the relevant regulatory approvals, as well as the integration of Tigo and Movistar's operations in Colombia. This integration involved several related transactions, including Millicom's acquisition of the Colombian government's equity stake in Colombia Telecomunicaciones (Coltel), following Telefónica's earlier divestment of its participation a few months prior, and Millicom's acquisition of EPM's stake in Tigo. In addition, the increase in the ownership stake of Brookfield Renewable Partners and the Qatar Investment Authority in Isagen SA ESP was also notable. In terms of sector activity, the most dynamic industries included software, renewable energy, and banking and financial services.

## Regional and Local Climate

After several years of shifting to the left, recent elections have led to a number of countries moving towards more centrist and right-leaning administrations, which, to varying degrees, have reintroduced more market-oriented policies. However, this has resulted in a more heterogeneous and less predictable investment landscape, where investment conditions must be assessed on a country-by-country basis. This is especially pertinent because large investors usually do not view individual countries in the region (except Brazil) as separate markets but rather categorise them into three or four major markets (eg, Southern Cone, Andean Region, Pacific Rim countries, Caribbean Rim countries). Consequently, events in a specific country in the region tend to influence investment decisions in other countries that are considered part of the same market.

Brazil – traditionally a key driver of deal activity in the region – continues to play a central role, although its economic recovery and growth trajectory have been more gradual than initially expected. Meanwhile, Mex-

ico has emerged as a primary focus for investment in the region, benefiting from its proximity to the United States and the structural impact of nearshoring. In turn, investors are increasingly prioritising opportunities in Mexico over expansion into other Latin American markets.

## Trends and Developments in M&A and Corporate

### *Regional scale targets*

In recent years, there has been a noticeable shift in M&A transactions towards targets with regional, multi-jurisdictional operations. Investors are looking for companies that offer regional scale and have a presence beyond Colombia. This trend is particularly evident in sectors such as energy, telecommunications and healthcare, where companies have successfully expanded their operations into the Andean region and Central America.

Colombian companies with a proven track record of regional expansion are particularly attractive to investors. These companies provide an opportunity to gain a foothold in multiple markets and leverage regional synergies. The focus on regional scale reflects a broader strategic shift among investors, who are seeking to diversify their portfolios and mitigate country-specific risks by investing in companies with a broader geographic reach.

### *Dominance of strategic investors*

Strategic investors have been at the forefront of M&A activity in Colombia and the broader Latin American region. These investors are typically more resilient to short-term market fluctuations and economic instability because they have a long-term investment horizon. Unlike financial investors, who may be more sensitive to short-term economic changes and volatility, strategic investors are focused on the bigger picture and their long-term strategic goals.

One significant advantage that strategic investors have is access to cheaper financing. Many of these investors have substantial cash reserves and can secure financing at preferential rates, making it easier for them to pursue and close deals even in challenging economic conditions. However, the dominance of strategic investors in the M&A market has also led to increased antitrust scrutiny. Regulators are more vigilant about potential anti-competitive effects, which can prolong the deal-making process and lead to more frequent use of carve-outs to address regulatory concerns.

### *Pre-organisation carve-outs*

Carve-outs have become a prevalent trend in the Colombian M&A market. Companies are increasingly engaging in pre-sale reorganisations to create portfolios that are easier to sell, more attractive to investors and subject to less regulatory scrutiny. By isolating specific business lines or assets, sellers can unlock hidden value by excluding underperforming units from transactions and focus on high-growth segments.

Carve-outs allow sellers to highlight and capitalise on high-performing parts of their business, making them more appealing to potential buyers. By separating out specific business units or assets, companies can set competitive prices for these parts, enhancing their attractiveness and facilitating smoother transactions.

### *Earn-outs and deferred payments*

The economic instability and higher costs of capital have made it challenging to accurately value businesses, leading to an increased use of earn-outs and deferred payment mechanisms in M&A transactions. Earn-outs and deferred payments are payment structures that allow the final purchase price to be contingent on the future performance of the acquired business. These mechanisms help bridge the valuation gap between buyers and sellers and mitigate the risks associated with past performance volatility and uncertain future outcomes.

However, while earn-outs and deferred payments offer a practical solution to valuation challenges, they also come with potential downsides. These structures can lead to future disputes and litigation if the agreed-upon performance targets are not met or if there are disagreements over the calculation of earn-outs. Despite these risks, the use of earn-outs and deferred payment mechanisms have continued to gain traction in the Colombian M&A market as investors seek to navigate economic uncertainty, although they still account for a relatively small proportion of overall transactions.

### *Artificial intelligence (AI) in due diligence*

Identifying how target companies are relating and adapting to AI developments has become a key part of conducting due diligence. It has become important to identify whether the target has incorporated AI tools and applications into its business and whether the AI tools being used comply with intellectual property (IP) regulations and are not misusing IP rights from third parties.

Buyers conducting due diligence in IP-related companies are also seeking to understand whether the IP rights of the target are properly protected from potential misuses of third parties' AI developments.

### *Integration of AI*

The adoption of AI is transforming the M&A landscape by streamlining processes, enhancing decision-making and improving efficiencies. Advanced AI tools now go beyond traditional data analysis by generating summaries, flagging risks, automating contract review, and supporting valuation through predictive analytics, which is helping legal professionals and investors make more informed decisions. This technological advancement is expected to continue shaping the M&A market in the years to come.

In the Colombian legal sector, AI is increasingly being used in due diligence, document preparation and deal execution overall.

### *ESG considerations*

Environmental, social and governance (ESG) factors are playing an increasingly critical role in M&A and corporate-related processes. Investors now have more sophisticated tools to assess and verify compliance with ESG standards, while local regulations increasingly provide companies with clearer guidance on both implementing ESG practices and reporting on their compliance with such ESG standards. Accordingly, investors are prioritising thorough due diligence on ESG matters to ensure that potential targets align with their own ESG values, have sustainable business models and are not exposed to significant reputational risks. This focus on ESG integration is becoming a key driver in decision-making processes, as investors seek to mitigate risks and capitalise on opportunities related to sustainability.

### *The National Artificial Intelligence Policy*

Following the adoption of the National Artificial Intelligence Policy in 2025, Colombia has continued advancing towards a more structured regulatory and institutional framework for AI, with particular emphasis on IP, copyright and digital risks.

Colombia has recently proposed multiple bills in the Senate requesting regulatory updates from the Colombian Copyright Office, as the current law from 1982 applies only to content created by human beings. However, ongoing discussions are now exploring hybrid authorship models that recognise collaboration between humans and AI, which may become part of future reforms.

In parallel, administrative authorities, such as the Colombian Trade Mark Office, have begun incorporating AI into IP administration processes, particularly in trade mark examination and similarity searches. At the same time, they are strengthening compliance requirements for technology transfer agreements involving data and AI systems.

### *Guidelines on cybersecurity, privacy and proportionate use, regulating the development and use of AI in Colombia*

On 20 May 2025, Congress introduced Bill No 422 to regulate AI. The bill draws on international models such as the EU Artificial Intelligence Act and a Brazilian bill. It outlines incentives, risk classifications and accountability mechanisms for AI development and deployment in Colombia:

- national AI oversight and regulatory authority – the Ministry of Science, Technology and Innovation will be the agency responsible for supervising and regulating the development and use of AI;
- adaptation and review – the Ministry will periodically review and update the law to ensure that it remains relevant in light of technological advancements;
- regulatory sandboxes – these controlled environments will allow for the testing of AI innovations under flexible regulatory conditions, promoting responsible experimentation;

- incentives for AI research and development – the bill seeks to implement programmes and funding to support AI research; and
- protection of fundamental rights – continuous monitoring and oversight will be carried out to classify and mitigate risks, ensuring the safe development and use of AI.

Since late 2024, the Colombian Congress has formed a special Bicameral Commission on Artificial Intelligence to support, analyse and build consensus regarding AI-related legislative initiatives.

The commission, established by Resolution 02 on 11 September 2024, monitors legislative proposals and assesses future initiatives. It is currently working to shape AI legislation and strengthen the regulatory framework for technological development.

## Developments in IP Matters

### *Pending comprehensive AI legislation (2026 status)*

As of early 2026, multiple AI bills, including those introduced in July and October 2025, remain under review by Congress and have not yet been enacted, reflecting an active but still transitional regulatory environment. Recent proposals include significant penalties, such as fines of up to 3,000 minimum wages, operational suspension, or closure of AI-related activities for non-compliance.

### *AI innovation programmes (2026)*

Initiatives such as the Colombia Inteligente 2026 call, launched by the Ministry of Science, Technology and Innovation, promote AI research and development across strategic sectors, focusing on food security, energy transition, healthcare sovereignty, and science for peace. These initiatives aim to strengthen research, technological development, and the adoption of AI, contributing to progress in the following areas:

- biodiversity management and bioeconomy;
- intelligent agrifood systems;
- renewable energy and energy transition;
- AI technologies for educational transformation in the regions; and
- risk management and wildlife conservation through AI.

### *Trade marks classification and practice updates*

Recent developments in IP in Colombia demonstrate the adoption of the new Nice Classification (13th edition), which introduces changes in product classification, including:

- rescue, safety and emergency goods moving from Class 9 to Class 12; and
- electrically heated garments moving from Class 11 to Class 25.

Adjustments in the classification of food products. The Colombian Trade Mark Office has begun incorporating AI to enhance the efficiency and speed of trade mark searches. At the same time, the international IP system is increasingly integrating advanced tools, including image similarity search, automated assistance in the Vienna Classification, retrieval of word marks, and pre-examination data extraction.

In parallel, Official Communication No 002 of 2025, issued by the Trade Mark Office, established stricter compliance expectations for technology transfer processes involving personal data or technologies designed to process such data. Furthermore, a legal interpretation released in February 2026 provided additional clarity on key aspects such as cross-border data flows, allocation of responsibilities, contractual structures and accountability requirements.

Taken together, these developments are not isolated changes but rather part of a broader transformation of Colombia's IP framework. They signal a shift towards a more integrated and sophisticated system, where AI adoption, data governance and regulatory compliance interact to reshape how IP is managed both at an operational and strategic level.

## Trends in Employment and Compensation Matters

### *Sexual harassment in the workplace*

An employer's Workplace Coexistence Committee is no longer competent to investigate cases of sexual harassment. These cases must be exclusively handled by senior management and the human resources department, and employers must now establish a separate internal procedure led by the human resources function to receive and address cases and complaints

of sexual harassment in the workplace and consequently update workplace regulations.

### *New labour inspection model*

Employers must align with the new labour inspection model established by the Ministry of Labour. This model, referred to as the "Inspection with Purpose", modernises labour and social security inspections and introduces a human rights-based approach. Its primary objective is to unify inspection criteria at the national level and ensure consistent and equitable enforcement actions aimed at eliminating discrimination in the workplace.

The new model incorporates principles such as in dubio pro operario, a preventative approach, and the recognition of violence and rights violations, including discrimination, xenophobia, ableism and ageism. Employers must prepare for inspections based on six mandatory approaches: differential, gender, disability, ethnic (with an anti-racist perspective), life-course and intersectional. These inspections (preventative, reactive or Ministry-initiated) will be unannounced and prioritised in cases of potential labour violations, violence or infringements of trade union rights. Employers must also certify discrimination-free conditions, maintain accessible documentation, and ensure information availability for oversight.

In addition, inspections under the "Inspection with Purpose" framework will be conducted directly by the "Elite Inspection Group". This specialised group, with a differential and gender-based approach, will be responsible for carrying out site visits, urgent protection measures, and other procedures associated with the new model.

### *Shift from comprehensive salaries to ordinary salaries*

A noticeable market trend has emerged involving the execution of addenda to employment agreements to transition employees from a comprehensive salary scheme (*salario integral*) to an ordinary salary structure. This development is largely driven by the significant increase in the statutory minimum wage for 2026, which directly affects the minimum threshold required to maintain a valid comprehensive salary arrangement.

Under Colombian law, a comprehensive salary must be at least 13 times the statutory minimum wage. As a result, increases in the minimum wage raise the legal floor for employees to remain under this compensation scheme, prompting employers to reassess existing arrangements.

For 2025, the statutory minimum wage was COP1,423,500, and the statutory minimum comprehensive salary was COP1,750,905.

For 2026, the statutory minimum wage is COP18,505,500, and the statutory minimum comprehensive salary is COP22,761,765.

### *Mandatory registration of vacancies*

New regulation introduces obligations regarding the registration of job vacancies. Employers must report all vacancies within ten business days of their creation through authorised providers of the Public Employment Service, including minimum required information such as occupation code, candidate profile, salary, location, qualification level and work modality (on-site, remote or hybrid).

Employers may refrain from publishing certain strategic vacancies, including executive roles, special projects or internal promotions, where valid justification exists. Compliance will be subject to oversight by the Administrative Unit of the Public Employment Service.

### *Standards for workplace lactation rooms*

New rules strengthen requirements for workplace lactation rooms, making them mandatory for larger employers (those with capital exceeding 1,500 minimum wages or more than 50 female employees). Key obligations include registration with health authorities, defined certification and inspection timelines, appointment of a trained person in charge, and mandatory record-keeping on use, cleaning and maintenance.

These requirements apply regardless of hybrid work arrangements, and employers must comply within a non-extendable three-month transition period.

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## Developments in Tax Matters

### *Wealth tax*

Colombia levies a wealth tax under two separate regimes:

- a permanent regime applicable to resident individuals and non-resident individuals and entities on their assets held in Colombia (with several exceptions, such as shares in Colombian entities); and
- a temporary regime applicable to legal entities for fiscal year 2026.

The temporary regime applicable to legal entities was enacted under the State of Economic, Social and Ecological Emergency declared in early 2026, with the purpose of raising additional revenues to address the fiscal impact of climate-related events and other emergency expenditures. Under this regime, the tax applies exclusively for fiscal year 2026 to legal entities, and other income tax filers with net equity as of 1 March 2026 equal to or greater than 200,000 UVT (approximately COP10.47 billion).

The taxable base corresponds to the net equity, defined as total assets minus liabilities, determined as of that date, subject to certain exclusions. The triggering event is the possession of such net wealth as of 1 March 2026.

The applicable tax rate is generally 0.5%. However, a higher rate of 1.6% applies to entities operating in the financial and extractive sectors. The tax is assessed on a one-time basis and must be paid during 2026.

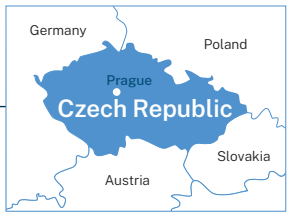
## Developments in Personal Data Protection

### *Standard contractual clauses for international transfer and transmission of personal data*

In late 2025 and early 2026, the Data Protection Authority formally incorporated the Ibero-American Data Protection Network (RIPD) model contractual clauses into Colombian regulations. Until now, these clauses had only been considered a recommended best practice, as a mechanism for the transfer and/or transmission of personal data in Colombia.

The model clauses may only be amended to add to or strengthen the rights and safeguards set forth therein; that is, they may not be modified to reduce, limit or alter the guarantees granted. Likewise, non-compliance with the model clauses may be interpreted, beyond a mere contractual breach, as a failure to comply with the orders and instructions issued by the Data Protection Authority and, consequently, as a violation of the Colombian personal data protection regime.

# CZECH REPUBLIC




## Law and Practice

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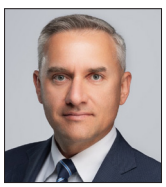
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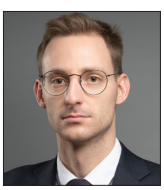
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# 1. Legal System

## 1.1 Legal System and Judicial Order

### Introduction

The Czech Republic is a civil law jurisdiction based primarily on codified legislation. The legal system relies principally on statutes enacted by Parliament and supplemented by implementing regulations, international treaties and European Union law. Unlike common law systems, judicial decisions do not formally constitute an independent source of law. Courts therefore primarily apply and interpret legislative provisions rather than establish legal rules through judicial precedent.

The current legal framework developed significantly following the political and economic transformation after 1989 and the subsequent accession of the Czech Republic to the European Union in 2004. For businesses operating within the jurisdiction, this has resulted in a relatively predictable legal environment aligned with broader European regulatory standards.

### Sources of Law

The Czech legal system operates through a hierarchical structure of legal rules and instruments. Constitutional order forms the highest level of the legal framework and establishes fundamental principles concerning the organisation of the state, separation of powers and protection of individual rights.

The principal sources of law include:

- constitutional acts;
- international treaties incorporated into the legal order;
- directly applicable European Union regulations;
- statutes adopted by Parliament; and
- subordinate legislation issued by ministries and administrative authorities.

The constitutional order of the Czech Republic consists primarily of:

- the Constitution of the Czech Republic;
- the Charter of Fundamental Rights and Freedoms; and
- constitutional legislation adopted by Parliament.

Ordinary legislation forms the principal legal framework for business activities. The legislation most commonly affecting commercial operations includes:

- the Civil Code (Act No 89/2012 Coll.);
- the Business Corporations Act (Act No 90/2012 Coll.);
- the Labour Code (Act No 262/2006 Coll.);
- the Trade Licensing Act (Act No 455/1991 Coll.);
- the Insolvency Act (Act No 182/2006 Coll.);
- the Competition Protection Act (Act No 143/2001 Coll.);
- the Administrative Procedure Code (Act No 500/2004 Coll.);
- the Civil Procedure Code (Act No 99/1963 Coll.);
- the Income Tax Act (Act No 586/1992 Coll.);
- the VAT Act (Act No 235/2004 Coll.); and
- the Accounting Act (Act No 563/1991 Coll.).

These legal acts regulate key aspects of commercial activity, including establishment of companies, corporate governance, contractual relationships, employment matters, taxation and insolvency proceedings.

### Judicial Decisions and Interpretation of Law

Although judicial decisions are not formally recognised as a source of law, decisions of higher courts play an important practical role in ensuring legal consistency and predictability.

Lower courts generally follow established judicial interpretation, particularly where legal provisions contain ambiguities or require further clarification.

The most significant judicial institutions include:

- the Constitutional Court;
- the Supreme Court; and
- the Supreme Administrative Court.

### Court Structure

The Czech judicial system consists of four levels of ordinary courts:

- district courts;
- regional courts
- high courts; and

- the Supreme Court and the Supreme Administrative Court.

*District courts*

District courts generally function as courts of first instance for most civil and criminal matters. These courts commonly hear contractual disputes, employment disputes, debt recovery proceedings and standard commercial claims.

*Regional courts*

Regional courts perform both first instance and appellate functions (reviewing of district court decisions). More complex commercial matters, insolvency proceedings and administrative matters are commonly heard at this level in the first instance.

Regional courts frequently deal with:

- corporate disputes;
- insolvency proceedings;
- intellectual property disputes; and
- significant commercial litigation.

*High courts*

High courts act as appellate courts reviewing first instance decisions of regional courts.

*Supreme Court*

The Supreme Court represents the highest judicial authority in ordinary civil and criminal matters. It primarily addresses questions concerning legal interpretation rather than factual issues and seeks to ensure uniform application of law.

### Administrative Judiciary

Court review regarding administrative matters commences before regional courts, with appeals and cassation review falling within the jurisdiction of the Supreme Administrative Court.

Administrative courts commonly review disputes concerning:

- tax matters;
- licensing decisions;
- public procurement procedures;
- regulatory sanctions;
- immigration issues; and
- decisions of administrative authorities.

## 2. Restrictions on Foreign Investments

### 2.1 Approval of Foreign Investments

#### Introduction

The Czech Republic generally maintains an open investment regime and foreign investors are typically treated equally to domestic investors. Foreign individuals and legal entities may establish companies, acquire ownership interests, purchase assets and conduct business activities without general restrictions based solely on foreign ownership. Under the Act No 34/2021 Coll., on the Screening of Foreign Direct Investments (the "FDI Screening Act"), a foreign investor is strictly defined as an individual or entity that is not a citizen of the Czech Republic or another EU member state, does not have its registered office in the Czech Republic or another EU member state, or is directly or indirectly controlled by such a person. The regulations also apply to trustees of trust funds under similar conditions.

Historically, the Czech Republic has promoted foreign investment and has been regarded as an attractive jurisdiction for both European and non-European investors due to its central geographical location, developed infrastructure and stable legal framework. Nevertheless, increasing concerns regarding national security, strategic technologies and protection of critical infrastructure have led to the implementation of foreign investment screening mechanisms consistent with broader European Union initiatives.

Foreign investments may therefore become subject to review where they involve sensitive sectors or where national security considerations arise.

#### Investments Subject to Review

Most ordinary investments do not require governmental approval. However, specific transactions involving strategic sectors may be subject to mandatory review procedures under the FDI Screening Act.

Under the FDI Screening Act, review requirements generally arise where a foreign investor acquires an

"effective degree of control" over the target's economic activity. For the purposes of the FDI Screening Act, an effective degree of control includes, in particular:

- the ability to dispose of at least a 10% share of voting rights in the target entity, or to exercise corresponding influence over the target entity, including through persons acting in concert or subject to common control with the foreign investor;
- membership of the foreign investor, or a person closely connected to the foreign investor, in a corporate body of the target entity;
- the ability of the foreign investor to exercise ownership rights over assets through which the relevant economic activity is carried out; or
- any other level of control enabling the foreign investor to gain access to information, systems, or technologies relevant to the protection of the security of the Czech Republic or its internal or public order.

Attention is generally paid to investments involving strategic or security-sensitive sectors. Pursuant to Section 7 of the Czech FDI Screening Act, prior approval of the Ministry of Industry and Trade is mandatory in particular where the foreign investment concerns:

- entities active in production, research, development, innovation or life-cycle management of military material;
- critical infrastructure operators;
- providers of regulated services subject to a higher level of cybersecurity obligations;
- dual-use goods and technologies listed under applicable EU export control regulations; and
- other activities or assets considered essential from the perspective of the security or public order of the Czech Republic.

The assessment focuses primarily on the substance and practical effects of the transaction rather than purely formal ownership structures.

### Competent Authority

Foreign investment reviews are conducted primarily by the Ministry of Industry and Trade of the Czech Republic.

The Ministry may also co-operate with other governmental authorities depending on the nature of the transaction, including:

- security authorities;
- intelligence services;
- defence authorities;
- cybersecurity authorities; and
- other specialised regulatory bodies.

As a result, the review process frequently includes legal, economic and security considerations.

### Timing Considerations

Where approval requirements apply, investors generally need to obtain clearance before completing the transaction.

Parties commonly address regulatory approval requirements through transaction documentation by including:

- conditions precedent;
- co-operation obligations;
- information-sharing requirements;
- long-stop dates; and
- termination mechanisms.

Failure to identify applicable review requirements at an early stage may significantly affect transaction timing and completion certainty. Failure to comply with the FDI Screening Act can result in severe sanctions. The Ministry may prohibit the continued existence of the foreign investment and order the sale of the target entity or asset. Furthermore, carrying out an investment without the required approval or consultation proposal may result in a fine of up to 1% of the investor's total net turnover, while violating conditions or a prohibition decision can lead to a fine of up to 2% of the turnover.

## 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

### Introduction

Where a transaction falls within the foreign investment review framework, investors are generally required to submit an application for approval or a proposal for

consultation to the Ministry of Industry and Trade prior to completion of the investment.

The filing process aims to provide authorities with sufficient information to assess whether the proposed investment may affect public security or public order.

### Filing Requirements

Applications commonly include information regarding:

- the investor;
- ownership and control structure;
- beneficial ownership information;
- financing arrangements;
- business activities of the target entity;
- strategic relevance of the transaction; and
- expected control rights following completion.

Authorities may request additional documentation if the information submitted is considered insufficient.

The extent of required information generally depends on the complexity of the transaction and the sensitivity of the sector involved.

### Review Process

The review process generally consists of several stages:

- Initial Review: Authorities perform a preliminary assessment to determine whether the transaction raises concerns affecting national interests.
- Additional Assessment: Where concerns arise, authorities may conduct a more detailed review involving consultation with relevant governmental institutions.
- Decision Stage: Following completion of the assessment, authorities may:
  (a) approve the investment without conditions;
  (b) approve the investment subject to commitments;
  (c) prohibit the investment; or
  (d) impose corrective measures.

The overall timing of the procedure may vary depending on transaction complexity and the extent of governmental review required.

### Consequences of Non-Compliance

Failure to comply with mandatory filing obligations may lead to various consequences.

Potential sanctions include:

- administrative fines;
- suspension of implementation of the transaction;
- corrective measures;
- restrictions or prohibition of shareholder and voting rights;
- orders requiring the sale of the target entity, the target asset, or the acquired interests; and
- other remedial measures.

Authorities may also review transactions ex-officio for up to five years after completion where concerns arise that a filing should have been made.

### Transaction Risk Allocation

In practice, parties commonly allocate regulatory risks contractually.

Transaction documents frequently address:

- responsibility for preparing filings;
- co-operation obligations;
- allocation of costs;
- handling of regulatory requests; and
- consequences of delayed approval.

Careful allocation of regulatory risk has become increasingly important in cross-border transactions involving strategic sectors.

## 2.3 Commitments Required From Foreign Investors

Authorities may approve an investment subject to specific commitments where concerns relating to public security or strategic interests are identified.

The objective of such commitments is generally to modify the investor's original intent to ensure it does not threaten the security of the Czech Republic or its internal or public order, while allowing the investment to proceed.

The specific scope of commitments varies depending on the nature of the investment and the risks identified during the review process. The need for commitments can also be triggered by comments received from other EU member states or an opinion from the European Commission.

### Typical Commitments

Commitments may include:

- implementation of specific security measures;
- restrictions on access to sensitive information;
- cybersecurity obligations;
- reporting obligations;
- limitations concerning technology transfers;
- preservation of strategic assets within the Czech Republic; and
- requirements concerning management or operational arrangements.

Additional obligations may arise where critical infrastructure or sensitive technologies are involved.

### Practical Considerations

In practice, commitments are determined individually and authorities generally seek measures proportionate to the identified risks. The negotiation of commitments takes place before the matter is submitted to the government for a resolution, and the standard statutory review period is suspended during these negotiations.

Investors should therefore assess potential regulatory concerns at an early stage and consider whether transaction structures or operational arrangements may require modification.

## 2.4 Right to Appeal

Administrative decisions issued in connection with foreign investment screening may generally be challenged through administrative procedures and judicial review mechanisms. However, an administrative appeal (remonstrance) cannot be filed against a decision that was conditioned by a government resolution, nor can such a decision be reviewed in administrative review proceedings. Furthermore, a lawsuit or a request to reopen the proceedings against such a decision cannot be granted suspensory effect.

The availability of review serves as an important safeguard against unlawful or disproportionate administrative decisions.

### Administrative Review and Judicial Proceedings

Investors may challenge decisions concerning:

- procedural irregularities;
- incorrect legal interpretation;
- insufficient factual findings; or
- disproportionality of imposed measures.

Administrative courts generally examine whether authorities acted in accordance with applicable legislation and procedural requirements.

### Limits of Judicial Review

Although judicial review is available, courts frequently grant authorities a relatively broad degree of discretion where matters of national security or public policy are involved.

As a result, courts may show deference to governmental assessments involving sensitive security considerations. Judicial proceedings are also subject to strict rules protecting classified information. The presiding judge may allow participants access to classified parts of the file only to the extent necessary, provided it does not threaten state security, its sovereignty, territorial integrity, democratic foundations, lives or health of persons, or the activities of intelligence services or the police. Additionally, evidence cannot be obtained through witness testimony if relieving a person of their confidentiality obligation could threaten or seriously disrupt the operations of intelligence services or the police.

### Practical Implications

Because judicial proceedings may require considerable time and face evidentiary limits regarding classified intelligence, investors commonly seek to resolve concerns during the review process itself rather than rely exclusively on subsequent litigation.

Early identification of potential regulatory issues frequently reduces transaction risk and improves completion certainty.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

#### Introduction

The most commonly used corporate vehicles in the Czech Republic are the limited liability company (*společnost s ručením omezeným* – s.r.o.) and the joint stock company (*akciová společnost* – a.s.). Both a private limited liability company and a joint stock company provide separate legal personality and limited liability protection. In a private limited liability company, shareholders generally do not bear personal liability beyond their unpaid capital contributions. In a joint stock company, shareholders do not bear personal liability for the company's obligations at all. In both structures, the company itself is liable for its debts and obligations with all of its assets. Both forms are available to domestic and foreign investors on substantially equal terms.

#### Limited Liability Company

The limited liability company is the most frequently used legal form and is generally considered the standard structure for small and medium-sized enterprises, holding structures, subsidiaries of foreign investors and joint ventures. The structure is widely used due to its relatively simple administration and flexibility in internal governance arrangements. The limited liability company may be established by one or more shareholders, and the minimum statutory contribution may be lower than EUR1. Shareholders are generally liable only up to unpaid contributions registered in the Commercial Register.

The company is managed by one or more managing directors, while the supreme corporate body is the general meeting of shareholders. A supervisory board is optional. The internal governance structure is relatively flexible and may be extensively tailored in the constitutional documents, including voting arrangements, transfer restrictions, profit distribution mechanisms or veto rights.

Compared to a joint stock company, the limited liability company is subject to lower administrative and regulatory requirements. Corporate formalities are generally simpler, disclosure obligations are more limited, and the structure is easier and less costly to maintain. For this reason, the limited liability company is commonly used for SPVs and ordinary operating businesses, private holding structures and closely held companies with a limited number of shareholders.

At the same time, the limited liability company may become less practical in situations involving a larger number of investors, more sophisticated financing arrangements or frequent transfers of ownership interests.

#### Joint Stock Company

The joint stock company is a more formalised and capital-oriented corporate vehicle typically used for larger or more complex business structures, including investment platforms, regulated businesses, financing structures and holding companies with multiple investors.

Ownership interests in a joint stock company are represented by shares, which facilitates transfers, investor entry and exit mechanisms, pledge structures and more sophisticated shareholder arrangements. Shareholders do not bear personal liability for the company's obligations, with their economic risk generally limited to the value of their shares.

A joint stock company may be established by one or more shareholders. The minimum registered capital requirement amounts to approximately EUR80,000.

Czech law allows both:

- a dualistic governance system consisting of a board of directors and supervisory board; and
- a monistic governance system consisting of an administrative board.

In both systems, the general meeting remains the supreme corporate body.

Compared to a limited liability company, the joint stock company structure is generally considered more suitable for larger shareholder projects, private equity and venture capital investments, joint ventures involving multiple strategic investors, management incentive structures, financing transactions and situations where future capital raising is contemplated.

The joint stock company is also typically preferred where:

- a greater number of shareholders is expected;
- ownership interests are intended to be more easily transferable;
- sophisticated shareholder and investment arrangements are required;
- external financing, IPO, or bond issuances are contemplated; or
- the parties seek a governance framework perceived as more appropriate for larger corporate groups or institutional investors.

For these reasons, the joint stock company structure is frequently used for larger holding platforms, investment structures, infrastructure and development projects, and businesses preparing for future strategic investment or potential public offering.

### Others Form

Other legal forms recognised under Czech law include general partnerships, limited partnerships and co-operatives, although these are used less frequently in ordinary commercial practice. Foreign investors may also establish a branch office, although a branch does not constitute a separate legal entity.

## 3.2 Incorporation Process

The incorporation process in the Czech Republic is generally straightforward and may often be completed within several business days where standard structures are used and no regulatory approvals are required.

The incorporation process generally includes:

- preparation and execution of constitutional documentation;
- payment of minimum capital contributions;
- obtaining the relevant trade licences or other business authorisations;
- registration in the Commercial Register; and
- subsequent registration of the ultimate beneficial owner.

Constitutive documents typically regulate matters including the company name, registered office, business activities, governance arrangements, ownership structure and rules relating to the management and operation of the company.

Depending on the type of company, minimum share capital requirements may apply. Capital contributions are generally paid to a special bank account established for the company prior to incorporation. The opening of such account is commonly connected with internal compliance procedures and AML/KYC checks performed by the relevant financial institution, particularly in cases involving foreign shareholders or more complex ownership structures.

The incorporation process also typically includes the appointment of managing directors, members of the board of directors, supervisory board members or other corporate officers, depending on the selected corporate form and governance structure.

A company generally acquires legal personality upon registration in the Commercial Register.

Following incorporation, the company is generally required to complete a number of post-incorporation registrations and compliance steps, including:

- tax registrations;
- registrations with social security and health insurance authorities;
- registration of the ultimate beneficial owner;
- obtaining any industry-specific permits, licences or regulatory approvals; and
- fulfilment of ongoing accounting and reporting obligations.

The overall timing of incorporation may vary depending on factors including:

- foreign ownership structures;
- regulated business activities;
- documentation and apostille/legalisation requirements;
- complexity of capital contributions;
- timing of bank onboarding and AML procedures; and
- licensing or regulatory approval requirements, if applicable.

### 3.3 Ongoing Reporting and Disclosure Obligations

Companies in the Czech Republic are subject to several continuing reporting and disclosure requirements.

Typical obligations include:

- filing annual financial statements;
- maintenance of beneficial ownership information;
- accounting compliance; and
- tax reporting obligations.

Companies must also register certain changes in the Commercial Register without undue delay. Such changes commonly include:

- appointment or removal of directors;
- amendments to constitutional documents;
- changes in registered capital; and
- changes concerning registered offices.

Beneficial ownership information must also be maintained and updated. Failure to comply with reporting obligations may result in administrative sanctions and practical complications in dealings with authorities or commercial counterparties. In particular, where the beneficial owner is not properly registered, the relevant beneficial owner may be prevented from exercising voting rights or receiving profit distributions. Czech law further provides mechanisms allowing courts to review discrepancies between the actual beneficial ownership structure and the information recorded in the register of beneficial owners. Incorrect or incomplete registration may therefore lead to judicial proceedings concerning inconsistencies in the registered data and related corporate consequences.

Additional obligations may apply to regulated entities and businesses operating within specific sectors.

### 3.4 Management Structures

Management structures differ depending on the selected legal form.

In both private limited liability companies and joint stock companies, the general meeting composed of the shareholders acts as the highest corporate authority and decides fundamental matters relating to the company.

A private limited liability company generally operates through a relatively simple management structure consisting of one or more executive directors responsible for the company's day-to-day management and external representation.

A joint stock company may adopt either:

- a dual-board structure consisting of a management board and supervisory board; or
- a monistic (one-tier) structure consisting of an administrative board.

The choice of governance structure frequently depends on shareholder expectations, internal group policies and the desired allocation of management and supervisory functions.

The Business Corporations Act also allows significant flexibility in adjusting internal governance arrangements through constitutional documentation.

### 3.5 Directors', Officers' and Shareholders' Liability

Members of corporate bodies are generally required to act with due managerial care, in good faith and in the best interests of the company.

Directors are expected to exercise appropriate care, maintain sufficient information for decision-making purposes and avoid conflicts of interest. Failure to comply with these duties may result in personal liability.

Potential consequences may include:

- liability for damages;
- obligations to return benefits received;
- restrictions on performing management functions; and
- specific insolvency-related consequences.

Although Czech law does not formally recognise the common law doctrine of "piercing the corporate veil", certain statutory rules may, in specific circumstances,

result in personal liability of shareholders, members of corporate bodies or other individuals connected with a company. Such liability typically arises from breaches of statutory duties rather than from a general disregard of the company's separate legal personality.

Such situations may arise particularly in connection with:

- breaches of duties in insolvency situations; and
- breaches of duties by members of corporate bodies, including breaches of the duty of due managerial care.

However, in the context of ordinary business activities, separate legal personality and limited liability remain fundamental principles of Czech corporate law.

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

Employment relationships in the Czech Republic are governed primarily by statutory law, particularly the Labour Code, which represents the principal source of regulation for employment matters. The Labour Code establishes mandatory rules concerning employment relationships, working conditions, employee protections and employer obligations.

Additional regulation may arise from:

- implementing legislation;
- sector-specific regulations;
- collective bargaining agreements;
- internal employer regulations; and
- individual employment agreements.

Employment law in the Czech Republic is generally characterised by a relatively high level of employee protection. Many statutory provisions are mandatory and cannot be excluded or reduced by agreement to the detriment of the employee.

Employment agreements and internal regulations may therefore supplement statutory rules only where they provide terms more favourable to employees.

European Union legislation also significantly influences Czech employment law. EU law has shaped numerous areas including:

- working time regulation;
- equal treatment requirements;
- anti-discrimination rules;
- employee health and safety;
- data protection in employment relationships; and
- employee rights in corporate transformations.

Although judicial decisions do not formally constitute an independent source of law, decisions of higher courts play an important practical role in interpreting employment legislation and promoting consistency in application.

### 4.2 Characteristics of Employment Contracts

Employment contracts must generally be concluded in writing.

Czech law requires employment contracts to contain certain mandatory elements, including:

- type of work to be performed;
- place of work; and
- commencement date.

Additional provisions are frequently included concerning:

- remuneration;
- working hours;
- probationary periods;
- confidentiality obligations;
- benefits;
- notice arrangements; and
- intellectual property matters.

Employment contracts may be concluded either for an indefinite period or for a fixed term.

Indefinite employment relationships remain the standard form of employment and are generally preferred in practice.

Fixed-term employment contracts are subject to statutory restrictions intended to prevent the repeated or

abusive use of temporary employment arrangements. Under Czech labour law, a fixed-term employment relationship may generally be agreed for a maximum period of three years and may be renewed or extended no more than twice between the same employer and employee. As a result, the overall duration of successive fixed-term employment relationships between the same parties will typically not exceed nine years.

Probationary periods may also be agreed between the parties. The maximum duration of the probationary period depends on the position of the employee involved.

## 4.3 Working Time

### Introduction

Employment relationships are also subject to mandatory rules concerning working conditions and employee welfare.

Standard working time generally amounts to 40 hours per week, although shorter working schedules may apply depending on operational conditions and specific sectors. Work exceeding this limit is considered overtime. Overtime may only be required for serious operational reasons and is subject to statutory limits. Employees are generally entitled either to additional pay or compensatory time off for overtime work. Certain groups of employees, such as part-time employees, enjoy enhanced protection against overtime requirements.

### Annual Leave and Additional Absences

Employees are generally entitled to paid annual leave. The statutory minimum annual leave entitlement amounts to four weeks, although employers frequently provide more generous arrangements as part of compensation and retention policies.

Employees may also be entitled to additional absences in situations including:

- illness;
- maternity and parental leave;
- family care obligations; and
- certain personal circumstances.

## 4.4 Termination of Employment Contracts

Termination of employment relationships is subject to relatively detailed regulation and employee protection requirements.

Employment may generally terminate through:

- agreement between the parties;
- notice;
- immediate termination in specific circumstances; or
- expiration of a fixed-term arrangement.

Employers cannot generally terminate employment without legally recognised grounds where termination occurs through notice procedures.

Permitted grounds commonly include:

- organisational restructuring;
- redundancy;
- long-term incapacity;
- serious breaches of obligations; and
- other statutory circumstances.

Formal procedural requirements must also be observed.

These commonly include:

- written notice;
- proper identification of termination grounds;
- observance of notice periods; and
- notification requirements where applicable.

Employees dismissed for organisational reasons may become entitled to statutory severance payments depending on the circumstances and duration of employment. Statutory severance payments may also apply in certain health-related cases, including where the employment relationship is terminated due to a work-related injury, occupational disease or where the employee is no longer medically fit to perform the work as a result of occupational health reasons.

Special protections also apply to certain categories of employees, including:

- pregnant employees;

- employees on parental leave;
- employees temporarily incapable of work; and
- employees affected by work-related injuries or occupational diseases.

Failure to comply with statutory requirements may result in termination being declared invalid.

### 4.5 Employee Representations

Employee representation is not automatically mandatory in all businesses; however, Czech law permits employees to establish representative bodies where statutory requirements are satisfied.

Forms of employee representation commonly include:

- trade unions; and
- works councils.

Trade unions generally exercise broader rights than works councils and may participate actively in negotiations concerning working conditions and collective agreements.

Employee representatives may also possess rights relating to:

- access to information;
- consultation procedures;
- workplace conditions;
- organisational restructuring; and
- collective redundancies.

Employers may therefore be required to inform or consult employee representatives before implementing particular decisions affecting employees.

In practice, the significance of employee representation varies substantially depending on the size of the employer, the industry involved and historical labour practices within the relevant sector.

While employee representation structures are common in larger organisations and industrial businesses, smaller employers frequently operate without formal representative bodies.

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/ Employers

Please note that this tax overview is intended to provide only a brief and high-level summary of selected legal and regulatory aspects. We do not provide tax, accounting, or audit services, and any references to tax or accounting matters are included for general informational purposes only.

Individuals who are tax residents of the Czech Republic are generally subject to taxation on their worldwide income, while non-residents are generally taxed only on income derived from Czech sources.

Employment income is generally subject to personal income tax and mandatory social security and health insurance contributions. Employers are responsible for withholding and remitting employment-related taxes and contributions on behalf of employees.

Mandatory payments in employment relationships generally include:

- personal income tax;
- social security contributions; and
- public health insurance contributions.

The applicable level of taxation and contributions depends on various factors, including income levels, available exemptions and specific employee circumstances.

Cross-border employment arrangements may additionally require consideration of:

- double taxation treaties;
- social security co-ordination rules;
- tax residency issues; and
- permanent establishment risks.

### 5.2 Taxes Applicable to Businesses

Companies with a registered seat or place of effective management in the Czech Republic are generally subject to corporate taxation on worldwide income. Non-resident entities are generally taxed only on Czech-source income.

The principal taxes affecting businesses include:

- corporate income tax;
- value added tax (VAT);
- withholding tax;
- real estate taxation; and
- sector-specific taxes where applicable.

Corporate income tax applies to taxable profits derived from business activities and other taxable income sources.

Businesses exceeding statutory thresholds may become subject to mandatory VAT registration. Voluntary registration may also be available in certain circumstances.

Withholding taxes may also apply to certain categories of payments, including:

- dividends;
- interest; and
- selected cross-border payments.

The Czech Republic has implemented Pillar Two of the OECD's Two-Pillar Solution in line with the EU Directive on global minimum taxation. Czech legislation introduced both the top-up tax rules applicable to multinational enterprise groups and a Qualified Domestic Minimum Top-up Tax (QDMTT). The Czech QDMTT has also been included on the OECD central record as a regime meeting the requirements for safe harbour status.

### 5.3 Available Tax Credits/Incentives

The Czech Republic offers several tax incentives and tax relief mechanisms, particularly in the areas of investment support, research and development, and employment. Investment incentives may include corporate income tax relief, cash support for job creation and employee training, especially in manufacturing, technology centres, and strategic service sectors.

A significant incentive is the R&D tax deduction, allowing taxpayers to deduct eligible research and development expenses from their tax base in addition to standard accounting treatment. Tax relief is also available for certain environmentally friendly investments and vocational training activities.

### 5.4 Tax Consolidation

In the Czech Republic, there is no general tax consolidation regime for corporate income tax purposes. Companies within a group are generally taxed separately and cannot consolidate profits and losses for income tax purposes.

However, Czech law recognises consolidation from an accounting perspective. Under the Czech Accounting Act, a parent company may be required to prepare consolidated financial statements if it controls one or more subsidiaries and the group exceeds certain statutory thresholds relating mainly to assets, turnover and number of employees. Small groups are generally exempt unless a public-interest entity is involved.

### 5.5 Thin Capitalisation Rules and Other Limitations

Czech tax law contains thin capitalisation and related interest limitation rules that restrict the tax deductibility of financing costs under certain circumstances.

First, the Czech Income Tax Act includes specific thin capitalisation rules applicable primarily to related-party financing. As a general rule, interest on loans and credits from related parties may become tax non-deductible if the borrower's debt-to-equity ratio exceeds statutory thresholds. For most companies, the ratio is generally 4:1, while stricter rules apply to banks and insurance companies. These rules aim to prevent excessive debt financing within corporate groups.

### 5.6 Transfer Pricing

Transfer pricing rules are applicable in the Czech Republic and apply to transactions between related parties, both domestic and cross-border.

The Czech transfer pricing framework is based primarily on the arm's-length principle and broadly follows the Organisation for Economic Co-operation and Development Transfer Pricing Guidelines. Under Czech tax law, prices agreed between related parties must correspond to prices that would have been agreed between independent parties under compa-

rable conditions. If the pricing deviates from market conditions and the taxpayer cannot properly justify the difference, the Czech tax authorities may adjust the taxpayer's taxable income accordingly.

Related-party transactions commonly subject to transfer pricing scrutiny include intercompany financing, management and support services, licensing arrangements, supply and distribution transactions, business restructurings, and transfers of intangible assets. Transfer pricing rules apply not only to multinational groups but also to domestic group structures.

Although Czech legislation does not generally impose a universal statutory obligation to prepare transfer pricing documentation, taxpayers are expected to maintain sufficient supporting documentation demonstrating compliance with the arm's-length principle. In practice, tax authorities frequently request transfer pricing documentation during tax audits. Czech practice generally follows the OECD-recommended master file and local file approach.

The Czech tax authorities actively focus on transfer pricing audits, particularly in cases involving recurring losses, low-profit entities, significant related-party financing, or transactions with entities located in low-tax jurisdictions. Penalties, late-payment interest, and additional tax assessments may arise where transfer prices are considered inconsistent with market conditions.

### 5.7 Anti-Evasion Rules

Tax authorities in the Czech Republic possess broad powers to review compliance with tax obligations and to verify the accuracy of tax reporting. The principal authority responsible for tax administration is the Financial Administration of the Czech Republic.

Tax authorities may conduct various forms of review, including:

- routine tax inspections;
- targeted tax audits;
- requests for explanations; and
- reviews of specific transactions.

Tax audits may focus on a wide range of issues, including:

- corporate income tax calculations;
- VAT compliance;
- transfer pricing arrangements;
- deductibility of expenses;
- withholding tax obligations; and
- cross-border transactions.

Where tax authorities identify deficiencies, they may impose:

- additional tax assessments;
- penalties;
- late payment interest; and
- administrative sanctions.

Taxpayers generally have procedural rights during tax proceedings and may provide explanations, evidence and supporting documentation.

Disputes with tax authorities may be challenged through administrative procedures and judicial review mechanisms.

The dispute process commonly involves:

- administrative objections;
- appeals;
- proceedings before regional administrative courts; and
- review by the Supreme Administrative Court.

### 5.8 Tariffs

The Czech Republic does not operate an independent national tariff regime. As a member state of the European Union, it forms part of the EU Customs Union and applies the Common Customs Tariff established at the EU level. Consequently, customs duties and trade measures are determined primarily by European legislation rather than domestic law.

Goods imported from countries outside the European Union may be subject to customs duties depending on factors including:

- classification of goods;

- country of origin;
- customs value; and
- applicable preferential trade arrangements.

Goods moving within the European Union are generally not subject to customs duties due to the principle of free movement of goods.

Higher tariffs and protective measures are commonly associated with sensitive sectors, including:

- agricultural products;
- food products;
- textiles;
- steel products; and
- selected manufacturing industries.

In addition to ordinary tariffs, imports may also be affected by trade defence measures such as anti-dumping duties or safeguard measures intended to protect European industries.

Recent geopolitical developments, supply chain concerns and strategic trade considerations have increased the importance of customs compliance and international trade regulation for businesses operating in the Czech market.

## 6. Competition Law

### 6.1 Merger Control Notification

Competition law in the Czech Republic is governed primarily by the Competition Protection Act together with directly applicable European Union competition rules. Merger control seeks to prevent concentrations that could significantly restrict effective competition within relevant markets.

Certain mergers and acquisitions are subject to mandatory notification where statutory thresholds are satisfied.

The notification obligation generally applies to:

- mergers between previously independent undertakings;
- acquisitions of direct or indirect control over another undertaking;
- acquisition of substantial business assets; and
- creation of full-function joint ventures performing autonomous economic activities on a lasting basis.

Concentration must generally be notified where one of the following turnover thresholds is met:

- the combined net turnover achieved in the Czech Republic by all participating undertakings exceeds CZK1.5 billion, and at least two of the participating undertakings each achieved net turnover in the Czech Republic exceeding CZK250 million; or
- the net turnover achieved in the Czech Republic by at least one participating undertaking exceeds CZK1.5 billion and the worldwide net turnover achieved by another participating undertaking exceeds CZK1.5 billion.

However, an amendment to the Czech Competition Act is currently under discussion and may modify the existing merger control regime. Under the current governmental proposal, the standard notification thresholds would increase to a combined Czech turnover of CZK2.5 billion and at least CZK350 million Czech turnover achieved by at least two participating undertakings. At the same time, the proposed amendment would introduce a “call-in” mechanism enabling the Czech Competition Authority (ÚOHS) to require notification even for transactions falling below the statutory thresholds where the transaction could potentially result in a substantial distortion of competition.

The assessment is therefore primarily turnover-based, while market shares are generally relevant only for the substantive competition analysis rather than jurisdictional filing thresholds.

The concept of control is interpreted broadly and may arise not only through share acquisitions but also through contractual arrangements or other mechanisms allowing decisive influence over commercial activities.

Joint ventures may also become subject to notification where the joint venture performs independent and

lasting economic functions rather than merely supporting the activities of parent entities.

Transactions satisfying applicable notification thresholds generally may not be implemented before obtaining regulatory approval.

Consequently, transaction documentation commonly includes:

- conditions precedent;
- co-operation obligations;
- information-sharing provisions, often structured on a "counsel-to-counsel only" basis in order to protect trade secrets and competitively sensitive information; and
- long-stop arrangements.

The parties must, however, ensure that pre-closing co-operation and information exchange are structured so as to avoid unlawful "gun-jumping", including premature implementation of the transaction or the exchange of competitively sensitive information beyond what is necessary for the transaction process.

Early competition law assessment frequently assists parties in avoiding delays and implementation risks.

## 6.2 Merger Control Procedure

Merger notifications are submitted to the Office for the Protection of Competition, which represents the principal Czech competition authority responsible for merger review and competition enforcement.

Notification filings generally include information concerning:

- transaction structure;
- ownership arrangements;
- business activities of the parties;
- market definitions;
- competitors;
- customers; and
- economic data relating to affected markets.

### Review

The review procedure commonly consists of multiple stages.

#### *Initial review phase*

Following submission, the authority performs an initial assessment intended to determine whether the transaction raises substantive competition concerns. Where no material concerns arise, approval may typically be granted during the initial review stage.

Straightforward transactions frequently involve:

- limited market overlaps;
- minimal vertical relationships; or
- insignificant market shares.

#### *Second-phase investigations*

Where potential competition concerns arise, the authority may initiate a more detailed investigation.

Such investigations may involve:

- requests for additional information;
- market testing procedures;
- consultation with competitors and customers; and
- more detailed economic assessment.

The authority may ultimately:

- approve the transaction without conditions;
- approve the transaction subject to commitments;
- prohibit the transaction; or
- impose corrective measures.

Commitments may include both structural and behavioural remedies. Examples may include:

- divestment obligations;
- access commitments;
- supply obligations; and
- operational restrictions.

Parties remain generally prohibited from implementing the transaction before receiving clearance.

Failure to observe this requirement may result in substantial financial penalties and additional corrective measures.

### 6.3 Cartels

Czech competition law prohibits agreements and co-ordinated conduct that prevent, restrict or distort competition.

The prohibition applies to both formal agreements and informal arrangements where undertakings co-ordinate market behaviour. Prohibited conduct commonly includes:

- price-fixing arrangements;
- market-sharing agreements;
- restrictions of production or output;
- bid-rigging practices; and
- exchanges of commercially sensitive information.

Competition law may apply regardless of where the relevant conduct occurred if the conduct produces effects within the Czech market. Consequently, foreign businesses with no physical presence in the Czech Republic may nevertheless become subject to Czech competition rules where their activities affect competition within the jurisdiction. The assessment generally focuses on:

- the purpose of the conduct;
- market conditions;
- economic effects; and
- the impact on competition and consumers.

Certain forms of conduct are considered particularly serious because they are generally regarded as harmful by their nature. Businesses frequently face competition risks in connection with:

- trade association activities;
- information exchanges;
- distribution arrangements;
- co-operation agreements; and
- procurement procedures.

The Office for the Protection of Competition possesses broad investigatory powers and may conduct inspections and request documentation. Violations may result in:

- significant financial penalties;
- behavioural remedies;
- invalidity of agreements; and
- reputational consequences.

Leniency mechanisms may also be available to participants in cartel arrangements who voluntarily co-operate with authorities.

### 6.4 Abuse of Dominant Position

Competition law additionally prohibits abuse of a dominant position by undertakings possessing substantial market power.

Dominance itself is not prohibited. Competition concerns arise only where market power is exercised in a manner that restricts competition or harms consumers. The assessment of dominance typically considers factors, including:

- market share;
- barriers to market entry;
- economic strength;
- customer dependence; and
- competitive conditions.

Examples of potentially abusive conduct may include:

- predatory pricing;
- discriminatory treatment of business partners;
- refusal to supply;
- tying arrangements;
- exclusivity requirements; and
- unfair contractual conditions.

As with cartel regulation, the assessment focuses primarily on the effects of conduct within the Czech market rather than solely on the location where the conduct occurred. Although Czech law does not recognise economic dependency as an entirely separate concept to the same extent as some other jurisdictions, conduct involving imbalances in bargaining power may nevertheless raise competition concerns where market power exists.

In practice, abuse investigations frequently involve complex economic analysis and detailed examination of market conditions. Businesses with substantial market positions therefore commonly implement internal competition compliance programmes and review

commercial practices regularly in order to minimise regulatory risk and ensure compliance with applicable competition rules.

## 7. Intellectual Property

### 7.1 Patents

Patent protection in the Czech Republic applies to technical solutions that are new, involve an inventive step and are capable of industrial application. Patent protection aims to provide inventors with exclusive rights to exploit inventions and prevent unauthorised use by third parties. Patent protection generally extends for a period of up to 20 years from the filing date, provided that applicable maintenance fees are paid throughout the duration of protection.

Patent rights are generally obtained through registration procedures before the Industrial Property Office. Applicants typically submit:

- an application form;
- technical description of the invention;
- claims defining the scope of protection; and
- supporting documentation where required.

Applications are examined to determine whether statutory requirements are satisfied.

The Czech Republic also participates in broader international frameworks, allowing applicants to seek protection through:

- European patent procedures; and
- international filing systems.

Patent owners generally possess exclusive rights relating to:

- manufacturing products;
- commercial use;
- licensing arrangements;
- sale of protected products; and
- prevention of unauthorised exploitation.

Patent rights may be enforced through judicial proceedings. Available remedies commonly include:

- injunctions;
- damages;
- surrender of unjust enrichment;
- destruction of infringing goods; and
- other corrective measures.

In serious cases, patent infringement may also give rise to criminal liability under Czech law, particularly where the infringement is intentional and causes substantial damage or unlawful gain. Criminal sanctions may include fines, prohibition of activity, confiscation of goods, or imprisonment.

### 7.2 Trade Marks

Trade marks protect signs capable of distinguishing goods or services of one undertaking from those of another.

Trade mark protection serves an important commercial purpose because it enables businesses to establish brand identity and market recognition.

Trade mark registration generally provides protection for ten years from the filing date and may be renewed repeatedly for additional ten-year periods.

Protection may be obtained through:

- national registration procedures;
- European Union trade mark systems; or
- international registration mechanisms.

Applications generally undergo examination intended to assess whether registration requirements are satisfied and whether conflicts with prior rights exist.

Rights-holders may generally prevent unauthorised use of identical or confusingly similar signs in commercial activities. Available enforcement measures commonly include:

- injunctions;
- damages;
- seizure of infringing products;
- removal of products from the market; and
- destruction of infringing materials.

In serious cases, trade mark infringement may also result in criminal liability, particularly where the infringement is intentional and carried out on a commercial scale.

### 7.3 Industrial Designs

Industrial design protection applies to the visual appearance of products rather than their technical functionality.

Protection seeks to safeguard the aesthetic aspects of products where these create a distinctive overall appearance.

Industrial design protection generally applies initially for a limited period and may subsequently be renewed up to a maximum duration of 25 years.

Registration procedures generally require submission of:

- applications;
- visual representations of the design; and
- identification of products concerned.

The Czech Republic additionally participates in European systems allowing broader territorial protection. Rights-holders generally possess exclusive rights concerning use of protected designs and may prevent unauthorised commercial use by third parties.

Available remedies commonly include:

- cessation of infringing activities;
- damages;
- destruction of infringing products; and
- additional corrective measures.

Criminal law remedies may also apply in serious cases of intentional infringement, similarly to the protection available for patents and trade marks under Czech law.

### 7.4 Copyright

Copyright protection applies to original literary, artistic and scientific works as well as certain related subject matter. Protected works commonly include:

- written works;
- music;
- visual works;
- audiovisual content;
- architectural works;
- computer programs; and
- other original creative works.

Unlike certain industrial property rights, copyright protection generally arises automatically upon creation of a work and does not require registration.

Economic rights generally continue for a period of 70 years following the death of the author.

Copyright owners possess rights relating to:

- reproduction;
- distribution;
- communication to the public;
- modification; and
- commercial exploitation.

Moral rights also exist and generally protect the personal relationship between authors and their works. Rights-holders may seek various remedies where infringement occurs. Available measures commonly include:

- injunctions;
- damages;
- unjust enrichment claims;
- removal of infringing materials; and
- publication of corrective statements.

### 7.5 Others

Additional forms of intellectual property protection exist under Czech law and may be particularly important in technology-driven and commercially sensitive industries.

#### Software, Databases

Software is generally protected under copyright law because computer programs are commonly regarded as literary works for legal purposes. Databases may benefit from:

- copyright protection; and

- separate database rights where statutory requirements are satisfied.

### Trade Secrets

Trade secrets also receive legal protection where information satisfies specified conditions.

Protected information generally must:

- possess commercial (competitive) value;
- be identifiable and valuable;
- not be generally available in the relevant business circles;
- relate to an enterprise; and
- be subject to reasonable confidentiality measures.

Trade secrets frequently include, for example:

- technical know-how;
- customer information;
- business strategies;
- manufacturing processes; and
- commercial data.

Rights-holders may seek remedies where confidential information is unlawfully obtained, disclosed or used. Available remedies commonly include:

- injunctions;
- damages;
- destruction of materials; and
- additional corrective measures.

In practice, businesses operating in the Czech Republic frequently rely on a combination of intellectual property rights and contractual protections to safeguard commercially valuable assets and technology.

## 8. Data Protection

### 8.1 Applicable Regulations

Data protection in the Czech Republic is governed primarily by the European Union General Data Protection Regulation (GDPR), together with national implementing legislation and sector-specific rules. Since the GDPR applies directly throughout all EU member states, the Czech framework is closely aligned with broader European standards and principles.

The legal framework establishes core principles governing the processing of personal data, including:

- lawfulness, fairness and transparency;
- purpose limitation;
- data minimisation;
- accuracy;
- storage limitation;
- integrity and confidentiality; and
- accountability.

Organisations processing personal data must ensure that an appropriate legal basis exists for processing activities. Legal bases commonly include:

- consent of the individual;
- performance of contractual obligations;
- compliance with legal obligations;
- legitimate interests; and
- protection of vital interests.

Organisations are additionally required to satisfy various compliance obligations, which may include:

- provision of privacy notices;
- implementation of security measures;
- maintenance of internal documentation;
- breach notification procedures; and
- protection of data subject rights.

Data subjects possess various rights under the applicable framework, including rights concerning:

- access to personal data;
- rectification of inaccurate information;
- erasure of data;
- restriction of processing;
- data portability; and
- objection to processing activities.

Businesses increasingly consider data protection issues not merely as regulatory requirements but also as important components of broader risk management and corporate governance practices.

### 8.2 Geographical Scope

Data protection rules may apply beyond the territorial boundaries of the Czech Republic.

The GDPR possesses broad extraterritorial application and may apply not only to entities established within the European Union but also to foreign organisations where they:

- offer goods or services to individuals located within the European Union; or
- monitor behaviour occurring within the European Union.

As a result, foreign companies targeting customers or users located in the Czech Republic may become subject to Czech and European data protection requirements despite lacking a physical presence in the jurisdiction.

Businesses operating internationally commonly encounter issues relating to:

- customer databases;
- online services;
- marketing activities;
- employee information; and
- cloud-based systems.

Cross-border transfers of personal data outside the European Economic Area are also subject to specific legal requirements. Such transfers generally require:

- adequacy decisions;
- standard contractual clauses;
- binding corporate rules; or
- other recognised safeguards.

International businesses increasingly assess data transfer arrangements carefully due to evolving regulatory expectations and enforcement activity.

### 8.3 Role and Authority of the Data Protection Agency

Data protection regulation in the Czech Republic is supervised by the Office for Personal Data Protection.

The authority performs various supervisory and enforcement functions, including:

- monitoring compliance with data protection legislation;
- investigating complaints;
- conducting inspections;
- issuing recommendations and guidance;
- reviewing compliance measures; and
- imposing corrective measures.

The authority possesses broad investigatory powers and may request documents and information from organisations involved in data processing activities.

Where non-compliance is identified, available measures may include:

- warnings;
- corrective orders;
- processing restrictions;
- temporary prohibitions; and
- administrative fines.

The level of sanctions generally depends on factors including:

- seriousness of violations;
- duration of non-compliance;
- degree of co-operation; and
- measures adopted to mitigate consequences.

In practice, enforcement activities frequently focus on transparency obligations, security measures, direct marketing practices and processing activities involving sensitive categories of personal information.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

The Czech legal environment continues to evolve through both domestic legislative initiatives and implementation of broader European regulatory developments.

Many expected reforms arise directly from European Union policies and are likely to influence the legal environment across multiple sectors.

Key developments are expected to include:

- implementation of additional EU digital regulatory measures;
- further development of artificial intelligence regulation;
- expansion of cybersecurity requirements;
- continued implementation of OECD and EU tax initiatives;
- sustainability-related reporting obligations; and
- ongoing digitalisation of public administration.

Particular attention is expected to focus on artificial intelligence and digital regulation.

European initiatives concerning AI governance are expected to create additional compliance obligations affecting businesses involved in:

- technology development;
- automated decision-making;
- data processing; and
- digital services.

Cybersecurity regulation is also expected to remain an important area of development. Businesses operating in critical sectors and digital environments may face additional compliance obligations concerning risk management, incident reporting and security measures.

Expected amendments to Czech competition law are likely to strengthen the powers of the Czech Competition Authority (ÚOHS). The proposed changes include broader investigatory and enforcement powers, increased procedural flexibility, expanded use of interim measures, and wider market monitoring competences. The amendment is also expected to introduce additional tools enabling the authority to intervene more effectively in digital and rapidly evolving markets.

Employment law developments may continue focusing on:

- remote working arrangements;
- flexible working models;
- digital workplace issues; and
- employee protections in changing work environments.

Tax regulation is also expected to continue evolving through implementation of international initiatives concerning transparency, minimum taxation standards and cross-border reporting requirements.

Although many anticipated reforms originate outside the Czech Republic itself, particularly at the European level, they are expected to have a direct practical impact on businesses operating within the Czech market. Consequently, companies increasingly monitor legislative developments proactively and incorporate regulatory changes into long-term compliance and business planning strategies.

# DOMINICAN REPUBLIC




## Law and Practice

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**Headrick Rizik Álvarez & Fernández** (Headrick) was founded in 1985 and has 15 partners, a team of 31 associate attorneys and 17 paralegals. Headrick's office is located in Santo Domingo, National District, Dominican Republic. Matters related to doing business are handled by the corporate/business division, which is comprised of seven partners, ten associates and six paralegals. Headrick represents financial institutions that are financing projects and renewable energy projects in the country; offers general advice in connection to cross-border transactions; and offers general advice to local and foreign clients that undertake or wish to undertake business in the country. The firm's key clients include MercaSID and Induveca, Imperial Tobacco La Romana, Grupo PuntaCana, Marsh Franco Acra, Los Angeles Dodgers, New York Yankees, Merck, Pfizer, Google, Phillip Morris International, General Electric, Johnson & Johnson.

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## 1. Legal System

### 1.1 Legal System and Judicial Order

The Dominican Republic is a civil law jurisdiction. The judicial system is organised on a territorial basis and has a hierarchical structure. There are ordinary courts and courts of exception, which hear specific cases.

The ordinary courts are the Courts of First Instance (trial courts) and the Courts of Appeal. The Courts of First Instance have jurisdiction over civil, criminal, commercial and administrative cases at the trial level. The Courts of Appeal hear appeals to judgments rendered by trial courts and review issues of law and errors of procedure. The Supreme Court of Justice is the highest court. It holds the ultimate authority and serves as the highest judicial body in the country. It is responsible for evaluating the correct interpretation and application of laws.

The courts of exception are the Justice of the Peace (*Juzgado de Paz*) and the Land Courts (*Tribunal de Jurisdicción Original/Tribunal Superior de Tierras*).

Specialised courts address specific areas of law, for instance, the Superior Electoral Court (*Tribunal Superior Electoral*) is the highest authority in electoral contentious matters, while the Superior Administrative Court (*Tribunal Superior Administrativo*) has jurisdiction over disputes arising between the administration and private individuals.

The Constitutional Court is the supreme organ of interpretation and control of the constitutionality. Decisions rendered by the Constitutional Court are binding.

## 2. Restrictions on Foreign Investments

### 2.1 Approval of Foreign Investments

Foreign investments do not require prior approval from the authorities except when a regulated sector requires regulatory approval both for domestic and foreign investment. In general, the Dominican Republic affords standard national treatment to foreign investors. There are no exchange control restrictions and there is the right to free transfer of funds abroad.

Foreign investment is regulated by Law No 16-95, which was enacted to promote foreign investment in the Dominican Republic and provides equal treatment for foreign and local investors. It includes attractive benefits for foreign investors. Under said Law, foreign investment is allowed in all sectors, with the exception of those linked to the disposal of certain hazardous materials or waste not produced in the country, activities that affect public health or the environment, or the production of material and equipment linked to national defence and security.

In order for foreign investors to obtain the benefits set out in Law No 16-95, interested parties must register their investment with the Prodominicana of the Export and Investment Center of the Dominican Republic (CEI-RD), after completing their investment.

### 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

In the Dominican Republic, the registration of a foreign investment is done before the One-Stop Investment Window (*Ventanilla Única de Inversión*- VUI) of the CEI-RD. Foreign investors investing without registration would not benefit from the incentives offered by the Law. Failure to register is not subject to sanctions.

In order to register an investment, a foreign investor must submit an application and other required formalities to the CEI-RD within 180 calendar days from the date on which the investment is made. The CEI-RD is required to evaluate the application and, if the registration requirements are met, issue the corresponding certificate of registration within 15 business days. However, in practice, this process is often longer, as the review and evaluation of the application are very rigorous.

### 2.3 Commitments Required From Foreign Investors

The applicable legal framework does not condition the approval of an application to register an investment to certain commitments. However, in order to benefit from the Investment Residency Permit Programme, a minimum investment of USD200,000, its equivalent in Dominican pesos, or any other currency accepted by the Central Bank of the Dominican Republic, must be made in the Dominican Republic to the share capital of a newly incorporated or existing company.

### 2.4 Right to Appeal

An investor may challenge the decision not to authorise an investment. Any administrative acts may be appealed before the bodies that issued them (by way of a reconsideration request), or before the entity which is hierarchically superior to the issuing body, within the 30 days of the notice of the decision subject to the appeal. The applicant may also appeal before the Superior Administrative Court within the aforementioned 30 days.

In the event that an application is rejected, if the applicant decides to submit a reconsideration request before the CEI-RD, or, where applicable, before the hierarchically superior entity, the applicant may subsequently withdraw their reconsideration request and instead file an appeal before the Superior Administrative Court.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

#### Main Corporate Vehicles for Doing Business in the Dominican Republic

The most common types of corporate vehicles used in the Dominican Republic for doing business with limited liability are:

- stock corporations (*sociedades anónimas* or S.A.s);
- simplified stock corporations (*sociedades anónimas simplificadas* or S.A.S.s), which are a sub-type of corporations; and
- limited liability companies (*sociedades de responsabilidad limitada* or S.R.L.s).

These corporate vehicles may be incorporated with a minimum of two shareholders, which can be legal or natural persons, domestic or foreign.

#### S.R.L.s

S.R.L.s were conceived as corporate vehicles suitable for medium and small businesses. It is a hybrid between a partnership and a corporation. The capital for S.R.L.s is formed by non-negotiable shares, and a restriction on the entry of new shareholders is one of its principal features.

S.R.L.s use the concept of a limited liability company by separating the personal assets of its members from those of the company. S.R.L.s may be managed by one manager (*gerente*), two managers or a board of managers acting as a collegiate body, who may or may not be shareholders, who may be individuals, domestic or foreign.

The minimum capital requirement for an S.R.L. is DOP200, since Law No 479-08 on Commercial Companies and Sole Proprietorships with Limited Liability ("Law No 479-08"), as amended, requires a minimum of two shareholders and a minimum value per share of RDD100 each.

In S.R.L.s, the maximum number of shareholders is 50.

### S.A.s

S.A.s are typically reserved for large businesses. Due to their characteristics, corporations are the ideal vehicle for companies that wish to pursue venture capital, accumulate a large number of shareholders, and/or eventually pursue an initial public offering. Corporations must be mandatorily managed by a board of directors composed of at least three members and are required to have a statutory auditor (*comisario de cuentas*).

The minimum capital requirements for an S.A. are:

- authorised capital: DOP30 million; and
- paid-in capital: DOP3 million (a minimum of 10% of the authorised capital shall be subscribed and paid).

### S.A.S.s

S.A.S.s are a subtype of corporations (S.A.), suitable for medium or large investments and businesses that will not venture into the stock market. The management and control of an S.A.S. is more flexible than that of a corporation. The provisions of Law No 479-08, apply supplementarily for all situations not described in the by-laws.

Management and control rules for Dominican S.A.S.s are flexible as they will be governed by its by-laws. In that sense, they may be managed by a sole director (president), a board of directors or any other management body or structure.

The minimum capital requirements for an S.A.S. are:

- authorised capital: DOP3 million; and
- paid-in capital: DOP300,000 (a minimum of 10% of the authorised capital shall be subscribed and paid).

## 3.2 Incorporation Process

### Incorporation of a Company

The main steps for incorporating a Dominican company or registering a branch of a foreign entity are as follows.

- Registration of the company's trade name with the National Office of Industrial Property (ONAPI), prior to the incorporation of the company. For branch registration, this step is not mandatory but highly advisable.
- Registration in the Mercantile Registry of the relevant Chamber of Commerce and Production of the jurisdiction of the seat of the company. Upon registration, the company's Mercantile Registry Certificate is issued and the company is deemed to be duly incorporated.
- Once registered at the Mercantile Registry, the company must then be registered with the National Taxpayers' Registry (*Registro Nacional de Contribuyentes* or RNC, by its Spanish acronym) at the local tax department. The tax department will issue a certificate validating the company's registration and assigning an RNC number to the company.

In addition, as secondary steps in order to do business, a company with employees should register with the Ministry of Labour and the National Social Security Treasury (TSS); other registrations may be applicable depending on the activity of the company and if it operates within a regulated sector.

### Tax for the Incorporation of Companies

Currently, a 1% tax is imposed on the authorised share capital upon the incorporation of Dominican companies. This tax does not apply to the registration of foreign branches. However, pursuant to Law No 30-26 on Pro-Economic Growth Measures, Tax Simplification, and Mitigation of the International Crisis ("Law 30-26"), this tax will be abolished with effect from 2027.

### Timeframe

Local registration of a foreign legal entity typically takes four to six weeks after the relevant filings take place, while the incorporation of a Dominican company could take around six to eight weeks from the date of execution of the incorporation documents until effective registration with the RNC.

## 3.3 Ongoing Reporting and Disclosure Obligations

### Reporting and Disclosure Obligations

Private companies are subject to reporting and disclosure obligations. Every year, the board of directors or the manager or managers, as applicable, must prepare an annual management report. In addition, where companies have a statutory auditor, the statutory auditor must also prepare an annual report. Companies must hold an annual shareholders' meeting, within the first 120 days after the end of the fiscal year, to discuss and approve the accounts of the previous fiscal year. The audited financial statements (when applicable), the annual management report, the resolutions to be submitted to the shareholders and the statutory auditor's report (when applicable) mustl be made available to the shareholders at the company's registered address during the 15 days preceding the meeting.

Changes in management, statutory auditor and/or shareholders, capital increase, domicile change, amendments of by-laws, dissolution, mergers, the minutes of shareholders meetings and any other relevant corporate documents, must be registered before the Mercantile Registry, which is a public registry. The registration of documents in the Mercantile Registry grants these documents effectiveness against third parties. There is, however, no governmental agency in charge of enforcing these filings or corporate governance in general, unless it is a listed company or regulated sector.

In addition, companies are subject to monthly and annual tax reporting and filings.

### Notice of Relevant Changes

Companies should register the general information regarding the company (domicile, share capital, shareholding structure, management, etc) with the corresponding Mercantile Registry and the Tax Department (DGII, by its Spanish acronym). Relevant changes to the company's registered information should also be reported.

### Financial Statements

All commercial entities that borrow funds from third parties, issue securities of any nature or have gross income greater than 100 minimum wages must have their financial statements audited in accordance with the norms of the Certified Public Accountants Institute of the Dominican Republic.

### Ultimate Beneficiary

Under Anti-Money Laundering and Terrorism Act ("Law No 155-17"), companies must disclose to DGII general information on the ultimate beneficial owners of the company. A "beneficial owner" is defined as the natural person who exercises final effective control over a legal person or that holds at least 20% of the share capital of said legal person, including the natural person for the benefit of whom a transaction is carried out. The disclosure of the company's ultimate beneficial owner(s) is conducted through the filing of form RC-02 (necessary to register changes in the RNC of the DGII) and is also requested as part of the annual tax declaration forms (IR-2) and other applicable tax forms.

### Tax Compliance Officer

Legal entities must register with the DGII the individual responsible for ensuring compliance with the company or legal entity's tax obligations, (ie, a tax compliance officer). This individual must accept their appointment at an annual shareholders' or members' meeting and must sign the RC-02 form.

The individual designated as responsible for the company or legal entity's tax obligations must hold one or more of the positions specified by law, that is, president, vice-president, director, manager or legal representative. According to the notice issued by the DGII regarding the registration of the tax compliance officer, this individual may not be someone unrelated to the administration, control or operations of the business or entity. If this update is not completed, the DGII will assign this responsibility ex officio to the individual designated as manager or director, or to the individual with the largest ownership interest in the company.

## 3.4 Management Structures

The company's by-laws shall determine the rules in connection with its management structure. Directors are appointed by the shareholders. The management structures available for the more commonly used corporate vehicles are set out below.

- S.A.s are managed mandatorily by a board of directors composed of at least three members, and supervised by one or more statutory auditors (*comisario de cuentas*).
- S.A.S.s' rules of management and structure are governed by their by-laws. They may be managed by a sole director (president), a board of directors or any other management body or structure. A statutory auditor is optional, unless the company issues the securities allowed by the law for this legal form, in which case it is mandatory.
- S.R.L.s can have one sole manager, two managers or a board of managers. Managers can only be individuals. A statutory auditor is optional and is not customary.

## 3.5 Directors', Officers' and Shareholders' Liability

### Liability of Directors

Directors shall be liable, towards the company or toward third parties, for any infringement of the law, breach of the company's by-laws, defaults in their management, including negligence, or any torts and damages against shareholders or third parties resulting from their acts or omissions vis-à-vis shareholders or third parties.

Directors are under a general duty of loyalty, duty of acting as a good businessperson (duty of care), duty of non-compete and duty of confidentiality. Directors' related transactions (and shareholders transactions in S.A.S.s and S.R.L.s) are regulated by the law and certain director-related transactions (and shareholders transactions in case of S.R.L.s) are prohibited.

Available civil claims in damages for directors' liability include both individual claims by the aggrieved party (shareholder or third parties) in accordance with general civil liability rules of law, as well as a company's claim in damages for directors' liability that, individually or collectively, shareholders may seek.

In addition to civil liability, the law also provides for directors' criminal liability. Provisions on liability vary depending on the company type in question.

### Criminal Liability of Legal Entities

Under Law No 74-25, establishing the Dominican Criminal Code, which was enacted on 3 August 2025 and is set to take effect in early August 2026, legal entities may now face criminal liability. Specifically, a legal entity may be held criminally responsible for offences arising from wrongful acts or omissions committed by its officers, representatives, or employees acting on its behalf, where such conduct is attributable to the entity's failure to exercise adequate oversight, direction, or supervision.

### Relieving Directors From Liability: Statute of Limitations

The statute of limitations for the civil claims in damages provided in the law is two years from the date of the default or breach of duty.

### Piercing the Corporate Veil

The general principle is that companies have separate legal personality, independent from that of their shareholders. However, in limited cases, the legal personality of the company may be pierced, thus making its shareholders and/or its directors and/or officers liable.

According to Law No 479-08, the corporate veil can be pierced when there is reason to believe that the company is used to commit fraud against the law, violate public order or to commit fraud to the detriment of the rights of shareholders or third parties.

The Tax Code abides by the "substance over form" concept, and thus, under said principle the corporate veil may be pierced.

Additionally, Section 11 of the Tax Code, as amended by recently enacted Law No 25-24 amending Section 11 of the Dominican Tax Code ("Law No 25-24"), establishes joint and several tax liability for directors and shareholders of a company in connection with the company's tax obligations. Law No 25-24 provides that presidents, vice-presidents, directors and managers of a company and representatives of entities without legal personality will be jointly and severally liable if they have evaded or neglected their responsibilities or permitted tax non-compliance, whether intentionally or negligently. Shareholders of a legal entity, as well as the ultimate beneficial owners, will

also be jointly and severally liable for the entity's tax debts, in cases of negligence, up to the limit of their investment (equity). Moreover, Law No 24-25 introduces joint and several tax liability for companies within the same economic group when the group is deemed to have been created solely for the purpose of evading tax obligations.

The Labour Code also includes a provision for piercing the corporate veil in the case of companies that constitute an economic group where fraud is involved. When there are one or more companies that are under the direction, control or administration of other companies or that constitute an economic group, then all companies will be jointly and severally liable with respect to the labour obligations of its employees in the event of fraud.

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

#### The Labour Law Regime

Since the Dominican Republic is a civil law jurisdiction, the nature of legal rules governing the employment relationship are mainly statutory. The Dominican labour law regime is governed essentially by the Labour Code and resolutions issued by administrative labour authorities. Case law is used to interpret and further clarify labour law provisions but are subordinate to the same.

The provisions of the Dominican Labour Code are public policy, and therefore any contractual clauses and legal provisions contrary to the same are considered to be void and without effect. Hence, internal labour handbooks and employment agreements are valid, provided they do not contravene the Labour Code. An employment agreement does not have to be in writing (except for labour agreements for a determined period of time or for a specific project), but proven by the facts, which is what prevails.

Dominican labour law is territorial and applies to all employees that work in Dominican territory, whether they are foreign or national, even if they have been hired in a foreign country.

#### Collective Bargaining Agreements

Collective bargaining agreements may establish more favourable conditions for the workers, which are deemed to be included in and automatically modify the individual employment contracts.

### 4.2 Characteristics of Employment Contracts

Employment agreements can be concluded verbally or in writing. Labour agreements for a determined period of time or for a specific project need to be executed in writing. Pursuant to the Dominican Labour Code, an employment contract is one whereby a person undertakes to render a personal service to another, under their immediate or delegated dependence and direction, in exchange for a remuneration.

The duration of employment contract is regulated as follows:

- for an indefinite time;
- for a limited time; or
- for a specific job or service.

All labour contracts are presumed to be made for an indefinite time period. Contracts for a limited time and for a specific job or service can only be entered into when the nature of the work requires it and/or under the conditions foreseen by the Dominican Labour Code.

The existence of an employment contract is presumed (until proven to the contrary) in any personal employment relationship. The employment contract may be purely consensual in nature, the validity of the verbal agreement is established by law, and practice is consistent with this criterion since the simple agreement of the parties is sufficient for an employment relationship to take place.

Under the Labour Code what prevails are the facts over what is in writing; thus, what prevails is not the employment contract that is made in writing, but the one that is executed according to the facts, which will allow the establishment of the nullity of any contract in which the parties have proceeded in simulation or fraud of labour laws.

## 4.3 Working Time

### Working Hours

There is a maximum working time applied to salaried employees. The working week will end at 12pm on Saturday, and, in principle, it must not exceed eight hours per day or 44 hours per week, except for the exceptions provided via resolution of the Minister of Labour.

The aforementioned general rule is not applicable (unless agreed otherwise) to the following workers:

- those that act as representatives or agents of the employer;
- those that are appointed to management or inspection positions;
- those that work in rural establishments run by members of a same family or one person; and
- those who perform intermittent activities or activities that solely require their presence in the workplace.

Workers are not allowed to remain for more than ten hours a day at their place of work. In addition, after four hours of continuous work, there must be a rest period of one hour, and after five hours, a rest period of one and a half hours. All workers have the right to an uninterrupted weekly rest of 36 hours.

### Overtime

The employer must pay 35% over the normal wage for overtime between 44 and 68 hours per week and 100% for overtime surpassing 68 hours per week.

The working day may be extended, but only to the extent necessary to avoid a serious disturbance to the normal operation of the employer's company, in the cases specified by the law.

## 4.4 Termination of Employment Contracts

Dominican labour law can be considered an "employment at will" jurisdiction, as it allows unilateral termination without cause by either party in indefinite term agreements but establishing the payment of severance and acquired rights when effected by the employer.

Generally speaking, termination of the employment contract is divided into two groups in the case of indefinite term agreements: termination without cause; and termination with cause.

- Termination with cause: termination by the unilateral decision of the employer is justified if the employer is able to prove the existence of a just cause as defined by the Labour Code. Otherwise, termination of employment is considered unjustified, and the employer is required to pay severance as described below.
- Termination without cause: any of the parties in an employment contract has the right to end a contract for an indefinite time via advance notice to the other and without alleging cause.

When the employer exercises their right of dismissal without a cause, it has ten days to pay the worker severance (advance notice and severance) as provided by the Labour Code, plus other acquired rights, as follows:

- advance notice;
- severance pay;
- mandatory Christmas bonus;
- compensation for vacation, if applicable; and
- a profit bonus, within 120 days of the closing of the fiscal year.

## 4.5 Employee Representations

It is not mandatory for employees to be represented by someone other than themselves. In principle, employees do not have to be informed or consulted by management with respect to decisions regarding the company's operations. However, if decisions that may affect employees' working conditions are to be taken, the employees must be informed of such decisions.

Employees have the right, but not the obligation, to unionise for the representation of their professional interests within their workplace, and employers may not restrict the right of workers to join or refrain from joining a union, or to withdraw from a union to which they belong. The exercise of the right to unionise is an individual prerogative of each worker.

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/ Employers

An employer is under the obligation to withhold income tax on salaries paid to its employees.

All natural and legal persons residing or domiciled in the Dominican Republic will pay income tax on revenue of Dominican source and on revenue of foreign source originating from financial investments and gains.

Currently, individuals residing in the Dominican Republic are subject to income tax ranging from 15% to 25% of their taxable net income for each fiscal year. The exempted annual income is adjusted every year according to the inflation rate for the previous year published by the Central Bank of the Dominican Republic. The annual income of up to DOP416,220 is exempted from income tax and, above that sum, the following scale would apply.

- Annual income from DOP416,220.01 to DOP624,329.00: 15% for the sums exceeding DOP416,220.01.
- Annual income from DOP624,329.01 to DOP867,123.00: DOP31,216.00 plus 20% for the sums exceeding DOP624,329.01.
- Annual income from DOP867,123.01 and above: DOP79,776.00 plus 25% for the sums exceeding DOP867,123.01.

Notwithstanding the foregoing, pursuant to Law 30-26, effective 1 January 2027, annual income of up to DOP480,000.00 shall be exempt from income tax. Annual income in excess of such amount shall be subject to the following progressive income tax rates:

- From DOP480,000.01 to DOP685,000.00: 15% of the amount exceeding DOP480,000.
- From DOP685,000.01 to DOP910,000.00: DOP30,750.00, plus 20% of the amount exceeding DOP685,000.00.
- From DOP910,000.01 to DOP4,800,000.00: DOP75,750.00, plus 25% of the amount exceeding DOP910,000.00.
- In excess of DOP4,800,000.00: DOP1,048,250.00, plus 27% of the amount exceeding DOP4,800,000.00.

Individuals shall be considered resident of the Dominican Republic for tax purposes if they are in the Dominican Republic for over 182 days, continuously or not, during a fiscal year.

National or foreign individuals who come to reside in the Dominican Republic will only be subject to the payment of income tax on their revenues of foreign source from investments and financial gains from the third year or taxable period to be counted from the period on which they became residents. Additionally, if a non-resident employee receives income from a Dominican source, those amounts shall be subject to local taxes, specifically income tax, amounting to 27% for foreign/non-resident individuals and entities.

Complimentary compensation given to an employee is subject to income tax (27%) over the gross amount of such compensation. Housing, transportation, mobile phone charges, among others, is considered as complimentary compensation. Unlike the income tax withholding on the salaries of employees, this tax is to be covered by the employer and not by the employee.

All companies that have salaried employees must be registered with the Social Security Treasury (TSS) and make their payments on a monthly basis as follows.

- Family health insurance (SFS): 10.13% of the quotable salary (7.09% shall be covered by the employer and 3.04% by the employee).
- Pension fund (AFP): 9.97% of the quotable salary (7.10% covered by the employer and 2.87% by the employee).
- Occupational risk insurance (SRL): the employer must pay a fixed fee of 1% on the salary of the employee and an additional variable fee of up to 0.6% on the salary of the employee depending on the risk level of the activities performed by the company.

In addition, the employer must pay the National Institute of Technical Professional Training (INFOTEP) 1%

of its employee payroll and the employee must pay 0.5% deductible from bonuses.

### 5.2 Taxes Applicable to Businesses

Dominican tax laws are territorial.

All natural and legal persons residing or domiciled in the Dominican Republic will pay income tax on revenue of Dominican source and on revenue of foreign source originating from financial investments, gains and technical assistance services. For these purposes, technical assistance services refer to the provision of independent management, technical, and consulting services involving the furnishing of non-patentable know-how. Companies incorporated in the Dominican Republic are considered resident for tax purposes as well as foreign entities' branches registered locally and permanent establishments. If the individual or legal entity is not considered resident for tax purposes, then it would pay tax on each revenue of Dominican source and would be taxed on its gross income.

A "permanent establishment" is defined as a fixed place of business in which a natural person, legal entity or foreign entity carries out all or part of its activities, such as: headquarters, offices, branches, commercial agencies, factories, workshops, mines, oil or gas wells, quarries or any other place of extraction of natural resources, assembly projects, including supervision activities thereof. It also includes construction or supervision activities derived from the sale of machinery or equipment when their cost exceeds 10% of the sale price of said goods, business consulting services, provided they exceed six months within a fiscal year, and representatives or agents, when the representatives or agents of a legal entity would generate a risk of a taxable presence for such legal entity when they carry out all or almost all of their activities in the Dominican Republic on behalf of the legal entity.

The main applicable taxes to companies doing business, among other, are set out below.

- Income tax: any earning or benefit obtained from a good or activity and all the benefits, profits received or accrued, and capital gains made by the taxpayer, whatever their nature, origin or denomination, shall be deemed as "income". The applicable annual income tax on the net income of legal entities, resident or with a registered permanent establishment in the Dominican Republic is 27%. Pursuant to Law No 30-26, on a transitional basis, taxpayers whose reported income equals or exceeds DOP1 billion shall be subject to an income tax rate of 30% for fiscal years 2026, 2027, and 2028. Beginning with fiscal year 2029, the rate will revert to 27%.
- VAT: the transfer of industrial goods and services (ITBIS, which is the local VAT equivalent) tax rate applicable to the transfer of products, the import of industrialised goods and the provision of services to the local market is 18%.
- Tax on assets: 1% tax on the value of its assets (not adjusted for inflation, and applying the deduction for depreciation, amortisation and reserves for uncollectable accounts). Pursuant to Law No 30-26, companies operating in the agricultural sector are fully exempt from the assets tax.
- Capital gains tax: this tax must be paid by any individual or legal entity that transfers or disposes of capital assets subject to this tax. To determine the capital gain, the fiscal cost of the respective good or capital asset will be deducted from the sale price or disposal value. The rate is 27% for companies. Pursuant to Law No 30-26, capital gains derived from the transfer of real estate by individuals are subject to a flat 10% tax. Exemptions apply where: (i) the transferred property is the seller's primary residence, and the full proceeds are reinvested in a new primary residence within six months (with a proportional exemption if only a portion of the proceeds is reinvested); or (ii) the seller is aged 65 or older, regardless of reinvestment. Law No 30-26 expressly incorporates digital assets and crypto-assets into the Tax Code as capital assets.
- Real estate transfer tax: 3% tax on the greater of the acquired real estate property's total value or its fiscal value, applicable to acts of real estate property transfer (purchase and sale agreements, exchanges, deeds in lieu, adjudications, contributions to trusts, etc).
- Transfer tax (motor vehicles): 2% tax on the greater of the acquired motor vehicle's total value or its fiscal value.

- Withholdings on dividends: dividends from Dominican sources are subject to a single and definitive withholding of 10%. Those dividends from foreign sources are considered financial gains and are taxed at a rate of 27% for companies and 25% for individuals.

Other withholding obligations include:

- 27% on payments made abroad; with the exception of: (i) royalties and rights paid to non-residents, which are subject to 15% on the gross amount as a final tax; and (ii) software licences, online advertising services and data storage rights paid to non-residents, which are subject to 15% on the gross amount as a final tax, unless the payment constitutes a genuine transfer of software ownership by the developer or owner of the programme, in which case it is exempt.
- 10% on interest paid to non-resident individuals or companies;
- withholding on employees' salaries based on a progressive scale with a cap up to 27% effective 1 January 2027, and other contributions to the National Social Security System and INFOTEP; and
- 15% on fees, commissions and other payments for the provision of services in general.

Custom duties and tariffs apply to the importation of goods, with the exceptions and provisions established in different international treaties signed by the country.

In connection to Pillar Two of the Global Anti-Base Erosion Model Rules (GloBE) published by the Organisation for Economic Co-operation and Development (OECD), the Dominican Republic's income tax rate applicable to MNE (Multinational Enterprises) complies with the minimum global tax set forth by the OECD, ie, 15% (the Dominican Republic's current rate for corporate income tax is 27%). Likewise, the current rate for taxes over the payment of interests, dividends and royalties is 10% (higher than the 9% proposed by the OECD for the same concept). In this context, since the Dominican Republic already complies with Pillar II of the GloBE rules, the introduction of domestic top-up tax is not required. Nevertheless, as explained in **5.8 Tariffs**, there are certain special tax regimes that grant an exemption from corporate income tax, such as the free trade zones regime.

## 5.3 Available Tax Credits/Incentives

### Tax Incentives

The main tax incentive regimes are for:

- free trade zones;
- comprehensive border development;
- tourism development; and
- renewable energy.

### Free Zones

Free zones are granted the following tax incentives and exemptions for legal entities classified as free zone companies according to the procedure established by law:

- tax on the incorporation of companies and on capital increases;
- income tax;
- import duties, tariffs, custom rights and other taxes affecting raw materials, equipment, parts of buildings, etc, destined for construction, preparation or operation within free zones;
- all existing export and re-export taxes, with certain exceptions those regarding import tariffs;
- construction taxes, taxes on loan agreements and on registration and transfer of real estate property from the date of formation of the free zone operator;
- free zones are exempted from giving their employees a yearly company bonus; however, free zones are still required to pay to their employees a Christmas bonus;
- consular fees; and
- taxes on assets and ITBIS.

### Comprehensive Border Development

Law No 12-21 creates the special zone for comprehensive border development (SBDZ) and an incentive regime, which covers the Dominican Republic provinces of Pedernales, Independencia, Elías Piña, Dajabón, Montecristi, Santiago Rodríguez and Bahoruco, providing the following tax incentives and exemptions for legal entities classified according to the procedure established by law.

- Selective tax on consumption, applicable to telecommunications and insurance services for the facilities of the project located in the SBDZ.
- Tariffs and ITBIS on machinery and equipment imported or acquired in the local market, as applicable, required for the installation and start-up of the company.
- ITBIS on the acquisition and import of inputs and raw materials used in the production of goods exempt from ITBIS in accordance with current tax legislation.
- 50% of ITBIS on the acquisition and import of inputs and raw materials used in the production of goods which are not exempt from ITBIS in accordance with the current tax legislation.
- Tariff on the import of inputs and raw materials used for the production of goods, only when they are not produced in the Dominican Republic.
- Real estate transfer tax and other taxes related to real estate operations on the land and infrastructure where the classified project will be developed.
- Taxes, fees and registration rights related to the capital gain and transfer of shares in companies with registered offices within the SBDZ.
- Exemption from the obligation to withhold and pay to the Tax Department payments abroad for technological innovation services required by the classified project exclusively during construction and start-up.

### Tourism Development

Under Law No 158-01 for the Promotion of Tourism Development, companies domiciled in the Dominican Republic that qualify to benefit from the incentives of such law are exempt from paying:

- income tax, as established under Law No 158-01;
- national and municipal taxes charged for using and issuing construction permits, including the acts of land purchase, provided they are used as authorised by Law No 158-01; and
- import taxes and other taxes, such as rates, rights, surcharges, including ITBIS that are applicable to the equipment, materials and furniture that are necessary for the first equipment and commissioning and the tourist facility in question.

### Renewable Energy

All projects of public, private or mixed facilities that generate energy from the following renewable sources may benefit from the incentives provided in Law No 57-07 on Incentives to the Development of Renewable Energy Sources and its Special Regimes, as amended, upon prior approval, according to the procedure established by law:

- wind farms with an initial installed capacity that does not exceed 50 MW;
- hydroelectric facilities of which hydroelectric capacity does not exceed 5 MW;
- electro-solar (photovoltaic) installations of any type and of any power level;
- solar thermal installations (concentrated solar energy) of up to 120 MW of power per plant; and
- facilities that produce energy from biomass up to a generated power capacity of 150 MW.

The main applicable incentives for the renewable energy regime are:

- an exemption from import taxes and VAT; and
- a ten-year income tax exemption; and
- a reduction of taxes on external financing: a 5% reduction of the tax for payment of interest from external financing, only in relation to interest payments to financial institutions.

## 5.4 Tax Consolidation

Tax consolidation is available and can be requested by the interested party or declared ex-officio by the Tax Administration to prevent tax evasion or to clearly reflect the income of any of the organisations or companies of an economic group.

## 5.5 Thin Capitalisation Rules and Other Limitations

The Dominican Republic has thin capitalisation rules. The maximum debt-to-equity ratio for the purposes of deduction of interest is 3:1. Per the Dominican Tax Code, the amount for interest deduction may not exceed the value resulting from multiplying the total amount of interest accrued in the tax period (1) by three times the relationship between the average annual equity balance (C) and the annual average bal-

ance of all debts (D) of the taxpayer that accrue interest: 1×3 (C/D).

## 5.6 Transfer Pricing

Transfer pricing rules are applicable, whereby transactions between related parties are regulated. Transactions between a resident and a related natural person, legal person or entity must be carried out in accordance with the prices that would have been agreed between independent parties in comparable transactions and under the same or similar circumstances.

Such rule also applies when a resident conducts commercial or financial transaction with:

- a related resident; or
- physical or legal persons or entities domiciled, incorporated or located in territories with preferential tax regimes, low or no taxation, or tax havens, whether the latter are related or not.

When the prices agreed for commercial or financial transactions between companies in scope of this provision do not adjust to the values of similar transactions between independent companies, the Dominican Tax Administration may challenge them and make the corresponding adjustments.

Taxpayers must file a transfer pricing information return (DIOR) with respect to transactions with its related parties, which must be filed annually within 180 days after the fiscal closing date.

When operations made with related parties exceed DOP12,193,981.70 in the fiscal year, the taxpayer must have prepared a transfer pricing study or report on the process of the assessment of prices agreed between the related parties at the time of filing the DIOR.

## 5.7 Anti-Evasion Rules

Tax evasion is incurred by those who, through actions or omissions that do not constitute any of the infractions provided for in the Tax Code, produce or could produce an illegitimate decrease in tax revenue, the improper granting of exemptions or damage to the creditor of the tax obligation.

Tax evasion is considered an infraction under the Dominican Tax Code and is sanctioned with a monetary penalty of up to two times the amount of the omitted tax, without detriment to the possibility of the Tax Administration ordering the closing of the establishment of the offender, if applicable.

## 5.8 Tariffs

The applicable tariff regimes in the Dominican Republic are established by Customs Law No 168-21. Ad valorem duties on imported goods are set forth under Law No 146-00 on Tariff Reform, as amended.

The importation of goods into the Dominican Republic is subject to the following.

### Custom Duties (Tariffs)

Goods are subject to seven different tariff rates, depending on the type of good: 0%, 3%, 8%, 14%, 20%, 25% and 40%.

### Excise Tax (ISC)

Excise Tax is the tax applied to the transfer of certain domestically produced goods at the manufacturing level, as well as their importation, and the provision or leasing of specific services, such as telecommunications services, insurance services and financial transactions. Imported goods such as alcohol, tobacco, hydrocarbons, among others, are subject to this tax. The rate will depend on the type of product or service offered.

Alcoholic products are taxed through fixed amounts determined by the volume of pure alcohol content, along with an additional 10% ad-valorem based on the suggested retail price.

Tobacco products are subject to fixed amounts depending on the cigarette type, plus a 20% ad-valorem applied to the suggested retail price.

Telecommunications services are taxed at a rate of 10%, while insurance services generally carry a 16% tax. Pursuant to Law No. 30-26, the tax rate applicable to life insurance is reduced progressively: 11% in 2027, 6% in 2028, and fully exempt as of 2029. Non-life insurance services remain subject to the standard 16% rate. Hydrocarbons are taxed through specific

amounts per gallon, in addition to a 16% ad-valorem. Other goods are taxed based on the fixed amounts established under the Tax Code.

### Value Added Tax (ITBIS)

The ITBIS rate applicable to the transfer of products, the import of industrialised goods and the provision of services to the local market is 18%, calculated based on the net transfer price of the good or service, in accordance with the Tax Code.

The Dominican Republic has five trade agreements:

- the Dominican Republic–Central America–United States Free Trade Agreement (DR-CAFTA);
- the CARIFORUM–European Union Economic Partnership Agreement (EPA);
- the Dominican Republic–Central America Free Trade Agreement (TLC RD/CA);
- the Dominican Republic–Caribbean Community (CARICOM) Free Trade Agreement; and
- the Trade Agreement between the Dominican Republic and the Republic of Panama.

The Dominican Republic grants preferential tariffs to countries with which it has a free trade agreement, which benefit from reduced or zero tariffs on most goods. Additionally, certain sectors benefit from tariff or custom duty exemptions, including free trade zones, renewable energy projects, tourism development, non-profit organisations.

Tariffs are often higher on:

- agricultural products (poultry, rice, beans, dairy, onions and garlic, sugar, corn and wheat flour) to protect local producers;
- beverages (beer, rum) to protect local industries; and
- textiles (higher on Asian and other non-preferential countries).

Because of recent global developments, the Dominican economy may face both potential benefits and difficulties. Higher gold prices may boost export revenues, while higher tariffs and a slowdown in global trade could negatively affect the textile and manufacturing industries, potentially resulting in reduced investment inflows.

The United States is the Dominican Republic's most significant bilateral trading partner, representing 53.5% of the country's total exports, valued at over USD7.6 billion in 2025.

The Dominican Republic is among the countries with the lowest reciprocal tariff rate (10%).

## 6. Competition Law

### 6.1 Merger Control Notification

As a general rule, Competition Law No 42-08 does not create a notification regime for merger and acquisition transactions but companies in specific industries are subject to the requirements established by their corresponding regulators and sectorial laws.

Mergers and acquisitions are subject to notification in the case of telecommunications companies, insurance, reinsurance and insurance intermediation companies, as well as financial intermediation entities, companies which are the beneficiaries of public concessions for electricity generation and mining, pension fund administrators and companies making public offerings.

### 6.2 Merger Control Procedure

Law No 42-08 does not set forth a merger control procedure but companies in specific industries are subject to the requirements established by their corresponding regulators and sectorial laws.

In the case of telecommunication companies, written notice should be given to the authorisations department of the Institute of Telecommunications (*Instituto Dominicano de las Telecomunicaciones* – INDOTEL) prior to the closing of any transaction which implies, directly or indirectly, the loss or possibility of loss, on the part of the seller or assignor, of corporate control, or the possibility of forming the corporate will of the company which holds the authorisation to operate as a telecommunication service provider in the Dominican Republic. If INDOTEL determines that prior authorisation is required in order to execute the trans-

action, the telecommunications service provider must comply with the procedure provided for in INDOTEL's Regulation for Authorisations.

Authorisation of change of control is issued by INDOTEL via a resolution. The process takes at least 97 business days.

In the case of free zone companies, a change in their shareholding structure requires a formal notice to be given to the National Council of Free Export Zones (*Consejo Nacional de Zonas Francas de Exportación* – CNZFE), which may be given after the transaction has closed or the change is effective. This notice is not legally mandated and is made purely for informational purposes. No prior authorisation is required for changes to the shareholding structure of a free zone company.

## 6.3 Cartels

Law No 42-08 governs anti-competitive agreements and practices. It prohibits all practices, acts and agreements between competitor economic agents, be it express or implicit, in writing or verbal, that have for effect imposing unjustified barriers in the market.

Law No 42-08 is a public policy law whose purpose is to promote and defend effective competition with the aim of increasing economic efficiency in goods and services markets with a view to generating benefits and value for consumers and users of said goods and services in the Dominican territory. It is applicable to all economic agents, legal or natural persons, governed by private or public law, for profit or non-profit, foreign or domestic, that do business in Dominican territory. It is also applicable to:

- acts, agreements or conducts, including those derived from a dominant position, that originate outside the Dominican territory, if they have restrictive effects on competition within the national territory; and
- acts, agreements and administrative provisions that have the effect of restricting competition.

Law No 42-08 basically regulates:

- concerted practices;
- abuse of dominant position; and
- unfair competition.

The National Commission for the Defence of Competition (*ProCompetencia*) is the authority in charge of ensuring the protection of free competition in the Dominican Republic.

In certain regulated sectors, the applicable sectorial laws contain provisions regarding the defence of free competition that delegate functions in this area to the regulator of the sector in question (eg, INDOTEL in matters of telecommunications).

## 6.4 Abuse of Dominant Position

### Economic Dependence

The abuse of economic dependency, the economic subordination of one contracting party to the other in a given contract, is not regulated. There are legal provisions, such as Consumer Protection Law No 358-05, that prohibit abusive clauses in adhesion contracts in commercial relations with consumers (B2C). The commercial or contractual relationships between professionals (B2B) are governed based on the principle of "the free will to contract" and Article 1134 of the Dominican Civil Code, which establishes that legally formed agreements have the force of law between the parties.

### Abuse of Dominant Position

Law No 42-08 prohibits the abuse of dominant position. Pursuant to the provisions of this Law, dominant position is defined as the control of the relevant market enjoyed by an economic agent, by itself or jointly with others, that gives it the power to hinder the maintenance of effective competition or allows it to act in said market regardless of the behaviour of its competitors, clients or consumers.

The possession of a dominant position in the market or its increase, by itself, does not constitute an offence under the law, only its abuse.

## 7. Intellectual Property

### 7.1 Patents

A patent is an exclusive right granted by the Dominican state to inventions and utility models and gives the inventor exclusivity for its exploitation for a fixed period of time. According to Law No 20-00 on Industrial Property ("Law No 20-00"), an invention is any idea or creation of the human intellect capable of being applied to industry that meets the patentability conditions set forth in the applicable legal framework and may refer to a product or a procedure. To be patentable, the invention must be capable of industrial application, be novel and have an inventive level.

Likewise, a utility model is considered to be any new form, configuration or disposition of elements of any artifact, tool, instrument, mechanism or other object, or of any part of it, that allows a better or different operation, use or manufacture of the object that incorporates it, or that provides some usefulness, advantage or technical effect.

The right to the patent belongs to the inventor and is obtained through its registration before ONAPI's inventions department. However, it can be transferred.

The Dominican Republic is a contracting party to the Patent Cooperation Treaty (PCT). The PCT is an international co-operation agreement that allows applicants to apply for patent protection for an invention in multiple countries at the same time by filing an "international" patent application before the national patent office of the contracting state of the nationality or domicile of the applicant or before the International Office of the World Intellectual Property Organization (WIPO). Consequently, the Dominican Republic can be automatically designated in any international application, and nationals and residents of the Dominican Republic have the right to file applications under the PCT.

The patent application must contain the details of the applicant and the inventor(s), and a Spanish translation of the specification, including the description, claims, drawings and sequence listing, if applicable, and the priority claim declaration and certified copy of the priority document, if applicable. Once filed, ONAPI's inventions department oversees the formal examination of merits of the application.

The scope of the patent protection is to exclude third parties from the exploitation of the invention. However, legislation contemplates some limitations as long as they do not unreasonably conflict with the normal exploitation of the patent or cause unreasonable prejudice to the legitimate interests of the patent holder, taking into account the legitimate interests of third parties.

The law establishes criminal and economic sanctions for the infringement of a patent. The owner of a patent can initiate civil or criminal actions before a court with jurisdiction against any person who infringes the rights granted by the law, including petitioning for conservatory measures.

The invention patent has a duration of 20 non-extendable years, commencing from the filing date of the application in the Dominican Republic. However, under DR-CAFTA and Law No 20-00, the titleholder of a patent may request a patent term adjustment (PTA) if there is an unreasonable delay in the patent granting process incurred by ONAPI's inventions department. Compensation may be requested for a maximum of three years if ONAPI incurs in a delay of more than five years in the granting of the patent or more than three years from the date of the request for an examination on the merits. To maintain a patent or a patent application, the applicant must pay annual fees.

The utility model patent expires after 15 non-extendable years, commencing from the filing date of the patent application in the Dominican Republic.

### 7.2 Trade Marks

Law No 20-00 defines a trade mark as any sign or combination of signs capable of graphic representation that allows the products or services of a company to be distinguished from the products or services of other companies.

The right to the exclusive use of a trademark is acquired through its registration before ONAPI.

After the trade mark application is filed before ONAPI, the distinctive signs department proceeds with the formal evaluation of the merits. Once the trade mark is approved, it is published in the Official Gazette of ONAPI. After the publication, any third party may file an opposition against the application for registration, within a period of 45 days from the notice's publication date. After this period has elapsed, and if no oppositions are filed, ONAPI proceeds to grant and register the trade mark.

Upon registration, a trade mark is valid for ten years from the date on which the registration certificate is issued and may be renewed for successive periods of ten years following the expiration date. The owner has a grace period of six months to proceed with the renewal, after the expiration date.

The law establishes criminal and economic sanctions for unauthorised commercial use of a registered trade mark or a fraudulent imitation of a trademark, in relation to the products or services that it distinguishes, or to related products or services. The owner of a registered trade mark can initiate administrative actions against applications or registered trade marks that affect their trade mark, or file civil actions before the relevant court against any person who infringes the rights granted by law, including petitioning for conservatory measures.

### 7.3 Industrial Designs

According to Law No 20-00, an industrial design is any collection of lines or combinations of colours, or any two-dimensional or three-dimensional external shape that is incorporated into an industrial or handicraft product, including parts intended for assembly in a complex product, the packaging, presentation, graphic symbols and typographic characters, excluding computer programs, to give it a special appearance, without changing the destination or purpose of said product.

The right to obtain the protection of an industrial design belongs to the designer(s).

The protection is acquired via registration before the inventions department of ONAPI, provided that it is a new design and has a unique character.

The protection of an industrial design does not include the elements or characteristics of the design determined solely by the performance of a technical function that does not incorporate any arbitrary contribution of the designer or that its reproduction is necessary to allow the product that incorporates it to be mechanically assembled or connected with another product of which it constitutes a part or integral piece. The scope of its protection is to exclude third parties from the exploitation of the industrial design.

The application must be filed before ONAPI, including the details of the applicant, the designer, a brief description of the visible characteristics that appear in each graphic or photographic representation, and the drawings and/or photographs of the industrial design. Once the application is filed, ONAPI's inventions department proceeds with the evaluation of the application to verify if meets the requirements established to grant protection over the industrial design.

The duration of the registration is five years, and it may be extended for two additional periods of five years by paying the established extension fee.

### 7.4 Copyright

Copyright is regulated by Law No 65-00 on Copyright.

Pursuant to Law No 65-00, copyright includes the protection of literary and artistic works, the literary or artistic form of scientific works, including all creations of the mind in the indicated fields, whatever the mode or form of expression, dissemination, reproduction or communication, or gender, merit or destiny.

It is important to note that, unlike trademarks, the author's right is an immanent right that is born with the creation of the original work. The formalities that Law No 65-00 enshrines are to give publicity and greater legal certainty to the holder of the rights, and the omission does not harm the exercise of their rights. Therefore, the registration of these works is not mandatory.

The National Copyright Registry of the National Office for Copyright (ONDA, by its Spanish acronym) is in charge of the registration of the works, performances, productions, including phonograms and broadcasts

protected by Law No 65-00, acts and contracts that refer to copyright or related rights.

The limitations and exceptions to copyright are of restrictive interpretation and may not be applied in such a way that they violate the normal exploitation of the work or cause unjustified damage to the interests of the owner of the respective right.

The owner of the copyright or a related right, successors in title, or whoever has the conventional representation of the same, has the right to decide how they will initiate and proceed in the exercise of the rights conferred by law. Law No 65-00 contemplates administrative sanctions, such as fines and civil and criminal liability for violation of copyright.

The copyright over a work is divided into moral and economic rights. Regarding moral rights, the author has a perpetual, imprescriptible and inalienable right to claim paternity over the work. While, economically, the rights correspond to the author during their life and to the spouse and successors for 70 years from the death of the author. For some works, such as anonymous and collective works, the protection starts from the publication or from its creation, if it is not published within 50 years from its creation.

Protection for a computer program is 70 years from publication or from its creation, if it is not published within 50 years from its creation.

## 7.5 Others

### Computer Programs

Software, or computer programs, as they are regulated by Law No 65-00 on Copyright, are protected in the same terms as literary works, whether source programs or object programs, or by any other form of expression, including technical documentation and user manuals.

A computer program is defined by Law No 65-00 as the expression of a set of instructions through words, codes, plans or in any other way that, when incorporated into an automated reading device, is capable of making a computer or other type of machine execute a task or obtain a result.

The protection of software extends to both operating and application programs, in source code or in object code, as well as technical documentation and user manuals.

### Databases

In the Dominican Republic, databases are also recognised as literary works.

The protection extends to the bases or compilations of data or other materials that are legible by machine or in any other way that, further to the selection or provision of its contents, constitute creations of an intellectual nature. However, the protection does not extend to the compiled data or information.

### Trade Secrets

Trade secrets are regulated by Law No 20-00 on Industrial Property. They are identified as business secrets and defined as any undisclosed commercial information that a natural or legal person possesses that can be used in any productive, industrial or commercial activity, and that is likely to be transmitted to a third party.

According to the law, a business secret shall be recognised as such for purposes of its protection when the information which constitutes it:

- is not generally known or easily accessible by persons who are in the circles that normally manage the respective information; and
- has been subject to reasonable measures taken by its legitimate owner to keep it secret.

Law No 20-00 establishes that actions considered unfair competition with respect to a business secret are:

- exploiting it without the authorisation of the legitimate owner; and
- a business secret to which access has been obtained subject to a confidentiality obligation, resulting from a contractual or employment relationship.

It is important to take into account that the law does not establish specific sanctions for the violation of

rights over business secrets, therefore, it is presumed that any remedy falls on the civil liability regime for violating the provisions of the aforementioned law or for breach of contract in the event of a confidentiality agreement or contractual relationship between the owner of the secret and the person who exercises the infringement.

## 8. Data Protection

### 8.1 Applicable Regulations

The Dominican Republic's Constitution recognises the fundamental nature of an individual's right to honour, respect and non-interference in one's private life. It also enshrines the fundamental principles that govern the treatment of personal data, notably, the principles of reliability, legality, integrity, security and purpose.

Law No 172-13 on the Protection of Personal Data is the general law for the protection and processing of personal data. This Law:

- governs the collection, storage, safekeeping, use and access rights to personal data recorded in files, databases and registries for the issuance of public or private reports; and
- regulates the incorporation and operation of Dominican credit bureaus.

Monetary and Financial Law No 183-02 imposes on banks and other regulated financial institutions:

- secrecy requirements;
- a legal obligation to maintain confidentiality regarding deposits received from the public and to refrain from revealing information in a detailed or segregated manner that could reveal the identity of their customers or account holders; and
- a confidentiality obligation, which prohibits banking entities from releasing personal banking data, except for the reasons provided for under the Law.

Additionally, the Dominican Republic's legal system has, in writing, some of the general principles instituted by the General Data Protection Regulation (GDPR), using consent as the justification for the processing of personal data. Hence, it is important to point out that the Dominican Republic is a consent-based market with respect to the processing of personal data.

### 8.2 Geographical Scope

Even if processing of information is carried out abroad, if a foreign company targets customers in the Dominican Republic, there is a risk that customers may claim the collection of data takes place in the Dominican Republic and, accordingly, the provisions of Law No 172-13 would apply to the collection and treatment of data in the Dominican Republic.

The "treatment of personal data" is defined as:

- any operations or processes that allow for personal data processing, such as the collection, creation, storage or organisation of personal data;
- the evaluation or analysis of such personal data; or
- the transmission of such personal data.

Law No 172-13 applies to all data controllers that collect information in the Dominican Republic and is of public order (ie, mandatory, and the parties may not opt out of its provisions). The definition of treatment is considerably broad under Law No 172-13 and includes operations and procedures that entail the collection of information as well as its processing per se.

Personal data may only be transferred internationally if the owner of the data expressly authorises such transfer. The processing and transfer of personal data is unlawful when the owner of the data has not given their free, explicit and conscious consent, which shall be in writing or by other means to equate to it. Said consent must appear expressed in a provable way.

### 8.3 Role and Authority of the Data Protection Agency

#### Data Protection Authority

The Dominican Republic does not have a national data protection authority. However, Law No 172-13 provides that databases and registries, whether public or private, intended to provide credit reports (ie, credit bureaus) are subject to the inspection and supervision of the Superintendency of Banks. Hence, save for the Superintendency of Banks of the Dominican Republic, which regulates personal data matters in

connection with banking matters, there is no data protection authority that supervises compliance with the legal framework.

### Habeas Data

In that sense, most of the claims must be resolved utilising the general or common procedures that Dominican courts have instituted. The Constitution of the Dominican Republic provides any person with the opportunity to initiate a "habeas data" claim. A habeas data claim is a legal action through which any person can confirm the existence of their personal data in registries, as well as the content of said data. Through habeas data, in the event of falsehood or discrimination, the person may also request the suspension, rectification, confidentiality or update of the data.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

#### Proposed Amendment to Competition Law No 42-08

A draft bill recently submitted to the Executive Branch by *ProCompetencia* would comprehensively overhaul and repeal Competition Law No 42-08, introducing, among other reforms, a pre-merger notification regime for the first time. Under the proposal, parties to mergers, acquisitions, or other transactions involving the acquisition of control would be required to notify the Antitrust and Economic Competition Authority (*Autoridad Nacional Antimonopolio y Competencia Económica* – ANACE) - the proposed new name for the current regulator, *ProCompetencia*- prior to closing.

Two key features of this proposal merit attention. First, the introduction of an ex-ante merger control regime represents a significant change for a small economy such as the Dominican Republic, where minimum efficient scale often represents a significant share of the relevant market. A more practical approach would be to focus on policies that enable robust ex post enforcement against abuses of dominant position, among others, in order to preserve transactional efficiency. Second, the filing threshold is drawn too broadly. Notification would be triggered whenever the parties - jointly or individually - generated gross revenues exceeding DOP200 million in the prior fiscal year, a low bar that risks capturing transactions that raise no genuine competition concerns, unnecessarily increasing costs and extending closing timelines. This concern is further compounded by the absence of an automatic inflation adjustment mechanism, which would leave any future threshold adjustment to ANACE's board's discretion, without a safeguard against its progressive erosion in real terms.

# ECUADOR




## Law and Practice

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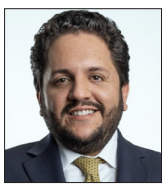
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**Flor Bustamante Pizarro & Hurtado** (FBPH) was formed through the merger of partners from four established Ecuadorian law firms. With offices in Quito, Manta and Cuenca, the firm comprises more than 45 lawyers supported by a multidisciplinary team of professionals from different practice areas. FBPH's partners and senior lawyers have up to 38 years of experience advising domestic and international clients on complex legal matters across a broad range of industries. FBPH advises on corporate and commercial matters, M&A, banking and finance, tax, labour, competition, arbitration, energy and natural resources, telecommunications, environmental law and regulatory matters. The firm has extensive experience assisting foreign investors entering the Ecuadorian market, as well as Ecuadorian companies expanding internationally. Its work covers acquisitions, project development, financing transactions, regulatory compliance, dispute resolution and day-to-day corporate advisory. FBPH regularly works alongside leading international law firms on cross-border transactions and complex domestic matters.

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# 1. Legal System

## 1.1 Legal System and Judicial Order

Ecuador follows the civil law tradition, derived from the Roman-Germanic legal system and characterised by comprehensive statutory codification. The Constitution of the Republic of Ecuador, enacted in 2008, is the supreme law of the land and establishes both the principle of constitutional supremacy and the hierarchy of legal norms. Accordingly, the order of precedence is:

- the Constitution;
- international treaties and conventions;
- organic laws; ordinary laws;
- regional regulations and district ordinances;
- executive decrees and regulations; ordinances; agreements and resolutions; and
- other acts and decisions of public authorities.

Justice is administered through the Judicial Branch (*Función Judicial*), whose principal bodies are as follows.

- The National Court of Justice: The highest court within the ordinary judicial system, it is composed of 21 justices organised into specialised chambers. The Court primarily hears cassation appeals and other extraordinary remedies, develops binding case law in the circumstances established by law, and exercises the jurisdiction conferred upon it by the Constitution and the Organic Code of the Judiciary.
- Provincial courts of justice: These are appellate courts organised into specialised chambers according to subject matter. They hear appeals against judgments rendered by first-instance courts. Constitutional amendments approved in the 2024 referendum provide for the creation of specialised constitutional chambers within the provincial courts, subject to the enactment of the corresponding implementing legislation and institutional measures.
- First-instance courts and judicial units: These are specialised courts. In cantons where the judicial workload does not justify specialised courts, multi-jurisdictional judicial units exercise jurisdiction over several matters.
- Other specialised courts: Ecuador also has administrative litigation courts and tax litigation courts, which hear disputes involving public administration and tax matters, respectively
- Constitutional Court: This is the highest authority for constitutional review and interpretation. It is an autonomous constitutional body that does not form part of the judicial branch. Its principal powers include abstract constitutional review, constitutional interpretation, the resolution of constitutional conflicts of competence, the adjudication of extraordinary actions for constitutional protection, and the selection and review of constitutional judgments.
- Council of the Judiciary: This is the governing body responsible for the administration, management, discipline, evaluation and judicial career system of the judicial branch.

The Attorney General's Office and the Public Defender's Office are autonomous organs of the judicial branch under the Organic Code of the Judiciary. The Attorney General's Office directs criminal investigations and exercises public criminal prosecution, while the Public Defender's Office provides legal representation to individuals who cannot afford private counsel.

In addition to the ordinary judicial system, the Constitution recognises the jurisdiction exercised by the authorities of indigenous communities, peoples and nationalities within their ancestral territories, in accordance with their traditions and customary law, provided that such jurisdiction is exercised consistently with the Constitution and internationally recognised human rights.

Ecuador also recognises domestic and international arbitration, as well as mediation, as constitutionally protected alternative dispute resolution mechanisms. Arbitration is governed by the Constitution, the Arbitration and Mediation Act, and the international treaties ratified by Ecuador.

## 2. Restrictions on Foreign Investments

### 2.1 Approval of Foreign Investments

As a general rule, foreign investments do not require prior governmental approval in Ecuador. Foreign investors enjoy equal treatment and may invest in most economic sectors under the same conditions applicable to Ecuadorian nationals, subject to compliance with generally applicable legal and regulatory requirements.

The Ecuadorian Constitution recognises foreign investment as complementary to domestic investment and guarantees equal rights and obligations for foreign individuals within Ecuadorian territory. Likewise, the Organic Code of Production, Trade and Investment (*Código Orgánico de la Producción*, *Comercio e Inversiones* – COPCI) grants foreign investors the same legal treatment, rights and protections afforded to domestic investors.

Notwithstanding the foregoing, certain sectors and activities remain subject to constitutional or statutory restrictions.

#### Restricted Border and National Security Areas

Foreign individuals and foreign legal entities may not acquire ownership rights or concessions over land located within national security zones, nor over protected natural areas, except in the cases expressly authorised by law. These restrictions also apply to Ecuadorian companies with foreign shareholders, unless one of the statutory exceptions applies, such as where the foreign individual or shareholder has been legally domiciled in Ecuador for at least five consecutive years or in the case of certain family relationships with Ecuadorian nationals.

These restrictions do not constitute an investment approval regime. Rather, they establish statutory prohibitions subject to limited legal exceptions.

#### Strategic Sectors

Investments in strategic sectors are not prohibited for foreign investors. However, activities involving sectors reserved under the Constitution – such as energy in all its forms, telecommunications, non-renewable natural resources, hydrocarbon transportation and refining, biodiversity and genetic heritage, the radio spectrum and water resources – may only be carried out pursuant to the legal framework governing each sector and, where applicable, following the corresponding governmental authorisation, delegation or contractual arrangement.

The Constitution permits the state, on an exceptional basis and whenever the national interest so requires, to delegate participation in strategic sectors to mixed-economy companies or private operators under the conditions established by law.

Accordingly, while Ecuador does not maintain a general foreign investment screening or approval regime, foreign investors must comply with the sector-specific authorisations, licences, permits and contractual requirements applicable to regulated activities before commencing operations.

Ecuadorian law also allows domestic and foreign investors to enter into investment contracts with the Ecuadorian state under the Organic Code of Production, Trade and Investment. These agreements may provide legal stability regarding certain tax and regulatory conditions, subject to the requirements established by law.

### 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

Ecuador does not maintain a general foreign investment approval regime. Accordingly, foreign investors are not required to obtain governmental approval solely because they are foreign or because they intend to acquire an interest in an Ecuadorian company.

Where a foreign investor acquires shares or equity interests in an Ecuadorian company, no prior governmental approval is required. The Ecuadorian company must, however, comply with the applicable corporate reporting obligations before the Superintendence of Companies, Securities and Insurance (*Superintendencia de Compañías*, *Valores y Seguros* – SCVS), including reporting the foreign shareholder, its ownership chain up to the ultimate beneficial owner, the foreign shareholder's certificate of legal existence, and the appointment of an attorney-in-fact or representative in Ecuador for corporate transparency and regulatory

purposes. These are reporting and disclosure obligations and should not be construed as an investment approval requirement.

A different regime applies where a foreign company intends to conduct business directly in Ecuador through a branch. Under Article 6 of the Companies Act, a foreign company carrying on business in Ecuador must appoint a permanent attorney-in-fact authorised to represent it before Ecuadorian authorities and courts. Where the company intends to execute public works, provide public services or engage in the exploitation of natural resources, it must also establish a legal domicile in Ecuador through the registration of a branch.

Assuming that all foreign corporate documents have been duly legalised or apostilled and submitted, the branch registration process generally takes between six and nine weeks.

Investments in strategic or regulated sectors – including hydrocarbons, mining, financial services, telecommunications, transportation and other regulated activities – remain subject to the licences, permits, concessions or contractual arrangements established by the applicable sector-specific legislation. Such requirements apply irrespective of the nationality of the investor and should not be regarded as a foreign investment approval regime.

### 2.3 Commitments Required From Foreign Investors

Ecuador does not generally require foreign investors to undertake specific commitments as a condition for investing. However, investments in regulated sectors remain subject to the obligations established under the applicable legislation, licences, concessions or investment agreements. Depending on the sector, these may include minimum investment commitments, environmental and social obligations, health and safety standards, technical requirements, reporting obligations and, where applicable, local employment or local content requirements.

In practice, environmental permitting and regulatory compliance are among the principal conditions applicable to large-scale projects in sectors such as mining, hydrocarbons, infrastructure and energy.

### 2.4 Right to Appeal

Ecuador does not maintain a foreign investment approval regime. Accordingly, foreign investors generally do not challenge investment approvals as such. Where an administrative licence, permit, concession or other sector-specific authorisation is denied, the applicant may file the administrative appeals provided under the Organic Administrative Code and, once the administrative stage has concluded, seek judicial review before the administrative litigation courts.

Where applicable, investors may also rely on the dispute resolution mechanisms available under investment treaties or investment contracts entered into with the Ecuadorian state.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

Corporate entities in Ecuador are primarily governed by the Companies Act, the Commercial Code and, where applicable, the Organic Law on the Popular and Solidarity Economy. Following the reforms introduced in 2020 and 2023, most corporate forms may be incorporated by a single shareholder or partner. In practice, foreign investors most commonly operate through a simplified stock corporation (*sociedad por acciones simplificada* – S *AS*), a joint-stock company (*sociedad anónima* – SA) or a branch of a foreign company, depending on the nature and scale of the investment.

#### SAS

The SAS is currently the most flexible and widely used corporate vehicle in Ecuador. It may be incorporated by one or more individuals or legal entities, has no minimum share capital requirement and may be incorporated through a private document, including electronically through the SCVS. Shareholders' liability is limited to the amount of their capital contributions.

Unless otherwise provided in the by-laws, the company is not required to have a board of directors, allowing considerable flexibility in its governance structure. Owing to its simplified incorporation process and con-

tractual flexibility, the SAS is generally the preferred vehicle for start-ups, wholly owned subsidiaries, holding companies, joint ventures and most private investment projects.

Unless the founders elect otherwise under the applicable legal regime, the incorporation of an SAS is effected through registration with the SCVS. Where contributions include real estate, a public deed and registration with the relevant Land Registry are required.

### SA

The SA remains the preferred vehicle for large businesses, regulated industries, projects involving multiple investors and companies requiring more sophisticated corporate governance structures. Capital is divided into freely transferable shares, and shareholders' liability is limited to the amount of their contributions. Since the 2023 reforms, it may also be incorporated as a single-shareholder company.

The minimum share capital is USD800. The company's governance generally consists of the shareholders' meeting, one or more legal representatives and, where established by the by-laws, a board of directors.

This corporate form continues to be widely used for regulated businesses, financial institutions, companies seeking external financing and projects involving institutional or strategic investors.

### Limited Liability Company (Compañía de Responsabilidad Limitada – Cía Ltda)

A limited liability company may have up to 15 partners. Equity interests are not freely transferable and generally require the approval of the remaining partners, reinforcing the intuitu personae nature of this corporate form. The minimum capital is USD400, and the liability of the partners is limited to the amount of their contributions.

This vehicle is typically used for closely held, family-owned or professional businesses where maintaining the composition of the ownership structure is an important consideration.

Compared to the SA, its governance is generally more rigid. In particular, managers appointed in the articles of association enjoy greater stability, as their removal may be subject to the grounds and procedures established in the Companies Act and the company's by-laws, rather than being freely revocable at any time.

### Branch of a Foreign Company

A foreign company may conduct business directly in Ecuador through a branch. To do so, it must obtain authorisation from the SCVS, appoint a permanent legal representative domiciled in Ecuador and allocate capital of at least USD2,000.

Although a branch does not have separate legal personality from its parent company, it is treated as a local taxpayer and is generally subject to the same tax and regulatory regime applicable to Ecuadorian companies carrying out the same activities.

### Mixed-Economy Company (Compañía de Economía Mixta)

A mixed-economy company combines public and private capital and is primarily used for projects involving the state or the provision of public services. It is governed by the Companies Act and the special rules applicable to mixed-capital entities.

Public and private shareholders must be represented on the board of directors in proportion to their capital contributions. Where the public sector holds more than 50% of the share capital, the chair of the board must be appointed from among the directors representing the public sector.

In practice, the SAS has become the preferred corporate vehicle for most domestic and foreign private investments due to its simplified incorporation process and governance flexibility, whereas the traditional SA remains the preferred structure for regulated businesses, companies with more sophisticated governance requirements and projects involving institutional investors.

## 3.2 Incorporation Process

The incorporation process depends on the type of corporate vehicle selected. In practice, the incorporation of a SAS is significantly faster than that of traditional

corporate forms, while the establishment of a branch of a foreign company involves additional corporate approval and registration requirements.

### SAS

The incorporation of an SAS may be completed electronically through the online platform of the SCVS. Where the founders use the standard incorporation model provided by the SCVS, the process may be completed within one business day.

Where customised by-laws are adopted or non-standard provisions are included, the incorporation documents are subject to review by the SCVS prior to registration, which may increase the incorporation timeline. The incorporation of the company shall be carried out before the SCVS itself. It may be incorporated by private act, except in specific cases such as incorporation involving the transfer of a real estate property, which require certain formalities due to the nature of the transaction.

When a foreign legal entity incorporates an Ecuadorian company (including an SAS, SA or *Cía Ltda*), acting as a shareholder or partner, an additional report is required for the purposes of corporate transparency. They must submit an affidavit before a notary, duly apostilled, setting out the full shareholding structure, an apostilled power of attorney for a representative resident in Ecuador and an apostilled certificate of legal existence. The SCVS usually takes 2–3 weeks to review these documents. For foreign shareholders or partners who are natural persons, only their passport is required.

The subsequent process is the same as for traditional companies: obtaining the Tax ID number (*Registro Único de Contribuyentes* – RUC) and the municipal licence.

### SAs and Cía Ltdas

The incorporation of traditional corporate entities generally involves the following steps:

- reservation of the corporate name before the SCVS;
- preparation and agreement of the company's by-laws;
- execution of the incorporation instrument, which may take the form of either a public deed or a private document, depending on the applicable legal requirements and the type of company being incorporated – notarial fees, where a public deed is required or elected, and Commercial Registry fees, where registration is required, are subject to the official tariff schedule established by law;
- registration with the Commercial Register and creation of a company profile (and company administrator) with the SCVS;
- registration before the Internal Revenue Service (*Servicio de Rentas Internas* – SRI) to obtain a Taxpayer Identification Number (*Registro Único de Contribuyentes* – RUC);
- obtaining access credentials to the SRI electronic platform for tax compliance purposes; and
- obtaining an operating licence from the corresponding municipal authority.

### Branch of a Foreign Company

A foreign company wishing to establish a branch in Ecuador must obtain prior authorisation from the SCVS. The parent company must adopt the corresponding corporate resolutions approving the establishment of the branch, confirming that its corporate purpose and constitutional documents allow it to establish branches abroad, appointing a permanent attorney-in-fact domiciled in Ecuador and allocating the statutory minimum capital to the branch.

Foreign corporate documents must be duly apostilled or legalised and, where executed in a language other than Spanish, officially translated before being submitted to the Ecuadorian authorities. Once the branch has been authorised, it must be registered with the corresponding Commercial Registry, obtain an RUC and complete any additional registrations or permits required for the proposed business activity.

Depending on the corporate vehicle selected and the specific circumstances of each case, the incorporation process may take from one business day (for the electronic incorporation of a standard-form SAS) to approximately 6–9 weeks (for the establishment of a branch of a foreign company), assuming that all required documentation has been duly executed,

apostilled or legalised (where applicable), translated where necessary and submitted in a timely manner.

In practice, the electronic incorporation system implemented by the SCVS has significantly reduced the time required to incorporate SAS companies, making them the preferred legal form for most new businesses in Ecuador. However, the most appropriate corporate structure should be determined on a case-by-case basis, taking into account the specific needs, objectives and regulatory considerations of each business.

## 3.3 Ongoing Reporting and Disclosure Obligations

Private companies incorporated in Ecuador are subject to a number of ongoing corporate, financial and disclosure obligations before the SCVS, the SRI and, where applicable, other regulatory authorities. The principal reporting and compliance obligations include the following.

### Corporate Filings

These involve:

- reporting the appointment, removal or replacement of directors, managers, legal representatives and other corporate officers;
- registering amendments to the company's by-laws with the Commercial Registry or the Companies Registry maintained by the SCVS, as applicable;
- obtaining prior authorisation from the SCVS for those corporate acts that require regulatory approval under the Companies Act or applicable SCVS regulations; and
- maintaining updated corporate information before the SCVS, including the company's registered office, electronic notification address and other relevant corporate information.

### Financial Reporting

Companies subject to the control of the SCVS must annually file their financial statements during the first quarter of the following fiscal year. Depending on the statutory thresholds established by the SCVS, the financial statements must be accompanied by an external audit report issued by an audit firm duly qualified before the SCVS. Companies are also required to file the shareholders' or partners' resolutions approving the management report, annual financial statements and, where applicable, distribution of dividends.

### Shareholding Transparency

Companies must keep the SCVS and the SRI informed of changes in their shareholding structure and comply with the applicable beneficial ownership and corporate transparency reporting requirements. Where a shareholder is a foreign legal entity, the Ecuadorian company must report the ownership chain up to the ultimate beneficial owner, together with the supporting corporate documentation required by the SCVS.

### Tax and Regulatory Compliance

Companies must comply with the shareholder and beneficial ownership reporting obligations established by the SRI, in addition to the ordinary tax filing obligations applicable under Ecuadorian tax legislation.

Companies must also maintain in force the municipal operating permits, licences and registrations required by the municipality where they conduct business. In addition, depending on the nature of their activities, companies may be subject to ongoing reporting obligations and periodic renewals before the competent sector-specific authorities. These may include, among others, environmental, mining, hydrocarbons, financial, telecommunications, health, food safety, transportation, customs or other regulatory authorities, each of which may require periodic filings, operational reports, inspections or licence renewals.

Failure to comply with these corporate, tax or regulatory reporting obligations may result in administrative fines, suspension or revocation of permits or licences, restrictions on the company's operations and other sanctions.

## 3.4 Management Structures

Ecuador follows a one-tier management system, under which there is no formal distinction between a supervisory board and a management board. Subject to the mandatory provisions applicable to each type of company, Ecuadorian corporate law grants shareholders and partners broad flexibility to determine the company's governance structure in the by-laws, including the number of directors or legal representa-

tives, their powers, term of office, method of appointment and decision-making procedures.

Companies may be managed by a sole legal representative or by two or more legal representatives. Depending on the provisions of the by-laws, legal representatives may act severally, jointly or successively. In practice, Ecuadorian companies commonly appoint a general manager as the principal legal representative and a president as the alternate legal representative, although other management structures may be freely adopted.

In the case of branches of foreign companies, management is entrusted to an attorney-in-fact (*apoderado*), who acts as the legal representative of the branch in Ecuador. The power of attorney granted by the foreign parent company must be duly apostilled or legalised and, where executed in a language other than Spanish, officially translated before being submitted to the SCVS for approval as part of the branch authorisation process.

Likewise, any subsequent revocation of the attorney-in-fact or the appointment of a new attorney-in-fact must also be approved by the SCVS, whose resolution authorises the corresponding registration with the Commercial Registry. In practice, the attorney-in-fact must expressly accept the mandate. This is usually done in the same letter requesting the approval of the power of attorney that is sent to the SCVS.

For local companies, shareholders or partners are also free to establish a board of directors in the by-laws, determine its composition, allocate its powers and regulate its internal operation. Ecuadorian law does not generally require private companies to have a board of directors. However, where a company voluntarily establishes a board of directors, it must comply with the gender diversity requirements introduced by the Violet Law (*Ley Violeta*). In general terms, companies with a board of directors composed of three or more members must ensure that, for every three members, one is a woman.

The by-laws generally determine the term of office of the legal representatives and directors, the scope of their authority and any internal limitations on their powers. As a matter of Ecuadorian corporate law, limitations contained in the by-laws generally cannot be invoked against good-faith third parties acting in reliance on the authority of the company's duly appointed legal representatives.

### 3.5 Directors', Officers' and Shareholders' Liability

As a general rule, Ecuadorian corporate law recognises the separate legal personality of companies. Accordingly, the company is solely liable for its obligations, while shareholders, directors, officers and legal representatives are not personally liable for the company's debts or obligations merely by virtue of their corporate position.

Likewise, in the case of branches of foreign companies, the attorney-in-fact (*apoderado*) appointed in Ecuador is not personally liable for the obligations of the branch solely by reason of acting as its legal representative.

Shareholders are generally liable only up to the amount of their capital contributions. Likewise, directors, managers and other officers are not personally liable for the company's obligations. However, under the Companies Act, directors and officers may incur personal civil liability where, through wilful misconduct, fraud, negligence or breach of their legal or statutory duties, they cause damage to the company, its shareholders or third parties. In addition, they may incur criminal liability where their conduct constitutes a criminal offence under the Comprehensive Organic Criminal Code (*Código Orgánico Integral Penal* – COIP), including fraudulent administration and other corporate offences.

Ecuadorian law also recognises the doctrine of piercing the corporate veil (*desestimación de la personalidad jurídica*). Pursuant to Companies Act, Ecuadorian courts may disregard the separate legal personality of a company where it has been used to commit fraud, abuse rights, evade legal obligations or cause damage to third parties, in which case liability may be extended to the persons responsible for such conduct.

However, the Companies Act expressly provides that piercing the corporate veil is an exceptional and sub-

sidiary remedy. Accordingly, it is not available where the law provides another direct legal mechanism to sanction, remedy or correct the alleged abuse or damage, including challenges, appeals or actions for nullity against the relevant corporate acts or decisions. The mere existence of unpaid debts, insolvency or contractual non-performance is not, in itself, sufficient to justify disregarding the company's separate legal personality.

Accordingly, the separate legal personality of the company and the limited liability of shareholders, directors, officers and legal representatives remain the general rule under Ecuadorian corporate law, while personal liability and piercing the corporate veil are exceptional remedies that apply only in the specific circumstances expressly provided by law.

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

Employment relationships in Ecuador are governed by a predominantly statutory and protective legal framework. Ecuadorian labour law is considered a matter of public policy and is based on the constitutional principles of worker protection, equal treatment, job stability and the non-waivability of statutory labour rights. Consequently, the parties' contractual freedom is limited, and employment agreements may not derogate from the minimum rights and benefits established by law.

The principal sources governing employment relationships are, in hierarchical order, the Constitution of the Republic of Ecuador, international treaties and conventions (particularly those ratified by the International Labour Organization – ILO), the Labour Code, other applicable legislation, executive regulations, ministerial resolutions and administrative regulations issued by the Ministry of Labour. Judicial precedents issued by the Constitutional Court also play an important role in the interpretation and application of labour legislation.

Collective bargaining agreements constitute an additional source of labour regulation and are binding upon the parties. Where a collective bargaining agreement grants more favourable rights or benefits than those established by law or by an individual employment agreement, the more favourable provisions generally prevail in accordance with the pro operario principle.

Individual employment agreements govern the specific terms and conditions of the employment relationship, provided that they comply with the mandatory provisions of labour legislation. Any contractual provision that reduces or waives statutory labour rights is generally deemed null and unenforceable.

### 4.2 Characteristics of Employment Contracts

Ecuadorian employment contracts are governed by the Labour Code, which establishes mandatory minimum employment conditions that cannot be waived by agreement between the parties. Although Ecuadorian law recognises both written and verbal employment contracts, written agreements are required for a number of employment arrangements and are the standard practice in virtually all formal employment relationships.

In addition, employers are generally required to register employment contracts electronically with the Ministry of Labour within the statutory period following their execution.

A written employment contract should generally include the essential terms of employment, including the identity of the parties, the services to be performed, remuneration, working hours, place of work, commencement date and, where applicable, the duration of the employment relationship.

The Labour Code requires certain employment contracts to be executed in writing, including contracts involving technical or professional services, probationary periods, apprenticeship arrangements, group employment, contracts with adolescent workers and temporary employment arrangements such as eventual, occasional and seasonal contracts.

As a general rule, indefinite-term employment is the standard form of employment in Ecuador. However, the Labour Code also recognises specific temporary employment arrangements in limited circumstances, including eventual contracts, occasional contracts and seasonal contracts.

### 4.3 Working Time

The ordinary working time in Ecuador is eight hours per day and 40 hours per week. However, the Labour Code establishes several special working time regimes depending on the nature of the activity or the operational needs of the employer. These include reduced working hours (subject to prior authorisation from the Ministry of Labour in exceptional circumstances), extended working days of up to ten hours per day provided that the weekly limit of 40 hours is not exceeded, special shifts for activities requiring continuous operations, part-time employment, night work, transportation services and underground mining. Adolescent employees (15–18 years old) may work a maximum of six hours per day and 30 hours per week.

Night work performed between 7 pm and 6 am is subject to a 25% wage surcharge. Employees working continuous shifts are entitled to at least 48 consecutive hours of weekly rest.

Hours worked in excess of the ordinary working schedule constitute overtime. Supplementary hours worked immediately after the ordinary working day are generally limited to four hours per day and 12 hours per week and are compensated with a 50% surcharge (or 100% when worked between midnight and 6 am). Extraordinary hours worked on mandatory rest days or public holidays are generally paid with a 100% surcharge.

Remote work is recognised under Ecuadorian law and may be performed on an autonomous, mobile, partial or occasional basis. Employees enjoy the same rights as on-site workers, including the right to digital disconnection for at least 12 consecutive hours within each 24-hour period.

Although the Labour Code does not expressly recognise a compressed four-day work week, recent ministerial regulations have introduced procedures allowing flexible distribution of the 40-hour weekly working schedule, including daily shifts of up to ten hours in authorised cases.

### 4.4 Termination of Employment Contracts

Ecuador is not an employment-at-will jurisdiction. Employment contracts may only be terminated on the grounds expressly established in the Labour Code, including mutual agreement, expiration of a valid fixed-purpose contract, resignation, justified termination through the *visto bueno* procedure, force majeure, permanent incapacity or death of the employer or employee, and business closure in the circumstances provided by law.

Unjustified dismissal entitles the employee to statutory severance compensation, calculated according to the employee's length of service and remuneration, together with payment of all accrued employment benefits, including proportional 13th and 14th salaries, unused vacation and any other outstanding statutory entitlements.

Ecuadorian law does not establish a separate collective redundancy procedure. Workforce reductions are generally implemented through the ordinary termination mechanisms provided by the Labour Code, including business closure or force majeure where the statutory requirements are met. Collective bargaining agreements may establish additional obligations.

Trade unions participate in collective bargaining through the procedures established in the Labour Code. Once collective bargaining has commenced, employees participating in the process benefit from statutory protection against dismissal, while elected union officers enjoy special employment protection during their term of office and for one year thereafter.

### 4.5 Employee Representations

Under Ecuadorian labour law, employers are not generally required to inform or consult employees before adopting ordinary management decisions. Employee representation is mandatory only in specific circumstances expressly provided by law, such as collective bargaining, trade union activities and certain administrative or disciplinary proceedings.

Companies employing ten or more employees must establish a Joint Occupational Health and Safety Committee composed of an equal number of employer and employee representatives. Employee representatives

are elected by the workforce and enjoy legal protection against retaliation arising from the performance of their duties. The committee oversees compliance with occupational health and safety regulations, investigates workplace accidents and occupational diseases, promotes preventive measures and recommends corrective actions to improve workplace safety.

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/Employers

#### Employees

Employees who qualify as tax residents in Ecuador are subject to personal income tax on their employment income under a progressive tax system. For the 2026 tax year, the applicable rates range from 0% to 37%, with the first tax bracket remaining exempt up to the statutory threshold established by the SRI.

The employer acts as a withholding agent and is responsible for calculating the employee's estimated annual personal income tax liability and withholding the corresponding amounts from the employee's remuneration throughout the year.

Employees must also contribute 9.45% of their remuneration to the Ecuadorian Social Security Institute (*Instituto Ecuatoriano de Seguridad Social* – IESS). These contributions are withheld by the employer and remitted to the IESS on the employee's behalf.

#### Employers

Employers are not subject to any additional income tax merely as a consequence of employing personnel. Ecuadorian companies are subject to corporate income tax on their taxable profits under the general tax regime applicable to legal entities. Corporate income tax is therefore separate from, and unrelated to, the existence of an employment relationship.

However, employers are required to:

- contribute 11.15% of each employee's remuneration to the IESS;
- withhold and remit the employee's personal income tax and employee social security contributions;
- register employees with the IESS and comply with the corresponding payroll reporting obligations; and
- comply with all mandatory labour-related payments established by law, including the 13th salary, the 14th salary, annual paid vacation, reserve funds (where applicable) and the statutory 15% employee profit-sharing.

Other than the employer's mandatory social security contributions and payroll withholding obligations, Ecuador does not impose a specific payroll tax on employers.

### 5.2 Taxes Applicable to Businesses

Companies incorporated in Ecuador are generally subject to taxation on their worldwide income, whereas branches of foreign companies and permanent establishments are taxed only on their Ecuadorian-source income.

The principal taxes applicable to companies doing business in Ecuador are the following.

#### Corporate Income Tax

As a general rule, Ecuadorian companies are subject to corporate income tax at a rate of 25% on their taxable profits. The rate may increase by three percentage points where the company's ownership structure involves residents of tax havens or low-tax jurisdictions in the circumstances established by law, or where the required corporate ownership information is not properly disclosed. Conversely, the rate may be reduced under various investment promotion regimes established by Ecuadorian legislation (see **5.3 Available Tax Credits/Incentives**).

#### VAT

VAT is levied on the transfer of goods, the provision of services and imports. The general VAT rate is 15%. Reduced rates also apply in specific cases, including 8% for certain tourism services during public holidays designated by the government, 5% for certain social housing construction services, and 0% for various essential goods and services, including basic food products, healthcare, education, medicines, books and certain transportation services.

### Withholding Taxes

Payments made abroad, including dividends, interest, royalties, technical services and other Ecuadorian-source income, may be subject to withholding tax. The applicable withholding rates depend on the nature of the payment, the tax residence of the recipient and the provisions of any applicable double taxation treaty. Higher withholding rates may apply where the recipient is located in a tax haven or a low-tax jurisdiction.

### Foreign Currency Outflow Tax (Impuesto a la Salida de Divisas – ISD)

Certain transfers of funds abroad are subject to the ISD, currently at a rate of 5%, unless a statutory exemption or reduction applies.

### Municipal Taxes

Businesses are also generally subject to municipal taxes and charges, including the municipal business licence tax (*patente municipal*) and, where applicable, the 1.5 per thousand tax on total assets, in accordance with the legislation of the relevant municipality.

### Other Taxes

Depending on the nature of their activities, businesses may also be subject to sector-specific taxes, regulatory contributions or special levies established under Ecuadorian law.

### OECD Pillar Two

As of the date of this publication, Ecuador has not implemented the OECD Pillar Two Global Anti-Base Erosion (GloBE) Rules, nor has it introduced a qualified domestic minimum top-up tax (QDMTT) that has been granted safe harbour status under the OECD's central record.

## 5.3 Available Tax Credits/Incentives

Ecuador offers a broad range of tax incentives aimed at promoting domestic and foreign investment. The principal incentives are contained in COPCI, the Organic Law for Economic Development and Fiscal Sustainability and other sector-specific legislation. The principal tax incentives include the following.

### Investment Contracts

Investors entering into an investment contract with the Ecuadorian state under COPCI may benefit from:

- a reduction of up to five percentage points in the corporate income tax rate;
- tax stability for the duration of the investment contract;
- legal stability regarding the incentives granted; and
- access to additional sector-specific incentives where applicable.

### Corporate Income Tax Reductions

Certain taxpayers may qualify for reductions in the corporate income tax rate, including:

- newly incorporated companies meeting the requirements established by law;
- micro, small and medium-sized enterprises (MSMEs);
- habitual exporters that maintain or increase employment levels; and
- companies investing profits in scientific, cultural or disability-support projects, which may benefit from a reduction in the corporate income tax rate of eight or ten percentage points.

### Special Economic Development Zones (Zonas Especiales de Desarrollo Económico – ZEDEs)

Companies established within ZEDEs may benefit from corporate income tax exemptions, customs incentives and other tax benefits, provided that they comply with the applicable investment, operational and employment requirements.

### Sector-Specific Incentives

Additional tax incentives are available for investments in sectors promoted by the Ecuadorian government, including renewable energy, tourism, certain agricultural and agro-industrial activities, exports and other strategic sectors. Depending on the applicable legislation, these incentives may include corporate income tax exemptions or reductions, accelerated depreciation, customs benefits, VAT incentives and other tax benefits.

The availability of each incentive depends on compliance with the specific statutory requirements applicable to the relevant investment, sector or promotion regime.

### 5.4 Tax Consolidation

Ecuadorian tax legislation does not provide for a tax consolidation regime. Each legal entity is treated as an independent taxpayer and must determine, file and pay its taxes separately, regardless of whether it forms part of a corporate group or has affiliated entities within or outside Ecuador. Consequently, taxable profits and tax losses cannot be consolidated or offset among different companies within the same group for Ecuadorian tax purposes.

Likewise, Ecuador does not permit the filing of consolidated corporate income tax returns. Each company must prepare and submit its own tax returns and comply individually with its tax obligations.

Although Ecuador recognises the concept of economic groups and related parties for certain tax and reporting purposes, particularly in connection with transfer pricing, disclosure obligations and anti-avoidance rules, these rules do not create a tax consolidation regime or allow the consolidation of taxable results among group companies.

### 5.5 Thin Capitalisation Rules and Other Limitations

Ecuador does not maintain a traditional thin capitalisation regime based on a statutory debt-to-equity ratio. Instead, the deductibility of financing costs is primarily governed by the Internal Tax Regime Law (*Ley de Régimen Tributario Interno* – LRTI) and its Regulations. However, an exception applies to financing granted by entities in the banking sector to related parties within the Ecuadorian banking sector, regulated by specific thin capitalisation rules.

Interest paid on financing granted by related parties in other sectors is deductible if it is below 20% of the annual profits of the debtor entity.

In the case of foreign financing, interest is generally deductible and exempt from withholding tax only to the extent that the applicable interest rate does not exceed the referential interest rate periodically published by the Central Bank of Ecuador (*Banco Central del Ecuador* – BCE). Interest exceeding the applicable BCE referential rate may be treated as non-deductible and may also trigger additional withholding tax consequences under Ecuadorian tax legislation.

As a general rule, interest expenses are deductible provided that they are incurred for the generation of taxable income, are properly supported by documentary evidence and comply with the arm's length principle where the financing is obtained from related parties. Financing transactions between related parties are also subject to Ecuador's transfer pricing rules where the applicable thresholds are met.

Interest paid to non-residents may also be subject to withholding tax and may benefit from relief under an applicable double taxation treaty, provided that the relevant statutory requirements are satisfied.

Ecuadorian tax legislation also contains general anti-avoidance rules, empowering the SRI to challenge financing arrangements lacking economic substance or entered into principally to obtain an undue tax advantage. Accordingly, intra-group financing structures should be supported by genuine commercial purposes and arm's length terms.

### 5.6 Transfer Pricing

Transfer pricing rules apply in Ecuador to transactions carried out between related parties, whether domestic or foreign. They also apply to transactions with persons or entities located in tax havens, low-tax jurisdictions or preferential tax regimes, regardless of whether a related-party relationship exists.

Under the Internal Tax Regime Law, such transactions must comply with the arm's length principle. Ecuadorian tax legislation recognises internationally accepted transfer pricing methods and uses the OECD Transfer Pricing Guidelines as a supplementary interpretative source, to the extent they are consistent with domestic law.

Taxpayers exceeding the applicable statutory thresholds for related-party transactions must file the Related-Party Transactions Annex and, where applicable, the Comprehensive Transfer Pricing Report. They must also maintain supporting documentation evidencing compliance with the arm's length principle, including local file documentation and, where appli-

cable, master file and country-by-country reporting obligations.

The SRI may review related-party transactions and adjust the taxpayer's taxable base where it determines that the agreed terms do not comply with the arm's length standard. Failure to comply with transfer pricing reporting or documentation obligations may result in penalties under Ecuadorian tax law.

## 5.7 Anti-Evasion Rules

Ecuadorian tax legislation contains both general and specific anti-avoidance rules designed to prevent tax evasion, abusive tax planning and the improper use of legal structures to obtain undue tax advantages.

The principal anti-avoidance mechanism is the General Anti-Avoidance Rule (GAAR), contained in the Tax Code and complemented by the Internal Tax Regime Law. Under these provisions, the SRI may disregard or recharacterise transactions that lack a valid business purpose and are implemented principally to obtain an improper tax benefit, subject to the applicable legal procedures and the taxpayer's due process rights.

Ecuadorian tax legislation also contains several specific anti-avoidance measures, including:

- transfer pricing rules applicable to transactions with related parties and, in certain cases, with entities located in tax havens or low-tax jurisdictions;
- enhanced tax rules applicable to transactions involving tax havens and preferential tax regimes;
- mandatory disclosure of the company's beneficial owners through the Beneficial Ownership Register;
- extensive information reporting obligations; and
- broad audit and reassessment powers granted to the SRI.

In addition, Ecuador's mandatory electronic invoicing system and withholding tax mechanisms facilitate the cross-checking of tax information and constitute important tools for detecting tax non-compliance.

Failure to comply with these rules may result in tax reassessments, penalties, interest and, where applicable, the imposition of administrative or criminal sanctions under Ecuadorian law.

## 5.8 Tariffs

Ecuador's tariff policy is determined by the Foreign Trade Committee (*Comité de Comercio Exterior* – COMEX), which approves the national customs tariff based on the Harmonized Commodity Description and Coding System (HS). Tariffs are administered by the National Customs Service of Ecuador (*Servicio Nacional de Aduana del Ecuador* – SENAE) and generally consist of ad valorem duties, although specific duties and mixed duties may apply in certain cases.

Import duties vary depending on the type of goods imported. As a general rule, capital goods, machinery and raw materials that are not produced locally are subject to reduced or zero tariff rates, whereas finished consumer goods that compete with domestic production are generally subject to higher tariffs.

Certain sectors of the Ecuadorian economy continue to benefit from greater tariff protection, particularly the agricultural, textile, footwear and selected manufacturing sectors. In addition, Ecuador applies the Andean Price Band System (*Sistema Andino de Franjas de Precios*) to certain agricultural products, including rice, sugar, dairy products, maize, oilseeds and related products. Under this mechanism, variable duties may be added to the applicable ad valorem tariff when international reference prices fall below predetermined thresholds, with the objective of protecting domestic producers against international price volatility.

As a member of the Andean Community (*Comunidad Andina* – CAN), Ecuador grants reciprocal tariff preferences to imports originating in Colombia, Peru and Bolivia. Ecuador also has trade agreements in force with the EU, the United Kingdom, the European Free Trade Association (EFTA), Chile, China and Costa Rica, under which qualifying goods may benefit from preferential tariff treatment, subject to the applicable rules of origin.

Ecuador has also recently strengthened its trade relationship with the United States through the Agreement on Reciprocal Trade (ART). While this is not a traditional free trade agreement, it is relevant to Ecuador's tariff and trade policy because it addresses trade

facilitation, market access, tariff and non-tariff barriers and related trade disciplines.

Ecuador's tariff regime has continued to evolve in recent years through the implementation of new trade agreements and the gradual reduction of tariffs applicable to a broad range of products covered by those agreements. At the same time, tariff protection continues to be maintained for sensitive sectors of the domestic economy, particularly agriculture and certain manufacturing industries.

## 6. Competition Law

### 6.1 Merger Control Notification

The Organic Law for the Regulation and Control of Market Power (*Ley Orgánica de Regulación y Control del Poder de Mercado* – LORCPM) establishes a mandatory and suspensory pre-merger control regime for certain economic concentration transactions.

The regime applies to transactions resulting in a change of control, including, among others:

- mergers;
- acquisitions of shares, quotas or assets conferring direct or indirect control over another undertaking;
- acquisitions of businesses or business units;
- the creation of full-function joint ventures; and
- any other transaction that results in the acquisition or transfer of control over an economic operator.

The notification must be submitted to the Superintendency of Economic Competition (*Superintendencia de Competencia Económica* – SEC) before the transaction is implemented whenever either of the following alternative thresholds is met:

- the combined turnover of the parties in Ecuador during the preceding financial year exceeds the threshold established by the market power regulation board (currently approximately USD80 million, depending on the applicable economic sector); or
- where the parties are active in the same relevant market, the transaction results in the acquisition or increase of a market share equal to or exceeding 30% of the relevant product or service market, whether at the national level or within a defined geographic market in Ecuador.

The notification obligation applies regardless of whether the transaction is structured as a share acquisition, asset acquisition, merger or joint venture. It may also apply to foreign-to-foreign transactions where the statutory jurisdictional thresholds are met and the transaction produces effects in Ecuador.

The transaction may not be completed until the SEC has issued its clearance decision. Implementing a notifiable concentration without prior approval may result in administrative sanctions and the adoption of corrective measures under the LORCPM.

### 6.2 Merger Control Procedure

The merger control procedure is conducted before the SEC under a mandatory pre-closing notification regime. The notification may be submitted by any of the parties involved in the transaction and must include the corporate, financial and market information required by the LORCPM and its implementing regulations.

Once the filing is deemed complete, the SEC conducts an initial review (Phase I) to determine whether the proposed transaction is likely to raise competition concerns. If the authority concludes that the transaction is not likely to create or strengthen market power or otherwise significantly restrict competition, it will authorise the transaction during this initial phase.

Where the SEC identifies potential competition concerns, the review proceeds to an in-depth investigation (Phase II). During this stage, the authority carries out a more detailed assessment of the relevant markets, the competitive effects of the transaction and any efficiencies put forward by the parties. The notifying parties may also propose structural or behavioural remedies to address the concerns identified by the SEC.

The procedure concludes with a reasoned decision either:

- authorising the transaction unconditionally;

- authorising it subject to structural or behavioural remedies; or
- prohibiting the concentration.

The transaction may not be implemented until clearance has been obtained from the SEC. Decisions issued by the SEC may be challenged through the administrative remedies provided under the LORCPM and, subsequently, before the Ecuadorian administrative courts.

### 6.3 Cartels

The LORCPM prohibits anti-competitive agreements and concerted practices between economic operators. The prohibition applies to both horizontal agreements (between competitors) and vertical agreements (between undertakings operating at different levels of the production or distribution chain), where they have as their object or effect the prevention, restriction or distortion of competition.

Particularly serious infringements include hardcore cartels, such as agreements between competitors to fix prices, allocate customers or markets, restrict production or output, or rig bids in public or private procurement procedures. These practices are considered the most serious restrictions of competition and are generally prohibited without the need to demonstrate their actual anti-competitive effects.

The LORCPM applies not only to conduct carried out within Ecuador, but also to conduct implemented abroad where it produces actual or potential effects in the Ecuadorian market, in accordance with the effects doctrine.

The SEC enjoys broad investigative powers. In the course of an investigation, it may:

- require the production of accounting records, correspondence (including electronic records), electronic data and any other documents relevant to the investigation;
- summon and interview the parties under investigation, their representatives, employees and third parties; and
- conduct inspections, with or without prior notice, at business premises. During an inspection, the SEC may examine documents, copy physical or electronic records and gather other relevant evidence.

Where the investigation involves a private residence, forced entry into business premises, seizure or retention of documents or access to confidential or legally protected information (including bank records), the SEC must obtain prior judicial authorisation in accordance with the LORCPM. The exercise of these investigative powers is expressly subject to the Constitution, due process and the protection of fundamental rights.

Any natural or legal person, whether public or private, is required to co-operate with the SEC by providing the information and documentation lawfully requested. Failure to comply may result in the administrative sanctions provided for under the LORCPM.

Decisions issued by the SEC may impose significant administrative fines, behavioural or structural remedies and cease-and-desist orders. Such decisions may be challenged through the administrative remedies established under the LORCPM and, subsequently, before the Ecuadorian administrative courts.

### 6.4 Abuse of Dominant Position

The LORCPM prohibits the abuse of a dominant position by one or more economic operators. Holding a dominant position is not unlawful in itself; only its abusive exercise is prohibited.

The LORCPM contains a non-exhaustive list of abusive practices, including unjustified refusals to deal, discriminatory or unfair commercial conditions, predatory pricing, tying and bundling practices, exclusive dealing arrangements and any other conduct capable of excluding competitors or exploiting customers, suppliers or consumers.

Unlike anti-competitive agreements, allegations of abuse of dominance are assessed on a case-by-case basis. The SEC examines, among other factors, whether the undertaking possesses substantial market power in the relevant market and whether the conduct has the object or effect of preventing, restricting or distorting competition.

The LORCPM also regulates situations of economic dependence. The abusive exploitation by an undertaking of another undertaking that is economically dependent upon it may constitute an infringement where the statutory requirements established in the LORCPM are met. The LORCPM applies irrespective of whether the conduct originates within or outside Ecuador, provided that it produces actual or potential effects in the Ecuadorian market, in accordance with the effects doctrine.

Where an infringement is established, the SEC may impose administrative fines and behavioural or structural remedies. Its decisions may be challenged through the administrative remedies provided under the LORCPM and, subsequently, before the Ecuadorian administrative courts.

## 7. Intellectual Property

### 7.1 Patents

Patent protection in Ecuador is primarily governed by the Organic Code of the Social Economy of Knowledge, Creativity and Innovation (*Código Orgánico de la Economía Social de los Conocimientos*, *Creatividad e Innovación* – COESCCI) and Andean Community Decision No 486, which applies directly in Ecuador.

Patents may be granted for inventions relating to products or processes in any field of technology, provided that they are novel, involve an inventive step and are capable of industrial application. Discoveries; scientific theories; mathematical methods; computer programs as such; diagnostic, therapeutic and surgical methods for the treatment of humans or animals; and plants and animals (other than non-naturally occurring microorganisms) are generally excluded from patent protection.

Patent rights arise upon registration and remain in force for 20 years from the filing date of the patent application, provided that the corresponding maintenance fees are duly paid.

Patent applications are examined by the National Intellectual Rights Service (*Servicio Nacional de Derechos Intelectuales* – SENADI). The registration procedure includes a formal examination, publication of the application for third-party opposition and a substantive examination of patentability before the patent is granted.

Patent owners may enforce their rights through administrative proceedings before SENADI and judicial proceedings before the competent courts. Available remedies include:

- preliminary and precautionary measures;
- cease-and-desist orders;
- the seizure or removal of infringing goods from the market;
- compensation for damages; and
- other remedies provided by the applicable intellectual property legislation.

Criminal remedies may also be available in the cases expressly provided by Ecuadorian law.

### 7.2 Trade Marks

Trade marks in Ecuador are primarily governed by COESCCI and Andean Community Decision No 486, which applies directly in Ecuador.

A trade mark is any sign capable of distinguishing goods or services in the marketplace, including words, names, letters, numbers, devices, colours, three-dimensional shapes, sounds, combinations of signs and any other sign capable of graphical or other appropriate representation. Ecuador applies the Nice Classification for the classification of goods and services.

Exclusive rights over a trade mark generally arise upon registration before SENADI. Registered trade marks are protected for ten years from the date of registration and may be renewed indefinitely for successive ten-year periods.

The registration procedure includes the filing of the application, a formal examination, publication for third-party opposition (generally within a 30-business-day opposition period) and a substantive examination of registrability before the mark is granted.

The owner of a registered trade mark has the exclusive right to prevent third parties from using identical or confusingly similar signs in relation to identical or related goods or services where such use is likely to create confusion or a likelihood of association. Well-known trade marks also enjoy the special protection afforded by Andean Community Decision No 486, even in certain circumstances where they have not been registered in Ecuador.

Trade mark rights may be enforced through administrative proceedings before SENADI and judicial proceedings before the competent courts. Available remedies include:

- preliminary and precautionary measures;
- cease-and-desist orders;
- the seizure, removal or destruction of infringing goods;
- border measures;
- compensation for damages; and
- where applicable, criminal remedies under Ecuadorian law.

### 7.3 Industrial Designs

Industrial designs in Ecuador are primarily governed by COESCCI and Andean Community Decision No 486, which applies directly in Ecuador. An industrial design is defined as the particular appearance of a product resulting from any combination of lines, colours, shapes, textures or materials, or from its two- or three-dimensional form, provided that such appearance does not alter the product's technical function or intended purpose.

Exclusive rights over an industrial design arise upon registration before SENADI. Protection is granted for a period of ten years from the filing date of the application and is not renewable. The registration procedure includes the filing of the application, a formal examination, publication for third-party opposition and a substantive examination to verify compliance with the applicable legal requirements, particularly the requirement of novelty, before registration is granted.

The owner of a registered industrial design has the exclusive right to prevent third parties, without authorisation, from manufacturing, offering for sale, marketing, importing or otherwise commercially exploiting products incorporating or reproducing the protected design.

Industrial design rights may be enforced through administrative proceedings before SENADI and judicial proceedings before the competent courts. Available remedies include:

- preliminary and precautionary measures;
- cease-and-desist orders, the seizure;
- removal or destruction of infringing goods;
- compensation for damages; and
- where applicable, criminal remedies under Ecuadorian law.

### 7.4 Copyright

Copyright in Ecuador is primarily governed by COESCCI. Copyright protection extends to all original literary, artistic and scientific works, regardless of the form of expression, including literary works, musical works, audiovisual productions, photographs, artistic works, architectural works, computer programs and databases that, by reason of the selection or arrangement of their contents, constitute original intellectual creations.

Copyright protection arises automatically upon the creation of the work and does not depend on registration. Although registration before SENADI is not constitutive of rights, it is commonly used as prima facie evidence of ownership and the date of creation in the event of a dispute.

As a general rule, copyright protection subsists for the life of the author plus 70 years following the author's death, after which the work enters the public domain.

Ecuadorian law distinguishes between moral rights and economic (patrimonial) rights. Moral rights, including the rights of authorship, integrity and disclosure, are perpetual, inalienable, unwaivable and imprescriptible. Economic rights, including the rights of reproduction, distribution, public communication, making available and transformation, may be assigned or licensed in accordance with the law.

Copyright may be enforced through administrative proceedings before SENADI and judicial proceedings before the competent courts. Available remedies include:

- preliminary and precautionary measures;
- cease-and-desist orders;
- the seizure or removal of infringing copies;
- compensation for damages; and
- where applicable, criminal remedies in cases such as piracy or counterfeiting.

### 7.5 Others

In Ecuador, computer software is protected under the copyright regime established by COESCCI and the applicable Andean legislation. Computer programs are protected as literary works, and copyright arises automatically upon their creation without the need for registration. Registration before SENADI is optional but may serve as prima facie evidence of ownership.

Databases are protected by copyright to the extent that the selection or arrangement of their contents constitutes an original intellectual creation. Copyright protection does not extend to the data or information contained in the database as such.

COESCCI and Andean Community Decision No 486 also protect undisclosed information and trade secrets, including manufacturing processes, formulas, technical know-how, business methods, customer lists and other confidential commercial information. Protection is available provided that the information is secret, (ii) has commercial value because it is secret and (iii) has been subject to reasonable measures by its lawful holder to preserve its confidentiality.

In practice, trade secret protection is commonly reinforced through confidentiality agreements, non-disclosure clauses and other contractual arrangements included in commercial, employment and services agreements. The unauthorised acquisition, use or disclosure of trade secrets may give rise to administrative and judicial remedies, as well as contractual liability and, where applicable, unfair competition claims.

Ecuadorian legislation also provides specific protection for other intellectual property rights, including layout designs (topographies) of integrated circuits and plant varieties, under the applicable provisions of COESCCI and the relevant Andean Community legislation.

## 8. Data Protection

### 8.1 Applicable Regulations

The protection of personal data in Ecuador is primarily governed by the Constitution of the Republic, the Organic Law on the Protection of Personal Data (*Ley Orgánica de Protección de Datos Personales* – LOPDP), published on 26 May 2021, and its General Regulation, published on 13 November 2023.

The Constitution recognises the fundamental right to the protection of personal data and provides that the collection, storage, processing, disclosure and transfer of personal data require either the data subject's authorisation or another legal basis established by law.

The LOPDP establishes a comprehensive legal framework broadly inspired by the principles of the EU General Data Protection Regulation (GDPR). It is based on the principles of lawfulness, fairness, transparency, purpose limitation, data minimisation, accuracy, storage limitation, integrity and confidentiality, accountability and proactive responsibility.

Personal data may only be processed where there is a valid legal basis, including the freely given, prior, specific, informed and unequivocal consent of the data subject or another legal basis expressly recognised by the LOPDP.

The LOPDP grants data subjects a broad catalogue of rights, including the rights of access, rectification, updating, erasure, objection, portability, suspension of processing and not to be subject to decisions based solely on automated processing where the legal requirements are met.

Controllers and processors are required to implement appropriate technical and organisational security measures, comply with the accountability principle, maintain appropriate governance measures and noti-

fy personal data security breaches to the competent authority where required by law.

The authority responsible for supervising and enforcing the LOPDP is the Superintendence for the Protection of Personal Data (*Superintendencia de Protección de Datos Personales* – SPDP), which is empowered to investigate infringements, issue administrative guidance and impose the sanctions established by law.

### 8.2 Geographical Scope

The LOPDP has an extraterritorial scope broadly comparable to that of the GDPR. The LOPDP applies to the processing of personal data carried out within Ecuador, irrespective of whether the controller or processor is established in Ecuador. It also applies to controllers or processors established outside Ecuador where the processing activities relate to:

- the offering of goods or services to individuals located in Ecuador; or
- the monitoring of the behaviour of individuals located within Ecuador.

Accordingly, a foreign company that targets customers in Ecuador or monitors the behaviour of individuals located in Ecuador may be subject to the obligations established by the LOPDP, including compliance with the applicable principles governing the processing of personal data and the recognition of the rights of data subjects.

International transfer of personal data is permitted where the requirements established under the LOPDP are satisfied. As a general rule, transfers may be carried out where the data subject has provided valid consent or where another lawful transfer mechanism applies, including transfers to jurisdictions providing an adequate level of protection, appropriate contractual safeguards, binding corporate rules for corporate groups or any other transfer mechanism recognised by Ecuadorian law.

### 8.3 Role and Authority of the Data Protection Agency

The authority responsible for supervising and enforcing Ecuador's data protection framework is the SPDP, an independent public authority with administrative, technical, operational and financial autonomy. The SPDP is responsible for overseeing compliance with the LOPDP and its implementing regulations. Its principal powers include:

- supervising compliance with the LOPDP;
- administering the National Data Protection Registry;
- issuing secondary regulations, technical guidance and administrative criteria concerning the application of the data protection framework;
- handling complaints and petitions submitted by data subjects;
- conducting investigations and administrative inspections;
- initiating and deciding administrative enforcement proceedings; and
- imposing the corrective measures and administrative sanctions provided by law.

Where the SPDP determines that an infringement has occurred, it may order corrective measures, require the adoption of compliance measures and impose administrative fines in accordance with the LOPDP.

Since becoming operational, the SPDP has progressively developed its supervisory and enforcement activities, particularly in relation to compliance programmes, privacy by design and by default, the processing of biometric data, and the implementation of appropriate technical and organisational security measures.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

Several legislative and regulatory developments are expected to continue shaping Ecuador's legal framework in the short-to-medium term.

#### Tax

Further tax reforms remain likely as part of the government's fiscal policy and efforts to promote investment and strengthen tax collection. Recent reforms have focused on modernising tax compliance, expanding digital tax administration, updating withholding tax regimes and strengthening tax transparency

and reporting obligations. Additional amendments to the tax framework, particularly regarding investment incentives and electronic compliance obligations, may be expected.

### Labour

The Ministry of Labour continues to promote greater labour flexibility through regulations governing special working time arrangements and the flexible distribution of the statutory 40-hour working week. Although these changes have so far been implemented mainly through secondary legislation, further legislative reforms to modernise Ecuador's labour regime remain part of the public policy debate.

### Data Protection

Following the entry into force of the LOPDP and its General Regulation, the SPDP is expected to continue issuing secondary regulations and technical guidance, while progressively increasing its supervisory and enforcement activities. Companies should therefore expect a more mature regulatory environment and greater scrutiny of compliance programmes, international data transfers, cybersecurity measures and privacy governance.

### Competition

Following the recent institutional reforms that created the SEC, further secondary regulations and administrative guidance are expected to continue developing Ecuador's competition law framework, particularly in relation to merger control, investigations and enforcement procedures.

More generally, Ecuador is expected to continue strengthening its legal framework, with the objective of attracting foreign investment, promoting international trade and aligning its regulatory standards with international best practices.

# EGYPT




## Law and Practice

**Contributed by:**
Mohamed Hashish, Heba El Abd, Mariam Rabie, Mohamed Selim and Abdelaziz Mohamed
**Soliman, Hashish & Partners**

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**Soliman, Hashish & Partners** (SHP) is a full-service corporate law firm, recognised as a leading financial and corporate law firm in Egypt. SHP is renowned for its innovative, high-quality, and commercially astute approach to every task. SHP works exclusively with well-established multinational clients in a wide range of practice areas, including corporate, M&A, banking and finance, telecoms, media and technology, energy and electricity, construction, public procurement, dispute resolution, intellectual property rights and employment. SHP acts as local legal counsel to private and public sector entities, including governments, NGOs and leading multinational companies operating in a wide range of sectors. Over the years, SHP has represented over 1,000 leading multinational clients in Egypt's largest mega projects and has established strong relationships with decision-makers in the public and private sectors.

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# 1. Legal System

## 1.1 Legal System and Judicial Order

The Egyptian legal system is primarily based on the French civil legal system, various other European codes, and religious law. In practice, religious law is applied only to personal status and family matters which are governed by the religious law of the individual concerned. The fundamental and organic law of Egypt is its constitution, which was passed in a referendum in January 2014 and amended in April 2019.

The Egyptian judiciary is highly independent, and judges are immune to dismissal, subject to no other authority but the law, and equal in rights and duties.

The judicial order under the Egyptian system is outlined below.

### Regular Courts

At the apex of the regular judiciary system in Egypt is the Court of Cassation, which was established in 1931 and is based in Cairo. The Court of Cassation is a court of law as opposed to a trial court and guarantees the uniformity and consistency of the implementation and interpretation of the law. Following this are the courts of appeal which have the competence to consider rulings by the courts of first instance falling under their jurisdiction, should these rulings be subject to appeal. Next are the first instance courts, also known as primary courts, which are strategically located in various district capitals. Complementing these are summary courts, which are found in central locations, coastal towns, and even within certain neighbourhoods. These courts' jurisdictions are determined based on two main factors: the monetary value involved in the legal matter and the specific geographic area over which the court has authority.

### State Council

The State Council is an independent judicial body competent to adjudicate administrative disputes and disciplinary proceedings. The judicial section consists of the Supreme Administrative Court, the Administrative Judiciary Court, the administrative courts, the disciplinary courts, and the State Commissioners' Authority, each competent to consider such submissions in accordance with the law.

### The Supreme Constitutional Court

The Supreme Constitutional Court is an autonomous and independent judicial body with its headquarters in Cairo. However, in cases of necessity, it may, upon the approval of its General Assembly, hold its sessions elsewhere in Egypt. The Supreme Constitutional Court is solely competent to decide on the constitutionality of laws and regulations, interpret legislative provisions, and adjudicate on disputes pertaining to the affairs of its members, on jurisdictional disputes between judicial bodies and entities that have judicial jurisdiction, on disputes pertaining to the implementation of two final contradictory judgments, one of which is rendered by a judicial body or an authority with judicial jurisdiction and the other is rendered by another, as well as on disputes pertaining to the execution of its judgments and decisions.

### The State Lawsuits Authority

The State Lawsuits Authority is an Egyptian judicial institution that resembles, in respect of competencies, the Attorney General in common law disciplines and particularly the United States Solicitor General.

The Authority represents the interests of the State in a variety of areas before national and international courts and arbitral tribunals. Under the applicable law, the Egyptian State Lawsuits Authority is granted the power to plead on behalf of the State even if the State itself does not wish to do so.

# 2. Restrictions on Foreign Investments

## 2.1 Approval of Foreign Investments

Foreign investments are subject to screening in Egypt based on specific criteria, including the investor's nationality and the company's activities, given that activities carried out by non-Egyptian investors, as well as the investor's nationality, may be restricted by relevant Egyptian laws and may require certain conditions to be met. Therefore, screening must be performed to ensure the satisfaction of these conditions and requirements. It is worth noting that foreign ownership restrictions are applicable in several sectors and locations such as:

- importation activities conducted for resale or trading purposes, noting, however, that these restrictions were recently relaxed – now permitting majority foreign ownership for a period of ten years, subject to renewal pursuant to certain conditions;
- commercial agencies or intermediary businesses; and
- carrying out business in the Sinai Peninsula.

It is worth noting that security clearance must be obtained for any foreigner to work or do business in Egypt. In practice, the General Authority for Investment and Free Zones (GAFI) usually approves changes in shareholding structures and the incorporation of companies without initially requiring a security clearance, with the exception of certain nationalities which are subject to advanced examinations, such as China, Russia, Ukraine, Nigeria, Israel, Iran, Belarus, Bangladesh, Iraq and Palestine, as such restricted nationalities require an advance security clearance. However, GAFI has recently started to relax the conditions of obtaining security clearance prior to incorporation with respect to some nationalities.

Aside from the security clearance, work permits must also be obtained for any foreign employees to be employed by the relevant company.

### 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

Prior to engaging in any business in Egypt, upon the incorporation application of the company, or upon the approval of a general assembly meeting for changes in the shareholding structure, a security clearance application is submitted to the relevant authority indicating all relevant data of the foreign investor.

Generally, investing in Egypt without obtaining a security clearance or any other necessary approvals for engaging in business may have legal ramifications, which could include legal penalties such as fines or other sanctions imposed by the relevant regulatory authority, restrictions on business operations and activities through a suspension imposed by the relevant governmental authority and the eventual disruption of any business plans the foreign investor may have made, severe financial losses, and contractual issues where certain contracts may be deemed null and void due to the lack of obtaining the necessary approvals, all of which may result in severe reputational damage to the business.

### 2.3 Commitments Required From Foreign Investors

In certain circumstances, the regulatory authorities may require certain conditions such as:

- a minimum capital for obtaining certain approvals and licences;
- the creation of a minimum number of jobs for Egyptian nationals; and
- requiring foreign investors to use a minimum percentage of local resources in their products.

### 2.4 Right to Appeal

Foreign investors have the right to appeal and review such decisions by way of referral to an administrative court, which has exclusive oversight over any administrative matter. Further, foreign investors may refer any dispute to international arbitration subject to certain conditions under the relevant Bilateral Investment Treaty (BIT), whereby any award issued in favour of investors will be enforceable vis-à-vis any assets owned by the Egyptian government outside Egypt.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

Both the Companies Law and the Trade Code provide several legal forms of business, similar to those legal forms that are available in North America and Europe, such as:

- branch of a foreign company;
- joint stock company (JSC);
- limited liability company (LLC); and
- one-person company (OPC).

The two most common types of companies selected by investors in Egypt are JSCs and LLCs, whereby the capital of a JSC shall be owned by at least three shareholders and constitute a minimum capital of EGP250,000. Whereas, for an LLC the minimum number of partners is two and no minimum capital is required. An LLC is usually the most recommended

corporate vehicle because an LLC has a simplified corporate structure compared to a JSC.

However, it is worth noting that depending on the activity of the company, a specific corporate structure may be required for certain activities such as banking activities. Further, depending on the company's activities, a company may be formed under different laws, such as the Capital Markets Law No 95 of 1992.

### 3.2 Incorporation Process

An incorporation application is submitted to the General Authority for Investment and Free Zones (GAFI), which is the regulatory authority overseeing the incorporation of companies in Egypt. Attached to such incorporation applications are a set of documents including corporate documents related to the shareholders or partners, passports of the directors or shareholders, the auditor's acceptance letter, certificate of non-confusion of the company's name, bank certificate and the lease agreement of the company's premises.

The Articles of Association and/or statutes of the company are then issued by GAFI after the provision of the relevant details such as share capital, auditor's information, address, duration of the company, directors/managers and the company's commercial register.

The incorporation process may vary depending on the readiness of all necessary documents required to be submitted at the time of incorporation. However, once all documents are ready, the incorporation process usually takes from one to two weeks. However, GAFI offers VIP services for the incorporation process for an additional charge of EGP10,000 (equivalent to approximately USD192).

### 3.3 Ongoing Reporting and Disclosure Obligations

Foreign investments are subject to review and screening by GAFI. All companies incorporated in Egypt that are entirely or partially owned by non-Egyptian investors (collectively, non-Egyptian-owned companies), regardless of the percentage of the ownership or the applicable legal regime, must regularly submit their Foreign Direct Investment (FDI) Data to GAFI, which includes information on, inter alia, foreign shareholders, corporate and financial information, pursuant to Decree No 2731 of 2019, as follows:

- within 30 days of the incorporation date or the date of any change in the non-Egyptian-owned company's capital, purpose, shareholding structure or board members (as the case may be);
- within 45 days of the end of each quarter of the calendar year; and
- within four months of the end of the relevant non-Egyptian-owned company's financial year.

Further, failure to satisfy the FDI requirement will entail a penalty fine of EGP50,000 for non-Egyptian-owned companies, in accordance with the Investment Law No 72 of 2017.

### 3.4 Management Structures

The one-tier management structure, where one governing body is responsible for management and decision-making, is widely considered the most common management structure in Egypt. For example, a JSC primarily consists of the board of directors, which is responsible for overseeing the operations of the company and making major decisions; they are elected or appointed by the shareholders of such company. Further, the executive management may be chaired by a CEO or managing director who is responsible for the day-to-day operations of the company and executing resolutions and decisions taken by the board of directors. Further, the general assembly of the company generally has the authority to elect or dismiss directors, approve financial statements, increase the company's capital and take other important decisions in relation to the company.

### 3.5 Directors', Officers' and Shareholders' Liability

The Companies Law No 159 of 1981, in general, does not recognise the concept of piercing the corporate veil, therefore, the liability of shareholders in a JSC or allotment holders in an LLC is strictly limited to the paid-in capital.

However, the aforementioned rule is subject to certain exceptions, such as if the number of shareholders in a JSC becomes less than three, then the concept of piercing the corporate veil shall apply to the remaining

shareholders in a JSC to legitimise their legal status by increasing the number of shareholders to reach the minimum required number.

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

On 3 May 2025, the New Egyptian Labour Law No 14 of 2025 (the "Labour Law") was officially published in the Official Gazette. In accordance with its provisions, the Labour Law entered into force on the first day of the month following the lapse of 90 days from the date of its publication (ie, 1 September 2025). The Labour Law replaced the previous Labour Law No 12 of 2003.

Under the Labour Law, any condition or agreement that violates the provisions of the Labour Law and/or derogates from the employee's rights and entitlements, shall be considered invalid. However, in the event that a rule and/or a stipulation originating either from the employment contract, employment practice, or any other employer resolution or internal work regulation, grant the employee better rights and/or benefits not provided by the provisions of the Labour Law, the said rule and/or stipulation shall remain valid as it provides better benefits in the interests of the employee.

### 4.2 Characteristics of Employment Contracts

In accordance with the provisions of the Labour Law, an employer must conclude an employment contract with an employee. It must be drafted in Arabic and provided in four identical copies. The employment contract must include the following information:

- start date of the contract;
- employer's name and place of employment;
- employee's name, qualifications, profession or craft, social insurance number and residence;
- the nature and type of work to be carried out by the employee;
- agreed salary, method and time of payment; and
- any other benefits, in cash or kind.

Furthermore, according to the Labour Law, the employment contract may be issued in a bilingual format – Arabic and the employee's native language – provided that the employee is a foreign national and does not speak Arabic. However, in the event of any discrepancy between the two versions, the Arabic text shall prevail.

As stipulated above, the employment contracts shall be made in four counterparts: one retained by the employer, one by the employee, and one submitted to the competent Social Insurance Office, and one copy to be submitted to the competent administrative authority (ie, the Labour Directorate within the employer's jurisdiction or submitted online via the Directorate's email).

Pursuant to the Labour Law, in the absence of a written contract, both the employee and employer have the right to prove the employment relationship, its duration, and all associated rights through any means of proof. However, it is worth noting that, in the absence of a written employment contract, there is a presumption that the contract is concluded for an indefinite period.

The employment contract may be concluded for either a definite or indefinite period or for the execution of a specific task or project. Notably, the Labour Law does not determine the maximum or minimum duration of the employment contract.

### 4.3 Working Time

According to the Labour Law, the maximum applicable working hours of employees shall not exceed eight hours per day or forty-eight hours per week excluding rest breaks. These limits are regulated by public order rules and cannot be superseded or extended by any form of agreement.

The New Labour Law provides that overtime work is only allowed in cases of emergency, unusual and/or exceptional circumstances in work conditions, provided that:

- the employer notifies the competent Labour Office within the employer's jurisdiction and this shall be certified consequently by the Labour Directorate within seven days of the occurrence of extraordinary work conditions or exceptional circumstances, providing justifications for additional work and the duration of the required work; and

- the total daily working hours shall not exceed twelve hours, and the employees shall be entitled to monetary compensation.

Under the Labour Law, overtime work shall be compensated as follows:

- Overtime During Working Days: In addition to their regular pay, employees are entitled to receive a 35% increase in their salary for overtime during the day, and a 70% increase for overtime hours worked at night.
- Overtime During Weekends: In addition to their regular pay, employees are entitled to an additional 100% of their salary for overtime worked. The employer is also obliged to grant the employee a day off during the following week in place of the lost rest day.
- Overtime During Public Holidays: In addition to their regular pay, employees are entitled to either double their regular pay, or a compensatory day off, subject to a written request submitted by the employee in accordance with the Labour Law.

## 4.4 Termination of Employment Contracts

The Labour Law stipulates that an employee may be dismissed if they commit one of the following acts, which shall be deemed a gross misconduct ("Gross Misconduct"), including, inter alia:

- assumption of a false identity or submission of false documents;
- failure to follow safety instructions;
- disclosure of the secrets of the establishment at which they work, leading to the occurrence of serious damage to the establishment;
- competing with the employer in the same field;
- visible intoxication or being under the influence of drugs during working hours; and
- acts of aggression against the employer or general manager and/or committing serious aggression against any superiors either during work hours or related to work.

The authority to impose the penalty of dismissal lies within the competent labour court.

It is worth noting that the Labour Law stipulates that an employee shall be deemed to have resigned if he or she is absent from work without a legitimate excuse for more than 20 non-consecutive days within one year, or for more than ten consecutive days, provided that the employer, or its representative, has served the employee with a registered notice accompanied by an acknowledgement of receipt following ten days of absence in the first case and five days of absence in the second case.

There are different procedures for terminating employment contracts, depending on whether they are fixed or permanent, which will be further clarified in the following two sections.

### Termination of a Fixed-Term Employment Contract

An employer shall not have the right to terminate a fixed-term employment contract prior to its expiry, unless the employee commits a Gross Misconduct. The burden of proof rests with the employer to establish that such misconduct occurred.

As a general rule, the Labour Law provides that the employee shall not have the right to terminate a fixed-term employment contract early except in the following cases:

- If the employee resigns, in which case the resignation must be submitted to the employer, to be duly signed by the employee or their authorised representative, and certified by the competent administrative authority (the Labour Office within the employer's jurisdiction). The employment relationship will not terminate unless a formal decision of acceptance is issued by the employer.
- If the employment relationship exceeds five years, the employee may have the right to terminate the employment relationship by providing three months' notice in accordance with the Labour Law.

Where a fixed-term employment contract is terminated prior to the expiry of its term without a legally recognised ground, the assessment of compensation is generally subject to judicial discretion. In practice, courts may award compensation equivalent to the employee's salary for the remaining term of the contract or such other amount as reflects the actual

damages suffered, in accordance with the provisions of the Civil Code.

In addition, under the Labour Law, where an employer terminates a fixed-term employment contract that was concluded or renewed for a period exceeding five years, the employee shall be entitled to a severance gratuity equivalent to one month's salary for each completed year of service.

### Termination of a Permanent Employment Contract

An employer shall not have the right to terminate a permanent employment contract unless the employee commits a Gross Misconduct. The employer has the burden of proving that the employee has committed a Gross Misconduct.

Furthermore, should the employer intend to terminate a permanent employment contract, they are required to provide the employee with notice. The Labour Law establishes a standardised notice period for the termination of permanent contracts, set at three months, irrespective of the employee's length of service.

According to the Labour Law, if the employer terminates a permanent employment without proof of any Gross Misconduct by the employee, the said employee shall be entitled to compensation equivalent to the salary of at least two months for each year of service in addition to any other financial entitlements (if any).

Employees, under the Labour Law, shall be entitled to terminate the contract if the employer fails to fulfil a significant obligation arising from the Labour Law, the individual or collective employment contract, or the establishment's regulations. Furthermore, termination is permissible if the employee or their relatives experience assault by the employer or their representatives. In such instances, the termination is regarded as equivalent to dismissal by the employer without just cause. Accordingly, the employee will be entitled to compensation for unfair termination, in addition to other financial entitlements.

### Termination of Employment Due to Redundancy or Closure of the Establishment

Under the Labour Law, the employer shall have the right to completely or partially shut down the organisation or reduce its size by terminating the employment contracts of a number of employees to mitigate any economic crisis, provided that (i) a downsizing request is submitted to the competent authority for approval; and (ii) the competent syndication and the employees shall be notified of both the downsizing request and approval.

In this case, a dismissed employee shall be entitled to the following end-of-service indemnity:

- an indemnity equivalent to one month of their salary for the first five years; and
- an indemnity equivalent to one month and a half of their salary for the remaining period.

Should the employer fail to obtain the necessary approval from the competent authorities for the downsizing and proceed to reduce its size by terminating the employment contracts of several employees, those employees shall be entitled to monetary compensation, as such terminations will be considered unfair dismissals.

## 4.5 Employee Representations

The Egyptian Trade Union Law No 213 of 2017 grants the employees of an establishment the full right to establish, join or withdraw from a union committee, in accordance with the applicable Egyptian laws and internal regulations of the relevant union committee.

In order for a union committee to acquire legal personality and to be able to exercise its activities, it should be formed of at least 50 employees. As of the date on which the required documents are provided to the relevant administrative authority and provided that the establishment conditions are fully satisfied, the union committee shall be considered to be legally established under the Trade Union Law.

The union committee shall be entitled to directly exercise and manage the following matters with the relevant employer:

- resolving individual and collective disputes relating to their members;
- concluding collective labour agreements at the enterprise level;

- participating with the general trade union in the preparation of draft collective labour agreements, organised primarily under the Labour Law;
- participating in the discussion of projects of the production plans of the facility and assisting in their implementation;
- participating in the implementation, development and/or amendment of internal regulations and guidelines relating to the regulation of labour and employees' affairs in the establishment;
- implementing the services programmes determined by the general trade union; and
- organising and managing the union committee's affairs and activities freely, without restriction to this right.

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/ Employers

The Egyptian Income Tax Law No 91 of 2005 provides that the monthly gross salaries of employees shall be subject to taxes, to be deducted from each employee's monthly gross salary, based on the relevant tax brackets of each employee's annual salary.

Further, in accordance with the Egyptian Social Insurance and Pensions Law No 148 of 2019, all Egyptian entities are required to register with the Social Insurance Authority and insure their employees.

The social insurance contribution's percentage is 29.75% of the monthly gross salary, capped at EGP16,700, which is required to be paid to the Social Insurance Authority as follows:

- 18.75% of the monthly gross salary shall be borne by the employer; and
- 11% of the monthly gross salary shall be borne by the relevant employee.

### 5.2 Taxes Applicable to Businesses

Business in Egypt is generally subject to certain taxes such as:

- corporate income tax at approximately 22.5 per cent;
- value-added tax (VAT) on goods and services at a 14 per cent standard rate;
- withholding tax on certain payments to non-residents such as dividends;
- property taxes;
- stamp duty on certain documentation, such as leases and deeds; and
- capital gains tax on general profits from the sale of assets.

Recent amendments were introduced in 2025 to VAT Law No 67 of 2016 (the "VAT Law") pursuant to Law No 157 of 2025. These amendments introduced new VAT treatments for certain products and services, including changes to the applicable VAT rates and exemptions from VAT for specific products and services.

Such amendments include, inter alia, amendments to the VAT rates applicable to contracting and construction services (ie, supply and installation) and crude oil, as well as VAT exemptions for natural mining and quarry materials in their natural state, excluding crude oil, and donation advertisements for non-profit hospitals and government medical institutes.

### 5.3 Available Tax Credits/Incentives

Under the Investment Law No 72 of 2017, there are a variety of general tax incentives foreign investors may benefit from, in addition to other additional incentives under the Investment Zones Incentives, such as the free zones or technological zones, which may enjoy certain incentives such as reductions on corporate income tax, custom duties exemption on imported materials and equipment, and reduced VAT rates on certain goods and services. It is worth noting that such incentives vary from one investment zone to the other and the nature of the activities of the business, which shall be confirmed by a local tax adviser.

Additionally, pursuant to the Tax Incentives for Small Businesses Law No 6 of 2025, a number of facilitations and incentives are introduced for small businesses with an annual turnover not exceeding EGP20,000,000. It is important to note that eligibility for these incentives is subject to certain criteria. These incentives may include exemptions and reliefs from stamp taxes, notarisation, and registration fees

related to company incorporation contracts, as well as credit facility and mortgage agreements pertinent to the company's operations. Moreover, the company may benefit from exemptions on capital gains tax as well as taxes on distributable profits. Tax rates applicable to the company are also reduced, and such companies are exempt from the obligation to maintain the records, books, and documents stipulated in the Unified Tax Procedures Law No 206 of 2020.

### 5.4 Tax Consolidation

Tax consolidation is not currently regulated under Egyptian law.

### 5.5 Thin Capitalisation Rules and Other Limitations

In accordance with the Income Tax Law (as amended), debt interest (interest expenses) paid by legal persons on loans and advances obtained by them is not a deductible cost to the extent that such loans and advances exceed two times the average equity rights as reflected in the financial statements prepared in accordance with Egyptian Accounting Standards.

Debt interest includes all amounts chargeable by the legal person in return for the loans, advances of any kind obtained thereby, bonds and bills. The loans and advances include, for the purposes of this item, bonds and any form of financing by debts through securities with fixed or variable interest. Equity includes the paid-up capital in addition to all reserves and dividends reduced by retained losses, provided that the difference of the adjusted account is not included in the reserves account and is determined to be non-taxable.

However, by way of exception to the above, Law No 30 of 2023 provides that interest on loans and advances obtained by legal persons shall remain deductible where the debt-to-average-equity ratio exceeds 2:1, provided that it does not exceed the applicable threshold prescribed below during the transitional period commencing in 2022 and ending with the close of the 2028 tax year:

- 4:1 for the 2023 tax year;
- 3:1 for the tax years 2024 through 2027; and
- 2:1 for the 2028 tax year.

### 5.6 Transfer Pricing

Under the Income Tax Law, if related companies place conditions in their commercial or financial transactions that differ from those between unrelated companies, that will reduce the tax base or transfer its burden from one taxable company to another exempt or non-taxable company, the Egyptian Tax Authority (ETA) shall be entitled to determine the taxable profit on the basis of the neutral price of the relevant transaction, which shall be deemed transfer pricing of transactions concluded between related companies under common ownership or control.

The ETA shall verify the proper application of neutral price (market price) by related persons in their transactions with respect to the exchange of goods, services, raw materials, capital equipment, the distribution of shared expenses, royalty returns and other commercial or financial transactions that are carried out.

A Transfer Pricing Decree was adopted in 2018 to provide new tax guidelines for cross-border transactions between related companies, requiring the submission of specific documents by the relevant companies.

### 5.7 Anti-Evasion Rules

As a general rule, the Egyptian Unified Tax Procedures Law No 206 of 2020 ("Unified Tax Law") provides that financiers, taxpayers and others shall abide by specific requirements, including the following:

- notifying of the commencement of the activity and registering with the ETA;
- obligation to keep paper or electronic books and records within the prescribed legal period, and issue tax invoices in accordance with the provisions of laws and regulations;
- enabling the ETA's employees to perform their duties with regard to the procedures of review, examination, completion and control;
- notifying the ETA of any changes in the activity or establishment within the specified legal period;
- determining the responsible person(s) dealing with the ETA, whether the individual concerned or a legal representative thereof;
- calculating the tax correctly in accordance with the laws and regulations;

- paying tax in the manner and within the time limit specified; and
- including the unified tax registration number in all correspondence and dealings with the ETA or third parties.

Further, legal persons who sell a commodity or provide a service shall register all their purchases and sales of goods and services on the electronic system, in a manner that ensures that the ETA can track the movement of transactions permanently, and determine the size, value, parties involved, and other matters necessary for assessing and collecting the prescribed tax.

## 5.8 Tariffs

Customs and tariffs in Egypt are governed by Law No 207 of 2020 (the "Customs Law") and Decree No. 218 of 2022 issued by the President of Egypt and amended by Presidential Decree No 67 of 2023 (the "Customs Tariff Decree"). Under the Customs Law, a customs tariff is defined as a table formulated based on the description and classification of goods. It sets forth the application rates of customs duty levied on such goods, in addition to the general interpretative rules governing the application of these duties. Simultaneously, the Customs Tariff Decree sets out the rules, categories, and schedules of the customs tariff, as well as any amendments or cancellations.

According to the Customs Tariff Decree, goods temporarily exported for repair are taxed upon re-import at 10% of the total repair cost, including transport and insurance. Additionally, goods exported for completion of manufacture are taxed upon re-import at the rate applicable to the final product, calculated on the cost of the finishing work plus transport and insurance.

With regard to the tourism sector, hotel and tourism establishments may import equipment and machinery (excluding private passenger cars) at a reduced 20% customs duty or the applicable import tax, whichever is lower, under conditions defined by the Minister of Finance.

According to the Customs Tariff Decree, the following goods benefit from reduced customs duty rates:

- infant formula manufacturers: 2% of the value or the applicable import tax, whichever is lower, on raw materials and inputs;
- Arab Petroleum Pipelines Company: 2% of the value or the applicable import tax, whichever is lower, on imports for projects, including machinery and transport (excluding passenger cars);
- Arab Organization for Industrialization companies: 5% of the value or the applicable import tax, whichever is lower, on components for overhauling locomotive turbine engines;
- electric/clean energy vehicle infrastructure: 2% of the value or the applicable import tax, whichever is lower, on:
  (a) EV or natural gas refuelling station equipment;
  (b) EV/gas conversion kits;
  (c) environmental monitoring equipment; and
  (d) renewable energy components (wind/solar);
- electric bus manufacturers: 2% of the value or the applicable import tax, whichever is lower, on batteries, electric motors, control units, auxiliary system units, steering units, battery cooling units, and air conditioning devices;
- mobile phone manufacturers: 2% of the value or the applicable import tax, whichever is lower on batteries, speakers, and cameras; and
- natural gas vehicles: 35% reduction on the applicable import tariff.

### Incentives for Local Assembly Industries

The Customs Tariff Decree sets out the conditions under which assembly industries may obtain permission to have their assembled products treated under customs supervision, with preferential treatment for customs duties. In this regard, completely disassembled parts imported for industrial assembly under the supervision of the Customs Authority may benefit from a reduced import duty. Specifically, it shall be subject to the customs duty applicable to the complete product, reduced by 10%.

Furthermore, where the local manufacturing component of the product reaches at least 10%, the imported foreign components may be subject to a reduced customs duty – lower than that applicable to fully finished product – based on a graduated scale. This reduction may reach up to 90%, or alternatively, the product may be subject to its individual component

duty rates, whichever results in a lower duty. However, this preferential treatment is contingent upon the local manufacturing percentage reaching 60%, a threshold that can be lowered to 40% by virtue of a decision from the Minister of Trade and Industry.

The local manufacturing percentage shall be calculated based on the contribution of the assembly line, as determined by a decision from the Minister of Trade and Industry for each assembly industry individually. This percentage shall be supplemented by the ratio of locally manufactured components to the total complete components constituting the final product, as specified by the General Authority for Industrial Development, in accordance with the project establishment licence issued.

Moreover, the Minister of Finance, upon the request of the Minister of Trade and Industry, may grant companies involved in assembling complex industrial products an advance reduction in customs duties of up to 40%, even prior to the fulfilment of the required local component levels. This preferential treatment is conditional on achieving the stipulated local component within a specified timeframe outlined in their industrial licence.

The General Authority for Industrial Development, in co-ordination with the Customs Authority, shall monitor these companies' compliance through annual reporting to the Minister of Finance. In the event that a company fails to meet its targeted local component level by year-end, the preferential treatment shall be revoked. Consequently, the company will be reassessed under the standard customs rules. It must also reimburse any resulting financial discrepancies along with statutory interest calculated at the highest applicable legal rate for the period in which the benefit was enjoyed.

## 6. Competition Law

### 6.1 Merger Control Notification

With respect to the amendments in late 2022 to the Antitrust Law No 3 of 2005 (the "Antitrust Law"), as amended, the pre-closing clearance for any transaction that constitutes an "economic concentration", subject to meeting the relevant criteria with respect to financial thresholds, has been newly introduced, replacing the post-notification regime. Under the new amendments, economic concentration is defined as any change of control or material influence as a result of a merger or acquisition or establishment of a joint venture.

### 6.2 Merger Control Procedure

In April 2024, the Egyptian Prime Minister issued Decree No 1120 of 2024, issuing the Executive Regulations of the Antitrust Law, whereby the application of the new amendments to the Antitrust Law has been introduced. The Egyptian Competition Authority was granted the authority to review and approve proposed mergers and acquisitions prior to entering into the transaction, provided that the said proposed transaction constitutes an "economic concentration" and meets the relevant criteria with respect to financial thresholds. The new pre-merger control system came into effect as of 1 June 2024.

Further, the Financial Regulatory Authority (FRA) was granted authority to review and approve any proposed mergers and acquisitions prior to their execution, provided that the persons concerned with the transaction exercise one of the activities under the FRA's supervision, including, inter alia, securities and capital markets activities, insurance, reinsurance or insurance brokerage activities, financial leasing activities, or microfinance activities.

### 6.3 Cartels

The Antitrust Law primarily governs anti-competitive agreements and monopolistic practices. It prohibits agreements between competitors, or between a party and any of its suppliers or clients, with the purpose of restricting competition such as price fixing and other forms of anti-competitive agreements. The Antitrust Law also sets penalties for any violation under the provisions thereof, such as nullity of certain agreements and fines on a case-by-case basis.

### 6.4 Abuse of Dominant Position

The Antitrust Law addresses the abuse of a dominant position by one entity or more within the market, such as unfair pricing, unwillingness to deal and discrimination.

## 7. Intellectual Property

### 7.1 Patents

According to the Intellectual Property Law No 82 of 2002 (the "Intellectual Property Law"), the following conditions must be met for an invention to be granted a patent:

- novelty;
- inventive step; and
- capability of economic exploitation.

The owner of the patented innovation has the right to prohibit others from using, making, selling, or importing the patent commercially once it has been registered. Generally, patent protection is valid for 20 years from the date of filing the application.

### 7.2 Trade Marks

According to the Intellectual Property Law, a trademark is a logo, mark, word or any visually perceptible sign that is used by a certain person, company, or group to differentiate their products and/or services from others in the market. In accordance with the Intellectual Property Law, the trademark registration serves simply as a kind of ownership evidence that can be challenged. The first use of the mark in the market establishes ownership of the trademark in accordance with Egyptian law and as established and confirmed by precedent.

According to the Intellectual Property Law, the trademark's protection period spans ten years, and can be extended for similar durations upon request by the owner during the final year of each protection period, provided that the corresponding registration fee is paid. However, if the owner fails to apply for renewal within six months after the protection period has ended, they can still apply for a renewal by paying the prescribed fee and an additional fee determined by the executive regulations of the Intellectual Property Law, not exceeding EGP500, otherwise the trademark shall be deleted.

### 7.3 Industrial Designs

According to the Intellectual Property Law, an industrial design is any arrangement of lines and each stereoscopic shape, with or without colours if it takes a distinctive appearance characterised by novelty and capable of industrial use. The Intellectual Property Law provides that the period of protection of the industrial design or model is ten years starting from the date of submitting the application for registration in Egypt. Protection is renewed for another five years if the owner of the design or model submits an application for renewal within the final year of the term. However, the owner has the right to apply for renewal within three months following the date of expiry of the protection period, otherwise the registration shall be cancelled.

The Intellectual Property Law stipulates that the registration of the industrial design or model grants the owners exclusive rights to prevent others from manufacturing, selling, or importing products that take the form of such design or model or include it. The right to prevent third parties from importing, selling, or distributing the aforementioned products shall be exhausted if the owner markets those products in any country or licences others to do so.

### 7.4 Copyright

Copyright constitutes the rights granted to authors and artists regarding their creative works under the Intellectual Property Law. A variety of works are protected by copyright under the aforementioned Law, including computer software, databases, advertisements, geographic maps, and technical drawings in addition to books, music, oil paintings, sculptures, and films. Copyright protection extends only to expressions and not to ideas, procedures, and methods of operation or mathematical concepts.

Moreover, there are neighbouring rights which are known as copyright-associated rights, and which enable innovators to spread their ideas and publish their works by providing performers, sound recording companies, and broadcasting organisations with legal protection. The protection of copyright and related rights extends to Egyptians and foreigners, both natural and legal persons, belonging to one of the member states of the World Trade Organisation (WTO). Under the aforementioned article, protection is granted:

- for performers: if one of the following conditions is met:

(a) if the performance takes place in a member state of the WTO;
(b) if the performance is captured in sound recordings, the producer of which belongs to a member state of the WTO, or the sound is first recorded in the territory of a member state of the WTO.
(c) if the performance is broadcast by a broadcasting organisation based in a member state of the WTO, and the broadcast is broadcast from a transmitter also located in a member state of the WTO.

- for producers of phonograms: if the sound is first recorded in a member state of the WTO; and
- for broadcasting organisations: if the headquarters of the broadcasting organisation is located in the territory of a member state of the WTO, and the broadcasting programme has been broadcast from a transmitter also located in the territory of a member state of the WTO.

### 7.5 Others

It is worth noting that plant varieties developed in Egypt or abroad, whether they are obtained in a biological or non-biological manner, shall enjoy protection in accordance with the provisions of the Intellectual Property Law upon their registration in the register of plant varieties that grant the right of protection. In order to enjoy protection, the variety must be characterised by novelty, distinction, homogeneity, and stability, and bear its own name. The Intellectual Property Law stipulates that the period of protection of plant varieties shall be 25 years for trees and grapes, and 20 years for other agricultural crops.

Further, undisclosed information shall be protected in accordance with the provisions of the Intellectual Property Law, provided that the following conditions are met:

- the information is confidential in nature, such that the details of the information or its composite components are not widely known or circulated among individuals in the specific industrial sector related to the information;
- its commercial value is derived from its confidential status; and
- its confidentiality relies on the effective measures undertaken by its lawful owner to maintain it.

## 8. Data Protection

### 8.1 Applicable Regulations

The general laws regulating data protection in Egypt are the Constitution, the Penal Code No 58 of 1937, and the Anti-Cybercrime Law No 175 of 2018 ("Cybercrime Law"). It is worth noting that the main legislation governing personal data is the Data Protection Law No 151 of 2020 ("Data Protection Law") which applies to any personal data that is subject to any electronic processing whether partially or entirely, with the exception of certain data that is processed by the Central Bank of Egypt.

The Data Protection Law prohibits personal data from being collected, processed, or disclosed by any means except with the explicit consent of the data subject. Further, the Data Protection Law places restrictions and conditions on the transfer of any "personal data" abroad, which is subject to a licence from the Data Protection Centre (DPC) and a certain level of protection not less than the one provided for under the Data Protection Law.

On 1 November 2025, the Executive Regulations of the Data Protection Law were published in the Official Gazette and made available to the public around 25 December 2025. Persons subject to the Data Protection Law are granted a grace period of one year as of the issuance date thereof to legitimise their position with the Executive Regulations.

### 8.2 Geographical Scope

The Data Protection Law applies to any processor, controller or handler, whether corporate or natural, who breaches the Data Protection Law if they are:

- an Egyptian national inside or outside Egypt;
- a non-Egyptian residing within Egypt; or
- a non-Egyptian outside Egypt if the act is punishable in any form in the country where it occurred and the data subject who is affected by the breach is an Egyptian national or a non-Egyptian residing in Egypt.

### 8.3 Role and Authority of the Data Protection Agency

The DPC is the regulatory authority empowered by virtue of the Data Protection Law to oversee and enforce the Data Protection Law, including the issuance of required licences, authorisations and certifications in accordance with the Data Protection Law.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

In early April 2026, the Senate approved a draft new Antitrust Law introducing amendments to the current Antitrust Law, which has been approved in principle by the House of Representatives. This new Antitrust Law is expected to be issued soon, to replace the current Antitrust Law. The key amendments to be made include, inter alia, transferring the affiliation of the Egyptian Competition Authority (ECA) so that it becomes an independent regulatory body with a public legal personality, reporting directly to the President of the Republic rather than the Prime Minister. Further, the new draft grants the ECA the power to impose administrative financial sanctions without having to obtain a court ruling.

With respect to the Labour Law, it is worth noting that ministerial decrees further regulating certain employment-related matters are still pending issuance, including, inter alia, decrees relating to work and sanctions regulations and occupational health and safety.

Furthermore, it is worth noting that it has been reported that the Egyptian government is currently in the process of preparing an all-new Arbitration Law that will be proposed to the Egyptian House of Representatives.

# Trends and Developments

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**Soliman, Hashish & Partners** Soliman, Hashish & Partners (SHP) is a full-service corporate law firm, recognised as a leading financial and corporate law firm in Egypt. SHP is renowned for its innovative, high-quality, and commercially astute approach to every task. SHP works exclusively with well-established multinational clients in a wide range of practice areas, including corporate, M&A, banking and finance, telecoms, media and technology, energy and electricity, construction, public procurement, dispute resolution, intellectual property rights and employment. SHP acts as local legal counsel to private and public sector entities, including governments, NGOs and leading multinational companies operating in a wide range of sectors. Over the years, SHP has represented over 1,000 leading multinational clients in Egypt's largest mega projects and has established strong relationships with decision-makers in the public and private sectors.

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Over the past few years, the Egyptian government has been significantly improving the business environment in the country, which has resulted in various changes to the legal framework governing the establishment and operation of businesses in Egypt. Egypt has attracted more foreign direct investment (FDI) across multiple industries, predominantly within the financial services, technology and infrastructure sectors.

Egypt was ranked ninth in the top source and destination economies for FDI in 2025 by the UN Trade and Development in its World Investment Report. In 2025, Egypt was a principal driver in the growth of greenfield project value, recording a 30% increase in its value along with a 4% rise in number. Furthermore, the value of international project finance (IPF) deals in Africa increased as a result of construction megaprojects in Egypt. It is also worth noting that Egypt was ranked just outside the top ten primary destinations for greenfield projects in the digital economy in 2025, leading in Africa.

Further, in 2026, Egypt was ranked third out of 18 markets in the Middle East and North Africa region, and has globally ranked 27th out of 202 markets for investment openness, according to a Fitch Ratings report reviewed by the Cabinet's Information and Decision Support Center (IDSC), as reported on Egypt's state information service website.

Despite international and local crises faced by the country over the years (including revolutions, COVID-19, the Russia-Ukraine war, the Palestinian conflict, the Iran-Israel conflict, inflation, foreign currency shortages and the threat of potential recession), Egypt has continued to implement its best efforts to improve the legal environment to attract foreign investors and regulate certain activities under the current climate.

## Investment in Egypt

According to Investment Law No 72 of 2017 (the "Investment Law") and Prime Minister's Decree No 56 of 2022, companies seeking to establish strategic or national projects that contribute to development, as well as partnership projects between the private sector and the State, the public sector, or the public business sector in the fields of public utilities, infrastructure, new and renewable energy, roads, transportation, and ports, may apply for a single licence for the establishment, operation, and management of the relevant project (the "Golden Licence").

The Golden Licence is deemed sufficient for the operation of the investment project, without the need to obtain any additional licences, permits, or approvals. The Golden Licence Committee at the General Authority for Investment and Free Zones (GAFI) is responsible for co-ordinating with the relevant governmental authorities in Egypt to obtain all licences, permits, and approvals required by law for the establishment and operation of the investment project. According to Decree No 56 of 2022, the Golden Licence shall be granted by virtue of a decision of the Prime Minister for investment projects that satisfy at least two of the following required conditions:

- The investment project shall contribute to the growth of exports through exporting no less than 50% of its products abroad annually, within three years from the commencement of its activity.
- The investment project shall aim to reduce imports, industrial localisation, as well as increase the proportion of local components in its products, provided that the percentage of local components in its products, including raw materials and production requirements, constitutes at least 50%, and further provided that the aforementioned percentage be calculated by subtracting the value of the imported components from the product cost.
- The financing of the investment project shall be primarily dependent on the foreign currency transferred from abroad through any bank registered with the Central Bank of Egypt (CBE).
- The investment project shall be established in one of the undeveloped areas, including, inter alia, Southern Giza Governorate, the governorates of the Suez Canal Region: Port Said, Ismailia and Suez (east of the canal), border governorates, including the Red Sea Governorate to the south of Safaga, and Upper Egypt governorates.
- The investment project shall contribute directly to fields of technology transfer and localisation in Egypt, innovation support, and scientific research development.

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- The main objective of the investment project shall be securing strategic goods for the country, thereby reducing reliance on imports.
- The investment project shall lessen environmental impact via reducing gas and temperature emissions and climate improvement.
- The investment project shall offer a labour-intensive investment project by employing not less than 500 Egyptian nationals.

It is worth noting that as of 2026, a total of 52 Golden Licences have been issued by GAFI, of which eight Golden Licences were granted in 2026 covering investment projects worth around USD1.2 billion.

Furthermore, amendments were introduced to the Executive Regulations of the Investment Law pursuant to Prime Minister's Decree No 2140 of 2023 with the aim of promoting foreign direct investment. These amendments include revisions to the Private Free Zones regime, most notably the introduction of a provision authorising the Cabinet to approve the establishment of projects within a Private Free Zone upon the proposal of the competent minister, following an assessment of the project by GAFI and subject to the satisfaction of certain prescribed conditions.

Furthermore, the aforementioned Decree lifted some of the requirements for establishing projects in the Private Free Zones, including:

- the requirement to check initially whether there is a location in the Public Free Zone that would accommodate the project;
- the minimum capital requirement of USD10 million, and the investment costs thereof not being less than USD20 million or its equivalent in a freely convertible currency;
- the minimum area requirement for the project being 20,000 square metres; and
- a minimum requirement of 500 employees; in addition, this Decree has introduced provisions regarding the inclusion of the services industry under the Private Free Zone system.

### Labour Law

It is worth noting that on 3 May 2025, the New Egyptian Labour Law No 14 of 2025 (the "Labour Law") was officially published, replacing the previous Labour Law No 12 of 2003. In accordance with its provisions, the Labour Law entered into force on the first day of the month following the lapse of 90 days from the date of its publication (ie, 1 September 2025).

The Labour Law has introduced key new changes to the previous Labour Law, including, inter alia, recognising new work models, such as remote work, increasing maternity leave, introduction of paternity leave, and increasing the maximum number of times female employees may take unpaid leave to take care of their child. Under the Labour Law, any condition or agreement that violates the provisions of the Labour Law and/or derogates from the employee's rights and entitlements, shall be considered invalid.

### Merger Control

The amendments made to the Antitrust Law No 5 of 2003 (the "Antitrust Law") in December 2022 replaced the post-notification regime for a transaction with the newly introduced pre-merger control system, whereby the Egyptian Competition Authority (ECA) is given the authority to review and approve proposed mergers and acquisitions prior to entering into the transaction. In April 2024, the Egyptian Prime Minister issued Decree No 1120 of 2024, enacting the Executive Regulations of the Antitrust Law and thereby implementing the new amendments. The new pre-merger control system went into effect as of 1 June 2024 and requires pre-approval from the ECA for transactions that constitute "economic concentration" between the contracting parties (namely, a change in control or material influence of a person resulting from a merger, acquisition or joint venture), subject to meeting the relevant criteria with respect to financial thresholds.

It is worth noting that any transaction that constitutes "economic concentration" shall be subject to the pre-closing clearance requirement from the ECA. By virtue of the new amendments, economic concentration is defined as any change of control or material influence as a result of a merger or acquisition or establishment of a joint venture.

Furthermore, the Financial Regulatory Authority (FRA)'s notification and pre-approval are required for any potential transaction that constitutes "economic

concentration" and fulfils the financial thresholds, provided that the concerned persons with the economic concentration exercise one of the activities under FRA's supervision, namely securities and capital markets, insurance, reinsurance or insurance brokerage activities, mortgage finance activities, financial leasing activities, securitisation and factoring activities, and microfinance.

It is worth noting that in early 2026, the Senate approved a draft new Antitrust Law introducing amendments to the current Antitrust Law, which has been approved in principle by the House of Representatives. This new Antitrust Law, which is expected to be issued soon, will replace the current Antitrust Law. The key features of the amendments to be made include, inter alia, transferring the affiliation of the ECA so that it becomes an independent regulatory body with a public legal personality, reporting directly to the President of the Republic instead of the Prime Minister. Further, the new draft grants the ECA the power to impose administrative financial sanctions without having to obtain a court ruling.

### Fintech

It is worth noting that fintech was newly introduced in 2020 in Egypt as part of the issuance of the new Banking Law No 194 of 2020 with the purpose of promoting financial inclusion and the digitalisation of the financial sector in Egypt. However, the applicability of obtaining a fintech licence for the banking sector is still pending the issuance of further regulations in this regard by the CBE. Fintech has since been further regulated in the non-banking financial services (NBFS) sector by the issuance of the new Fintech Law No 5 of 2022 and its Executive Regulation ("Fintech Law"), which facilitate the integration of technologies into NBFS and the regulatory framework for the licensing scheme for such services from the Financial Regulatory Authority (FRA). These services include, inter alia, insurtech, microfinance, robo-advisory, artificial intelligence, mobile applications and digital platforms.

In July 2023, the CBE issued regulations regarding the licensing and regulatory framework for digital banks in Egypt, which shall effectively allow for the establishment and operation of digital banks, in an effort to support innovation and transformation of the digital economy, whilst representing an important step in aligning with global developments in the financial technology industry.

Furthermore, in 2024, the FRA issued Decree No 57 of 2024, which establishes the rules for regulating the operation of robo-advisers for investment. A robo-adviser is an electronic system that provides financial advice to clients for the purpose of creating, managing, and rebalancing an investment portfolio using AI algorithms. The FRA highlighted that portfolio management companies are now authorised to provide automated investment advice via robo-advisers.

It is also worth noting that in 2024, the FRA issued Decree No 140 and 148 of 2024, establishing Special Purpose Acquisition Companies (SPACs) in Egypt, and has recently approved the first application for a SPAC, which is defined as a company licensed by the FRA solely to raise cash funds, through an initial public offering, for the sole purpose of acquiring or merging with an operating business within a specific timeframe.

Moreover, the FRA issued Decree No 227 of 2025, which sets out requirements for companies and entities licensed to conduct non-banking financial activities to strengthen their technological infrastructure and cybersecurity. These entities must submit policies and governance frameworks for information technology (IT), cybersecurity and risk management to the FRA, and conduct annual tests, with the reports submitted to FRA.

The FRA also issued Decree No 279 of 2025, establishing a registry for companies that provide technological systems for risk assessment in the non-banking financial sector. It requires that only companies listed in the registry can offer risk assessment services to licensed non-banking financial entities, sets the requirements and conditions for registration in the registry and imposes ongoing reporting and compliance obligations to the FRA, thereby enhancing oversight and standardisation of technology-driven risk evaluation in Egypt's non-banking financial sector.

In 2026, the FRA issued Decree No 28 of 2026, requiring companies licensed to carry out consumer

finance activities to provide insurance coverage for their clients up to 65 years of age who have obtained financing from such companies against the risks of death and total permanent disability. Additionally, FRA issued Decree No 35 of 2026 requiring companies licensed to carry out non-banking financial activities, whose issued and paid-up capital exceed EGP50 million, to conclude an annual insurance policy with one of the insurance companies operating in Egypt to cover liability risks of their board of directors and executive managers.

Furthermore, the FRA issued Decree No 40 of 2026 regulating the rules and procedures for issuing the investor identification number for trading in securities and financial instruments markets, including the obligations of the transacting parties.

### Data Protection

In 2020, Egypt introduced the Law on the Protection of Personal Data No 151 of 2020 ("Data Protection Law"), which regulates personal data that is processed electronically. Prior to the issuance of the Data Protection Law, data protection was only governed by the Constitution, the Penal Code No 58 of 1937 (the "Penal Code") and Law No 175 of 2018 on Anti-Cybercrime and Information Technology Crimes (the "Cybersecurity Law"). The Data Protection Law is modelled on the European General Data Protection Regulation (Regulation (EU) 2016/679) (GDPR), as it aims to establish various standards and rules that safeguard data protection and the rights of individuals in Egypt. There are certain types of personal data that are not subject to the Data Protection Law, including, inter alia, data held by the CBE.

It is worth noting that the Data Protection Law applies to any controller, processor or handler (natural or juristic) of personal data. It also applies to any of the aforementioned persons who breach the Data Protection Law if they are:

- an Egyptian national inside or outside Egypt;
- a non-Egyptian residing within Egypt; or
- a non-Egyptian outside Egypt if the act is punishable in any form in the country where it occurred and the data subject who is affected by the breach is an Egyptian national or a non-Egyptian residing in Egypt.

The Data Protection Law sets out the requirements governing the processing, handling and control of any personal data. As a general principle, such processing is contingent upon obtaining the consent of the data subject and licensing from the Data Protection Centre. It is noteworthy that the Data Protection Centre is designated as the regulatory authority responsible for overseeing the application and enforceability of the Data Protection Law. Moreover, the Data Protection Law regulates the cross-border transfer of personal data and prescribes certain conditions and standards that must be satisfied for the lawful transfer of personal data outside of Egypt.

In light of the above, it is worth noting that the Executive Regulations of the Data Protection Law was published in the Official Gazette on 1 November 2025, and made available to the public around 25 December 2025. Accordingly, persons subject to the Data Protection Law are granted a grace period of one year as of the issuance date thereof to legitimise their position with the Executive Regulations.

### Banking, Finance and Exchange Control

It is worth noting that the Egyptian Pound underwent a number of devaluations throughout 2022 in order to secure IMF loans.

Despite the fact that investors are freely allowed by law and the relevant and applicable Bilateral Investment Treaty to transfer dividends to their home country, the current shortage and unavailability of foreign currency in Egypt has made it difficult to transfer such proceeds and dividends of the investors to their home country. As a result, many foreign investors secured their own sources of foreign currency, with banks applying differing priority criteria for exchanging Egyptian pounds into foreign currency. However, it is worth noting that these restrictions have relaxed significantly in 2024, allowing foreign investors to secure foreign currency.

### Imports

As of December 2022, the CBE abolished the system of requiring importers to obtain letters of credit for their purchases and returned to the cash-against-

documents system for importing goods. This change alleviates the previously higher costs and time burdens on importers.

It is also worth noting that in 2023, by virtue of Law No 173 of 2023, foreign ownership restrictions on importation have been lifted, permitting limited liability companies, 51% of the allotments of which are owned by non-Egyptian partners, to register in the Importers' Registry, provided that the total duration of registration does not exceed ten years from the date of entry into force of the said law. However, this duration may be extended for one additional period not exceeding ten years by a decision from the Council of Ministers.

In conclusion, different legal developments have taken place across different regulations and sectors in Egypt. These measures reflect the Egyptian government's aim to foster a stable and well-regulated economy, not only for Egyptians, but also to promote foreign direct investment in Egypt. Notably, reports indicate that further changes are anticipated in the coming years, including the introduction of new labour and arbitration laws.

# ENGLAND & WALES




## Law and Practice

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**Winston Taylor** is a transatlantic law firm built for the businesses, people and markets driving capital and innovation. The firm is present in the major commercial centres that matter to global clients: the USA, the UK, Europe, Latin America and the Middle East. With a team of over 1,400 lawyers, Winston Taylor brings deep experience in major litigation, critical transactions, strategic IP and private wealth, and has four focus sectors: technology, media and telecommunications, life sciences and healthcare, financial services, and projects, energy and infrastructure. Whatever the challenge, Winston Taylor is in the room with its clients, shoulder to shoulder in the everyday moments and the ones that change everything.

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## 1. Legal System

### 1.1 Legal System and Judicial Order

The UK is a common-law jurisdiction, primarily built on case law, where the outcomes of previous legal cases set precedents for future cases. The UK courts are arranged in a hierarchy. At the base are magistrates' courts and county courts, dealing with minor criminal offences and civil matters, respectively. Above these are the Crown Court and High Court, which handle more serious criminal cases and significant civil disputes.

The Court of Appeal sits above these courts and reviews cases from them to ensure the correct application of law. The Supreme Court is the highest court in the UK; it provides final judgments on points of national importance and clarifies laws that affect everyone.

There are also specialist tribunals – eg, for employment and immigration. These tribunals make decisions within their specific field but can be appealed to the higher courts.

While judges create common law, statues passed by the UK Parliament take precedence over all case law. This combination of statute law and common law ensures both a democratic input from Parliament and a detailed interpretation by judges based on precedent.

## 2. Restrictions on Foreign Investments

### 2.1 Approval of Foreign Investments

While the UK does not have a specific foreign investment regime, in 2022 it introduced the National Security and Investments Act 2021 (NSIA), which applies to investors of any country, including UK investors. There is a requirement for a mandatory notification if the target is active in one of 17 key sectors of the economy (and within the definition of those sectors in the Act). Clearance must be obtained prior to closing (with substantial fines for non-compliance).

The 17 sectors are:

- advanced materials;
- advanced robotics;
- artificial intelligence (AI);
- civil nuclear;
- communications;
- computing hardware;
- critical suppliers to government;
- cryptographic authentication;
- data infrastructure;
- defence;
- energy;
- military and dual use;
- quantum technologies;
- satellite and space technologies;
- suppliers to the emergency services;
- synthetic biology; and
- transport.

Notifiable transactions are those where there is an increase in shareholding or voting rights from:

- 25% or less to more than 25%;
- 50% or less to more than 50%;
- less than 75% to 75% or more; or
- the acquisition of voting rights that enables or prevents the passing of any class of resolution governing the affairs of the entity being acquired.

The Act also introduces a voluntary filing if the target is outside the definitions of the 17 key sectors, or is active in any sector but there are national security issues. Since filing is voluntary, there is no obligation to wait for approval before completing. However non-notified transactions that raise national security concerns might be called in for review by the government. Asset deals and IP licensing transactions can be subject to call-in if they raise national security issues, and it is possible to notify voluntarily.

The Act has extraterritorial application (therefore, for example, it will apply to acquisitions in the USA, Canada, EU, China or any other jurisdictions of non-UK entities that conduct activities in the UK or supply goods and services in the UK, even if they do not have a direct presence there).

### 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

Notifications are made to a dedicated government unit in the Cabinet Office, the Investment Security Unit (ISU), through a digital portal. The form to complete is not overly complex and, within a couple of weeks, the ISU will confirm whether the filing is accepted or if more information is needed. Once the Secretary of State confirms acceptance, a review period of 30 working days will start. This could end with a clearance or a call-in for an assessment period of a further 30 working days, at the end of which there can be clearance, clearance with conditions, prohibition or an extension of 45 working days for further review. With possible suspensions during the assessment period, full national security scrutiny can be estimated to be up to 21 weeks, or longer with the parties' agreement.

Closing a transaction that is subject to mandatory notification without notifying and obtaining clearance carries a heavy fine of up to 5% of the total global turnover of the acquirer, or GBP10 million (whichever is greater), and imprisonment of up to five years, and the transaction becomes void.

### 2.3 Commitments Required From Foreign Investors

The government has accepted commitments in several cases – eg, requiring certain capabilities to remain in the UK, information barriers for sensitive information and restricted access to sensitive areas.

### 2.4 Right to Appeal

If a company wishes to challenge certain decisions of the Secretary of State – eg, to approve, block or unwind a transaction – it can apply for a judicial review of the decision.

Judicial review is the mechanism by which the courts review the lawfulness of a decision taken by a public body. An application for judicial review can be brought on the grounds of illegality, procedural unfairness or unreasonableness/irrationality, or for a breach of a right protected by the European Convention of Human Rights.

Normally, an application for judicial review must be made "promptly and in any event within three months" of the decision under challenge. However, the NSIA modifies the term, and an application must be made within 28 days of any decision (extendable in exceptional circumstances).

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

The three most common types of corporate vehicles in the UK are:

- a private company (Ltd) limited by shares;
- a public limited company (PLC); and
- a limited liability partnership (LLP).

There are other corporate vehicles – eg, companies limited by guarantee, unlimited companies, community interest companies and charitable incorporated organisations – but these are less common.

### Private Limited Companies

A UK private limited company is typically governed by one or more directors and operates in accordance with its Articles of Association, as prescribed by the Companies Act 2006 (CA2006). The liability of shareholders is limited, meaning that their financial responsibility for company debts does not exceed the unpaid amount on their shares.

A private limited company does not have a minimum share capital requirement, though it must always have at least one share in issue, and there must always be at least one shareholder. These companies are best suited to SMEs and are particularly appropriate for family businesses, start-ups and businesses seeking to keep their affairs private from public scrutiny.

### Public Limited Companies

A UK PLC is governed by the CA2006. Many PLCs are admitted on a stock market, typically the London Stock Exchange or the AIM Market, which will mean an additional regulatory framework applies (depending on the relevant market). A PLC must appoint at least two directors and a qualified company secretary. It is managed by a board of directors and is subject to more stringent regulations than a private limited company. A PLC must have a minimum of two shareholders, and shareholders' liability is limited to the amount that remains unpaid on the shares they hold. The minimum share capital threshold for a PLC is GBP50,000, with at least 25% of the nominal capital (and the whole of any premium) being paid up in cash upon incorporation. This type of entity is suitable for larger ventures looking to attract investment from public markets – being able to raise capital through equity offerings and sell shares to the public offers substantial opportunities for growth and expansion, making it an attractive option for businesses with ambitious scaling plans.

Some companies may start as private companies limited by shares and re-register as a PLC later, perhaps because they are looking to list on a public market.

### Limited Liability Partnerships

An LLP is a type of corporate vehicle that merges the flexibility of a partnership (as it is taxed as a partnership) with the benefits of limited liability for its members. The governance structure of an LLP is administered directly by its members, usually pursuant to an LLP agreement, which sets out each member's responsibilities, obligations and share of profits.

Members of an LLP enjoy limited liability protection – their personal exposure for the debts incurred by the LLP does not extend beyond their individual investments into the LLP unless they engage in wrongdoing or personal negligence. There are no statutory rules regarding minimum capital contributions in an LLP, but an LLP must always have at least two members. In the UK, LLPs are particularly favoured by professional services firms, including law practices and accountants.

## 3.2 Incorporation Process

The steps and timing for the incorporation of entities in the UK depend on the type of entity that has been chosen. All private limited companies, PLCs and LLPs must be registered at Companies House, the UK's registrar of companies, which operates under the CA2006. Online registration with Companies House is typically processed within 24 hours, while postal applications may take 8–10 days. A fee is payable. The information required for each is as follows.

- Limited companies:
  - (a) name – an appropriate company name that conforms with Companies House regulations must be chosen;
  - (b) documentation – the necessary documents, including the memorandum of association and articles of association, must be prepared;
  - (c) identity verification – all proposed directors who are individuals must verify their identity (using one of the Companies House-approved routes) prior to incorporation (if they have not done so already for another entity) and provide their personal code as proof;
  - (d) forms – Form IN01 must be completed, with details including the registered office, email address, principal business activities, director(s), secretary (if any), shareholder(s), person(s) with significant control, share capital and confirmation of lawful purpose; and
  - (e) registration – once the application has been processed by Companies House, a certificate of incorporation will be received confirming the

legal existence of the private limited company.

- PLCs:
  (a) name – an appropriate company name that conforms with Companies House regulations must be chosen;
  (b) documentation – the necessary documents, including the memorandum of association and articles of association, must be prepared;
  (c) identity verification – all proposed directors who are individuals must verify their identity prior to incorporation (if they have not done so already) and provide their personal code;
  (d) forms – Form IN01 must be completed, with details including the registered office, email address, principal business activities, directors (at least two), secretary, shareholder(s), person(s) with significant control, share capital and confirmation of lawful purpose;
  (e) minimum share capital – it must be ensured that there is a minimum allotted share capital of GBP50,000 (or the specified euro equivalent) with at least 25% of the nominal capital (and the whole of any premium) paid up in cash upon incorporation;
  (f) registration – once the application has been processed by Companies House, a certificate of incorporation will be received confirming the legal existence of the PLC;
  (g) trading certificate – before starting business or borrowing money, a trading certificate must be obtained from Companies House by demonstrating that the PLC has met the minimum share capital requirements, which can take several weeks after registration; and
  (h) listing – if the PLC is to be listed on a stock market, various requirements will need to be met, including the publication of a prospectus (or multilateral trading facility (MTF) admission prospectus) and there are ongoing rules and obligations; timing for this step can vary depending on market conditions and the PLC's readiness to list.
- LLPs:
  (a) name – an appropriate LLP name that conforms with Companies House regulations must be chosen;
  (b) designated members – at least two members must be chosen to be designated members, who are responsible for statutory compliance duties;
  (c) documentation – an LLP agreement is optional but recommended;
  (d) identity verification – all proposed members who are individuals must complete identity verification (if they have not done so already) and provide their personal code;
  (e) forms – Form LL IN01 must be completed, with details including the registered office, email address and information about its members and any person(s) with significant control; and
  (f) registration – once the application has been processed by Companies House, a Certificate of Incorporation will be issued confirming the legal existence of the LLP.

### 3.3 Ongoing Reporting and Disclosure Obligations

UK companies are subject to various ongoing reporting and disclosure obligations, which aim to ensure transparency and accountability.

Private limited companies, PLCs and LLPs are required to inform Companies House about any changes in directors or secretaries, amendments to articles, changes to share capital or beneficial ownership and certain resolutions of the shareholders. These filings must be made with Companies House within certain deadlines, often 14–30 days from the relevant event or change. Private limited companies, PLCs and LLPs need to file annual financial statements and annual confirmation statements.

Financial statements should reflect an accurate financial position and be filed within nine months of the end of their accounting reference period for companies and LLPs, or within six months for PLCs. Confirmation statements must be filed on a yearly basis to confirm that all information about the business held by Companies House is current and correct, including details on management, share capital, shareholders and the people with significant control. Filing misleading or false statements at Companies House, without reasonable excuse, is a criminal offence.

For PLCs, there are a number of further reporting and disclosure requirements that are set out by the market regulators.

If companies fail to comply with their ongoing reporting and disclosure obligations, various penalties and consequences may apply.

### 3.4 Management Structures

In the UK, entities are typically organised under a one-tier system, with a single board of directors responsible for both the strategic direction and the day-to-day management. Combining oversight with active management in a single body streamlines the decision-making process.

The board of directors is usually made up of executive and non-executive directors – executive directors are responsible for the daily operations of the company, and the non-executive directors bring an independent perspective and oversee the performance of the executive directors.

### 3.5 Directors', Officers' and Shareholders' Liability

Directors and officers of both private companies and PLCs have fiduciary duties towards the company, which include acting within their powers, promoting the success of the company for its members' benefit, exercising independent judgment and reasonable care, skill and diligence and avoiding conflicts of interest. The main rules that govern the duties of directors in the UK are set out in the CA2006.

If directors breach their fiduciary duties, they could face civil proceedings. In some cases, criminal liability may arise under company or insolvency legislation – eg, for fraud, wrongful trading or false filings at Companies House (or some other CA2006 breaches). If a PLC is listed on a stock market, its directors could face criminal liability for breaches of financial services or market regulation – eg, the Market Abuse Regulations, Financial Services and Market Act 2000 or Criminal Justice Act 1993.

In addition, there are some areas of legislation that impose personal liability on a company's directors for actions by the company or associated people, including in relation to health and safety, environmental matters, bribery, fraud, tax evasion and corporate manslaughter.

The principle known as "piercing (or lifting) the corporate veil" exists in English law. Typically, a company is seen as a distinct entity from its shareholders, although the court may decide to pierce this "veil". This principle is only applied by courts in exceptional circumstances where the company has been used as a vehicle for fraud or improper conduct, or where the individuals behind a company have abused the corporate structure to shield themselves from liability or to perpetrate wrongdoing. Case law provides that it can only be justified when the more conventional remedies are all seen to be inadequate.

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

The legal rules governing the employment relationship are multifaceted and can be categorised as follows.

#### Statutory Law

This comprises legislation enacted by Parliament that sets out various rights and obligations for employers and employees. Key statutes include the Employment Rights Act 1996 (ERA1996), the Equality Act 2010 (EA2010), the Health and Safety at Work etc. Act 1974 and the Employment Rights Act 2025 (ERA2025). The ERA2025 represents a significant overhaul of UK employment law. It came into force on 18 December 2025; however, many of the changes will only take effect in 2026 and 2027.

The following laws, depending on the stage of employment in question, are of particular note.

- Recruitment:
  - (a) EA2010;
  - (b) Rehabilitation of Offenders 1974; and
  - (c) the Data Protection Act (DPA) 1998.
- Pre-employment checks:
  - (a) the Safeguarding Vulnerable Groups Act 2006; and
  - (b) the Immigration, Asylum and Nationality Act 2006.

- Employment offer:
  (a) ERA1996;
  (b) the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002; and
  (c) the Part Time Workers (Protection from Less Favourable Treatment) Regulations 2000.
- Training and development:
  (a) EA2010;
  (b) ERA1996;
  (c) the Education and Skill Act 2008; and
  (d) the Employees Study and Training Regulations 2010.
- Change in personal circumstances:
  (a) ERA1996;
  (b) ERA2025;
  (c) the Flexible Working Regulations 2014; and
  (d) the Employment Act 2002.
- Performance management:
  (a) EA2010; and
  (b) ERA1996.
- Industrial action:
  (a) ERA2025;
  (b) the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A1992);
  (c) the Strikes (Minimum Service Levels) Act 2023; and
  (d) the Conduct of Employment Agencies and Employment Business (Amendment) Regulations 2022.
- Mergers and acquisitions:
  (a) the Transfer of Undertakings (Protection of Employment) Regulations 2006.
- End of employment:
  (a) ERA1996;
  (b) ERA2025;
  (c) EA2010;
  (d) TULR(C)A1992; and
  (e) the Collective Redundancies and the Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 1999.

### Other Sources of Law and Regulation

The following are also important sources of legal rules that govern employment relationships.

- Case law (common law): The UK uses a common law system whereby judges make decisions interpreting statutes and cases establishing legal principles. Case law establishes precedent, which is then followed by other tribunals deciding employment disputes.
- Collective bargaining agreements: These are agreements made between employers (or employers' organisations) and trade unions representing workers. They govern key employment terms including pay, working hours, holidays and other working conditions.
- Employment contracts: Individual contracts between an employer and employee establish the contractual terms that apply to the employment relationship including duties, remuneration, benefits and termination procedures.
- Regulatory materials: Guidance from regulatory bodies, including the Health & Safety Executive or Information Commissioner's Office, also plays a significant role in shaping workplace practices.

## 4.2 Characteristics of Employment Contracts

An employment contract between an employee and employer is a legally binding agreement. An employee has the right to a "written statement of employment particulars" in accordance with Section 1 of the ERA1996. A Section 1 statement sets out the main terms of employment, and there is a list of mandatory terms that must be given to every employee.

An employer will be treated as having met its obligations to provide a Section 1 statement where it gives an employee a written contract containing information satisfying the employer's Section 1 obligations, and the document is provided no later than the beginning of employment.

From October 2026, the ERA2025 introduces a new right to be provided with a statement of a worker's right to join a trade union. This statement must be provided at the same time as the Section 1 statement.

The characteristics of a typical employment contract include:

- a job title and description;
- commencement date of the employment, duration and if it is intended to be for a fixed term;
- location of work;
- salary and benefits, including payment frequency;

- hours of work;
- probationary period and terms;
- notice period;
- holiday pay entitlement and procedures;
- sick leave policies and pay;
- notice period required for termination by either party;
- any training entitlement that the employer requires the worker to complete;
- disciplinary and grievance procedure;
- variation of terms – this explains how changes to the employment contract are made, typically requiring mutual agreement in writing; and
- any post-employment restrictions – non-compete or restrictive covenants.

### 4.3 Working Time

In the UK, the regulation of working hours for workers (which includes employees) is governed by the Working Time Regulations 1998 (as amended). Key aspects of these regulations include the following.

- Maximum weekly working time: Workers are protected by a 48-hour maximum working week, calculated over a reference period (typically 17 weeks). Some sectors are exempt from this, as are senior workers, who can determine their own working time. Workers can opt out of the maximum working week by signing a written statement, but they cannot be forced to do so. They may opt back into the regime at any time by giving notice to their employer.
- Night work limits: For night workers, there are special limits on working hours. Typically, night work should not exceed an average of eight hours in any 24-hour period.
- Rest periods and breaks: Workers have the right to rest breaks during work (a minimum of 20 minutes if the working day is longer than six hours) and daily and weekly rest periods (11 consecutive hours' rest in any 24-hour period and an uninterrupted 24 hours without any work each week or 48 hours each fortnight).
- Overtime regulation: Employers should decide whether overtime is voluntary or compulsory for a particular job and draft the employee's employment contract accordingly. There are no statutory provisions that require an employer to pay a particular overtime wage, but average pay over the total hours they have worked must not fall below the national minimum wage. Working time may have an impact on employees' holiday pay. Employers must ensure that total working time, including overtime, does not exceed the maximum weekly limit unless an opt-out agreement is in place.
- Record keeping: Employers must keep adequate records to show compliance with working time limits and health assessments for night workers.

### 4.4 Termination of Employment Contracts

The following conditions apply for termination of employment.

- There is no concept of "at will" employment in the UK, and employees have the right to be given notice when their employment terminates.
- As a requirement by law, employees must give their employer at least one week's notice that they are leaving if they have been employed for one month or more. An employee who has been continuously employed for more than one month, but less than two years, is entitled to receive one week's notice from their employer. Thereafter, they are entitled to receive an additional week's notice for each complete year of service, up to a maximum of 12 weeks.
- If an employer wants to, it can extend the notice period beyond the statutory notice period by including longer notice periods in the employment contract.
- An employee can be dismissed without any notice period if they have committed a serious breach of the employment contract that would justify this (eg, gross misconduct).
- All employees with more than two years' service may only be dismissed for one of the five legally fair reasons and be subject to a fair procedure. If the employer does not follow this procedure, the employee may have an entitlement to an ordinary unfair dismissal claim and can claim compensation as a result. The ERA2025 will reduce the qualifying period for unfair dismissal from two years to six months and completely remove the cap on compensatory awards. These changes apply from 1 January 2027.

- There are circumstances where employees with less than two years' service can claim automatic unfair dismissal. These include if the dismissal is for a reason like pregnancy or other discriminatory reason. The ERA2025 will, from 1 January 2027, introduce a further category of automatic unfair dismissal where the reason for dismissal is the employer's attempt to change certain core contractual terms (eg, a reduction in pay, changes to working hours or pension entitlements) and the employee refused to agree. This historically common practice by employers is known as "fire and rehire". It should be noted that there is a limited exception where employers can demonstrate the change was necessary to address serious financial difficulties that could not reasonably have been avoided.

In the case of redundancies, the following process must be followed.

- If an employer proposes to make redundant 20 or more employees within a period of 90 days or less at one establishment (ie, the employees' local workplace rather than the organisation as a whole), then it must consult collectively with elected employee representatives, as well as notify the Secretary of State. Consultation should start in good time before any redundancies are confirmed.
- Any dismissals should not take effect until at least:
  (a) 30 days after an employer's consultation obligations have been triggered, where between 20 and 99 redundancies are proposed; or
  (b) 45 days after an employer's consultation obligations have been triggered, where 100 or more redundancies are proposed.
- If an employee is made redundant and they have more than two years' service, they will qualify for a statutory redundancy payment.

### 4.5 Employee Representations

The following rules apply for collective consultation:

- an employer must collectively consult employees if they propose to make redundant 20 or more employees at one establishment within a period of 90 days or less;
- employers must consult with a trade union or employee representative about the redundancy process; and
- failure to comply with the legal requirement for collective consultation can result in claims to the employment tribunal. For dismissals taking place on or after 6 April 2026, the ERA2025 has doubled the maximum protective award for failure to comply with collective consultation obligations from up to 90 days' gross pay to up to 180 days' gross pay for each affected employee.

The following rules apply with respect to grievances and disciplinary hearings:

- employees and workers have a legal right to be accompanied, by a trade union representative or another employee, to grievance meetings or disciplinary hearings that can result in a disciplinary action against them;
- if an employee seeks the right to be accompanied, they must make a reasonable request;
- during a hearing, a representative may set out the employee's case, respond for the employee to any comments, talk to the employee during the hearing or take notes; and
- denying an employee the right to be accompanied could amount to a breach of an implied duty of trust and confidence and render the process unfair.

Rules apply with respect to TUPE (Transfer of Undertakings (Protection of Employment)), as follows:

- prior to a TUPE transfer, both the outgoing and incoming employers must inform and consult with staff representatives to set out any proposed changes and why the transfer is taking place; and
- an employer will consult with an employee regarding any changes relating to work practices that will take place as part of the transfer.

Applicable ICE Regulations (Information and Consultation of Employees) are as follows:

- where an employer has 50 or more employees in the organisation, the employees have the right to request a formal agreement to be informed and consulted on the operation of the business; and

- an elected employee representative may assist in conducting negotiations and requesting information from the employer.

From October 2026, the ERA2025 will introduce the following reform of trade union laws:

- statutory right for unions to access workplaces physically to meet, support, represent, recruit or organise workers or facilitate collective bargaining, and to communicate with workers both in person and digitally;
- duty to inform workers of the right to join a trade union; and
- enhanced protections against detriment short of dismissal for union representatives and employees who take part in industrial action.

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/Employers

Employees are subject to income tax on earnings from their employment, which is charged at progressive rates of 20%, 40% and 45%. UK-resident individuals are generally taxable on their worldwide income; non-UK residents are taxed only on earnings in respect of duties performed in the UK, subject to any relief available under double tax treaties. Previously, individuals who became UK residents after at least three years of non-residence were entitled to claim "overseas workday relief", whereby earnings from duties performed outside the UK were taxable only if and when remitted to the UK (the so-called "remittance basis of taxation"). From 6 April 2025, the remittance basis was replaced with the four-year foreign income and gains (FIG) regime. The regime allows qualifying residents to claim relief from taxes on eligible FIG and is available for a maximum period of four consecutive years from when an individual became a UK tax resident. Relief under the regime can be claimed only on the following types of foreign income:

- profits of a trade carried on wholly outside the UK;
- profits of an overseas property business;
- dividends from non-UK resident companies; and
- interest – eg, interest paid on a foreign bank account.

Employers with a presence in the UK are generally required to withhold tax from payments to employees, and to account for it to HM Revenue & Customs (HMRC) through the pay-as-you-earn (PAYE) system.

Special rules apply to tax benefits in kind and earnings from employment-related securities (including share options).

National insurance contributions (NIC; ie, social security contributions) are charged on employees who are present in the UK. These are currently charged at a rate of 8% up to the "upper earnings limit" (currently GBP967 per week) and 2% above that threshold. The employer is liable for secondary contributions at a rate of 15%. Employer contributions apply to benefits in kind, and both employer and employee contributions may apply to benefits from employment-related securities that are readily convertible assets. The employer is required to account for NIC through the PAYE system.

### 5.2 Taxes Applicable to Businesses

A company that is resident in the UK is chargeable to corporation tax on its worldwide profits. A non-resident company is chargeable to corporation tax on profits of a trade carried on in the UK through a permanent establishment therein, as well as from profits of a UK property business and any profits from a trade of dealing in or developing UK land. A residual charge to income tax applies to the profits of a trade carried on in the UK other than through a permanent establishment – in practice, this only applies to companies that are not resident in territories with which the UK has a tax treaty.

For accounting periods commencing on or after 31 December 2023, the UK has implemented the Pillar 2 Income Inclusion Rule, known as the multinational top-up tax (MTT), and a qualifying domestic top-up tax. The undertaxed profits rule was introduced with effect from 31 December 2024.

The UK imposes withholding tax on UK-source interest, royalties and certain other payments of a recur-

rent nature ("annual payments") at a rate of 20%. There is no withholding tax on dividends, except dividends paid by companies within the real estate investment trust regime. Withholding tax liabilities may be reduced or eliminated under the UK's double tax treaties, and certain additional reliefs apply under domestic law with respect to withholding tax on interest.

Companies with a UK establishment are obliged to register for VAT and to charge VAT on taxable supplies of goods and services if the value of its taxable supplies exceeds the VAT registration threshold (currently GBP90,000). Non-established persons are liable to register if they make any taxable supplies in the UK.

### 5.3 Available Tax Credits/Incentives

The UK offers an "above the line" credit for expenditure on research and development, which was subject to significant reform with effect from 1 April 2024. The amount of the credit is 20% of the qualifying expenditure, which is itself subject to corporation tax in the hands of the recipient, subject to a cap in many cases at three times the amount of the company's PAYE and NIC liabilities for the accounting period plus GBP20,000.

The former super-deduction regime for SMEs has been retained for loss-making, R&D-intensive SMEs. This provides an enhanced 186% deduction for qualifying R&D expenditure, which may be surrendered in exchange for a repayable tax credit amounting to 14.5% of the surrenderable loss. Similar reliefs are available for companies in the creative sector.

An elective patent box regime applies for profits from qualifying patents, resulting in an effective tax rate of 10% on qualifying profits.

### 5.4 Tax Consolidation

The UK does not have a consolidation regime for corporation tax purposes. However, the group relief rules allow companies to surrender losses within a group. Broadly, companies are members of the same group for this purpose if one is a 75% subsidiary of the other, or both are 75% subsidiaries of a third company (which need not be a UK company). Both current and carried-forward losses arising on or after 1 April 2017 may be subject to group relief surrenders.

The transfer of capital assets (including intangible fixed assets and loan relationships) between group companies will generally be viewed for tax purposes as taking place on a no-gain/no-loss basis, although the gain that would otherwise have been taxable on the intra-group transfer may be brought back into charge by way of a "degrouping charge" if the transferee company leaves the group within the next six years. A company that disposes of an asset outside the group may elect for the gain to be reallocated to another group company (eg, a company that has losses it can use to offset the gain).

For VAT purposes, companies may elect to register as a group where one controls the other or the two companies are under common control (including control by an individual or partnership). The effect of group registration is that all supplies to third parties are treated for VAT purposes as made by the representative member of the group, all supplies between group members are disregarded, and all group members are jointly and severally liable for the group's VAT liabilities.

### 5.5 Thin Capitalisation Rules and Other Limitations

The UK polices thin capitalisation through transfer-pricing legislation. Interest expense exceeding an arm's length amount may be disallowed for tax purposes. The transfer pricing legislation provides that it should be read in line with the 2022 OECD Transfer Pricing Guidelines, which include the guidance on financial transactions approved in 2020. The capacity of companies within a group to bear interest expense is generally tested on a company-by-company basis, but, to the extent that a debtor company is unable to do so, other group companies can be treated as guarantors and, as such, may take interest deductions for such interest expense. HMRC will consider entering into advance thin-capitalisation agreements to provide certainty as to a company's interest deductibility position – these have statutory force as advance pricing agreements.

In addition, the UK has introduced a corporate interest restriction limiting interest deductions for UK group companies to the lower of 30% of tax EBITDA and the worldwide group's interest expense, subject to a GBP2 million de minimis. Where the worldwide group

has an interest – ie, an EBITDA ratio that is higher than 30% – the UK companies may make a "group ratio election", allowing it to claim interest deductions up to an equivalent ratio. Disallowed deductions may be carried forward indefinitely and utilised in future periods; unused allowances with respect to the interest:EBITDA ratio may be carried forward for up to five years, and unused allowances with respect to the worldwide interest expense may be carried forward for one year.

### 5.6 Transfer Pricing

The UK has transfer pricing rules that align with – and are to be interpreted in accordance with – the OECD transfer pricing guidelines. These apply to domestic UK-to-UK arrangements, as well as cross-border provisions, but the government has recently consulted on introducing an exemption for transactions between UK companies where no UK tax is at stake.

An exemption applies where the UK company is dormant. In addition, SMEs are exempt from transfer pricing rules with respect to transactions with residents of the UK and of territories with which the UK has a full tax treaty. HMRC may issue a transfer pricing notice to "turn on" the transfer pricing rules to a medium-sized enterprise in any circumstances, or to a small enterprise where a transaction results in profits benefiting from the patent box regime.

From 1 January 2026, the Finance Act 2026 introduced various reforms to the UK's transfer pricing, permanent establishment and diverted profits tax (DPT) rules, including an exemption from transfer pricing rules for domestic transactions between UK companies taxable at the same corporation tax rate and an improvement to the "acting together" rules, to prevent truly arms-length arrangements from being caught by the rules. The government considered bringing medium-sized enterprises fully within the ambit of transfer pricing, but decided not to proceed with this proposal.

### 5.7 Anti-Evasion Rules

The UK has numerous anti-avoidance rules, many of which operate to disregard or re-characterise arrangements whose main purpose, or one of whose main purposes, is the obtaining of a tax advantage. These include a general anti-abuse rule, which can counteract arrangements giving rise to a tax advantage where they are "abusive" – defined as arrangements that cannot reasonably be regarded as a reasonable course of action in relation to the relevant legislative provisions. The courts have established that legislation must be read purposively and applied to the facts as viewed realistically – principles that have frequently been applied to counteract perceived avoidance.

### 5.8 Tariffs

Since the end of the Brexit transition period on 31 December 2020, the tariff regime in the UK has been governed by the UK Global Tariff (UKGT). The UKGT applies to all countries and all goods imported into the UK, unless the UK has a free trade agreement (FTA) with the country of origin or an exception applies (eg, the goods are imported from certain developing countries). Broadly, the tariff rates under the UKGT follow the EU tariffs, with some exceptions for goods where the UK has no domestic production.

Examples of notable FTAs include:

- the Trade and Cooperation Agreement with the EU – this came into force on 1 May 2021 and removed tariffs from goods traded between the UK and the EU, provided that traders had "self-certified" their compliance with agreed rules of origin (ie, that the goods have originated in either the UK or the EU according to specific criteria); and
- the Comprehensive and Progressive Agreement for Trans-Pacific Partnership between the UK and nine countries in the Asia-Pacific region – this allows for tariff elimination and reduction on key sectors (eg, food and agricultural products and goods in digital trade).

Some goods are covered by a tariff-rate quota (TRQ), which allows a limited amount of a product to be imported at a lower or zero tariff rate, subject to certain qualifying criteria. TRQs primarily cover agricultural and fishery products, as well as processed foods and industrial goods.

The UK has removed Russia's Most Favoured Nation status, following its invasion of Ukraine, effectively imposing significantly higher tariffs on Russian goods. Additional duties of 35% are currently imposed on

a wide range of goods originating from Russia and Belarus, above any existing tariff rates.

On 24 April 2025, the UK introduced new restrictions, including a complete prohibition on the importation of Russian diamonds and prohibitions on the export to Russia of energy-related goods and security technology. In previous years, various other sanctions had been implemented to introduce restrictions on trade for goods (eg, oil, gold, iron and steel products), which continue to be in force.

The recent trade deal with the USA has led to various tariff adjustments. Under the deal, the USA will continue to impose a new 10% tariff on imports for most British goods but higher tariffs on the imports of British cars, steel and aluminium will be reduced.

## 6. Competition Law

### 6.1 Merger Control Notification

The UK's merger control regime is overseen by the Competition and Markets Authority (CMA), which will have jurisdiction to review a transaction where a relevant merger situation has been created. This will be the case where two or more enterprises cease to be distinct and either:

- the target has turnover in the UK of exceeding GBP100M (the "turnover test"); or
- at least one of the parties has a UK turnover of more than GBP10 and, as a result of the transaction, the parties have a combined share in excess of 25% of the supply of any goods and services in the UK or a substantial part of it (the "share of supply test").

There is also a "hybrid" test, where the CMA will have jurisdiction where one party to the transaction (usually the acquirer) has an existing UK annual turnover of GBP350 million or more and supplies or acquires at least 33% of a particular category of goods or services in the UK (or a substantial part of it). The other party must be connected to the UK.

The UK has a largely voluntary notification system, so even where any of the thresholds are met, the parties are not required to seek clearance before completion of the transaction. For entities that the CMA has designated as having strategic market status under the Digital Markets, Competition and Consumers Act 2024, there is a mandatory requirement to notify to the CMA M&A activity above GBP25 million.

The rules are triggered when enterprises cease to be distinct – ie, brought under common ownership or control. This covers any joint venture or acquisition of shares that give total or partial control over any other entity.

### 6.2 Merger Control Procedure

The parties will need to determine whether to notify to the CMA for clearance. If they choose to do so, the following steps must take place.

- The CMA must be informed of the transaction, and pre-notification discussions on a draft merger notice are entered into, which can last up to three months (longer in complex cases).
- The CMA must be provided with the draft, and any additional queries from the CMA must be responded to.
- When the CMA is satisfied that the draft notification is complete, the parties must make the transaction public and formally file the merger form, and the CMA will start the formal Phase 1 process.
- Phase 1 will take up to 40 working days, and the CMA will consider whether the transaction may lead to a "substantial lessening of competition" (SLC).
- If there are no competition concerns, the CMA will proceed to clearance and issue a decision, which will be publicly announced.
- If it is determined that there is the risk of an SLC, the CMA has a duty to refer to a more in-depth Phase 1 review.
- To avoid a Phase 2, it is open to the parties to offer remedies to address competition concerns, in the form of binding undertakings in lieu of reference (UIL).
- Generally, the CMA will accept UILs where the problem is easily severable (structural remedies – ie, divestment of all or part of the business). Behavioural remedies may also be considered.

- If UILs are offered, the CMA will begin the process of a detailed consideration of whether they are suitable. The timeframe for final determination is 50 working days from when the SLC decision was announced to the parties, with the possibility of a 40 working-day extension.
- If the CMA refers to Phase 2, a more in-depth and detailed examination of the possible SLC that was identified in Phase I is undertaken. The entire process is complex and time-consuming, and the CMA has up to 24 weeks from reference (extendable by up to eight weeks) to make a final decision.

If the parties choose not to notify for clearance, the CMA has up to four months from the later of completion of a non-notified merger and the time when the transaction became public to investigate. While considering whether to investigate an anticipated completed transaction, the CMA may make an initial enforcement order to prevent pre-emptive integration of the businesses or require the reversal of any action. This means that the parties are unable to begin to integrate the businesses until the CMA's investigation is complete (and clearance obtained) or the CMA confirms that it does not have jurisdiction.

If the CMA decides to look into a non-notified transaction, it will send the acquirer an enquiry letter requiring it to respond with details of whether one or both the jurisdictional thresholds are met and, if so, further substantial details relating to the transaction. If the thresholds are met, the CMA may decide to open a merger investigation and begin the process as set out in the foregoing.

If the parties believe that the transaction does not raise competition issues, or they take a decision not to notify formally, they can submit what is called a "briefing paper". This is a well-reasoned document of around 5–6 pages explaining why the parties do not propose to submit a notification to the CMA and why there are no competition issues.

If the CMA agrees with the parties' assessment, it will usually come back stating that it has no further questions. This is not public, and third parties are not contacted in relation to a briefing paper. A briefing paper can usually only be submitted after the transaction documentation is signed, and the CMA usually gives a response within a couple of weeks. There are no filing fees.

If the response is positive, and the CMA does not call in the transaction for a Phase 1 review, this gives some comfort to the parties, although the CMA reserves the right to open a Phase 1 investigation at a later stage – eg, if new facts come to light or complaints are raised. As mentioned in the foregoing, the CMA can open an investigation, even after a briefing paper, within four months of the deal being made public.

### 6.3 Cartels

Chapter 1 of the Competition Act 1998 prohibits agreements between undertakings, decisions by associations of undertakings, and concerted practices that may affect trade within the UK and have as their object or effect the prevention, restriction or distortion of competition. All agreements that infringe Chapter 1 are void.

Section 2 (2) of the Act sets out a non-exhaustive list of prohibited behaviour, comprising the following:

- directly or indirectly fixing purchase or selling prices or any other trading conditions;
- limiting or controlling production, markets, technical development or investment;
- sharing markets or sources of supply;
- applying dissimilar conditions to equivalent transactions with other trading parties, placing them at a competitive disadvantage; and
- making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations that, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Certain agreements may be exempt from the prohibition if they contribute to improving production or distribution, or promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits. However, these agreements must not:

- impose restrictions that are not indispensable to the attainment of these objectives; or

- afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.

If an agreement is investigated, the CMA can impose fines on undertakings that violate the prohibition of up to a maximum of 10% of their worldwide turnover.

### 6.4 Abuse of Dominant Position

Chapter 2 of the Competition Act 1998 prohibits any conduct by one or more undertakings that amounts to the abuse of a dominant position in a market within the UK, and partially prohibits it if it may affect trade within the UK.

An undertaking is considered dominant if it can act independently of competitive pressures (eg, setting prices, controlling supply or hindering competitors' ability to operate in the market). There is a rebuttable presumption of dominance if an undertaking has a share of the relevant market of more than 50%, and CMA guidance confirms that less than a 40% share is unlikely to create dominance.

Section 18 (2) of the Act sets out examples of abuse, including the following:

- directly or indirectly imposing unfair purchase or selling prices, or other unfair trading conditions;
- limiting production, markets or technical development to the prejudice of consumers;
- applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; and
- making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations that, by their nature or according to commercial usage, have no connection with the subject of such contracts.

If it can be shown that the behaviour is objectively justified, it will not be abusive even if competition is restricted. It is for the dominant undertaking to prove the justification. If conduct is investigated, the CMA can impose fines on dominant undertakings of up to 10% of their worldwide turnover.

## 7. Intellectual Property

### 7.1 Patents

Patents are exclusivity rights that protect products and processes of a technical nature. The subject matter of protection must be novel and inventive, and must satisfy several other statutory requirements, for the patent to be valid. Patents last 20 years, but protection may be extended in the case of a medicinal product by up to a further five years by a supplementary protection certificate. Patents are normally registered in national patent offices once granted, but the unitary patent (which has pan-European protection for 18 countries rather than a single country) is registered at the European Patent Office. Depending on the nature of the patent, it may be enforced in infringement proceedings in the national courts or the Unified Patent Court. Remedies for infringement typically include damages and injunction.

### 7.2 Trade Marks

Broadly, a trade mark is any sign capable of distinguishing the goods and services of one undertaking from those of others. A trade mark can consist of, for example, words (including personal, business and brand names), logos, patterns, letters, numerals, colours, sounds, motions, holograms, videos and the shape of goods or their packaging. Provided they are not cancelled, trade mark registrations subsist for ten years from the date of registration and can be renewed (potentially indefinitely) for successive periods of ten years on payment of a fee. No proof of use is required for renewal. Trade mark protection can be obtained by filing an application with (i) the UK IP Office or (ii) the World Intellectual Property Organization (WIPO) for an international mark designating the UK. The latter can be cheaper and administratively easier if applications for the same mark are being filed in numerous jurisdictions. Trade marks must be registered for specific goods and/or services.

Protection for one good/service will not necessarily mean that the owner can prevent third-party use of the same mark for other goods/services. Unlike some other jurisdictions, a trade mark does not need to have been used for an application to be filed. However, once registered, if a mark is not put to genuine use for a continuous period of five years in the UK, it can

be revoked on application of a third party (subject to various conditions).

Applications are examined to determine whether they meet the definition of a registrable trade mark. Following successful examination, applications are published to allow oppositions to be filed by any third parties who consider they have a conflicting prior right. The UK IP Office will not raise an objection on these grounds of its own volition. Assuming any objections and oppositions are successfully resolved, an application will be registered (usually within about five months). Now that the UK is no longer part of the EU, EU trade marks (EUTMs) no longer cover the UK. However, the UK legislated to fill the gap by creating a new UK mark (called a "comparable trade mark") for all EUTMs in existence as of 31 December 2020.

The UK law of passing off protects the goodwill generated through using a trade mark (whether that mark is registered or not). It can also be used to prevent false endorsements and some misleading claims of equivalence.

Trade mark and passing-off rights are enforced through the UK courts. Remedies for infringement include compensation, an injunction to restrain the infringement, delivery up/destruction of infringing materials, publication of the judgment and legal costs. Interim injunctions can also be obtained.

Brand owners are strongly advised to (i) conduct clearance searches before launching new brands in the UK to check that they will not be infringing anyone else's rights, and (ii) file trade mark applications before announcing/launching new brands. This could save the considerable costs and embarrassment of having to re-brand.

### 7.3 Industrial Designs

There are two main types of design protection available in the UK: a registered design and an unregistered design. Both protect the appearance of a product or its packaging, resulting from their features (including features resulting from the lines, contours, colours, shape, texture and/or materials of the product/packaging). Surface decoration is also protected. To be protected, a design must be new and have individual character, and not be dictated by the technical function of the product.

A design registration lasts for a maximum of 25 years and must be renewed every five years (on payment of a fee). Unregistered design protection subsists for three years from first disclosure. Registered protection is much stronger (in particular, unregistered designs are only infringed when copied). If registration is required, an application must be filed within 12 months of first disclosure of the design; otherwise, the design will be deemed not new.

Registered protection can be obtained by filing an application with (i) the UK IP Office or (ii) WIPO for an international design designating the UK. The latter can be cheaper and administratively easier if applications for the same design(s) are being filed in numerous jurisdictions. There is very little examination of design applications, and no opposition procedure. Multiple designs can be filed in the same application to save costs.

Since the UK is no longer part of the EU, pan-EU Registered and Unregistered EU Designs no longer cover the UK. However, any such designs in existence on 31 December 2020 continue to be protected in the UK for the life of the right.

Designs are enforced through the courts in the UK. Remedies for infringement include compensation, an injunction to restrain the infringement, delivery up/destruction of infringing materials, publication of the judgment and legal costs. Interim injunctions can also be obtained.

The UK also protects another form of unregistered design (called a "design right"). It is similar in scope to the unregistered design, although there are key differences – eg, a design right does not protect surface decoration.

### 7.4 Copyright

Copyright protects original literary, dramatic, musical and artistic works, as well as other subject matter (including sound recordings, films and broadcasts). It therefore protects original drawings, graphics, software code, literature and databases. Copyright gen-

erally lasts for the life of the author plus 70 years. Different rules apply to computer-generated works, films, sound recordings, broadcasts and non-UK works/authors. It is not possible to register copyright in the UK. Protection arises automatically once a work is recorded, in writing or otherwise (irrespective of whether it is recorded by or with the permission of the author).

The general rule is that the author of a literary, dramatic, musical or artistic work is automatically the first owner of copyright in it. However, where such a work is made by an employee in the course of their employment, their employer is the first owner of copyright. Ensuring that any works created by independent contractors, outside consultants and design agencies are automatically transferred to a business is key.

Copyright is enforced through the UK courts. Remedies for infringement include compensation, an injunction to restrain the infringement, delivery up/destruction of infringing materials, publication of the judgment and legal costs. Interim injunctions can also be obtained.

Copyright can be infringed in a number of ways, including by copying the whole or a substantial part of a work in which copyright subsists (with a substantial part being assessed qualitatively rather than quantitatively). Using even very small parts of a work can constitute infringement, but there are some "permitted uses".

### 7.5 Others

Copyright can subsist in original software text/code. Databases are protected under the law of copyright if they are original – ie, if, by means of the selection or arrangement of the contents of the database, the database constitutes "the author's own intellectual creation".

A separate right, called the database right, also protects databases for which there has been a "substantial investment" in "obtaining, verifying or presenting the contents of the database". Unlike copyright, there is no requirement for originality/creativity. "Investment" can mean "any investment whether in financial, human or technical resources". Like copyright, the database right is an automatic right that exists as soon as the database is fixed in recorded form.

Trade secrets protect certain commercially sensitive and confidential information, including industrial processes and recipes, against disclosure to or use by third parties without consent. These may be enforced against breach resulting in damages and injunction.

## 8. Data Protection

### 8.1 Applicable Regulations

The UK General Data Protection Regulation (UK GDPR) is the main legislation governing the processing of personal data. It is retained in EU law and largely mirrors the EU General Data Protection Regulation 2016 but has recently been amended by the Data (Use and Access) Act 2025 (D(UA)A), which renders the UK legislation slightly further apart from the EU's General Data Protection Regulation, although the two laws remain fundamentally similar. The UK GDPR places a range of obligations on those processing personal data and confers rights on individuals in relation to their personal data. The DPA 2018 supplements the UK GDPR (including where the UK was given discretion as to its implementation). It also implements the EU Law Enforcement Directive and covers the processing of personal data by the UK intelligence services. The Privacy and Electronic Communications Regulations 2003 as amended (PECR), based on the EU's ePrivacy Directive, set out additional rules governing the privacy of communications. In particular, they cover direct marketing and the use of cookies and similar technologies.

The Network and Information Systems Regulations 2018 (the "NIS Regulations") implement the EU's Network and Information Security (NIS) Directive 2016. They cover the security of IT systems and impose various cybersecurity and incident reporting obligations on relevant digital service providers and operators of essential services in designated sectors.

The Product Security and Telecommunications Infrastructure Act 2022 deals with the security of consumer-related products. Together with related secondary

legislation, it imposes security requirements throughout the supply chain.

A variety of other sector-specific cybersecurity laws may be relevant, and the D(UA)A also introduces new provisions relating to the sharing of personal and non-personal data, the detail of which will be brought in under secondary legislation.

### 8.2 Geographical Scope

Most of these laws have extraterritorial effect, applying to businesses operating in the UK, targeting or supplying the UK, or processing the personal data of UK individuals, regardless of the organisation's location. The UK GDPR applies to any organisation processing the personal data of UK individuals where the processing relates to offering them goods or services, or to monitoring their behaviour. It applies to the processing of personal data by a controller or processor in the context of an establishment located in the UK, regardless of where the processing takes place. There are strict rules around the export of personal data from the UK.

### 8.3 Role and Authority of the Data Protection Agency

The Information Commission (IC) is the agency in charge of enforcing data protection and cybersecurity rules, and it also produces guidance and codes of practice (notably the Children's Code, which covers the processing of children's personal data by online services). The IC has various powers. Under the UK GDPR, for example, it has a range of enforcement powers, including to impose fines for non-compliance of up to the higher of GBP17.5 million or 4% of annual global turnover. Data controllers are required to pay annual fees to the IC of between GBP52 and GBP3,763 depending on their size and subject to minor exceptions.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

The UK commenced a review of its design laws in 2025. This follows amendments to the EU design regime. The UK is expected to pass the Cyber Security and Resilience (Network and Information Systems) Bill in 2026. This will expand and update the scope of the current NIS Regulations largely (but not wholly) in line with the EU NIS2 Directive, which was enacted after Brexit. The government plans to legislate on AI, although this is expected to cover AI infrastructure rather than AI safety.

New restrictions on filing documents at Companies House are expected to take effect no earlier than November 2026. Only directors or employees of a company who have verified their identity at Companies House will be able to file on behalf of that company, other than authorised intermediaries who are registered with Companies House. Identity verification requirements for corporate directors, relevant legal entities with control and corporate members of LLPs, as well as new restrictions on the use of corporate directors, are expected to take effect at a similar time.

The UK government consulted on proposed amendments to the NSIA notification regime in 2025 and published its response in March 2026. The proposed changes will refine the scope of mandatory filings by introducing new sensitive sectors (including water, critical minerals and a standalone semiconductors category) while narrowing certain definitions, particularly in relation to AI, to focus the regime more closely on transactions that present genuine national security risks. The reforms are expected to be implemented later in 2026; until then, the existing NSIA rules remain in force.

# Trends and Developments

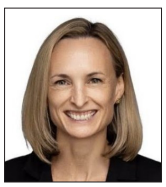
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**Winston Taylor**

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While the UK has a vibrant start-up business culture, a perception has grown in recent years that it struggles to scale its successful businesses. Capital markets in the USA are often perceived to offer higher valuations than those in the UK, which have underperformed relatively in recent years, while pools of private capital are also seen as much deeper in the USA. One consequence of this has been a steady stream of UK start-ups flipping to the USA to access those pools of capital – a trend reinforced by the generous capital gains tax incentives available to US taxpayers for investments in US early-stage businesses.

### The EIS and VCT Regimes – Background and Recent Reforms

The UK government is seeking to tackle this challenge by enhancing the tax reliefs available for investments in early-stage companies. Chief among these is the Enterprise Investment Scheme (EIS), which offers 30% income tax relief to individuals making equity investments in early-stage trading companies, as well as a complete capital gains exemption on exit and the ability to defer tax on prior capital gains where the proceeds are used to make qualifying investments.

The EIS was introduced in 1994 and has become a well-established and well-used feature of the UK investment scene. The government had previously confirmed that it would continue until at least 2035 (having been scheduled to expire in 2025), and in its most recent Budget statement, it doubled the financial thresholds for qualifying companies.

From April 2026, therefore, companies can potentially receive EIS investments if they have gross assets of up to GBP30 million before the investment, and GBP35 million after it – an increase from the previous thresholds of GBP15 million and GBP16 million, respectively. The maximum investments under the EIS and other venture capital schemes have also increased from GBP5 million in a year and GBP12 million over the life of the company to GBP10 million and GBP24 million, respectively. These thresholds are increased to GBP20 million and GBP40 million for "knowledge-intensive companies" – which, broadly, are companies spending a certain proportion of their expenditure on research and development and which either develop intellectual property for exploitation or have a certain proportion of skilled employees.

The Venture Capital Trust (VCT) regime provides income tax relief for share subscriptions in listed vehicles that themselves subscribe for shares in companies eligible for EIS relief. The VCT thresholds for investee companies have been increased in line with the increases for EIS purposes, but the rate of VCT income tax relief has been reduced from 30% to 20%. The government's justification for this change is that it provides a better balance between the EIS and VCT regimes, given dividends from VCTs are exempt from tax, while dividends from EIS companies are not.

What will this mean in practice? The increased thresholds will mean that many companies looking to raise Series B or C rounds, and which were previously above the net asset thresholds, will now be able to do so using EIS, making them considerably more attractive

to UK-resident direct investors – though the reduction in the rate of tax relief for VCT investment may have the counteracting effect of reducing investment.

The expansion of EIS eligibility is a welcome statement of intent from the government. Attracting external capital into early-stage companies is, however, only part of the challenge. Equally important is the ability of those same companies to build and retain the talented teams needed to deploy that capital effectively – and it is here that the Enterprise Management Incentive (EMI) scheme plays a central and complementary role.

## The EMI Scheme: Background and Purpose

The EMI scheme was introduced in 2000 as a targeted measure to help smaller, higher-risk trading companies compete for talent against larger, more established employers in a context where cash compensation was often not a realistic option. The government's intention was to provide a straightforward, tax-efficient mechanism through which early-stage companies could offer equity participation to key employees without the tax charges that would ordinarily arise on the grant or exercise of share options. In that respect, EMI was a deliberate complement to the EIS – where EIS was designed to attract external capital into early-stage companies, EMI was designed to help those same companies build and retain the teams needed to deploy that capital effectively.

### *How the scheme works*

The basic architecture of the scheme has remained broadly stable since its introduction. Qualifying companies may grant options over shares worth up to GBP250,000 per employee by reference to the market value at the date of grant, without triggering an income tax or national insurance contribution charge at that point. Where options are granted at or above market value, no income tax charge arises on exercise either, so that the employee's liability is confined to capital gains tax on an eventual disposal – historically at the preferential 10% rate available under Business Asset Disposal Relief, though that rate has now increased to 18% as discussed below. The result, notwithstanding that increase, remains a highly attractive tax profile by comparison with unapproved options, under which both the discount at grant and the gain on exercise are subject to income tax and national insurance contributions.

Notably, the regime also permits options to be granted at an exercise price set below the market value of the shares at the date of grant – a flexibility that can prove particularly useful where a company wishes to maintain a uniform exercise price across its option pool, for instance following a funding round that has pushed share values higher. Granting at a discount does not in and of itself taint the tax-favoured status of the option. Income tax and, potentially, both employer and employee national insurance contributions will be payable on the discount element at the point of exercise, but depending on the circumstances, the overall economic cost of that treatment may prove less burdensome than requiring employees to fund the higher exercise price.

### *A period of policy neglect and uncertainty*

For much of its history, however, the EMI regime suffered from a degree of policy neglect. The individual limit of GBP250,000, the company-wide limit of GBP3 million in outstanding options and the qualifying employee headcount threshold of 250 full-time equivalent employees had all remained unchanged for many years, eroding in real terms as company valuations, team sizes and employee expectations increased. The cumulative effect was a scheme that, while still providing genuine value, was increasingly misaligned with the realities of the modern growth company talent market.

The most significant development prior to the current Budget was the government's confirmation, following the 2022 Budget, of the scheme's continued availability after a period of uncertainty arising from the loss of EU state aid approval at the time of Brexit. That uncertainty had cast a temporary shadow over the scheme and created unwelcome instability for companies and advisers seeking to structure long-term incentive arrangements. The restoration of certainty was consequently a significant moment for the market, re-establishing EMI as a reliable long-term planning tool for growth companies and their advisers.

Around the same time, changes introduced to the Company Share Option Plan (CSOP) – a less gener-

ous but more broadly available regime under which options must be granted at market value and exercised between three and ten years after grant – made the arrangement more accessible to companies, with advisers increasingly introducing it as an alternative to EMI during the period of uncertainty. The 2022 Budget doubled the individual CSOP limit from GBP30,000 to GBP60,000 and relaxed the requirements over the share class over which options can be granted, taking effect from April 2023, which enhanced its relative attractiveness during a time of uncertainty for EMI. The resolution of the EU state aid issue and the restoration of certainty around EMI was therefore warmly welcomed, and CSOP has since returned to its more customary role as the default arrangement for companies that do not qualify for EMI.

### *The most recent Budget: a significant recalibration*

The most recent Budget has built on this with a substantial package of increases to the EMI limits, including:

- the gross asset threshold for qualifying companies has been quadrupled to GBP120 million, complementary to the doubled EIS gross asset thresholds;
- the qualifying employee headcount threshold has been doubled to 500 full-time equivalent employees;
- the company-wide grant limit threshold has been doubled to GBP6 million in outstanding options; and
- the exercisability period for the options has been increased from ten to up to 15 years.

Taken together, these changes represent the most significant recalibration of the EMI regime since its introduction. The gross asset and headcount threshold increases, in particular, are sensible in policy terms: the companies most likely to benefit from EMI are broadly the same cohort as those targeted by the EIS, and an increased threshold for EMI provides room for growth and reduces the risk of a company finding itself able to raise EIS investment but unable to offer EMI options to its employees. These changes also signal clearly that the government views equity incentivisation as a central part of its wider strategy for supporting the UK's growth economy.

Importantly, the government has also confirmed that amendments made to existing EMI scheme arrangements on or after 6 April 2026 to bring live options within the revised thresholds will not of themselves affect the tax-favoured status of those options. This is a pragmatic and welcome clarification that will spare companies and their advisers from having to conduct a detailed tax risk analysis before taking advantage of the updated regime. It removes a potentially significant practical obstacle to the prompt adoption of the new limits by companies with existing live options.

### *Areas for further reform*

The government has also undertaken a call for evidence on how to ensure that the tax system supports and encourages entrepreneurship. The consultation document includes a number of questions that are intended to gauge the effectiveness of the EIS and VCT schemes. It is to be hoped that it will take the opportunity to simplify a relief that, while generous, has detailed and complex eligibility criteria – and many traps for the unwary.

This review would also be a good opportunity to open up the EIS and EMI regimes to a wider range of business sectors. Historically, EU state aid rules resulted in companies carrying on certain excluded activities being ineligible for EIS relief. The list of excluded activities has not been reviewed for some years and now looks rather out of date. The exclusion of companies carrying on financial activities, for example, was perhaps understandable when banking was considered to be in the nature of a utility, and therefore not something that ought to be subsidised, but it has long sat awkwardly alongside the UK's ambitions as a global hub for financial technology.

The exclusion prevents fintech businesses from accessing these valuable reliefs, thus constraining the development of an innovative sector in which the UK is particularly strong and which is one of the most talent-intensive sectors in the UK economy. Were the government to follow through, it would represent a meaningful expansion of the reach of the EIS and EMI schemes and a significant signal to one of the country's most innovative and internationally competitive sectors.

The government's call for evidence on entrepreneurship also touches on employee incentives, and there is a strong case for using that process to address remaining areas of improvement within the EMI framework, chief amongst these being:

- the working time requirement – under which an employee must commit at least 25 hours per week, or 75% of their working time, to the company – which continues to cause difficulty for individuals in portfolio roles or with other professional commitments;
- the personal grant limit of GBP250,000 – this being out of date and eroded by inflation; and
- the HM Revenue & Customs (HMRC) valuation process, which, whilst generally workable, has at points been subject to delays that create real difficulties for companies seeking to close incentive arrangements to a specific timetable.

These are not insurmountable problems, but they do represent friction in a scheme that is otherwise widely regarded by founders and advisers as one of the most effective instruments available to the government for building equity-aligned teams at the growth stage. Addressing them would bring the EMI framework more closely into line with the modern realities of how high-growth companies operate and recruit. The government's consultation provides a timely and appropriate vehicle through which to do so.

## PISCES: Addressing the Liquidity Challenge

One of the practical limitations of EMI – and of employee share schemes more generally – has always been the question of liquidity. Options and shares in private companies are, by their nature, illiquid, and employees who have built up a meaningful equity stake may face an indefinite wait before they are able to realise any value, typically dependent on a trade sale or a full listing. This is where the government's recent introduction of PISCES – the Private Intermittent Securities and Capital Exchange System – represents a potentially significant development.

PISCES is designed to create a regulated, intermittent trading venue for shares in private companies, operating between the worlds of fully private ownership and a public market listing. For companies whose employees hold EMI options or have exercised into shares, PISCES offers the prospect of periodic liquidity events without the cost, regulatory burden and disclosure obligations associated with a full IPO. This is a meaningful advance: one of the recurring criticisms of equity incentive schemes in the UK has been that the ultimate payoff is too remote and uncertain to be an effective motivational tool, particularly for employees who are not founders and who may be less willing to wait years for a return.

By providing a structured mechanism for employees to sell shares in the secondary market at defined intervals, PISCES has the potential to make EMI and other share schemes considerably more compelling in practice. It also offers a natural staging post for companies that are considering a full listing but are not yet ready to commit to the obligations that entails. The trajectory of reform across both employee incentives and capital markets is therefore an encouraging one, and the interaction between EMI and PISCES may prove to be one of the more consequential developments of the current policy cycle.

### *Revitalising public markets*

As well as providing a bridge for private companies towards a full listing in the form of PISCES, both the current government and its immediate predecessor have sought to ease some of the burdens associated with full public listings. To that end, the regulatory regime for listing companies in the UK was significantly overhauled in 2024. Data from the Financial Conduct Authority suggests IPO and listing activity picked up in the fourth quarter of 2025 after several years of broadly flat figures, but the number of listed companies has continued to decline, with delistings exceeding IPOs. Much of the blame for this is laid at the fact that the UK, unlike the USA and many other countries, still levies a transaction tax – stamp duty reserve tax (SDRT) – which is charged at 0.5% on the consideration paid under contracts for the sale of shares.

The recent Budget sought to address this concern by introducing a three-year SDRT "holiday" (in other words, a time-limited exemption) for dealings in newly listed shares. Many advisers will have hoped for an abolition of SDRT altogether (together with its sister

tax, stamp duty, which applies to paper-based transfers of unlisted shares). Budgetary concerns doubtless precluded such a radical step, but advisers can take some consolation from the forthcoming introduction of an online system for filing and paying stamp duty, dragging stamp duty into the 21st century and finally eliminating a notoriously bureaucratic procedure that added material delay and costs to M&A activity.

### Encouraging Entrepreneurship – The Wider Backdrop

The recent consultation on encouraging entrepreneurship also shows signs that the government is thinking about how to support larger companies that have grown beyond the VCT, EIS and EMI limits – particularly by encouraging successful entrepreneurs to reinvest in start-ups, as happens very commonly in the USA.

However, this consultation is taking place in an environment where capital gains taxes have been increasing, not falling. The main CGT rate is now 24%. Business asset disposal relief previously provided a 10% rate of tax for individuals disposing of business assets or certain shareholdings in the company that employed them – including, in particular, individuals who held shares as a result of exercising EMI options. That rate has now increased to 18%. Similarly, individuals subscribing for ordinary shares in unquoted companies can potentially claim "investors' relief" on a subsequent disposal, but the rate of tax in such circumstances has also been increased from 10% to 18%. The government has indicated that it had heard views that both these reliefs were ill-targeted. While this may be the case, the increase in rates has undoubtedly left an impression that the government is hostile to entrepreneurship – and rebutting this will be one of the challenges it will face when responding to the recent consultation and developing policy in this area.

# FRANCE




## Law and Practice

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**Baker McKenzie Paris** is a leading international law firm offering a comprehensive, multidisciplinary approach to legal services. Its top-tier teams combine expertise across key practice areas including tax, corporate, employment, data protection, intellectual property and antitrust. With a deep understanding of both national and international markets, the firm provides seamless, cross-border solutions tailored to its clients' strategic objectives. Baker McKenzie supports businesses at every stage of their development, from establishing operations in France to expanding globally, ensuring compliance, managing risk and unlocking opportunities. The firm's integrated, client-focused approach enables it to deliver innovative and practical advice, helping clients confidently invest, grow and succeed in the dynamic French and international business environment.

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# 1. Legal System

## 1.1 Legal System and Judicial Order

France operates under a civil-law system. This means that greater emphasis is placed on codes and statutes rather than on case law and practices, as is the case in common-law jurisdictions. The exception is French administrative law, which is primarily created by the French administrative courts.

France has a written constitution (*Constitution de la Cinquième République*, or the "French Constitution"), which forms the basis of the French legal system and uses a system of legal codification (notably including the Civil Code, the Commercial Code, the Criminal Code, the Labour Code and the Tax Code). French law has a dual system comprising the following:

- judicial/private law (*droit privé*), including civil and criminal law in particular; and
- public law (*droit public*), including administrative and constitutional law in particular.

In addition to the French Constitution and international treaties, there are different domestic sources of laws and regulations in France. French laws (*lois*) are adopted by the French Parliament, which is made up of the National Assembly (*Assemblée Nationale*) and the Senate (*Sénat*). Meanwhile, ordinances (*ordonnances*) and regulations (*règlements*, being *décrets* or *arrêtés*) are issued by the French government.

The court system in France is divided into two parts:

- judicial courts (dealing with civil and criminal laws), comprising courts of first instance (ie, civil, commercial, labour and criminal courts), courts of appeal and the Supreme Court of Appeal (*Cour de cassation*); and
- administrative courts (dealing with public laws), comprising courts of first instance, courts of appeal and the Council of State (*Conseil d'État*).

In addition, there is a Constitutional Council (*Conseil constitutionnel*), which is responsible for controlling the compliance of new laws and statutes with the French Constitution, as well as the regularity and validity of political elections. Finally, there are various independent regulatory authorities, such as the Financial Markets Authority (*Autorité des marchés financiers*), which regulates the French financial markets, and the French Competition Authority (FCA – *Autorité de la concurrence*), which oversees all antitrust, competition and merger control matters in France.

# 2. Restrictions on Foreign Investments

## 2.1 Approval of Foreign Investments

France has a foreign direct investment (FDI) review/approval process in place. The Office of Foreign Investment Control in France (*Bureau du contrôle des investissements étrangers en France*, or CIEF) within the Ministry of Economy, Finance and Industrial, Energy and Digital Sovereignty is in charge of such review.

French FDI regulations apply when a foreign investor undertakes any of the following types of investments in a French company or business engaged in activities deemed sensitive under French FDI rules:

- the acquisition of control (as defined by Article L. 233-3 of the French Commercial Code (FCC)) of an entity governed by French law or an establishment registered with the Trade and Companies Register (*Registre du commerce et des sociétés*) in France;
- the purchase, in whole or in part, of a business (*branche d'activité*) of an entity governed by French law;
- for non-EU investors, the crossing – by the investor, directly or indirectly, acting alone or in concert – of the 25% threshold of the voting rights of an entity governed by French law; and
- for non-EU investors, the crossing – by the investor, directly or indirectly, acting alone or in concert – of the 10% threshold of the voting rights of an entity governed by French law whose shares are listed on a regulated market.

The main sectors/industries relevant to such control are those related to defence and, more broadly, all activities likely to jeopardise French national interests with regard to critical infrastructures (eg, energy, transportation, public health, electronic communications, space operations, public health and critical raw materials). R&D relating to critical technologies – such

as cybersecurity, AI, robotics, additive manufacturing, semiconductors, quantum technology, energy storage, and biotechnologies and technologies related to the production of low-carbon energy and photonics – can also be considered sensitive activities.

As a general rule, intra-group operations (ie, those between entities ultimately under common control) are exempted subject to certain limitations.

French FDI clearance is a mandatory regime –ie, a foreign investment cannot be completed before FDI clearance is obtained. As such, French FDI clearances are generally provided as conditions precedent to closing a transaction.

French FDI authorities review and assess the transaction based on the nature and sensitivity of the French activities acquired by the foreign investor. The aim is to determine whether such acquisition is likely to prejudice the French national interests with regard mainly to national defence, public authority, public order or public security in the sectors deemed sensitive by French FDI regulations.

This assessment is a fact-based analysis on a multi-criteria basis. The nature and scope of the French target activities, as well as the identity of the foreign investor, its size, its industrial project for France, potential relationships with foreign states, etc, will be reviewed in depth. French FDI regulations do not apply different analysis criteria based on the nature of the investor or the stake acquired.

It should be noted that, at EU level, the FDI screening framework is currently undergoing significant reform. In particular, the revised EU FDI Screening Regulation, which seeks to establish a more harmonised baseline across EU member states ("Member States"), was formally adopted by the Council of the EU on 8 June 2026. Member States will have 18 months to implement the required national screening mechanisms ahead of its expected application in January 2028.

## 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

### Filing

The authorisation process takes place in one or two phases, depending on the nature of the French activities at stake and the risk assessment made by the FDI authorities with regard to French national interests.

#### *Phase I*

The FDI authorities have 30 business days from the receipt of a filing to notify the foreign investor of any of the following:

- the investment falls outside the scope of the FDI regulations;
- the investment falls within the scope of the FDI regulations and is unconditionally authorised; or
- the investment falls within the scope of the FDI regulations and requires further analysis to determine under what conditions it could be authorised (Phase II opening).

The FDI authorities may issue post-filing information requests, which suspend the review period until satisfactory responses are provided by the investor.

#### *Phase II*

The FDI authorities can, during or more generally at the expiry of the Phase I review, open a Phase II review should they consider that the transaction requires further analysis. The FDI authorities must render their decision within 45 business days from the opening of the Phase II review. During the Phase II review, the FDI authorities may grant or deny their clearance or grant their clearance subject to commitments from the investor. These commitments must be proportionate to the necessary protection of French national interests.

### Sanctions for Non-Compliance

The French FDI regime is "mandatory" - ie, any foreign investment made in breach of French FDI regulation would expose the foreign investor to a wide range of severe sanctions, including the following:

- the nullity of the French investment;
- injunctions to file for clearance;

- the obligation to unwind the investment or to amend the investment terms;
- the suspension of the French target's voting rights;
- a prohibition on distributing dividends by the French target;
- payment of financial penalties; and
- criminal penalties (imprisonment and fines).

### 2.3 Commitments Required From Foreign Investors

The French FDI authorities may condition their approval of a transaction on specific commitments from the foreign investor. The scope of these commitments can vary significantly depending on the national interests at stake. Notable examples include the following:

- maintaining the French target's sensitive activities and industrial capabilities on French territory, such activities to be carried out by a company incorporated under French law;
- ensuring that the French target company continues to operate the sensitive activities for the benefit of the sensitive clients on reasonable technical and commercial terms;
- protecting sensitive IP and sensitive information; and
- adapting the internal organisation and governance of the entity, creating certain specific committees to oversee/deal with critical topics, and segregating sensitive information.

For the most critical activities, the FDI authorities can ask for a golden share for the benefit of the French state or a French state body, etc.

### 2.4 Right to Appeal

The decisions of the FDI authorities are subject to judicial claim (*recours de plein contentieux*) before French administrative courts. As such, a foreign investor may challenge a denied authorisation or overly stringent conditions before French administrative courts.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

As it is particularly valued for its flexibility and streamlined governance framework, the most common type of corporate vehicle in France is the **simplified joint-stock company** (*société par actions simplifiée*, or SAS), the main features of which are as follows:

- *Governance*: One president and, optionally, one or several general manager(s) and/or deputy general manager(s), or any other type of collective body set up by the shareholder(s) in the articles of association (*statuts*) (for more detail, see **3.4 Management Structures**).
- *Shareholders' liability*: Form of company limited by shares, ie, the shareholders' liability is limited to the amount of their contribution to the share capital.
- *Share capital*: EUR1 minimum.
- *Number of shareholders*: One shareholder minimum.
- *Usual purpose*: Best suited for greenfield projects, private equity projects, start-ups and scale-ups, patrimonial holdings and group subsidiaries.

Even though they have become less commonly used in practice, the following corporate forms are also worth noting:

- the **limited liability company** (*société à responsabilité limitée*, or SARL): a form of company limited by shares, often used for businesses that have a strong personal aspect (intuitus personae) (eg, family businesses, etc);
- the **joint-stock company** (*société anonyme* – SA): a form of company limited by shares, nowadays best suited for listed companies and groups' holdings; and
- the **real estate civil company** (*société civile immobilière*– SCI): a form of company not limited by shares, mostly used to own/manage real estate properties.

The answers provided in the sections below will focus on the main rules applying to SAS companies only.

### 3.2 Incorporation Process

The main steps to incorporate an SAS are as follows:

- drafting and finalising the articles of association (which determine the registered address, the amount of contributions and resulting share capital, and the number of issued and paid-up shares (in

kind, in cash or in know-how for an SAS or SARL), the governance (including the appointment of the first legal representatives and/or statutory auditors, if any), the corporate purpose, the corporate name, etc) and the ancillary corporate documentation (eg, statement of parenthood and absence of convictions for each newly appointed legal representative, ultimate beneficial owner form, etc);
- obtaining the certificate confirming the deposit of the share capital (*certificat de dépôt des fonds*) issued by the depository bank or a notary;
- gathering of the ancillary supporting documents (eg, ID/passport of the newly appointed legal representative(s), title for the registered address, corporate excerpt (*extrait Kbis*)of the statutory auditors, if any, etc);
- executing the articles of association and ancillary corporate documentation;
- completing the dematerialised incorporation formalities, notably (i) publication in a French legal gazette
- (*journal d'annonces légales*), (ii) publication in the French Official Gazette (*Bulletin officiel des annonces civiles et commerciales*, or BODACC) and (iii) registration with the Trade and Companies Register and the French National Companies Register (*Registre national des entreprises*); and
- obtaining the incorporation extract (*extrait Kbis d'immatriculation*) from the clerk (*greffier*) of a French commercial court (*Tribunal de commerce*).

The incorporation process generally takes approximately two weeks from the filing of the incorporation application to the issuance of the company's registration extract. While the registration procedure is now largely digitalised, the filing can only be completed once all required corporate documents and supporting materials have been duly executed and collected, which may prove time-consuming in practice.

## 3.3 Ongoing Reporting and Disclosure Obligations

From a corporate standpoint, the main annual reporting obligation of a French company is the drawing up, approval (within six months as from the end of the fiscal year (FY)) and publication of its annual financial statements.

In addition, French companies are subject to reporting and disclosure obligations when the following corporate information is modified:

- any information disclosed in the company's commercial court register extract (*extrait Kbis*) (ie, the share capital, the legal representatives, the registered address or the statutory auditor of the company, etc);
- any information included in the company's articles of association; and/or
- the ultimate beneficial owner of a company.

## 3.4 Management Structures

The SAS is the most flexible form of company in France, notably with respect to its governance.

The FCC only requires one mandatory legal representative in the SAS: the president of the company (*président*). The president may be a natural or juristic person and is vested by law with the broadest powers to bind and represent the company vis-à-vis third parties in all circumstances, within the limits of its corporate purpose.

In addition to the president, the articles of association may allow for (i) the appointment of one or several general managers (*directeurs généraux*) or delegate general managers (*directeurs généraux délégués*), the powers of which shall be provided in the articles of association (in practice, they are often vested with the same individual powers as the president) and/or (ii) the setting up of a collective body (such as a board, management committee, strategic committee, supervisory committee, etc), the composition and powers of which shall be determined in the articles of association.

## 3.5 Directors', Officers' and Shareholders' Liability

### Civil Liability of Directors and Officers

Directors and officers may incur civil liability towards the company, its shareholders, or third parties:

- *Towards the company*: Directors and officers may incur civil liability essentially on account of violations of the laws or regulations applicable to the company or of its articles of association, or in case of tortious or negligent acts of management. A

civil liability claim can be brought by the company through its legal representatives (*action ut universi*) or, in case of failure of its legal representatives to bring such claim, by the shareholder(s), acting here in the interest of the company (*action ut singuli*).
- *Towards the shareholder*(s): Directors and officers may incur civil liability essentially in case of loss personally suffered by the shareholder(s) as a result of a fault by a director or officer of the company (and as long as such loss is distinct from the loss suffered by the company, if any).
- *Towards third parties*: Directors and officers may incur civil liability only where they have committed a fault that is detachable from their functions and personally attributable to them. This is the case where a director or officer intentionally commits a fault of particular gravity incompatible with the normal exercise of its corporate functions. In the absence of such a detachable fault, a third party may only obtain damages by bringing a claim against the company itself.

The civil liability of directors and officers can be covered by a D&O insurance scheme.

### Criminal Liability of Directors and Officers

Directors and officers may incur criminal liability, notably for the following:

- *Misuse of corporate assets* (*abus de biens sociaux*): This is the most frequently prosecuted offence, targeting directors and officers who, in bad faith, have used the company's assets or credit in a manner they knew to be contrary to the company's interest, for personal purposes or to favour another company or enterprise in which they had a direct or indirect interest.
- *Presenting or publishing misleading financial statements*: This targets directors and officers who have knowingly published or presented to shareholders, with a view to concealing the true financial position of the company, annual accounts that do not give a true and fair view of the results for the financial year, the financial position and the assets of the company.
- *Distribution of fictitious dividends*.

The criminal liability of directors and officers cannot be covered by a D&O insurance scheme under French law.

### Liability in Insolvency Proceedings

Where judiciary liquidation proceedings are opened, directors and officers may be exposed to the following:

- *Action for liability for insufficiency of assets* (*action en responsabilité pour insuffisance d'actif*): The court may order directors and officers to bear all or part of the company's debts where a management fault contributed to the insufficiency of assets.
- *Personal bankruptcy* (*faillite personnelle*) *or a ban on managing companies*: Courts may impose these in cases of particularly serious misconduct (including misuse of corporate assets, fraudulent or irregular accounting, and the abusive continuation of a loss-making business).

### Shareholders' Liability and the Concept of "Piercing the Corporate Veil"

#### *Principle of limited liability for SAS companies*

The legal personality of an SAS acts as a protective screen between the company's creditors and the personal assets of its shareholder(s). Therefore, the shareholder(s) of an SAS are liable for the company's debts only up to the amount of its/their contributions.

#### *French law equivalent of "piercing the corporate veil"*

French law does not formally enshrine the concept of piercing the corporate veil as a general doctrine, but recognises several mechanisms allowing courts to disregard the protection afforded by the company's legal personality in certain situations, notably the following:

- *Commingling of assets*(*confusion de patrimoine*): Courts may extend proceedings opened against a company to another entity or to a shareholder where their respective assets are so commingled as to be indistinguishable.
- *Abuse of legal personality to defraud creditors*: The *action paulienne* allows creditors to have acts performed in fraud of their rights declared unenforce-

able against them, including through the interposition of a company created for that sole purpose.
- *Personal liability of shareholders for their own wrongful acts*: A shareholder's liability towards third parties may be engaged where the shareholder has committed a fault that is detachable from its capacity as shareholder, which is an intentional fault of a particular gravity incompatible with the normal exercise of shareholder prerogatives.

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

France has one of the most structured and employee-centric labour law systems in the world.

This statutory framework is supplemented by:

- applicable sector-level or company-level collective bargaining agreements (CBAs), which often provide more favourable provisions than the Labour Code;
- company policies and internal regulations, where mandatory;
- employment contracts, which may provide additional rights provided that they comply with mandatory legal and collective bargaining provisions;
- French case law, particularly decisions of the Supreme Court of Appeal (*Cour de cassation*), which plays a significant role in interpreting labour legislation; and
- EU law, including directly applicable regulations and directives implemented into French law.

Together, these sources regulate key aspects of the employment relationship, including hiring, remuneration, health and safety, discrimination, employee representation, disciplinary procedures and termination of employment.

### 4.2 Characteristics of Employment Contracts

As a general rule, a permanent employment contract (*contrat à durée indéterminée* – CDI) does not legally need to be in writing and may, in theory, be concluded verbally. However, in practice, employers almost always use written contracts to define the terms of employment and comply with their information obligations.

Certain types of employment contracts, including fixed-term contracts (*contrat à durée déterminée* – CDD) and part-time contracts, must be concluded in writing and contain mandatory statutory provisions. Failure to comply may result in the contract being reclassified as a permanent employment contract.

The employment contract generally specifies essential terms such as the employee's position, remuneration, place of work, working hours, probationary period (if any), notice period and applicable CBA.

The CDI is the standard form of employment in France. Fixed-term contracts are permitted only in specific cases expressly authorised by law (eg, temporary replacement of an absent employee or a temporary increase in business activity) and are subject to maximum duration and renewal rules. Probationary periods are permitted but must be expressly agreed in writing and cannot exceed the statutory or collectively agreed maximum duration.

### 4.3 Working Time

In principle, France has a 35-hour statutory working week, with overtime subject to additional compensation.

Overtime hours may be worked in addition to the legal working time, but only within two limits:

- the total working time in a single week must not exceed 48 hours; and
- the average weekly working time calculated over any 12 consecutive weeks must not exceed 44 hours. Overtime must generally be authorised by the employer and gives rise to either increased pay (typically 25% for the first eight overtime hours and 50% thereafter, unless otherwise provided) or equivalent compensatory time off.

Employees are also entitled to minimum rest periods, including:

- 11 consecutive hours of daily rest; and
- 35 consecutive hours of weekly rest, including the mandatory Sunday rest principle, subject to numerous exceptions.

Employees are entitled to a minimum of five weeks of paid annual leave per year, in addition to public holidays where applicable.

Several alternative working time arrangements exist, particularly for managerial employees.

For example, certain autonomous executives may work under a working time scheme set in a "days over the year" arrangement, under which working time is measured in days worked per year rather than hours, provided that specific legal conditions are met.

### 4.4 Termination of Employment Contracts

France is not an employment-at-will jurisdiction. An employer may terminate an employment contract only on legally recognised grounds and must comply with strict statutory procedures.

Individual dismissals must be based on a real and serious cause (*cause réelle et sérieuse*), which may be:

- personal, such as misconduct, repeated poor performance or incapacity; or
- economic, where justified by economic difficulties, technological changes, business reorganisation necessary to safeguard competitiveness, or cessation of business activity.

The dismissal procedure generally includes a written invitation to a pre-dismissal meeting, the meeting itself, and a formal dismissal letter stating the grounds for the dismissal. Failure to comply with either the substantive or procedural requirements may result in damages.

Employees dismissed for reasons other than serious or gross misconduct are generally entitled to:

- statutory or contractual notice (or payment in lieu thereof);
- statutory dismissal indemnity (depending on the applicable CBA and length of service); and
- payment of accrued but unused paid leave.

Where a dismissal is found to lack real and serious cause, compensation is awarded within the bounds of the statutory scale, which sets minimum and maximum amounts by seniority. Weak grounds or procedural missteps can therefore expose the employer to damages and, in limited cases (eg, null dismissals), to reinstatement.

Employment contracts may also be terminated by resignation, by retirement and by mutual agreement through a mutual termination agreement, which must be approved by the labour administration.

Collective redundancies are subject to additional requirements. Depending on the number of proposed redundancies and the size of the company, employers must consult the Social and Economic Committee (*comité social et économique*, or CSE) and, in larger-scale redundancy schemes (dismissing at least ten employees over a 30-day period in a company with 50 or more employees), prepare either a social plan (*plan de sauvegarde de l'emploi*) negotiated with employee representatives or established unilaterally and approved or validated by the labour administration.

Employers must also comply with obligations relating to redeployment, selection criteria, priority for re-employment, and information and consultation procedures. Failure to comply may result in the redundancy process being invalidated or give rise to significant financial liability.

As a negotiated alternative to compulsory redundancies, employers may also conclude a collective mutual-termination agreement (*rupture conventionnelle collective*), based on voluntary departures and subject to validation by the regional labour administration (*Direction régionale de l'économie, de l'emploi, du travail et des solidarités*, or DREETS).

### 4.5 Employee Representations

Under French law, employee representation is mandatory once certain workforce thresholds are met.

The principal employee representative body is the CSE, which must be established in any company employing at least 11 employees for 12 consecutive months.

The CSE's powers vary depending on the size of the company:

- *Companies with 11 to 49 employees*: The CSE primarily presents individual and collective employee claims relating to the application of labour law, CBAs and company policies, and promotes health, safety and good working conditions.
- *Companies with 50 or more employees*: The CSE has broader information and consultation rights. The employer must inform and consult the CSE before implementing decisions affecting the organisation, management or general operation of the company, including, for example:
  (a) collective redundancies and restructuring projects;
  (b) significant organisational or technological changes;
  (c) changes affecting working conditions or working time;
  (d) introduction of monitoring or surveillance systems;
  (e) implementation of technologies affecting employees; and
  (f) economic and financial matters, strategic business orientations and social policy.

The consultation must take place before the employer's final decision is implemented, allowing the CSE to issue a reasoned opinion (generally within one month). While the CSE's opinion is generally advisory and does not bind the employer, failure to comply with the information and consultation obligations may result in civil and criminal sanctions, suspension of the project by the courts in certain circumstances, and claims for damages.

For certain significant projects, the CSE may appoint independent experts (at the employer's expense in many cases) to assist it in the consultation process, particularly in relation to economic matters, health and safety, or major organisational changes.

In addition, trade unions may appoint union representatives in companies meeting the statutory conditions (generally at least 50 employees and where a representative trade union is established). Union representatives negotiate CBAs with the employer on matters such as remuneration, working time and working conditions.

Finally, employees benefiting from representative mandates (such as CSE members and trade union representatives) enjoy special protection against dismissal. Their dismissal requires prior authorisation from the labour inspectorate.

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/ Employers

#### Tax Residency of Employees

From a French domestic legislation standpoint, an individual is considered to have their tax residence in France if one of the following criteria set out in Article 4B of the French Tax Code (*Code général des impôts*) is met:

- The individual has their household in France, or otherwise, this corresponds to the location of their main abode. *Note*: An individual is considered to have their household in France if they live there on a permanent basis, with their spouse (or civil partner and/or children) or alone. If no household can be identified, the location of the main abode is determined based on the individual's actual presence in France, irrespective of the accommodation conditions.
- The individual carries on a professional activity in France, whether as an employee or otherwise, unless such activity is of a secondary nature. *Note*: A professional activity is considered primary where it accounts for the majority of the individual's effective working time.
- The centre of the individual's economic interests is located in France. *Note*: An individual who derives a greater proportion of their income from French sources than from foreign sources is deemed to have the centre of their economic interests in France.

Individuals meeting at least one of the above criteria are, in principle, regarded as French tax residents under domestic law, unless they qualify as residents of another jurisdiction under an applicable double tax treaty.

French tax residents are, in principle, subject to tax on their worldwide income (ie, from both French and foreign sources), subject to the provisions of any applicable double tax treaty, whereas non-residents are taxed in France solely on their French-source income.

### Personal Income Tax

Personal income tax (*impôt sur le revenu*) is calculated on the basis of the household unit (*foyer fiscal*) and is assessed under a progressive scale. For the 2026 tax year (income earned in 2025), the brackets are as follows:

- 0% on income up to EUR11,600;
- 11% on the portion between EUR11,601 and EUR29,579;
- 30% on the portion between EUR29,580 and EUR84,577;
- 41% on the portion between EUR84,578 and EUR181,917; and
- 45% on income above EUR181,917.

The tax liability is calculated using a household quotient (*quotient familial*) system, which divides total household income by a number of "parts" determined by the composition of the household, thereby moderating the progressive effect for larger families. Non-residents are subject to a minimum withholding rate of 20% (or 30% on income exceeding a specific threshold) on French-source income, unless a tax treaty provides otherwise.

Surtaxes may also apply:

- *Exceptional contribution on high incomes* ("*contribution exceptionnelle sur les hauts revenus*", *or CEHR*): This additional 3% surtax applies on all types of income exceeding EUR250,000 (for single taxpayers) or EUR500,000 (for married taxpayers), and a 4% surtax applies on income exceeding EUR500,000 (for single taxpayers) or EUR1 million (for married taxpayers). This surtax applies to all types of income received.
- *Differential contribution on high incomes* ("*contribution différentielle sur les hauts revenus*", *or CDHR*): This additional surtax applies to French tax residents whose global taxable income, after some adjustments, exceeds EUR250,000 (for single taxpayers) or EUR500,000 (for married taxpayers). The purpose of the CDHR is to apply a minimum effective tax rate of 20% on income received by the taxpayers covered. In other words, where the amounts of income tax and CEHR result in an effective tax rate on the global taxable income (as adjusted for the purposes of the CDHR) of less than 20%, the differential contribution (CDHR) will be applied in order to reach this minimum effective tax rate of 20%.

Personal income tax on employment income is collected through a pay-as-you-earn mechanism (*prélèvement à la source*), with the employer withholding tax each month at a rate communicated by the French tax authorities. These withholdings are advance payments, and the final tax liability is determined upon filing of the annual income tax return. The CEHR and CDHR are not withheld and are paid directly by the individual when filing that return.

### Employee and Employer Social Contributions

Employees and employers are subject to a range of social contributions levied on gross salary.

The main contributions notably include for the employee the generalised social contribution (*contribution sociale généralisée*) and the social debt repayment tax (*contribution au remboursement de la dette sociale*), levied respectively at rates of 9.2% and 0.5% on 98.25% of the gross remuneration. Other social contributions borne by both employees and employers primarily relate to retirement (basic and complementary pension schemes), unemployment insurance, health and disability coverage, work accident insurance and family benefits.

Overall, employee social contributions typically represent approximately 22% to 25% of gross remuneration. However, as certain contributions are capped, the effective employee contribution rate decreases for higher levels of remuneration and may fall to around 10.1% on income exceeding EUR385,000 (2026). It should also be noted that a portion of these contributions is deductible from the taxable income base for personal income tax purposes.

Employers bear a significant social security burden, with contributions typically representing approximately 40% to 45% of gross remuneration. However, as certain employer contributions are also capped, the effective rate may decrease to approximately 25% to 30% on remuneration exceeding EUR385,000 (2026).

### Payroll Tax

Employers that are not subject to VAT, or that are subject to VAT on less than 90% of their turnover, are liable to payroll tax (*taxe sur les salaires*). This tax is calculated on total gross remuneration paid to employees and is levied at progressive rates:

- 4.25% on the portion of annual salary below EUR9,147;
- 8.50% on the portion between EUR9,147 and EUR18,259; and
- 13.60% on the portion above EUR18,259.

Banks and financial institutions are among the main taxpayers subject to payroll tax, given that a significant portion of their activity is VAT-exempt.

## 5.2 Taxes Applicable to Businesses

### Direct Tax

Under French tax law, French resident companies are taxed on a domestic basis, whereas non-resident companies are only subject to corporate income tax (CIT) on profits attributable to France (eg, through a French permanent establishment, or in respect of French-source dividends, royalties, rental income and certain real estate or share-related capital gains).

A distinction is made between non-tax-transparent and tax-transparent companies.

Non-tax-transparent companies are personally liable for CIT, at a standard rate of 25%, increased to 25.825% (through a 3.3% surcharge) where CIT due exceeds EUR763,000. A temporary non-deductible CIT surcharge also applies to companies or tax-consolidated groups with French-source turnover of at least EUR1 billion (for FYs closed as from 31 December 2025) or EUR1.5 billion (for FYs closed as from 31 December 2026). It is calculated on the average CIT due for the relevant and preceding FY, at 20.6% (turnover EUR1–3 billion) or 41.2% (turnover above EUR3 billion), with a smoothing mechanism to mitigate threshold effects.

Tax-transparent companies are not personally liable for CIT; however, they are required to calculate a taxable income. Their shareholders are then liable to CIT or income tax on their share of taxable profits – including non-resident corporate shareholders.

### Withholding Taxes

France imposes withholding taxes on certain payments to non-residents:

- dividends: 12.8% for non-resident individuals and 25% for non-resident companies;
- services rendered in France and paid to a foreign resident with no French presence: 25%;
- royalties: 25%; and
- profits deemed distributed by a French PE to its foreign head office: 25%.

Likewise, (i) French real estate capital gains, (ii) gains on shares in French real estate-oriented companies and (iii) gains on disposals of shares in French companies where the seller holds 25% or more of the share capital are subject to CIT at 25%. Interest payments to non-residents are not subject to withholding tax, unless paid in a non-cooperative jurisdiction.

These rates may be reduced or eliminated under applicable tax treaties or, for intra-EU flows, under the Parent-Subsidiary Directive (withholding tax exemption where the recipient holds at least 10% of the distributing company shares for a minimum of two years) and the Interest and Royalties Directive (withholding tax exemption where a direct shareholding of 25%+ exists between the paying and receiving entity, directly or through a common parent, for at least two years). These exemptions are subject to anti-abuse conditions and may be claimed upfront or a posteriori. Higher withholding tax rates apply for transactions with non-cooperative jurisdictions (see **5.7 Anti-Evasion Rules**).

### VAT

VAT is charged on the supply of goods and services at a standard rate of 20% (alternative rates of 10%, 5.5% or 2.1% may apply, depending on the nature of the

transactions). VAT incurred for business purposes can be offset or refunded. VAT applies to both French and foreign companies doing business in France. Special rules govern cross-border transactions.

### Transfer Tax

Transfer tax is applicable to certain asset transfers, with rates varying depending on the type of transaction:

- transfer of a stock company's shares: 0.1% (intra-group exemption available);
- transfer of a non-stock company interest (*part sociale*): approximately 3% (intra-group exemption available);
- transfer of shares in a real estate-oriented company: 5%;
- transfer of a going concern, client base or assimilated assets: approximately 5%; and
- transfer of real estate assets: generally, between approximately 5.9% and 6.4% (with a 0.6% surtax for office, commercial and warehouse assets located in Île-de-France); lower rates may be available subject to conditions.

Transfer tax applies to transactions executed in France or involving assets located in France, irrespective of the tax residence of the parties.

### Pillar Two Rules

France transposed into domestic law the Income Inclusion Rule (IIR) and the Qualified Domestic Minimum Top-up Tax (QDMTT), applicable from 1 January 2024, as well as the Undertaxed Payment Rule (UTPR), applicable from 1 January 2025, in order to ensure a global minimum effective tax rate of 15% for multinational groups with consolidated annual revenue of at least EUR750 million. France's Pillar Two rules have been granted transitional qualified status on the OECD's central record.

### Other Taxes

French resident companies and French permanent establishments may also be subject to other taxes in France. Notable examples include business property tax, companies' social security contribution, CVAE (*Cotisation sur la Valeur Ajoutée des Entreprises* – currently being phased out with full elimination scheduled for 2030), local property taxes and payroll tax (see **5.1 Taxes Applicable to Employees/Employers**).

## 5.3 Available Tax Credits/Incentives

Several tax credits and incentives are available to French resident companies and French PEs:

- *Tax losses*: Tax losses can be carried forward indefinitely (up to EUR1 million plus 50% of the taxable profit per FY) or carried back one year (up to EUR1 million).
- *Parent-subsidiary regime*: A 95% exemption applies to dividends received by a French parent from eligible French or foreign subsidiaries, where it holds at least 5% of the share capital of the distributing entity for at least two years. This results in an effective rate of approximately 1.3% (further reduced within tax-consolidated groups – see **5.4 Tax Consolidation**).
- *Long-term capital gains regime*: Capital gains on the disposal of qualifying equity participations (French or foreign) are effectively taxed at approximately 3.1%. Shares in real estate-oriented companies are excluded.
- *R&D tax credit* (*crédit d'impôt recherche*): Equal to 30% of eligible R&D expenses up to EUR100 million, and 5% above. Any excess credit is refunded after three years, or immediately for SMEs and newly created companies.
- *Innovation tax credit* (*crédit d'impôt innovation*): Available to SMEs at 20% of eligible expenses incurred for the design and prototyping of new products, capped at EUR400,000 per year.
- *Young Innovative Enterprise* (*jeune entreprise innovante*) *regime*: Open to SMEs incorporated for less than eight years, at least 50% owned by individuals or qualifying entities, and devoting at least 15% of their deductible expenses to R&D. Benefits include exemption from employer social contributions on qualifying R&D personnel, and potential property tax and Company Property Tax (*Cotisation foncière des entreprises*) exemptions for up to seven years.
- *IP box regime*: Optional 10% taxation on qualifying net income (nexus calculation) derived from the licensing, sublicensing or transfer of certain IP assets (mainly patents and copyrighted software).

Additional incentives may apply to specific investments and to investments made in specific geographic areas or in French overseas territories.

## 5.4 Tax Consolidation

France's tax consolidation regime allows eligible French groups to be taxed on a consolidated basis. To qualify, the group parent must hold, directly or indirectly, at least 95% of the share capital and voting rights of each member subsidiary. All group members must be subject to standard French CIT and share aligned FY opening and closing dates. Additionally, the parent must not itself be 95% held by another eligible French company. French subsidiaries held at 95% through an EU or EEA intermediary may also join the group under certain conditions ("*Papillon*" tax consolidation or horizontal consolidation).

Under this regime, the parent is solely liable for the group's CIT, calculated on the aggregate of the taxable profits and losses of all group members. Key benefits include:

- consolidation of the members' tax results, allowing losses of one member to be offset against the profits of another in the same FY;
- neutralisation of certain intra-group transactions, including capital gains on transfers of fixed assets (other than qualifying equity participations) and intra-group provisions;
- a 1% add-back rule on intra-group dividends eligible for the parent-subsidiary regime, in lieu of the standard 5% share of costs and expenses (subject to a one-year holding period); and
- carryforward or carryback of tax losses at group level.

## 5.5 Thin Capitalisation Rules and Other Limitations

### Related-Party Interest Limitation

Interest paid to related companies (ie, companies that directly or indirectly control the borrower, are controlled by it, or are under common control) is deductible only up to a periodically published safe harbour rate or, if higher, the arm's length rate.

### Anti-Hybrid Rules

In line with the EU Anti-Tax Avoidance Directive (ATAD 2), anti-hybrid rules neutralise mismatch arrangements, ie, payments that are deductible in one jurisdiction but not taxed in another.

### General Interest Deduction Limitation Rule (EBITDA Cap)

In line with the EU Anti-Tax Avoidance Directive (ATAD 1), a taxpayer's net financing charges for a given FY are deductible only up to 30% of tax-adjusted EBITDA or EUR3 million, whichever is higher. The same thresholds apply to tax-consolidated groups but are calculated and assessed on a consolidated basis (net financial expenses being likewise determined at group level).

Where a company or group is thinly capitalised (ie, average related-party debt exceeds 1.5 times accounting net equity), these thresholds are reduced to 10% of tax EBITDA and EUR1 million. A safe harbour may allow a taxpayer belonging to an accounting consolidated group to claim an additional deduction equal to 75% of the net financial expenses disallowed under the 30% cap.

Disallowed net financing charges may be carried forward indefinitely, while unused deduction capacity (where the threshold exceeds the net financial expenses) may be carried forward for up to five FYs.

### Consolidated Tax Group Specific Limitation

Within a tax-consolidated group, interest on debt incurred to acquire shares in a company from a related party, where that acquired company is part of, or subsequently joins, the group, is partially non-deductible over a period of eight FYs following the acquisition (the "*amendement Charasse*").

## 5.6 Transfer Pricing

### Legal Framework

France has comprehensive transfer pricing (TP) rules requiring transactions between affiliated enterprises to comply with the arm's length principle, allowing the French tax authorities to adjust taxable income accordingly. Companies must maintain documentation demonstrating such compliance.

### Documentation Requirements

In line with OECD BEPS Action 13, France applies tiered TP documentation obligations based on size thresholds. French entities (companies or PEs of foreign companies) with revenue or gross assets of at least EUR150 million – as well as their French affiliates (parent, subsidiary or member of the same French tax consolidated group) – must prepare a full master file and local file, to be provided upon request during a tax audit. The same entities must also file an annual TP form within six months of their corporate income tax return, the threshold being lowered to EUR50 million for this purpose.

### Country-by-Country Reporting

French-headquartered multinational enterprise (MNE) groups with consolidated annual turnover of at least EUR750 million must file a country-by-country report (CbCR) within 12 months of the end of the relevant FY. French entities belonging to a foreign-headquartered MNE meeting the same threshold may also be required to file, where the CbCR is not filed in a jurisdiction having an information exchange agreement with France.

### Advance Pricing Agreements and Dispute Resolution

Companies may secure their TP positions through unilateral, bilateral or multilateral Advance Pricing Agreements. France participates in the OECD's mutual agreement procedure (MAP) and the EU Arbitration Convention and is a signatory to the OECD Multilateral Instrument (MLI), which strengthens dispute resolution mechanisms – including mandatory binding arbitration – across France's bilateral tax treaties.

## 5.7 Anti-Evasion Rules

### General Anti-Abuse and Evasion Rules

French tax law includes a range of general anti-avoidance measures targeting artificial or tax-driven arrangements. Under the abuse of law (*abus de droit*) doctrine, the French tax authorities may disregard transactions that are fictitious or exclusively motivated by the circumvention of tax legislation, with penalties of up to 80%. The "mini" abuse of law rule, applicable to acts carried out from 1 January 2020 onwards, extends this approach to arrangements whose main – rather than exclusive – purpose is to avoid or reduce tax.

Certain preferential tax regimes are subject to specific anti-abuse rules targeting fraudulent schemes and absence of substance (eg, the parent-subsidiary regime specific anti-abuse rule). Flows involving residents of non-cooperative jurisdictions are generally subject to a 75% withholding tax rate (notably on interest payments, capital gains, fees and dividends) and denied tax deductibility or exclusion from certain tax regimes.

Finally, treaty benefits may be denied where obtaining them was one of the main purposes of an arrangement or where the recipient is not the beneficial owner of the income.

### CFC Rules

French controlled foreign corporation (CFC) rules apply to profits of foreign branches and subsidiaries that are more than 50% owned and established in tax-privileged jurisdictions, ie, where the local CIT payable is less than 60% of the French theoretical tax (a difference of more than 40%). Such profits are subject to CIT in France in proportion to the French resident company's shareholding. Within the EU, a safe harbour limits the application of the CFC rules to purely artificial arrangements aimed at circumventing French tax legislation.

### Mandatory Disclosure Rules (DAC6)

France has transposed the EU Directive on mandatory disclosure of cross-border tax arrangements (DAC6). Intermediaries (and, in certain circumstances, taxpayers) must report cross-border arrangements meeting one or more prescribed hallmarks to the French tax authorities within 30 days of the relevant trigger event. The reported information is automatically exchanged with the tax authorities of other Member States.

## 5.8 Tariffs

In France, customs tariffs are set at EU level by the Council on a proposal from the European Commission (EC). The level of duty depends on three factors: the product classification; its origin; and the possible application of trade agreements, quotas or restrictions.

Customs duties are calculated on the value of the product, and the applicable rate is set out in the Integrated Tariff of the European Union (TARIC). In principle, that rate is the same regardless of the product's origin. However, exceptions may arise from free trade agreements, tariff quotas, preferential origin regimes or trade defence measures.

## 6. Competition Law

### 6.1 Merger Control Notification

Transactions that constitute a concentration and meet the French thresholds must be notified to the FCA prior to their implementation.

#### Types of Transactions Covered

A concentration occurs under either of the following circumstances:

- two or more independent undertakings merge; or
- one or more persons or undertakings already controlling at least one undertaking acquire control of the whole or parts of one or more other undertakings.

Following a concentration, an undertaking may exercise decisive influence alone, in which case it will be deemed to have exclusive control. An undertaking may also exercise decisive influence jointly with another undertaking(s), in which case they will together be deemed to have joint control. Joint control over an undertaking arises from either parity in the voting rights or the ability for a minority shareholder to block certain strategic decisions (such as the adoption of the budget or business plan or the appointment of top management).

Creating a joint venture that performs all the functions of an autonomous economic entity on a lasting basis also constitutes a concentration.

#### Thresholds

Concentrations must be notified to the FCA when the following three thresholds are cumulatively met:

- the combined worldwide turnover exceeds EUR150 million;
- the domestic turnover of each of at least two parties exceeds EUR50 million; and
- the transaction does not fall within the jurisdiction of the EC.

Law No. 2026-403 of 26 May 2026 on the simplification of economic life will raise the French merger control notification thresholds for the first time since 2004. As from 1 September 2026, transactions must be notified to the FCA when:

- the combined worldwide turnover exceeds EUR250 million;
- the domestic turnover of each of at least two parties exceeds EUR80 million; and
- the transaction does not fall within the jurisdiction of the EC.

Furthermore, the specific thresholds applicable to the retail sector have also been increased by Law No. 2026-403, while those applicable to French overseas territories remain unchanged. The reform is expected to reduce the annual number of notifiable transactions by 20–30%, mainly in the retail sector.

#### Exemptions

There are no exemptions under French merger control rules. Filing is mandatory whenever the thresholds are met. However, a simplified procedure is available in certain unproblematic cases, such as the constitution of an offshore joint venture or a concentration leading to no horizontal overlaps or vertical links.

#### Review of Concentrations Under Thresholds

In line with the ECJ's *TowerCast* judgment of 16 March 2023 (C-449/21), the FCA can conduct sub-threshold reviews of concentrations that may lead to an abuse of dominant position prohibited by Article 102 of the Treaty on the Functioning of the European Union (TFEU) or constitute an anti-competitive agreement under Article 101 of the TFEU.

In addition, following the ECJ's decision in the *Illumina/Grail* matter, the FCA is pushing for a legal reform that would lead to the introduction of a call-in power, enabling the FCA to review transactions in strategic sectors that fall below the legal thresholds, particularly within the technology and healthcare industries.

### Criteria for Antitrust/Competition Review

The extent of the competitive assessment by the FCA will largely depend on the impact of the concentration on the market. Concentrations that are eligible for a simplified procedure (eg, operations that are unlikely to cause any harm to competition) will require significantly less information than standard filings.

In standard filings, the parties are expected to provide market share and competitor information and describe the competitive environment in which the new entity will compete post-concentration, including the existence of barriers to entry, the existence of countervailing buyer power, the potential entry of new players, and the existence of spare capacity.

## 6.2 Merger Control Procedure

The notification process is divided into the following three phases:

- *Pre-notification phase*: Pre-notification is not mandatory but is encouraged for cases that may raise concerns (eg, preliminary questions on controllability or if it is anticipated that the transaction will give rise to competition issues). The pre-notification phase takes about one to two weeks and can be longer for complex cases. The FCA indicates in its guidelines that a notification that has undergone an effective pre-notification phase is generally declared complete on the day on which it is submitted. Transactions eligible for the simplified procedure are notified directly, without pre-notification.
- *Phase I*: This phase takes about 25 workings days. If commitments are offered, this phase can be extended by a further 15 working days, and an additional 15 working days may be granted at the request of the parties. Following a Phase I review, the FCA can authorise the concentration (either unconditionally or subject to remedies) or, if serious doubts remain as regards anti-competitive effects, initiate an in-depth examination known as Phase II.
- *Phase II* (*for complex cases only where an in-depth analysis is necessary*): Phase II takes about another 65 workings days. If commitments or amendments to commitments are submitted less than 20 days before the decision deadline, the review period may be extended by 20 working days, up to a maximum of 85 working days. The parties may request a further extension of 20 working days.

Following a Phase II decision, the Minister of the Economy may call in the case to review the concentration on grounds other than that of maintaining competition, such as general interest, industrial development and employment concerns.

### Suspensory Filing

Filing is suspensory. Therefore, the transaction cannot be implemented prior to the FCA's clearance.

The FCA can impose a fine of up to 5% of the entity's French turnover for failure to notify or for early implementation. In the event of failure to notify operations, the party responsible for notification must resubmit the notification.

## 6.3 Cartels

Article L. 420-1 of the FCC prohibits agreements and concerted practices which have as their object or effect the prevention, restriction or distortion of competition in a market. It is the national equivalent to Article 101 of the TFEU.

In particular, such practice is prohibited where it (i) limits access to the market or the free exercise of competition by other undertakings, (ii) impedes the determination of prices by the free play of market forces by artificially encouraging the increase or reduction of prices, (iii) limits or controls production, markets, investment or technical development, or (iv) shares markets or sources of supply.

French competition law applies concurrently with EU competition law. In practice, the FCA, which is empowered to apply EU competition law, enforces national provisions in line with the decisional practice of the EC and the case law of the EU courts, reflecting the principles of effectiveness and the direct applicability of EU law within the national legal order.

The FCA has jurisdiction where it can be established that there is a sufficiently close connection between the alleged infringement and the French territory. Such a close connection will be established where the following cumulative conditions are met:

- the practice produces direct, substantial, actual or foreseeable effects in France, or is implemented or originates there;
- the FCA is in a position to bring the entire infringement effectively to an end; and
- the FCA is able to gather, potentially with the assistance of other authorities, the evidence required to establish the infringement.

The FCA may impose fines of up to 10% of the highest worldwide turnover, excluding VAT, achieved by the undertaking concerned in any of the years during which the anti-competitive conduct took place.

### 6.4 Abuse of Dominant Position

Article L. 420-2 of the FCC prohibits the abuse by an undertaking or a group of undertakings of its dominant position in the domestic market, in line with Article 102 of the TFEU. The demonstration of such an anti-competitive practice requires, as a preliminary condition, establishing that the undertaking concerned, or the group of undertakings, holds a dominant position in the market. Secondly, the abuse of such position is prohibited by French competition law, which may, in particular, consist in refusals to deal, tying practices or discriminatory conditions of sale.

The interplay between French and EU competition law described above equally applies here: the FCA, empowered to enforce both sets of rules, ensures a consistent approach with the EC's decisional practice and EU case law, in line with the principles of effectiveness and direct applicability of EU law.

French competition law also recognises a standalone practice of abuse of economic dependence, which does not exist under EU law. Such a practice is established where the following cumulative conditions are met:

- the existence of a situation of economic dependence, assessed *in concreto* on the basis of factual elements (ie, an undertaking must be unable, within a reasonable period of time, to obtain a technically and economically equivalent alternative to the contractual relationships concerned);
- an abuse of that situation of economic dependence – eg, through the imposition of unfair trading conditions; and
- an effect on the functioning or the structure of competition.

As set out above in relation to cartels, the FCA's jurisdiction over abuse of dominance cases is triggered where a sufficiently close connection with French territory can be established, based on the same cumulative criteria (effects, implementation or origin in France; ability to bring the infringement to an end; and ability to gather the required evidence).

The same sanctioning framework also applies, with fines of up to 10% of the highest worldwide turnover (excluding VAT) achieved by the undertaking concerned during any year in which the infringement took place.

## 7. Intellectual Property

### 7.1 Patents

#### Definition

A patent protects a technical invention (eg, a product, a process or a device), provided that it is new, involves an inventive step and is capable of industrial application. Discoveries, scientific theories, mathematical methods, aesthetic creations, business methods and computer programs "as such" are excluded from patentability.

#### Length of Protection

A French patent is protected on the French territory for 20 years from the filing date, subject to the regular payment of annuities. Supplementary protection certificates may extend protection for certain medicinal and plant protection products.

#### Registration Process

A French patent application is filed with the French National Industrial Property Institute (*Institut national de la propriété industrielle*, or INPI). The invention must be described in the patent application in a manner that is sufficiently clear and complete to enable a person skilled in the art to carry it out. The application is examined for formal requirements and patentability.

A search report is drawn up, and the application is generally published 18 months after filing. Protection may also be obtained in France through a European patent filed with the European Patent Office, with or without unitary effect where applicable.

### Enforcement and Remedies

The claims define the scope of the protection. Patent owners may bring civil infringement proceedings before the competent specialised judicial courts and may seek preliminary or permanent injunctions, seizure of evidence (*saisie-contrefaçon*), damages, recall or destruction of infringing goods, and publication of the judgment. Certain acts of patent infringement may also give rise to criminal liability, and customs measures may be available.

## 7.2 Trade Marks

### Definition

A trade mark is a sign used in the course of trade to distinguish the goods or services of one undertaking from those of others. It may consist, in particular, of words, names, logos, letters, numerals, colours, shapes, sounds or other signs, provided that it can be represented in the register in a manner enabling the competent authorities and the public to determine the clear and precise subject matter of protection. To be eligible for trade mark protection and ensure the function of guarantee of origin, the sign must also be distinctive (ie, it must be unrelated to the goods and services for which the protection is sought) and not be generic, descriptive, or common in relation to the goods or services in question. Moreover, the sign must also be lawful, non-deceptive and available (ie, distinct from prior third-party rights).

### Length of Protection

A French trade mark registration is valid for ten years from the filing date and may be renewed indefinitely for further ten-year periods, subject to renewal formalities and payment of fees.

A trade mark may be revoked, notably for non-use in case the mark has not been genuinely used for an uninterrupted period of five years or in case the sign has become the common commercial designation of the product or service at stake.

### Registration Process

A French trade mark application is filed with the INPI, specifying the sign and the goods and services, according to the Nice Classification, for which the protection is sought. The INPI examines absolute grounds for refusal and publishes the application, and third parties may file observations or oppositions based on earlier rights. If no refusal or successful opposition is raised, the mark is registered.

Protection in the French territory may also be obtained through an EU trade mark filed with the EUIPO, or through an international registration designating France or the EU under the Madrid system and filed with the WIPO.

### Enforcement and Remedies

The trade mark owner may prohibit unauthorised use of identical or similar signs for identical or similar goods or services provided that there is a use in the course of trade and such use is likely to generate likelihood of confusion in the public's mind.

The trade mark owner may also rely on enhanced protection for marks with a reputation allowing the owner to claim protection beyond the goods and services for which the trade mark is registered, provided that certain conditions are met.

The trade mark owner may seek injunctions, damages, seizure of evidence (*saisie-contrefaçon*), recall or destruction of infringing goods, and publication of the judgment. Customs measures and criminal sanctions may also be available.

## 7.3 Industrial Designs

### Definition

A design protects the appearance of the whole or part of a product resulting, in particular, from the features of lines, contours, colours, shape, texture or materials of the product or its ornamentation. To be protected as a registered design, it must be new and have individual character.

### Length of Protection

A French registered design is protected for an initial period of five years from filing and may be renewed in five-year periods up to a maximum of 25 years. At

EU level, an unregistered design is protected for three years from the date on which it was first made available to the public within the EU.

### Registration Process

A French design application is filed with the INPI and must identify the applicant, the product indication and reproductions of the design. The INPI conducts a formal examination and publishes the registration, subject to possible deferment of publication.

Protection may also be obtained by filing an EU registered design with the EUIPO or through an international design registration under the Hague system with the WIPO.

### Enforcement and Remedies

A design owner may bring infringement proceedings against unauthorised making, offering, placing on the market, importing, exporting, using or stocking of products incorporating the protected design.

Available remedies include injunctions, seizure of evidence (*saisie-contrefaçon*), damages, recall or destruction of infringing goods, and publication of the decision. Customs measures and criminal sanctions may also be available in appropriate cases.

## 7.4 Copyright

### Definition

Copyright protects original works of the mind, whatever their genre, form of expression, merit or purpose, including literary, artistic, musical, audiovisual, graphic and software works. Provided that it is original (ie, it bears the author's footprint) and expressed in a form (ie, ideas and concepts are not eligible for copyright protection), the work is protected from the date of its creation.

### Length of Protection

Economic rights last for the life of the author plus 70 years after death. Moral rights (eg, right of paternity, right of integrity) are perpetual, inalienable and imprescriptible under French law. Specific rules apply to collaborative works, collective works, audiovisual works, posthumous works and related rights.

### Registration Process

There is no copyright registration in France. Rights arise automatically from creation. In practice, authors or right holders may use evidence-preservation tools, such as deposits with a bailiff/commissioner of justice, the INPI e-Soleau envelope or trusted timestamping, to evidence the date and content of a work, but these are not constitutive of rights.

### Enforcement and Remedies

Copyright owners may act against unauthorised reproduction, representation or adaptation of their works and/or in case of infringement of their moral rights. Remedies include injunctions, seizure of evidence, damages, withdrawal, recall or destruction of infringing copies, publication of the judgment, and criminal sanctions in appropriate cases.

## 7.5 Others

### Software

Computer programs are protected by copyright as literary works, provided that they are original. Protection notably covers the source code, object code and preparatory design material, but not the ideas or principles underlying the program. In France, the economic rights in software created by employees in the performance of their duties are, unless otherwise agreed, vested in the employer.

### Databases

Databases may benefit from copyright protection where the selection or arrangement of their contents is original. In addition, the database producer may benefit from a sui generis right where there has been a substantial investment in obtaining, verifying or presenting the contents. The sui generis right generally lasts 15 years from completion or from the database being made available to the public, subject to renewal where a substantial new investment is made.

### Trade Secrets and Know-How

Trade secrets are protected where information is not generally known or readily accessible, has commercial value because it is secret, and has been subject to reasonable protective measures by its lawful holder. Protection does not require registration and lasts as long as these conditions remain satisfied.

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## 8. Data Protection

### 8.1 Applicable Regulations

France's data protection framework is primarily based on the EU General Data Protection Regulation (GDPR), which applies directly across all Member States and has extraterritorial scope. The GDPR sets out the core principles governing the processing of personal data, including lawfulness, transparency, purpose limitation, data minimisation and security, as well as detailed obligations for controllers and processors.

This framework is complemented at national level by the French Data Protection Act (*Loi informatique et libertés*), as amended, which supplements the GDPR in areas where Member States retain flexibility (eg, certain processing conditions, enforcement procedures, and specific rules for public sector or sensitive data processing).

Together, these instruments establish a comprehensive regime governing the collection, use, storage and transfer of personal data. They apply not only to entities established in France, but also to foreign organisations that target individuals in the EU or monitor their behaviour.

In line with the GDPR, non-compliance may result in significant administrative fines, which can reach up to 4% of a company's global annual turnover, depending on the severity of the infringement.

### 8.2 Geographical Scope

EU and French data protection rules have a broad extraterritorial reach, meaning they can apply to foreign companies even if they have no physical presence in France or the EU.

Under the GDPR, these rules apply to any organisation that offers goods or services to individuals located in the EU, whether or not payment is required, or that monitors the behaviour of individuals within the EU – eg, through tracking or profiling techniques. As a result, a foreign company targeting customers in France – eg, through a website in French, pricing in euros or marketing campaigns directed at EU residents – will typically be subject to the GDPR and, where relevant, to certain provisions of French law.

In practice, this means that such companies must comply with the core requirements of the GDPR, including having a valid legal basis for processing personal data, providing clear and transparent information to individuals, implementing appropriate security measures, respecting data subject rights and complying with the rules governing international data transfers.

In addition, where they are not established in the EU, foreign companies may be required to appoint an EU representative and will need to engage with European supervisory authorities.

Overall, this extraterritorial framework ensures that foreign and EU-based companies are subject to equivalent data protection standards when they target individuals in France or elsewhere in the EU.

### 8.3 Role and Authority of the Data Protection Agency

In France, the authority responsible for enforcing data protection rules is the National Commission on Informatics and Liberty (*Commission nationale de l'informatique et des libertés*, or CNIL).

The CNIL is an independent administrative authority tasked with ensuring the proper application of the GDPR and the French Data Protection Act. Its role is both regulatory and supervisory. On the one hand, it issues guidance, recommendations and practical tools to help organisations understand and comply with their obligations. On the other, it monitors compliance through audits and investigations, which may be carried out on-site, remotely, or on the basis of documentary evidence.

The CNIL also has significant corrective and enforcement powers. It may issue warnings or formal notices, order organisations to bring processing operations into compliance, restrict or suspend certain data processing activities, and impose administrative fines. In line with the GDPR, these fines can reach up to EUR20 million or 4% of the undertaking's global annual turnover, whichever is higher, depending on the seriousness of the infringement.

In a cross-border context, the CNIL co-operates with other EU data protection authorities within the framework established by the GDPR, in particular through the "one-stop shop" mechanism, whereby a lead supervisory authority co-ordinates decisions concerning organisations operating in several Member States.

Overall, the CNIL plays a central role in both guiding organisations and enforcing compliance, ensuring the consistent and effective application of data protection rules in France and across the EU.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

Several legislative developments are expected to influence the French legal and tax landscape in the short to medium term:

- *Finance Bill for 2027*: The Finance Bill for 2027 (*Loi de finances pour 2027*) is expected to be presented to Parliament in the autumn of 2026 and adopted by the end of the year. It is, at this stage, too early to anticipate the content of the measures that will be included, although this bill should be influenced by the sustained pressure on French public finances and the government's commitment to a credible deficit consolidation path. This bill will be the last finance bill before the 2027 presidential elections.
- *EU AI Act*: Key obligations applicable to high-risk AI systems, originally scheduled to enter into force on 2 August 2026, are now expected to be deferred to late 2027 under the EU's Digital Omnibus simplification package.
- *EU FDI Screening Regulation*: Formally adopted by the Council on 8 June 2026, the revised regulation will need to be implemented by Member States within 18 months, with expected application in January 2028.
- *Pay transparency*: The draft bill transposing EU Directive 2023/970 of 10 May 2023 is currently before the French Parliament and will replace the existing gender equality index with seven new indicators applicable to employers with 50 or more employees.
- *Merger control*: Following the ECJ's *Illumina/Grail* decision, the FCA is considering adopting new guidelines introducing a call-in power, enabling it to review below-threshold transactions in strategic sectors such as technology and healthcare.

# Trends and Developments

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**Baker McKenzie Paris** is a leading international law firm offering a comprehensive, multidisciplinary approach to legal services. Its top-tier teams combine expertise across key practice areas including tax, corporate, employment, data protection, intellectual property and antitrust. With a deep understanding of both national and international markets, the firm provides seamless, cross-border solutions tailored to its clients' strategic objectives. Baker McKenzie supports businesses at every stage of their development, from establishing operations in France to expanding globally, ensuring compliance, managing risk and unlocking opportunities. The firm's integrated, client-focused approach enables it to deliver innovative and practical advice, helping clients confidently invest, grow and succeed in the dynamic French and international business environment.

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## France as a Business Destination

In 2026, France remains the leading European destination for foreign investments and, even in a more selective international environment, the country continues to draw substantial international capital. For the seventh consecutive year, France ranked first in Europe in 2025 by number of foreign investment projects, with 852 projects, ahead of the United Kingdom and Germany. These figures reflect a set of deep-rooted structural advantages: world-class infrastructure, a highly skilled workforce, a dynamic innovation ecosystem fuelled by initiatives such as French Tech, Choose France and the France 2030 investment plan, and a central geographic location within Europe.

At the same time, however, the French business environment is operating under greater pressure than in previous years, with political tensions, fiscal and high public debt constraints, and a more volatile international context impacting investment decisions directly.

## Political and Economic Context

France has experienced a period of significant political instability since the 2024 snap elections, with a succession of short-lived governments and difficult parliamentary arithmetic that long delayed budgetary decisions. A measure of stability has, however, returned with the appointment of Sébastien Lecornu as Prime Minister, allowing the government to push through some reforms and to maintain a credible trajectory to keep the public deficit under control.

France nonetheless remains under pressure to reduce its public deficit, which stood at 5.1% of GDP in 2025, with public debt projected to exceed 118% of GDP by end-2026. The government's consolidation efforts have, however, been acknowledged at both European and market levels: the European Commission has kept the excessive deficit procedure opened in 2024 suspended, recognising France's compliance with its commitments, and Standard & Poor's maintained France's "A+" sovereign rating with a stable outlook in May 2026. The political context nonetheless remains tense in the run-up to the 2027 presidential elections, which are likely to weigh on consumer and business confidence and complicate the adoption of structural reforms.

On the macroeconomic front, France is exposed to a deteriorating international environment, marked by new US tariffs and the economic fallout of the war in the Middle East, which has triggered a sharp rise in energy prices across Europe. France has, however, proved more resilient than its main neighbours: inflation stood at 2.8% in May 2026 below Italy and below the projected euro area average, supported by its largely decarbonised, nuclear-based electricity mix, which insulates the country from the doubling of gas prices triggered by the closure of the Strait of Hormuz. Activity has nonetheless slowed, with growth projected at 0.5–0.7% in 2026, unemployment rising to 8.1% in Q1 2026 and corporate insolvencies reaching a historic high. Looking ahead, the resolution of the conflict in the Middle East is expected to have a materially positive impact on the French economy, easing energy prices, restoring supply chain stability and improving overall business and consumer confidence across the euro area.

Despite this challenging environment, certain sectors continue to attract major investments and drive growth. French industry has shown remarkable resilience, with manufacturing output rebounding strongly in early 2026 (+1.3% in March and +0.4% in April) and helping the economy to avoid a technical recession. This momentum is supported by historically high levels of corporate investment, which are now more than 10% above pre-pandemic levels, and by the structural strength of strategic industrial sectors, including aerospace, naval, space and rail equipment, whose output now exceeds 2019 levels by nearly 28%. The defence sector, in particular, is operating at full capacity, supported by NATO members' rearmament commitments and heightened geopolitical tensions, with strong order intake at Thales and other prime contractors and a record contribution to French exports.

France is also emerging as Europe's leading hub for artificial intelligence and is set to become one of the continent's primary territory for AI infrastructure, supported by its abundant, decarbonised, nuclear-based electricity supply. The 2026 Choose France summit confirmed this dynamic, with a record EUR93 billion of announced foreign investments driven largely by AI projects, including Japanese group SoftBank's landmark commitment of up to EUR75 billion to develop

AI data centres across the country. Beyond infrastructure, France hosts some of Europe's most prominent AI players, most notably Mistral AI, which is now valued at around EUR11.7 billion following its 2025 fundraising rounds and stands as a key challenger to US and Chinese leaders in generative AI.

France's appeal also extends well beyond technology and innovation, as illustrated by its tourism sector: in 2025, France confirmed its position as the world's leading tourist destination, welcoming a record 102 million international visitors and generating EUR77.5 billion in international tourism receipts (up 9% year-on-year), with travel and tourism contributing approximately 9.1% of national GDP. In 2026, the French tourism market remains robust, underpinned by a structural shift in consumer preferences towards proximity tourism, in a context of heightened uncertainty and deep changes in consumption patterns, particularly in the travel sector where customers are increasingly looking for holidays that are closer to home, more responsible and more meaningful. This trend supports domestic and local tourism.

More generally, the continued attractiveness of France is also reflected in the dynamism of its M&A market, which started 2026 on a strong note, with the value of announced transactions involving a French party up 40% year-on-year in the first quarter of 2026, driven by a sharp rebound in outbound activity and a series of large strategic deals across the energy, healthcare, luxury and retail sectors. Notable deals include Engie's USD21.3 billion offer for UK Power Networks, Servier's USD2 billion acquisition of Day One Biopharmaceuticals and Kering's sale of its beauty division to L'Oréal for EUR4 billion. Industrial players, supported by solid balance sheets, are now leading the deal flow in a market where private equity firms remain cautious due to elevated portfolio valuations and tighter financing conditions.

## Setting Up a Business in France: Legal Framework and Corporate Structures

France offers a wide range of corporate forms to accommodate different business needs. The most commonly used vehicle for domestic and foreign investors is the simplified stock corporation (*société par actions simplifiée* – SAS), which is particularly valued for its flexibility and streamlined governance framework.

French corporate law is well integrated within the broader European legal framework and provides efficient mechanisms for implementing domestic and cross-border reorganisations, including mergers, demergers, corporate conversions and migrations. Cross-border transactions can generally be carried out both within the European Union and, subject to applicable reciprocity requirements and recognition principles, with non-EU jurisdictions.

Compared with a number of other European jurisdictions, the transfer of shares or businesses in France is generally straightforward and does not typically require the involvement of a notary, resulting in greater transactional efficiency and reduced formality.

From an administrative perspective, the ongoing digitalisation of corporate registries has significantly simplified incorporation and post-incorporation formalities. Most corporate filings can now be completed online, and electronic signatures are now widely accepted for corporate documentation.

In the area of corporate governance, recent years have seen increased transparency requirements, particularly through the implementation of beneficial ownership disclosure rules. The Loi PACTE has also encouraged companies to consider broader stakeholder interests by allowing them to define a corporate purpose (*raison d'être*). In parallel, French corporate law continues to evolve through legislative reforms and case law developments affecting shareholders' agreements, drag-along and tag-along mechanisms, and joint venture governance arrangements.

Overall, France offers a modern and flexible legal framework for the establishment, structuring and operation of businesses, while benefiting from the legal certainty afforded by a mature and well-developed judicial system.

## Foreign Direct Investment (FDI) Screening

France maintains one of the most robust foreign investment control regimes among OECD countries, covering strategic sectors including defence, energy,

healthcare, technology, artificial intelligence, telecommunications, water supply, critical raw materials, and critical technologies such as cybersecurity and biotechnology.

The scope of the regime has been progressively expanded since 1 January 2024 to encompass activities related to the extraction and processing of critical raw materials and expressly included French branches (*succursales*) of foreign companies within its perimeter. This strengthened framework has not, however, diminished France's attractiveness: for the seventh consecutive year, France ranks as the leading destination for FDI in Europe. FDI filing activity continues to grow, with 417 FDI filings submitted in 2025, up from 392 in 2024.

At EU level, the revised EU FDI Screening Regulation – which aims to move from a patchwork system towards a harmonised baseline across EU Member States – was formally adopted by the Council of the EU on 8 June 2026. The Member States will have 18 months to implement the required national screening mechanisms ahead of the regulation's expected application in January 2028.

### Antitrust

In terms of recent regulatory changes, the French Competition Authority (FCA) introduced a "pact of trust" to simplify antitrust screening procedures for straightforward transactions, enabling them to be notified without the need for pre-notification. At the same time, Law No. 2026-403 of 26 May 2026 on the simplification of economic life, enacted following the Constitutional Council's decision of 21 May 2026, raises the French merger control notification thresholds for the first time since 2004. From 1 September 2026, a transaction must be notified to the FCA where (i) the combined worldwide turnover of the parties exceeds EUR250 million (up from EUR150 million) and (ii) at least two of the parties each generate more than EUR80 million in turnover in France (up from EUR50 million). The specific lower thresholds applicable to the retail sector have also been increased, while the thresholds applicable to French overseas territories remain unchanged. The reform is expected to reduce the annual number of notifiable transactions by 20–30%, mainly in the retail sector.

In addition, following the European Court of Justice's decision in the *Illumina/Grail* matter, the FCA is considering adopting new directives that would enable it to review transactions in strategic sectors that fall below the legal thresholds, particularly within the technology and healthcare industries.

The FCA demonstrates a notably active and robust level of enforcement in France, positioning itself among the most vigorous competition authorities both within Europe and internationally.

### Employment Law

France has one of the most protective employment frameworks in Europe, governed by the French Labour Code and extensive collective bargaining, with strong dismissal protections, mandatory employee representation above certain headcount thresholds and an active role for the labour courts (c *onseils de prud'hommes*).

Successive reforms have nonetheless introduced greater flexibility for employers, most notably the 2017 Ordonnances Macron, which capped damages for unfair dismissal and streamlined social dialogue. France also offers employers a comprehensive toolkit to attract and retain talent, ranging from the favourable inpatriate tax regime to a wide range of employee incentive and profit-sharing schemes.

Recent developments include the transposition of EU Directive 2023/970 of 10 May 2023 on pay transparency, currently being discussed before Parliament. The draft bill will replace the existing gender equality index (in place since 2019) with seven new indicators to be published by employers with 50 or more employees, covering in particular overall gender pay gaps, variable pay components and pay quartiles.

### Tax Overview: Key Considerations

After several years of pro-business reforms, most notably the gradual reduction of the corporate income tax rate from 33.33% to 25%, the reduction of production taxes and the steady improvement of incentives for innovation, the French tax landscape has tightened since late 2024, in a context marked by heightened pressure on public finances and the need to consolidate the budget deficit.

Recent reforms have introduced several tax increases targeting both large companies and high-income individuals. For companies, the Finance Acts for 2025 and 2026 introduced and extended a temporary additional contribution on the profits of large enterprises, which can bring the effective corporate tax rate up to 36% for the largest groups, while the planned phase-out of the local *cotisation sur la valeur ajoutée des entreprises* (CVAE, a local value-added tax on businesses) has been postponed until 2030.

For individuals, the Finance Act for 2025 introduced a comprehensive reform of management packages, under which capital gains realised on equity instruments by managers and employees are now in principle taxed as salaries, together with a Differential Contribution on High Incomes (CDHR) ensuring a minimum 20% effective tax rate on the highest earners. The Finance Act for 2026 further introduced a new 20% annual tax on certain assets held by patrimonial holding companies, while the Social Security Financing Act for 2026 raised the social security contributions on capital income from 9.2% to 10.6%.

Despite this tightening, France remains an attractive jurisdiction from a corporate tax standpoint for foreign corporate investors. The country benefits from one of the world's most extensive networks of double tax treaties, with approximately 120 bilateral conventions in force, allowing investors to mitigate withholding tax leakage and secure the tax treatment of cross-border flows.

The French tax framework also offers a number of tax incentives and a particularly competitive environment for innovation, supported by the Research Tax Credit (*Crédit d'impôt recherche*), the Innovation Tax Credit (*Crédit d'impôt innovation*), the Patent Box regime taxing qualifying IP income at 10% and the Young Innovative Company (*Jeune Entreprise Innovante*) regime, which together position France as one of the most attractive European jurisdictions for R&D and innovation activities.

### Intellectual Property and Data Protection

France offers a robust and modern legal framework that effectively protects innovation and intangible assets, fully harmonised with EU standards. The National Institute of Industrial Property (INPI) plays a central role, with fully dematerialised filing procedures and updated guidelines for the filing of registered rights. In addition to registered rights, the French landscape covers the full spectrum of intellectual property rights including copyright, trade secrets and know-how, and is supported by specialised IP chambers within French courts as well as efficient interim relief mechanisms. French companies and IP practitioners also benefit from the Unified Patent Court, which has rapidly built up its case law since 2023 and is now firmly established as a key forum for European patent litigation.

Data protection is equally well established in France, with the GDPR fully embedded in business practices and the *Commission Nationale de l'Informatique et des Libertés* (CNIL) recognised as one of Europe's most active and influential supervisory authorities. The framework provides legal certainty for businesses while ensuring a high level of protection for personal data, supporting France's positioning as a trusted environment for data-driven innovation.

Recent developments confirm the dynamism of this area. The most significant is the progressive application of the EU AI Act (Regulation 2024/1689), with key obligations for high-risk AI systems originally set to enter into force on 2 August 2026, but currently subject to a proposed deferral to late 2027 under the EU's Digital Omnibus simplification package. The CNIL has been designated as the French lead authority and has published a series of practical guidelines articulating the AI Act with the GDPR, providing welcome clarity for businesses developing AI solutions in France. In parallel, the EU Data Act (Regulation 2023/2854), applicable since 12 September 2025, introduced a new framework for access to and sharing of data generated by connected devices and cloud services. Together with the GDPR, these texts form a coherent European framework that strengthens legal certainty in the digital economy and reinforces France's attractiveness for data-driven and AI-related investment.

### Dispute Resolution

France offers a structured and diversified dispute resolution system built around commercial courts (*tribunaux de commerce*), civil courts (*tribunaux judiciaires*)

and courts of appeal, with specialised chambers for complex commercial, financial and IP matters. French courts also benefit from a rich and well-established body of case law across most areas of business law, providing a high degree of legal certainty and predictability for companies operating in France.

Paris also stands out as one of the world's leading international arbitration hubs, hosting major institutions such as the International Chamber of Commerce and the *Centre de Médiation et d'Arbitrage de Paris*, and benefiting from a particularly favourable legal framework as well as the International Commercial Chamber of the Paris Court of Appeal, which hears international commercial and arbitration-related cases in English.

## Outlook for 2026 and Beyond

In a complex and evolving global environment, France is entering a phase of cautious stabilisation rather than rapid expansion. While macroeconomic and political uncertainties may continue to weigh on short-term performance, the country's core structural strengths remain firmly intact, particularly in strategic sectors such as defence, energy and artificial intelligence.

France also benefits from a well-established and sophisticated legal framework that is both flexible and robust. French law offers a wide range of efficient legal structures and transactional tools, providing foreign investors with reliable and adaptable solutions. Fully embedded in the European legal and regulatory framework, French law offers investors a high degree of legal certainty and seamless access to cross-border transactions.

In the current environment, investors are expected to adopt a more selective and strategic approach, focusing on resilient sectors and innovation-driven opportunities. The political calendar will remain a key factor, with the 2027 presidential election likely to influence investor confidence and the pace of reforms in the short term. Provided that political visibility improves and macroeconomic conditions stabilise, France should remain well positioned to consolidate its role as a leading European business and investment hub.

Overall, 2026 and 2027 are expected to be transitional years, but France, despite its high public debt, retains strong structural fundamentals that continue to underpin its attractiveness for international investors.

# GIBRALTAR




## Law and Practice

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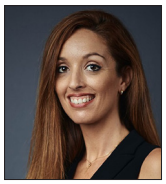
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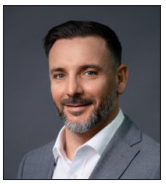
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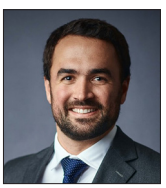
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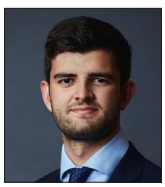
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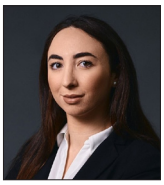
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# 1. Legal System

## 1.1 Legal System and Judicial Order

Gibraltar is a British overseas territory with a culture that emanates from the UK. Its laws are based on English law (common law system) and although its jurisprudence is largely home-grown, English and Commonwealth judicial precedent and rules of equity, although not strictly binding, are of persuasive authority in Gibraltar.

Gibraltar has its own government and parliament that are responsible for domestic affairs, while its foreign affairs are handled by the UK. It has its own written constitution, and statutes are enacted by its parliament.

Certain English acts are applied, either in whole or in part, in the following ways:

- by express reference to the schedule of the English Law (Application) Act, 1962;
- by Order of Her Majesty in Council;
- as expressed in the English act itself or in any other act; and
- by necessary implication.

### Court Structure

While similar to the court structure in England and Wales, there are notable differences in Gibraltar. This includes the absence of a High Court, Crown Court and County Courts, with Gibraltar's Supreme Court having jurisdiction over both criminal and civil matters. Gibraltar's Supreme Court handles matters that would fall under the UK High Court's Chancery, King's Bench and Family Divisions, as well as serving as an appellate function from the Magistrates' Court.

### Judiciary

Judges and magistrates are appointed locally, with a parallel system of lay assessors in the Magistrates' Court, as seen in England and Wales. The judiciary is independent from the government of Gibraltar and politically impartial.

Appeals from the Supreme Court are made to the Court of Appeal, which sits at periodic intervals and is presided over mostly by English judges. Appeals from that court are to the Privy Council, which sits in London.

### Civil Proceedings

Under Section 38A of the Supreme Court Act 1960, the Civil Procedure Rules (CPR) made under the Civil Procedure Act 1997 in England and Wales, as amended from time to time, apply in Gibraltar, with such modification as the circumstances may require. The Supreme Court Rules 2000 supplement these procedural rules, providing further requirements in terms of, inter alia, interpretation, court records, fees and costs and prescribed forms.

Civil proceedings can be split into a variety of "jurisdictions", but most are handled in the Supreme Court, with the Magistrates' Court hearing only a limited range of civil matters (eg, the Stipendiary Magistrate holds the office of the coroner in the UK). These jurisdictions include the following:

- family jurisdiction – non-contentious probate, divorce and matrimonial proceedings, and child proceedings;
- civil jurisdiction – contract and tort, commercial matters, and constitutional, public and administrative law matters;
- appellate jurisdiction – the Supreme Court will hear appeals from certain tribunals as well as the Magistrates' Court;
- admiralty jurisdiction – ship arrests and general admiralty matters;
- ordinary jurisdiction and company jurisdiction (Chancery equivalent) – equity and trusts, contentious probate, bankruptcy and insolvency, company matters;
- miscellaneous jurisdiction – landlord and tenant, mutual legal assistance, administrator general, deed polls, admissions to the Gibraltar Bar; and
- Court of Protection – jurisdiction over the property, financial affairs and personal welfare of people who lack mental capacity to make decisions for themselves.

### Criminal Proceedings

The Criminal Procedure and Evidence Act 2011 prescribes the applicable procedure in the Magistrates' Court and Supreme Court when they exercise criminal

jurisdiction. Together with the Crimes Act 2011, these acts brought about significant changes to the criminal justice system in Gibraltar, effectively creating a modern criminal code for Gibraltar. From a business perspective, corporate manslaughter prosecutions are also possible, with extension of this offence beyond corporations to the police, trade unions, partnerships and employers' associations.

All criminal proceedings commence in the Magistrates' Court, with the more serious (indictable) offences being sent to the Supreme Court, either for jury trial or sentencing.

### Lawyers

Most lawyers are England and Wales-qualified barristers or solicitors, with a minority of European lawyers. Qualification for call to the Bar in Gibraltar is via a separate procedure to qualification in the UK, and it is possible for UK-qualified solicitors to be called to the Gibraltar Bar. There is a practical training requirement before admission to the Gibraltar Bar, consisting of a period of 12 months' employment at an approved establishment, together with an approved academic course in Gibraltar law. In certain cases, the Chief Justice may waive one or more of these requirements – for example, when an English barrister is instructed to act as an advocate on a particular case or cases.

Gibraltar enjoys what is termed a "fused profession", whereby both barristers and solicitors called to the Gibraltar Bar enjoy rights of audience in every court, and barristers can be "acting solicitors". This results in practitioners with a diverse skill set who are all client-facing and able to conduct litigation or non-contentious work without restriction.

The Legal Services Regulatory Authority (LSRA) regulates the legal services industry in Gibraltar.

## 2. Restrictions on Foreign Investments

### 2.1 Approval of Foreign Investments

In Gibraltar, there is no distinction between foreign and domestic investment. In general, there are no restrictions on foreign or domestic shareholders. However, certain financial services, gaming and telecommunications businesses do require pre-authorisation from a regulator regarding their shareholders to ensure that the shareholders are reputable persons and meet applicable fitness and proprietary requirements.

### 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

Generally, an application would have to be made to the relevant regulator (for example, the Gibraltar Financial Services Commission in relation to a financial services business) as part of the wider application for the issuance of a licence in connection with the proposed activities. This sets out the details of the proposed shareholder, source of wealth, details regarding the fitness and proprietary requirements of the individual (for example, whether the individual has ever been declared bankrupt) and details regarding the beneficial interest held.

Failure to notify a regulator of any changes in shareholders, or obtain the pre-approval of a shareholder, could result in regulatory sanctions and revocation of the relevant licence.

### 2.3 Commitments Required From Foreign Investors

Generally, authorities do not condition their approval to certain commitments (although this may vary depending on the activities of the proposed investment), but individuals must notify the regulator should there be any material changes to the information provided in the initial application for approval.

### 2.4 Right to Appeal

The existence and framework of a right to appeal depend entirely on the specific regulatory function and sector involved. However, this will depend on the circumstances on a case-by-case basis as there may be situations where, in certain circumstances, there is some element of recourse. For example, under Section 615 of the Financial Services Act 2019, certain persons aggrieved by a formal decision notice issued by the Gibraltar Financial Services Commission has a statutory right to appeal the decision to the Supreme Court of Gibraltar.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

Corporate vehicles in Gibraltar may take various forms. These include trusts, foundations, limited partnerships, protected cell limited partnerships, limited liability partnerships, companies limited by guarantee, companies limited by shares, protected cell companies and unlimited companies.

As each form of corporate vehicle contains its own unique set of characteristics, the most suitable vehicle for a particular use case will depend on various factors, such as the nature of the underlying business activity or reasons for the establishment of the vehicle (eg, asset protection or succession planning).

Companies limited by shares are by far the most common form of corporate vehicle in Gibraltar. These may be set up as a private company (in which case the company's shares or debentures are not allowed to be offered to the general public) or as a public company (in which case the company's shares or debentures are allowed to be offered to the general public).

#### Private Companies

Private companies are required to adopt articles of association which set out the rules governing the relationship between the company and its shareholders, as well as the responsibilities of its directors.

Private companies must have a minimum of one director, and there is no statutory maximum number of directors. A company may, however, provide for a maximum number of directors under its articles of association. A sole director of a company is unable to also act as the secretary of that company.

Private companies must have a share capital that is divided into shares of a fixed amount, and there is no minimum or maximum share capital requirement. Therefore, private companies may be set up with a single shareholder and can consist of any number of shareholders (although regard must be had to regulatory implications of what could be construed as a collective investment scheme) without the need to register as a public company.

Due to their flexibility, the ease with which they can be set up and the limited liability offered to shareholders, private companies are usually perceived to be the preferred corporate vehicle for most businesses, joint ventures and holding companies in Gibraltar.

#### Trusts

A trust is an equitable obligation binding one party, the trustee, to control and manage property for the benefit of one or more parties, the beneficiaries. A settlor will transfer property to the trustee (whether during their lifetime or under a will) on specified terms which are usually contained in a trust deed and supplemented by a non-binding letter of wishes from the settlor to the trustee.

The provisions relating to the establishment and administration of a trust are contained in the document constituting the trust, known as the declaration of trust or trust deed. This document sets out the powers and fiduciary obligations of the trustees vis-à-vis the trust property/fund and the beneficiaries.

### 3.2 Incorporation Process

The incorporation process of a private company requires an application form, together with payment of the applicable fee, to be submitted to Companies House.

In the case of a company, the application form must include:

- the proposed name of the company;
- the liability of its members;
- whether the company is to be private or public;
- a statement of the intended registered office address and email address;
- the memorandum of association and articles of association (to the extent that bespoke articles of association or the memorandum of association are to be adopted);
- in the case of a company that is to be limited by shares, a statement of the authorised share capital, initial shareholding and particulars of the rights attached to shares;
- in the case of a company that is to be limited by guarantee, a statement of guarantee from the proposed members; and

• a statement of compliance.

There is no requirement for the first director(s) and secretary of a company to be named on the application form. Instead, the Companies Act facilitates a 14-day period during which details of the first director(s) and secretary of the company may be filed.

Standard incorporation takes approximately three working days and costs GBP100. However, Companies House also offers a same-day incorporation service for an additional GBP100.

Upon successful incorporation, Companies House will issue a Certificate of Incorporation which serves as conclusive evidence that the requirements of the Companies Act have been complied with and that the company is duly registered in Gibraltar.

### 3.3 Ongoing Reporting and Disclosure Obligations

Companies are subject to various ongoing annual and event-driven reporting and disclosure obligations.

All companies are required to deliver an annual return to Companies House, at least once in every calendar year. The annual return is a snapshot of certain information relating to a company including the company's main activity, shareholders, directors, secretary and share capital. The annual return must be delivered within 30 days of the date which the annual return is made up to.

Companies are also required to deliver annual accounts to Companies House. The accounting principles to be observed when preparing the accounts vary, depending on the size of the company, and range from an abridged balance sheet to full accounts (including balance sheet, profit and loss account, notes, directors' report and auditors' report). The annual accounts must be filed within 12 months (in the case of a private company) or ten months (in the case of a public company) of the financial year-end. Special rules apply in the case of a company's first reporting period.

Companies are also required to deliver certain information and shareholder resolutions when particular changes occur within the company. The Companies Act applies various filing dates depending on the event which triggered a filing requirement. In the majority of cases where filing of documentation is required, the Companies Act imposes a 30-day filing period.

### 3.4 Management Structures

There is a separation between ownership and control in companies limited by shares. Shareholders are the owners of a company and the directors are responsible for a company's management and day-to-day running, owing a fiduciary duty to the company.

Most of the obligations and responsibilities of the directors and shareholders are set out in a company's articles of association. However, the Companies Act does prescribe certain statutory obligations and responsibilities – for example, under the Act, any changes to a company's name or articles of association require the approval of a company's shareholders. These statutory requirements cannot be overridden by a company's articles of association.

### 3.5 Directors', Officers' and Shareholders' Liability

#### Directors' and Officers' Liability

Under the Companies Act, the officers of a company may be held criminally liable for certain offences which include where the officers fail to comply with certain filing and reporting obligations.

Directors are subject to common law, equitable and fiduciary duties. Broadly, these include the following duties:

- to exercise skill and care;
- to act in good faith and in the best interests of the company;
- to act within the powers conferred by the company's memorandum and articles of association and to exercise powers for a proper purpose;
- not to fetter their discretion;
- to avoid conflicts of interest; and
- not to make a secret profit.

The concept of "piercing the corporate veil" is recognised in Gibraltar and personal liability may therefore be imposed in certain situations – for example, where the directors permit an insolvent company or

prospectively insolvent company to continue trading unless they can demonstrate that it is beneficial for the creditors to continue to do so.

Under the Companies Act, any provision that seeks to exempt or indemnify a director or officer of the company from any liability which by virtue of any rule of law would otherwise attach to them in respect of any negligence, default, breach of duty or breach of trust of which they may be guilty in relation to the company, is deemed to be void. This does not prevent the company from indemnifying directors or officers against liability incurred in defending proceedings (whether civil or criminal) in which judgment is given in their favour or in which they are acquitted. Companies may also purchase and maintain directors' and officers' liability insurance cover.

### Shareholders' Liability

Under the Companies Act, the liability of the shareholders of a company limited by shares is limited to the amount unpaid on the shares respectively held by them. Shareholders may, however, be held personally liable in certain circumstances, such as where they provide a personal guarantee and accept a direct contractual liability with a third party.

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

The legal rules governing the employment relationship in Gibraltar share some similarities to the employment law of England and Wales, both in terms of legislation and common law, modified to suit the needs of the jurisdiction. The applicable legislation is contained primarily in the Employment Act 1932 and its subsidiary legislation, consisting of Orders and Regulations made under various sections of the Act, including but not limited to the:

- Employment Regulations 1994;
- Employment (Maternity and Parental Leave, and Health and Safety) Regulations 1996;
- Employment (Annual and Public Holidays) Order 1996;
- Conditions of Employment (Redundancy Pay) Order 2001;
- Fixed-Term and Part-Time Employees (Prevention of Less Favourable Treatment) Regulations 2003;
- Employment (Information and Consultation of Employees) Regulations 2005; and
- Conditions of Employment (Standard Minimum Wage) Order 2001.

Other primary legislation includes, but is not limited to, the Working Time Act 1999, the Equal Opportunities Act 2006 and the Employment (Bullying at Work) Act 2014, which is unique to Gibraltar with England and Wales never legislating in this manner for claims of bullying.

Collective bargaining agreements apply to some employers; these are most commonly negotiated by trade unions. However, there are also regulations in this area following the introduction of the Employment (Trade Union Recognition) Regulations 2023 which introduced a statutory mechanism for trade union recognition and collective bargaining rights in certain circumstances.

Gibraltar employment law applies to all employees working in Gibraltar, irrespective of nationality or even residence, given the large proportion of cross-border workers commuting to Gibraltar from Spain on a daily basis.

The parties to a contract may choose the governing law of the contract to be that of a different country. However, such an election of governance will likely be limited to contractual disputes, and Gibraltar law will continue to govern the law on the employment relationship generally.

### 4.2 Characteristics of Employment Contracts

A contract of employment may be concluded verbally. However, there is a minimum requirement to file a Notice of Terms of Engagement with the Department of Employment for all workers. In some cases, this notice may be the only written part of a contract between an employer and employee and sets out basic mandatory terms of the employee's employment, such as working hours, salary, holiday entitlement and notice periods, the minimum of which are set in statute. While the requirement to file the notice is mandatory in all cases, some employers will also

provide workers with a more detailed employment agreement, in addition to that notice, setting out its contractual terms and conditions and incorporating any additional benefits.

In addition to the rights imposed by statute, there are other terms implied into contracts by common law, including a duty to provide work and a mutual duty to maintain trust and confidence.

Variations to the employment relationship must be notified to the Department of Employment on a prescribed form known as the Notice of Variation of Terms of Engagement.

The duration of the employment contract is not regulated under Gibraltar law, but a worker is able to bind themselves to provide services for a fixed or indefinite term. This must be set out in the Notice of Terms of Engagement.

### 4.3 Working Time

Under the Working Time Act 1999, a worker's average working time, including overtime, must not exceed 48 hours each week, over a period of 17 weeks excluding any periods of sick leave, maternity leave or annual leave.

However, any worker may agree with their employer in writing that this maximum should not apply to them, provided the employer can comply with certain requirements set out in the Working Time Act 1999.

In the case of a worker between the ages of 15 and 17 (inclusive), the maximum working time shall not exceed eight hours a day, or 40 hours a week (between midnights on successive Sundays), and such workers may not opt out of the stipulated maximum working time.

There is no minimum working time applicable to workers in Gibraltar. Accordingly, zero-hour contracts are permitted under Gibraltar law.

The Employment (Annual and Public Holidays) Order 1996 sets out the rights employees have who work extra hours on public holidays when they are not ordinarily required to do so.

### 4.4 Termination of Employment Contracts

Employment contracts can be terminated by providing notice. Statute determines what the minimum notice periods are. However, employers often agree notice periods under the contract that are greater than those set out in statute.

A contract may also provide for payment in lieu of the notice period or to place the employee on garden leave for part or all of that notice period.

The first week of any employment under a contract of service is deemed to be probationary under statute, and the employment may be terminated at the end of such a week by either party without notice. After this period, the minimum statutory notice period must be applied, which will depend on, among other things, whether notice is given by the employer or the employee, and how often the employee is paid by the employer. However, in practice, employers typically include express contractual probationary periods extending beyond the statutory minimum, during which performance and suitability are assessed.

In the case of an employee giving notice of termination, the required period is determined by reference to how often they are paid only. For example, an employee must give one month's notice to terminate the employment, unless the employee is paid weekly where one week's notice is required. A failure to provide appropriate notice will give rise to a claim for wrongful dismissal. However, an employer may dismiss an employee, and an employee may abandon the service of an employer, without giving notice where there is good and sufficient cause for such dismissal (eg, gross misconduct) or abandonment, but an employer is not entitled to set up as good and sufficient cause that (a) the employee's lack, loss or impairment of skill, ability or efficiency makes the fulfilment of the contract of service impossible, or (b) that the employee no longer enjoys the employer's confidence.

Additionally, employees have a statutory right not to be dismissed unfairly if they have been employed for a continuous period of at least 52 weeks, ending with the effective date of termination and provided that the employee has not been dismissed for an automati-

cally unfair reason (eg, making protected disclosures) where the qualifying period does not apply. Employees may be dismissed "at will" before they have attained 52 weeks' continuous service, provided that the employer complies with minimum notice provisions under statute or the contract, and provided that the employee is not dismissed for an automatically unfair reason. Depending on the reason(s) underlying the dismissal, employers may also need to consider the Employment (Bullying at Work) Act 2014 and/or the Equal Opportunities Act 2006.

After 52 weeks' continuous employment, the employer must prove that there was a permitted reason for the dismissal of the employee. Permitted reasons for a dismissal are:

- reasons relating to capability of the employee;
- reasons relating to the conduct of the employee;
- that the employee was redundant;
- that the employee's continuous employment would result in the contravention of the law; or
- some other substantial reason of a kind to justify dismissal.

If an employee is found to be unfairly dismissed, they are entitled to compensation calculated by a statutory formula and which includes compensation for the unfair dismissal including a basic award (GBP2,200 or such higher amount as calculated by a statutory formula) and a compensatory award calculated by reference to the lesser of two years' salary of the employee at the time of the dismissal or twice the weekly minimum wage for two years, representing a cap of GBP77,064 based on the current minimum wage. There are deductions that can be made to these awards and the maximum upper limit for the compensatory award does not apply where an employee is found to be unfairly dismissed in certain circumstances, for example, dismissals in health and safety cases.

On termination of employment, a Notice of Termination must be filed with the Department of Employment.

Under the Employment Act 1932, collective redundancy consultation requirements apply where an employer is proposing to dismiss as redundant five or more employees at one establishment within a period of 90 days or less. In such circumstances, the employer must consult with the affected employees' representatives at the earliest opportunity and at least 60 days before the first dismissal takes place. Employee representatives include representatives of a trade union or representatives elected by the affected employee satisfying the requirements of the Employment Act 1932. The consultation must be undertaken by the employer with a view to reaching agreement with the employee representatives and must include a consultation about avoiding dismissals, reducing the number of employees to be dismissed and mitigating the consequences of the dismissals. Further, and as part of the consultation process, the employer shall disclose to the employee representatives and to the director the following in writing:

- the reasons for the proposed redundancies;
- the number and descriptions of affected employees;
- the total number of employees of any such description employed by the employer at the establishment in question;
- the proposed method for the selection of affected employees;
- the proposed method of carrying out the dismissals; and
- the proposed method of calculating the amount of any redundancy payments to be made.

A failure to consult in a collective redundancy situation can give rise to a declaration by the Employment Tribunal, and the Employment Tribunal may also make a protective award of compensation.

Employees dismissed for redundancy reasons are entitled to redundancy pay calculated by a statutory formula that is dependent on the employee's years of service, subject to a maximum of one year's pay and provided that the employee has completed one year's service.

### 4.5 Employee Representations

There are no general mandatory rights under Gibraltar law except regarding the following.

- Various consultation requirements are imposed on employers in respect of collective redundancy situ-

ations (as discussed in 4.4 Termination of Employment Contracts) or where an employee is affected by a transfer of an undertaking commonly known as TUPE.

- Additionally, the Employment (Information and Consultation of Employees) Regulations 2005 provide a framework for the rights to information and consultation upon the request of employees. In such cases, the employer must make a formal agreement about what business information it will share with its employees and when it will consult them, provided the employer employs a minimum of 50 employees, and 15 employees or 10% of the total workforce (whichever number is greater) make the request. Before the consultation process commences, the employer must arrange for its employees to elect the relevant number of information and consultation representatives by ballot: this means one representative per 50 employees or part thereof, provided that that number is at least two and does not exceed 25.
- Sub-Regulation 4 (1) of the Employment (Trade Union Recognition) Regulations provide that if a trade union wants to negotiate with an employer on behalf of a bargaining unit (defined as the group of employees concerned), it must be (a) registered and (b) recognised by that employer. The trade union may apply in writing to an employer for recognition as a bargaining agent (any such application needing to comply with Sub-Regulation 4 (4)) with the employer required within ten working days of receipt of that application to inform the trade union in writing whether it recognises that trade union as a bargaining agent or refuses to recognise the trade union as a bargaining agent and state the reasons thereof (Sub-Regulation 4 (5)). If the employer accepts the request for recognition then the parties must decide on a bargaining procedure. However, if the employer rejects the request for recognition, but (a) agrees to negotiate further, then a further 20 working days will be provided to negotiate (which can be extended by agreement of both parties under Sub-Regulation (7)) or (b) does not agree to negotiate further, then the trade union may apply to the Director of Employment for statutory recognition in accordance with Regulation 5 (Sub-Regulation 4 (6)). Regulation 5 contains the regulations relating to an application to the Director of Employment for a statutory recognition order directing the employer to recognise the trade union, but there are basic requirements that must be fulfilled for an application for statutory recognition including that the employer must employ a minimum of 21 employees or at least average 21 employees in the 13 weeks ending with the day on which the request was received. There are regulations focusing on collective agreements (Regulation 7), bargaining units and disclosure of information (Regulation 10) and rights to be accompanied to a disciplinary or grievance hearing (Regulation 10).

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/Employers

#### Income Tax

Income tax is charged on the profits or gains from any office or employment arising in or from Gibraltar, including any allowances, perquisites or benefits in kind (such as expense payments, vouchers and credit tokens, living accommodation, car expenditure and loans to employees).

For employees, tax on the income from employment is deducted from wages and salaries under the pay-as-you-earn (PAYE) system. An employer is required to deduct tax from the wages of the employee on each pay, and then pay the tax by the 15th day of the following month.

Taxpayers may, in their tax return, choose between an allowance-based system (ABS) or a gross income-based system (GIBS). However, irrespective of the system opted for, on final assessment the Income Tax Office will apply the system most beneficial to the taxpayer.

#### Allowance-Based System (ABS)

This system enables an individual to claim certain allowances against assessable income. Allowances include:

- personal;
- spouse;

- child;
- medical insurance premiums paid;
- life insurance premiums paid;
- pension contributions paid;
- first-time home purchase;
- mortgage interest;
- social insurance contributions paid; and
- pensioner.

The tax rates under the ABS are as follows:

- 14% on the first GBP4,000;
- 17% on the next GBP12,000; and
- 39% on the balance.

### Gross Income-Based System (GIBS)

Under the GIBS, a taxpayer is entitled to very few allowances/reliefs, but the applicable rates are lower.

The allowances/relief available under the GIBS include:

- first-time home purchase;
- mortgage interest;
- pension contributions paid; and
- medical insurance premiums paid.

The tax rates under the GIBS are as follows.

- Individuals with gross assessable income up to GBP25,000:
  (a) 6% on the first GBP10,000;
  (b) 20% on GBP10,001 to GBP17,000; and
  (c) 28% on the balance.
- Individuals with gross assessable income of more than GBP25,000 and up to GBP100,000:
  (a) 16% on the first GBP17,000;
  (b) 19% on GBP17,001 to GBP25,000;
  (c) 25% on GBP25,000 to GBP40,000;
  (d) 28% on GBP40,001 to GBP105,000; and
  (e) 25% on the balance.

Any taxpayer with income of GBP11,450 or less is not liable to income tax in Gibraltar.

### Social Insurance

Social insurance contributions are payable by every employee in any week in which they work.

Employee contributions are 10% of gross earnings, subject to a minimum of GBP14.34 per week and a maximum of GBP40.79 per week.

Employer contributions are 18% of gross earnings subject to a minimum of GBP31.98 per week and a maximum of GBP56.22 per week.

Individuals aged 60 and over are exempt from paying the employee's share of social insurance contributions.

There is also an exemption (subject to certain conditions) from the employer's and employee's social insurance contribution in respect of an employee's secondary employment.

A credit in respect of the employer's social insurance contributions is available to businesses with ten employees or less. This is increased to 20 employees for new businesses within the first year of operation. This is subject to all payments of tax and social insurance having been made on time by the company.

## 5.2 Taxes Applicable to Businesses

Companies are taxed on a territorial basis of taxation, meaning that only income accrued in or derived from Gibraltar will be subject to taxation in Gibraltar. Accrued in and derived from refers to the location of activities, which gives rise to the profits of the company.

A business whose income arises from an underlying activity that requires a licence and regulation under any law of Gibraltar (such as a business licence or licence issued by the Gibraltar Financial Services Commission), or is licensed in another jurisdiction but enjoys passporting rights into Gibraltar, shall have its income deemed as accruing in and deriving from Gibraltar.

Intercompany loan interest (which exceeds GBP100,000 per annum) and royalty income shall be deemed to accrue in and derive from Gibraltar if it is received by a company registered in Gibraltar. Intercompany loan interest and royalty income will be subject to tax at 15%.

The standard rate of taxation for a company is 15%.

There is no VAT or withholding tax on interest, dividend or royalty payments.

Companies could also be subject to import duty on the importation of certain goods, if applicable.

Stamp duty could also be payable on the transfer of a Gibraltar property owned by a company.

Gaming duty is levied at 0.15% on the gross profits of holders of a bookmaker, betting intermediary and gaming operator's licence. The first GBP100,000 of gross profits is exempt from this duty.

On 31 December 2024, legislation was passed implementing the Pillar Two global minimum tax rules in Gibraltar. The legislation confirms a 15% domestic minimum top-up tax (DMTT), which would apply to multinational enterprise (MNE) groups and domestic groups meeting the revenue threshold for financial years starting on or after 31 December 2023. The legislation has also introduced an income inclusion rule (IIR) that would apply for financial years starting on or after 31 December 2024.

Additionally, Gibraltar's DMTT regime has been granted transitional qualified status by the OECD and is eligible for QDMTT safe harbour status.

## 5.3 Available Tax Credits/Incentives

There is no capital gains tax, estate duty, wealth tax, gift tax or inheritance tax in Gibraltar.

### Category 2 Status

Gibraltar offers the opportunity for high net worth individuals to obtain Category 2 status which places a cap over the tax liability of that individual. Tax is applied to the first GBP118,000 of assessable income (including worldwide income) meaning that a Category 2 individual will pay a maximum of GBP42,380 tax per annum, subject to a minimum tax payable of GBP37,000 per annum (current rates).

The requirements for Category 2 status are as follows:

- must have available for exclusive use approved residential accommodation in Gibraltar for the whole year of assessment (can be either purchased or rented);
- must have a minimum net worth of GBP2 million;
- must have private medical insurance (which must meet the minimum requirements of cover);
- must not have been resident in Gibraltar for five years immediately preceding the Category 2 application; and
- must pay an amount equivalent to the maximum tax payable (currently GBP42,380) as part of a Category 2 application, which will be held as a deposit and used to settle the individual's final tax liability upon leaving Gibraltar.

### High Executive Possessing Specialist Skills (HEPSS) Status

HEPSS status is a special employment tax status available to individuals with specialist skills who intend to relocate to Gibraltar to take up employment. An individual in respect of whom a HEPSS certificate is issued shall be charged to tax on the first GBP160,000 per annum of their income under the Gross Income Based tax system of their assessable income only. This would mean that an individual with HEPSS status would pay a fixed amount of GBP39,940 tax per annum (current rates) regardless of their employment income.

The requirements for HEPSS status are as follows:

- must have available for exclusive use approved residential accommodation in Gibraltar for the whole year of assessment (can be either purchased or rented);
- must possess skills that are necessary to promote and sustain economic value in Gibraltar;
- must possess skills that are not readily available in Gibraltar;
- must not have been resident in Gibraltar for three years immediately preceding the HEPSS application; and
- must earn more than GBP160,000 per annum from that employment.

### Development Aid

In order to encourage private development in Gibraltar, promoters and developers of approved projects are offered certain incentives such as tax relief, import duty relief and rates relief. In order to qualify for the above reliefs, the project needs to be a new project and meet certain criteria.

### 5.4 Tax Consolidation

Tax consolidation is not available in Gibraltar.

### 5.5 Thin Capitalisation Rules and Other Limitations

Thin capitalisation rules are applicable in Gibraltar. For instance, interest paid on a loan by a company to related parties that are not companies, or loans secured by related parties where the ratio of the value of the loan capital to the equity of the company exceeds 5:1, would be considered a dividend payment and would not be a deductible expense for tax purposes.

The interest limitation rule in Gibraltar provides that exceeding interest expenses are deductible up to the greater of (i) 30% of EBITDA, or (ii) EUR3 million.

The overarching anti-avoidance provision in place in Gibraltar relates to the principle of "artificial and fictitious", as referring to transactions that are seen as inauthentic and not real.

### 5.6 Transfer Pricing

The general anti-avoidance rules should be interpreted in the manner that best secures consistency with the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations and other documents designed as comprising part of the transfer pricing guidelines.

If an amount charged for goods and services by a connected person is not at arm's length, the expense allowed shall be subject to a minimum of (i) the amount of the expense; (ii) 5% of the gross turnover of the company; or (iii) 75% of the pre-expenses profit of the company.

### 5.7 Anti-Evasion Rules

A person commits an offence if they are knowingly involved in the fraudulent evasion of income tax by them or any other person and could be imprisoned for up to seven years.

### 5.8 Tariffs

No response provided.

## 6. Competition Law

### 6.1 Merger Control Notification

On 1 January 2021, the Competition Act 2020 (the "Act") was introduced into Gibraltar law. The Act is the primary legislation governing merger control in Gibraltar. Under the Act, notification of arrangements or proposed arrangements which might have resulted or might result in the creation of a "relevant merger situation" may be done on a voluntary basis.

A "relevant merger situation" is created for the purpose of the Act if two or more enterprises "cease to be distinct" and the value of the turnover in Gibraltar of the enterprise being taken over exceeds certain thresholds or meets the share of supply test.

Enterprises will be deemed to "cease to be distinct" if they are brought under common ownership or control.

Enterprises will be treated as being under common control if they are:

- enterprises of interconnected bodies corporate;
- enterprises carried on by two or more bodies corporate of which one and the same person or group of persons has control; or
- an enterprise carried on by a body corporate and an enterprise carried on by a person or group of persons having control of that body corporate.

The threshold for the value of the turnover in Gibraltar of the enterprise being taken over must exceed: (i) GBP1 million, if in the course of the enterprise ceasing to be distinct, a person or persons has brought a relevant enterprise under the ownership or control of the person or group; or (ii) GBP25 million in any other case.

The share of supply test is met if:

- as a result of the enterprises ceasing to be distinct, one or both of the conditions mentioned in Sub-sections (4) and (5) (as set out below) prevails or prevails to a greater extent; or
- in the course of the enterprises ceasing to be distinct, a person or group of persons has brought a relevant enterprise under the ownership or control of the person or group mentioned in Subsections (6) and (7) (as set out below) was satisfied in relation to the relevant enterprise before it ceases to be a distinct enterprise.

For the purpose of Subsection (4), in relation to the supply of goods of any description, at least two thirds of all the goods of that description which are supplied in Gibraltar:

- are supplied by one and the same person or are supplied to one and the same person; or
- are supplied by the persons by whom the enterprises concerned are carried on, or are supplied to those persons.

For the purpose of Subsection (5), in relation to the supply of services of any description, the supply of services of that description in Gibraltar is to the extent of at least two-thirds:

- supply by one and the same person, or supply for one and the same person; or
- supply by the persons by whom the enterprises concerned are carried on, or supply for those persons.

For the purpose of Subsection (6), in relation to the supply of goods of any description:

- at least two thirds of all goods of that description which were supplied in Gibraltar were supplied by or to the person or persons by whom the enterprise was carried on; and
- that supply was made in connection with activities of the enterprise by virtue of which it was a relevant enterprise.

For the purpose of Subsection (7), in relation to the supply of services of any description:

- the supply of services of that description in Gibraltar was to the extent of at least two thirds of all the services of that description, supply by or for the person or persons by whom the enterprise is carried on; and
- that supply was made in connection with activities of the enterprise by virtue of which it was a relevant enterprise.

### 6.2 Merger Control Procedure

Under the Act, notices of arrangements or proposed arrangements which might have resulted or might result in the creation of a relevant merger situation may be given to the Gibraltar Competition and Markets Authority (GCMA) on a voluntary basis.

Any such notice must contain the information and be in the form prescribed by the GCMA. Where the GCMA is satisfied that a merger notice meets the requirements set out in the Act, the GCMA must give notice to that effect to the person who gave the merger notice.

In the absence of an extension, the GCMA is required, so far as is practicable, to take such action as it considers appropriate to bring the existence of the proposal, the fact that the merger notice has been given and the date on which the period for considering the notice may expire to the attention of those whom the GCMA considers would be affected if the arrangements were carried into effect within 40 working days, beginning with:

- the first working day after the day on which the GCMA gives notice to the person who gave the merger notice; or
- the first working day after the day on which the GCMA informs the person carrying on the enterprises concerned by the notice that it has sufficient information to enable it to bring an investigation.

The GCMA may extend the initial period if it considers that a relevant person has failed (with or without reasonable excuse) to comply with any requirement of a notice under Section 168 requiring them to attend

as a witness and produce documents in relation to the case in question.

### 6.3 Cartels

Under Part VI of the Act, an individual is guilty of an offence if they agree with one or more other persons to make or implement, or cause to be made or implemented, arrangements of the following kind relating to at least two undertakings ("A" and "B").

The arrangements must be ones which, if operating as the parties to the agreement intend, would:

- directly or indirectly fix a price for the supply by A in Gibraltar (other than to B) of a product or service;
- limit or prevent supply by A in Gibraltar of a product or service;
- limit or prevent production by A in Gibraltar of a product;
- divide between A and B the supply in Gibraltar of a product or service to a customer or customers;
- divide between A and B customers for the supply in Gibraltar of a product or service; or
- be an arrangement under which, in response to a request for bids for the supply of a product or service in Gibraltar, or for the production of a product in Gibraltar (i) A but not B may make a bid, or (ii) A and B may each make a bid but, in one case or both, only a bid arrived at in accordance with the arrangements.

Unless one of the last three points as set out above apply, the arrangements must also be ones which, if operating as the parties to the agreement intend, would:

- directly or indirectly fix a price for the supply by B in Gibraltar (other than to A) of the product or service;
- limit or prevent supply by B in Gibraltar of a product or service; or
- limit or prevent production of the product by B in Gibraltar.

Any person that is guilty of a cartel offence is liable:

- on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or both;
- on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum (GBP10,000), or to both.

Proceedings for a cartel offence may only be instituted with the consent of the Attorney General and no proceedings may be brought in respect of an agreement outside Gibraltar, unless it has been implemented in whole or in part in Gibraltar.

The GCMA has the power to conduct an investigation if there are reasonable grounds for suspecting that a cartel offence has been committed.

### 6.4 Abuse of Dominant Position

Under Chapter 2 of the Act, any conduct on the part of one or more undertakings which amounts to the abuse of a dominant position within a market is prohibited if it may affect trade within Gibraltar. For the purpose of the Act, conduct may constitute such an abuse if it consists of:

- directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- limiting production, markets or technical development to the prejudice of consumers;
- applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or
- making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contract.

The prohibition set out above is subject to certain exclusions. These exclusions cover a number of scenarios including: services of general economic interest, compliance with legal requirements, avoidance of conflicts with international obligations and reasons of public policy.

Where the GCMA has reasonable grounds for suspecting that the prohibition has been infringed, it may conduct an investigation. If the GCMA forms a

decision that the conduct infringes the prohibition, it may give to such a person or persons as it considers appropriate such directions as it considers appropriate to bring the infringement to an end. A direction may, in particular, include provision requiring the person concerned to modify the conduct in question or require them to cease that conduct.

If a person fails without reasonable excuse to comply with a direction, the GCMA may apply to the court for an order requiring the defaulter to make good their default within a time specified in the order, and if the direction relates to anything to be done in the management or administration of an undertaking, to require the undertaking or any of its officers to do so.

If the GCMA is satisfied that an infringement has been committed intentionally or negligently by an undertaking, it may require the undertaking concerned to pay the GCMA a penalty not exceeding 10% of the turnover of the undertaking in respect of the infringement.

## 7. Intellectual Property

### 7.1 Patents

A patent is a form of intellectual property which grants the inventor the right to exclude others from making or selling their invention for a period of time, thus being able to take legal action against anyone who makes, uses, sells or imports the invention without their permission. The invention must not be specifically excluded from protection.

Original applications to register a patent in Gibraltar cannot be made; the Gibraltar Registry will only replicate successful registrations made in the UK Intellectual Property Patent Office.

The grantee of a UK patent may apply within three years from the date of issue of the patent to have such a patent registered in Gibraltar in accordance with Section 2 of the Patents Act 1924.

As part of the registration process, the following documents must be submitted to the Gibraltar Registry in accordance with Section 3 of the Patents Act 1924 together with the application for registration of a patent (Form 1) and a filing fee of GBP30 in accordance with the Patent Rules:

- certified copies of the specification(s) (including drawings, if any) of the UK patent; and
- certificate of the Comptroller-General of the UK Patent Office giving full particulars of the issue on such specification(s) and, in the case of a patent treated as being granted in the UK by virtue of the provisions of Section 2 of the Patents Act 1924, a certificate by an officer duly authorised under the Patents Act that the UK has accepted the European Patent (UK) designating the patent as being effective in the UK and that the particulars of the application are true.

Upon such an application being received, together with the documents mentioned in Section 3, the Registrar of Patents shall issue a certificate of registration in accordance with Section 4 of the Patents Act 1924. The protection of a patent will remain valid for as long as the UK patent is valid; the time period is 20 years from the date of issue of the UK patent, provided that the applicable renewal fees have been paid accordingly.

Patent rights are able to be enforced against a party through the UK or Gibraltar courts. The remedies for patent infringement include the seizure/destruction of the infringing goods, monetary damages and injunctive relief. Section 7 of the Patents Act 1924 outlines the powers of the Supreme Court of Gibraltar and states that:

“The Supreme Court shall have power upon the application of any person who alleges that his interests have been prejudicially affected by the issue of a certificate of registration, to declare that the exclusive privileges and rights conferred by such certificate of registration have not been acquired on any of the grounds upon which the United Kingdom patent might be revoked under the law for the time being in force in the United Kingdom.

Provided that such grounds shall be deemed to include the manufacture, use or sale of the invention in Gibraltar before the priority date applicable to the patent in the United Kingdom, but not to include the

manufacture, use or sale of the invention in Gibraltar by some person or persons after the priority date applicable to the patent in the United Kingdom and before the date of the issue of the certificate of registration under Section 4.

For the purposes of this proviso the expression "priority date" in its application to a patent in the United Kingdom has the meaning assigned to it in Section 5 of the Patents Act, 1949, or any other Patents Act for the time being in force."

### 7.2 Trade Marks

A trade mark is a sign which can distinguish the trade origin of goods and/or services from those of competitors. A trade mark must be considered to be distinctive, which means it can be recognised as a sign that differentiates the origin of goods and/or services from those of other sources. A trade mark may include words, sounds, logos, colours, shape or any combination thereof.

The Registrar of Trade Marks deals with the registration of trade marks under the Trade Marks Act 1948 and the Trade Marks Rules 1948. It is not possible for originating applications to be made in Gibraltar. In accordance with Section 3 of the Trade Marks Act 1948, and subject to Part 3 of that Act, any person being the registered proprietor of a trade mark in the United Kingdom by virtue of an entry in the register of trade marks kept under the Trade Marks Act 1994, or any person deriving title from such registered proprietor by assignment or other mode of transfer, may apply at any time during the existence of the registration in the United Kingdom to have such trade mark registered in Gibraltar in respect of some or all of the goods comprised in the United Kingdom registration.

Part 3 of that Act refers, in particular, to the following.

- An international trade mark (UK) (ie, a trade mark entitled to protection in the UK which results from an international application made on or after 1 January 2021 for registration under the Madrid Protocol and designates the UK) where the registered proprietor of an international trade mark (UK) shall enjoy in Gibraltar the like privileges and rights as though the certificate of registration of the international trade mark (UK) had been issued with an extension to Gibraltar. Those privileges and rights shall continue in force only for so long as the registration in the UK remains in force.
- A comparable trade mark (EU) and (UK) where the registered proprietor of a trade mark registered in the UK as a comparable trade mark (EU) or a comparable trade mark (IR) under the Trade Marks Act 1994 shall enjoy in Gibraltar the like privileges and rights as though the registration in the United Kingdom had been extended to Gibraltar, until the date of expiry of the registration of such trade mark. Those privileges and rights conferred shall continue in force only for so long as the registration of the comparable trade mark (EU) or the comparable trade mark (IR), as the case may be, in the UK remains in force.

The following documents are required in order to register a trade mark under the Trade Marks Act 1948:

- application for registration of a trade mark (Form 1) (the Trade Marks Rules 1948);
- certified representation of the trade mark and a certificate of the Comptroller of the UK Patent Office (under their title of Registrar of Trade Marks) giving full particulars of the registration of the trade mark in the UK and such other documents as may from time to time be prescribed (Section 4 of the Trade Marks Act 1948);
- where the trade mark to be registered is a device, two prints of the trade mark; and
- the applicable filing fee of GBP30 (the Trade Marks Rules 1948).

Once all the relevant documents have been submitted to the Gibraltar Registry, the Registrar will then enter the prescribed particulars in the register and shall issue a certificate of registration to the applicant, who shall then be the registered proprietor in Gibraltar of the trade mark in respect of the goods entered in the register.

The registration of the trade mark is renewable every ten years and valid in Gibraltar as long as it is valid in the UK or the EU.

### 7.3 Industrial Designs

Industrial design is an intellectual property right that legally protects the visual design of objects or part of an object in the territories it is registered in, and constitutes the ornamental aspect of an object. In Gibraltar, there are two forms of industrial design: registered and unregistered.

Designs registered in the UK are automatically protected in Gibraltar by virtue of Section 2 of the Gibraltar Designs Act 1928. UK-registered design right applications are made and obtained through the UK Intellectual Property Office.

A design is legally defined as being the appearance of the whole or part of an object resulting from the features, shape, colours or materials of the object or ornamentation. Both 3D and 2D designs are protected by registered designs. The design must not have been publicly disclosed or published within the EEA prior to being registered. There is, however, a 12-month grace period following the disclosure which allows the designer to make its application.

An unregistered design right in the UK arises automatically on the creation of an original object and where it has been recorded in an article or design document, subject to the provisions of Part 3 of the UK Copyright, Designs and Patents Act 1988.

Designs registered in the UK have their rights extended and protected in Gibraltar, and there is no need for any applications to be made in Gibraltar. Designs produced in Gibraltar enjoy reciprocal protection in the UK under Part 3 of the UK Copyright, Designs and Patents Act 1988.

A registered design can be renewed every five years up to 25 years, subject to the payment of fees. The length of protection afforded to an unregistered design according to Section 216 of the UK Copyright, Designs and Patents Act 1988 will be 15 years from the earlier of the end of the calendar year in which the design was first recorded in a design document or an article was first made to the design; or if articles made to the design are made available for sale or hire within five years from the end of that calendar year, ten years from the end of the calendar year in which that first occurred.

Owners of both registered and unregistered designs are able to enforce action through the UK or Gibraltar courts. For unregistered designs, remedies can include injunctive relief, damages or accounting for profit made. For registered designs, remedies can include injunctive relief, damages, accounting for profit made, delivery or destruction of the infringed product.

### 7.4 Copyright

Copyright is a property right which subsists in sound recordings, films or broadcasts, original literary works – which includes databases, computer programs and preparatory design – dramatic, musical or artistic works and in the typographical arrangement of published editions. Copyright protects the author's work in several ways and prevents others from replicating this work, making an adaptation of this work, putting it on the internet and performing or playing this work in public.

Copyright protection is automatic upon the creation of the qualifying work, so no registration process is required. The length of the copyright is dependent on the type of work – for example, works such as written, sound, films and artistic work will last for 70 years after the author's death.

A copyright holder is able to enforce court proceedings where they believe that there has been an infringement on the copyright, and remedies include damages, injunctions and accounts. It is a criminal offence to infringe copyright.

### 7.5 Others

Other intellectual property rights in Gibraltar also extend to trade secrets. This is a common law right in which the information contained within has commercial value because it is secret, and the use or disclosure is likely to harm the interests of the trade secret holder in several ways – for example, regarding scientific and technical potential, business or financial interests, strategic positions or the ability to compete.

In accordance with Section 4 of the Protection of Trade Secrets Regulations 2018, it is possible the acquisition of trade secrets in Gibraltar shall be considered lawful if obtained by any of the following means:

- independent discovery or creation;
- observation, study, disassembly or testing of a product or object that has been made available to the public or that is lawfully in the possession of the acquirer of the information who is free from any legally valid duty to limit the acquisition of the trade secret;
- exercise of the right of workers or workers' representatives to information and consultation in accordance with any rules of law applicable in Gibraltar; or
- any other practice which, under the circumstances, is in conformity with honest commercial practices.

In accordance with Section 8 of the Protection of Trade Secrets Regulations 2018, the limitation period for bringing a claim for the unlawful acquisition, use or disclosure of a trade secret is six years. The start date for reckoning the limitation period for a claim for the unlawful acquisition, use or disclosure of a trade secret against an infringer begins with the later of:

- the day on which the unlawful acquisition, use or disclosure that is the subject of the claim ceases; or
- the day of knowledge of the trade secret holder.

Where damages are awarded in relation to unlawful acquisition, Section 16 of the Protection of Trade Secrets Regulations 2018 states that all appropriate aspects shall be considered, including:

- any negative economic consequences, including any lost profits, which the trade secret holder has suffered, and any unfair profits made by the infringer;
- elements other than economic factors, including the moral prejudice caused to the trade secret holder by the unlawful acquisition, use or disclosure of the trade secret; and
- where appropriate, damages may be awarded on the basis of the royalties or fees which would have been due had the infringer obtained a licence to use the trade secret in question.

## 8. Data Protection

### 8.1 Applicable Regulations

In Gibraltar, the overarching national law on data protection is the Data Protection Act 2004 (DPA 2004). The DPA 2004 was amended on 25 May 2018 to:

- implement the General Data Protection Regulation (Regulation (EU) 2016/679) (EU GDPR);
- transpose the Law Enforcement Directive (Directive (EU) 2016/680);
- implement a data protection framework under the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data of 1981 (Convention 108); and
- implement Articles 126–130 of the Convention of 19 June 1990 applying the Schengen Agreement of 14 June 1985.

The changes made to the DPA 2004 took Brexit into account, as well as the Data Protection Act 2018 of England and Wales (DPA 2018). Both statutes share a similar structure, but with notable differences, such as the repeal of Part IV of the DPA 2004, which related to intelligence service processing and was similar in structure and content to Part 4 of the DPA 2018.

Following the end of the Brexit transition period (see 1. Legal System), the DPA 2004 was further amended, and the EU GDPR now forms part of Gibraltar law by virtue of Section 6 of the European Union (Withdrawal) Act 2019, as read with (i) Section 2 (1B)(a) of the DPA, and (ii) the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019. This is now referred to as the "Gibraltar GDPR", which is essentially the EU GDPR read with certain modifications. It is, therefore, important to read the Gibraltar GDPR and the DPA 2004 side-by-side.

The DPA 2004 and the Gibraltar GDPR are supplemented by the following:

the Communications (Personal Data and Privacy) Regulations 2006 (CPDP Regulations), made under the Communications Act 2006; and

- the Data Protection (Search and Seizure) Regulations 2006 (DPSS Regulations).

The Communications Act 2006, together with the CPDP Regulations, transpose the E-Privacy Directive (Directive 2002/58/EC), imposing obligations on publicly available electronic communications services providers and users when they process personal data.

The DPSS Regulations, among other things, authorise justices of the peace to issue warrants to the supervisory authority (see **8.3 Role and Authority of the Data Protection Agency**) in certain circumstances, allowing them to enter premises, inspect and seize as required.

## 8.2 Geographical Scope

Both the EU GDPR and Gibraltar GDPR have what is referred to as "extraterritorial effect", in that, respectively, the EU GDPR can apply outside the EU, and the Gibraltar GDPR can apply outside Gibraltar. This is achieved in a similar manner in both pieces of legislation. Focusing on Gibraltar, the territorial scope of the Gibraltar GDPR can extend to any of the following situations.

- Where a controller/processor has an "establishment" in Gibraltar and processing occurs "in the context of the activities" of that establishment. This applies regardless of whether the processing occurs in Gibraltar or not.
- Where goods or services are offered to data subjects in Gibraltar, irrespective of whether payment is required by a non-Gibraltar controller/processor. There should be an element of targeting and other evidence will be considered, such as whether consumers are able to pay in their local currency, or whether a marketing campaign has taken place. This test is also not limited by citizenship or residency of the data subjects.
- Where the monitoring of behaviour of data subjects in Gibraltar is carried out by a non-Gibraltar controller/processor. Examples of monitoring would be predicting trends, or use of geo-location.
- Where a controller is not established in Gibraltar, but in a place where Gibraltar law applies by virtue of public international law.

Under Article 27 of the Gibraltar GDPR, controllers and processors established outside of Gibraltar would need to consider the appointment of a local representative in Gibraltar, if they are offering goods or services or monitoring the behaviour of data subjects in Gibraltar.

Controllers and processors based in Gibraltar offering goods or services or monitoring the behaviour of data subjects in the EU are subject to the EU GDPR, and will need to consider their obligations in that context. In particular, until the issue of adequacy is decided by the European Commission in respect of Gibraltar, appropriate safeguards (eg, such as standard contractual clauses) would need to be considered prior to a data transfer from Gibraltar to the EU or vice versa, given that, at the time of writing, Gibraltar is considered as a "third country" for the purposes of Chapter V of the EU GDPR.

## 8.3 Role and Authority of the Data Protection Agency

The DPA 2004 designates the Gibraltar Regulatory Authority (GRA) as the Information Commissioner.

The GRA is an independent statutory body responsible for the enforcement of the DPA 2004, as read with the Gibraltar GDPR, and its primary role as Information Commissioner is to uphold the privacy rights of individuals.

Under changes made to the DPA 2004, the GRA now has increased regulatory powers under that Act, as well as those granted under Article 58 of the Gibraltar GDPR. These powers are classed as "investigative", "corrective" and "authorisation and advisory", allowing the Information Commissioner to, among other things:

- bring or defend legal actions in Gibraltar or other courts;
- co-operate with and render assistance to supervisory authorities in other states of territories;
- conduct data protection compliance audits;

- issue information notices, requiring others to provide it with information to investigate compliance;
- issue assessment notices to allow it to enter premises, obtain documents and equipment, and interview persons;
- issue enforcement notices, including warnings and reprimands, which may impose temporary or definitive bans on processing, or order a controller/processor to take corrective action; and/or
- issue monetary penalty notices.

Article 57 of the Gibraltar GDPR also prescribes the tasks and functions of the Information Commissioner. These include, but are not limited to: promoting awareness of rights and obligations; handling complaints; conducting investigations and taking enforcement action against those controllers or processors failing to comply; and certifying and approving certain mechanisms and schemes such as contractual clauses or binding corporate rules.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

The Gibraltar government has tabled a Bill (the Employment (Amendment) Bill 2025), which, once enacted, is expected to introduce further protections that are broadly analogous to the Transfer of Undertakings (Protection of Employment) regime in England and Wales. The proposed reforms would align Gibraltar law more closely with UK and EU principles by ensuring continuity of employment rights in cases of service provision changes. This is in addition to existing protections in relation to the transfer of undertakings already contained under Part VIB of the Employment Act 1932.

# GREECE




## Law and Practice

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**Kyriakides Georgopoulos Law Firm** is a leading full-service law firm in Greece, with over 120 lawyers and a history dating back to the 1930s. The firm advises both domestic and international clients, combining deep local expertise with an international outlook. Its lawyers are active in leading legal organisations and global networks, and the firm is a founding member of the South East Europe Legal Group (SEE Legal), a regional alliance spanning 12 countries. Kyriakides Georgopoulos is consistently recognised by Chambers and Partners Global and Europe as a leading law firm in Greece.

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## 1. Legal System

### 1.1 Legal System and Judicial Order

Greece is a civil-law jurisdiction, primarily based on written law, codes and statutes, rather than on binding case law. The main sources of law are the Constitution, legislation enacted by Parliament, codes such as the Civil Code, Criminal Code and Codes of Procedure, as well as European Union law.

The Greek courts are organised into separate branches. Civil courts deal with private disputes between individuals or legal entities, while criminal courts handle criminal offences. Administrative courts hear disputes between individuals or businesses and the State or public authorities.

At first instance, cases are heard by lower courts, depending on the nature and value of the dispute or the seriousness of the offence. Appeals are generally heard by courts of appeal. At the highest level, Areios Pagos acts as the supreme court for civil and criminal matters, while the Council of State is the supreme administrative court. The Court of Audit also has supreme jurisdiction regarding specific public finance matters.

Unlike common-law systems, Greek judges do not formally create binding precedent in the same way as UK courts. Their role is mainly to interpret and apply written law. However, decisions of Areios Pagos are highly influential and help ensure consistency in the interpretation of legislation. In particular, when Areios Pagos issues a judgment and refers the case back to a lower appeal court, this latter court is bound by the legal interpretation adopted by Areios Pagos in relation to the specific legal matter decided. Nevertheless, such rulings do not constitute generally binding precedent for all courts in future cases.

Overall, the Greek legal system reflects the civil-law tradition – ie, Parliament-made statutes and codified rules are the primary source of law, while case law plays an important supporting role in clarifying how those rules are applied in practice.

## 2. Restrictions on Foreign Investments

### 2.1 Approval of Foreign Investments

#### General Framework

Greece introduced its first standalone foreign direct investment (FDI) screening mechanism through Law 5202/2025 (the "Law"), implementing Regulation (EU) 2019/452 on the screening of foreign direct investments into the Union on grounds of security or public order. The regime became operational in November 2025 following the issuance of the implementing Joint Ministerial Decision No 64260/2025 regulating the notification process and supporting documentation.

The Greek FDI regime applies to investments by third-country investors, as well as by EU-based entities directly or indirectly controlled by third-country persons or governments.

The regime applies to both greenfield investments and acquisitions resulting in direct or indirect control, or qualifying minority participations, in businesses active in covered sectors.

### Screening Criteria and Sectors

A filing obligation arises where the following cumulative conditions are met:

- The investor qualifies as a foreign investor.
- The target entity is incorporated under Greek law or otherwise carries out economic activity in Greece.
- The target operates in a designated sensitive or particularly sensitive sector.
- The applicable participation thresholds are met.

The Law distinguishes between "sensitive" and "particularly sensitive" sectors.

Sensitive sectors include energy, transport, health, information and communication technologies, and digital infrastructure. In these sectors, notification is generally triggered upon the acquisition of at least 25% participation rights, with additional filings required upon crossing certain higher thresholds.

Particularly sensitive sectors include defence, cybersecurity, artificial intelligence, critical port and submarine infrastructure, and certain tourism infrastructure located in border regions. In these sectors, the filing obligation is triggered at a lower threshold of 10%, reflecting heightened national security considerations.

The regime is mandatory and suspensory, in that transactions falling within its scope must be notified prior to completion.

## 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

### Review Process

The review process is administered by the B1 Directorate of the Ministry of Foreign Affairs and the Interministerial Committee for the Screening of Foreign Direct Investments (ICSFDI).

The authority initially reviews whether the transaction falls within the scope of the regime and whether the filing is complete. Following referral to the Interministerial Committee, the authority may either clear the transaction at a preliminary stage or initiate an in-depth review.

Within 30 days of a complete filing, ICSFDI either clears the investment or opens an in-depth review. Following an in-depth review, ICSFDI submits a recommendation to the Minister of Foreign Affairs, who decides whether to approve, prohibit or condition the investment. If no decision is issued within 60 days from the date of ICSFDI's recommendation, the investment is deemed approved.

The timetable may be suspended where additional information requests are issued.

### Consequences of Non-Compliance

The regime imposes a mandatory pre-closing obligation. Failure to notify, late notification, or submission of inaccurate or misleading information may trigger significant sanctions:

- Failure to submit an application, or the submission of an application after its completion, may result in the imposition of mitigation or reversal measures by the authorities.
- These sanctions may be accompanied by a fine ranging from EUR5,000 to EUR100,000 (however, from the time the Law enters into force (23 May 2025) until the issuance and publication of the Joint Ministerial Decision on Fines, these administrative fines will not be imposed).
- Failure to submit the documentation required, as well as the submission of false information may result in the prohibition of the investment.

Proceeding with an investment despite an explicit prohibition, obtaining approval on the basis of false information, or failing to comply with the mitigation measures or the reversal of the investment imposed may result in a fine of up to twice the value of the investment.

A decision to prohibit, reverse, or impose conditions on an investment entails the automatic nullity of the relevant transaction, which may include reversal of the share sale agreement and any measures necessary to remedy the consequences of the transaction.

Although the regime is still new and no established enforcement practice has yet emerged, investors should approach filing obligations conservatively,

particularly in infrastructure, technology, defence and data-driven sectors.

### 2.3 Commitments Required From Foreign Investors

The Greek FDI regime allows the authorities to approve transactions subject to conditions or mitigation measures aimed at addressing national security or public order concerns.

Although the Law does not provide an exhaustive list of remedies, possible mitigation measures may include governance safeguards, restrictions on access to sensitive information or infrastructure, cybersecurity and data localisation obligations, continuity commitments and limitations on the transfer of strategic assets or technologies.

The authorities may also monitor compliance with imposed conditions and request information or supporting documentation from the parties.

Given that the Greek regime only recently became operational and that there is no published decisional practice, there are currently no clear indications regarding the authorities' substantive approach to remedies or mitigation measures.

### 2.4 Right to Appeal

Law 5202/2025 does not establish a specific administrative appeal mechanism against FDI screening decisions.

However, as a matter of general Greek administrative law, final administrative acts may in principle be challenged before the competent administrative courts and, ultimately, before the Council of State.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

The principal corporate vehicles used in Greece are the *société anonyme* (*Ανώνυμη Εταιρεία* – SA) and the private company (*Ιδιωτική Κεφαλαιουχική Εταιρεία* – PC), both providing limited liability. Among smaller enterprises, the limited partnership (*Ετερόρρυθμη Εταιρεία* – LP) is a commonly used vehicle.

Prior to the introduction of PCs in the Greek legal framework in 2012, the limited liability company (*Εταιρεία Περιορισμένης Ευθύνης* – EPE) was the most widely used vehicle for SMEs; however, given its more restrictive formalities (eg, mandatory notarial execution of its articles of association (AoA)), it has gradually fallen into disuse, and new EPE incorporations are rare in practice.

#### SA

*Main characteristics*

- A minimum capital of EUR25,000, paid in cash or in kind, is required.
- Capital is divided into registered shares; different classes may be issued (ie, ordinary or preferred shares).
- Shareholders' liability is limited to their contribution.
- A single shareholder is permitted.
- It is managed by a board of directors or, in the case of non-listed small or very small SAs, by a sole director.
- Bond and warrant issuance is permitted.
- Shares may be traded on Regulated Markets.

The SA is the preferred vehicle for large operating companies, regulated entities, public companies and large-sized holding companies. Regulated activities (e.g. credit and financial institutions and investment services activities) may only be conducted through an SA. As a rule of thumb, an SA is more appropriate in case of many shareholders, external investors, or a large volume of business activities.

#### PC

*Main characteristics*

- There is no minimum capital requirement.
- Contributions are divided into company units.
- Partners may contribute through capital contributions, non-capital contributions (obligation to perform work or provide services), or guarantee contributions (assumption of personal liability to third parties up to a designated amount).
- Partners' liability is limited to their contribution.
- A single partner is permitted (note: mandatory registration with the National Social Security Fund (e-EFKA)).
- It is managed by the administrator(s).

The PC is the most flexible and frequently used vehicle for SMEs, greenfield projects and a small or medium-sized Greek holding company due to its flexibility, low costs, and simplified governance.

### LP

An LP consists of at least one general partner, with unlimited personal liability, and at least one limited partner, whose liability is limited to their agreed contribution.

#### *Main characteristics*

- There is no minimum capital requirement.
- The contributions of the partners may consist of their labour, money or other assets, as well as any other form of consideration.
- It is managed by its general partner(s).
- All partners must be registered with the e-EFKA.
- For LPs keeping single-entry books, distributed profits are exempt from dividend tax.

In the LP, partner identity is central to the company's operation and object. Therefore, unless the partnership agreement provides otherwise, the partner's death, bankruptcy, or legal incapacity will generally lead to the company's dissolution, and any change in the partnership structure requires the remaining partners' consent.

The LP is predominantly used by small enterprises and is unsuitable for regulated activities and large-scale operations, being preferred for activities with a low creditor exposure, such as the provision of services.

## 3.2 Incorporation Process

All company types follow a broadly similar incorporation process, completed either online through the E-One-Stop-Shop of the General Commercial Registry (GEMI) or before a notary public, serving as the one-stop-shop, by notarial deed, where required by law (eg, for in-kind real estate contributions) or agreed by the founders.

For online incorporation, the Model AoA (with either standardised or additional provisions) must be used, while for notarial incorporation, bespoke AoA may be used.

In all cases, the incorporation process is carried out in Greek and is completed within the same day. Online incorporation is more straightforward and cost-efficient, and upon completion, the company is automatically registered with GEMI, as well as with the tax and social security authorities.

Prior to incorporation, any foreign shareholder or partner, and any foreign director/administrator, must first register with the Greek tax authority and obtain a Tax Identification Number (TIN).

Under all of the above corporate forms, shareholders and partners may be either legal entities or individuals.

In addition to the incorporation fees, the incorporation of an SA is subject to a duty payable to the Competition Commission, amounting to 1‰ of the share capital.

## 3.3 Ongoing Reporting and Disclosure Obligations

Both the SA and the PC are subject to filing and disclosure obligations with GEMI, while LPs are subject to similar, albeit less extensive, compliance requirements.

Key obligations include:

- Management Changes/Changes to Representation Powers/AoA Amendment: Any change in legal representatives (including directors of SAs or administrators of PCs and LPs), any modification to representation powers and any AoA amendment must be registered with GEMI within 20 calendar days.
- Financial Statements: SAs and PCs are required to prepare annual financial statements under Greek Accounting Standards and to publish them via GEMI by the tenth calendar day of the ninth month following the end of the financial year. LPs keep single-entry books; accordingly, no such obligation applies to them, except for LPs keeping double-entry books (eg, LPs where all of their partners are limited-liability entities or their annual turnover exceeds EUR1,500,000).
- Single-Member Disclosure: Where an SA or PC has a sole shareholder or partner, the identity of that

individual or entity is subject to publicity requirements on the GEMI website.

Further, Greek law requires companies to register their UBOs (ie, individuals holding an interest of at least 25% in the company) in the Central UBO Register. Initial registration and updates must generally be made within 60 days of the triggering event.

### 3.4 Management Structures

Greek companies operate on a one-tier management structure; Greek law does not provide for a formal two-tier supervisory/management model.

#### SA

It is administered by a board of directors (BoD) of three to fifteen members elected by shareholders.

SAs classified as "very small" or "small" may appoint a sole director-administrator (being a natural person), with the same duties and powers as a full board, provided that the AoA so permit.

A legal entity may be elected as a director, provided a specific individual is expressly designated to act on its behalf.

The BoD may delegate its powers to its members or to non-members, provided that such delegation is permitted under the AoA.

Board members who receive remuneration or hold at least a 3% participation in the company must be registered with e-EFKA.

#### PC

It is administered by one or more administrators, who must be individuals, elected by the partners.

Administrators may delegate certain responsibilities to one or more individuals provided that such delegation is permitted under the AoA.

Administrators must be registered with e-EFKA.

#### LP

It is managed and represented by the general partner(s). The partnership agreement, however, may assign such powers to a limited partner, who is then liable as a general partner for any act of representation, unless the third party was aware of their limited partner status.

### 3.5 Directors', Officers' and Shareholders' Liability

Directors and administrators owe duties of care and loyalty to the company, assessed under a business judgment standard; those acting in good faith and in the corporate interest are typically protected from personal liability, though culpable acts/omissions or company debts, including unpaid tax and social security obligations, may attract personal liability. SA shareholders and PC partners are not liable beyond their contributions. Greek courts may exceptionally "lift the corporate veil" where the corporate form is abused to defraud creditors. In PCs, guarantee-contribution partners are directly liable towards third parties up to the AoA amount. In LPs, general partners bear unlimited liability; limited partners are liable only up to their agreed contribution.

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

Employment relationships in Greece are governed by the Greek Constitution, national legislation (ie, the Labour Code and the Civil Code, laws, presidential decrees and ministerial decisions), EU law and international treaties, as well as collective and individual employment agreements.

Case law is not a formal source of law but serves an interpretative function in applying statutory provisions.

### 4.2 Characteristics of Employment Contracts

The duration of the employment contract is agreed between the parties and may be either indefinite or fixed-term, on a full-time or part-time basis.

#### Fixed-Term Employment Agreements

A fixed-term contract may be renewed up to three consecutive times within a total period of three years and may not exceed an overall duration of three years. A break exceeding 45 calendar days is required to

avoid consecutive fixed-term contracts being characterised as indefinite-term contracts.

### Conclusion of Employment Agreements

There is no general legal requirement for employment agreements to be concluded in writing, except in specific cases (eg, part-time or temporary employment, renewal of fixed-term contracts).

### Essential Terms of Employment

Although employment contracts do not generally need to be in writing, employers must provide employees with written information on their essential employment terms (job description, remuneration, working time, etc) within specific time limits (one week/month, depending on the information).

## 4.3 Working Time

### Maximum Working Hours

The statutory working time in Greece is eight hours per day, 40 hours per week, for employees under a five-day weekly work schedule, and six hours and 40 minutes per day (40 hours per week) under a six-day schedule, except for certain employee categories with reduced working hours.

The total weekly working time may not exceed, over a reference period of up to four months, an average of 48 hours, including overtime.

### Overwork

Legal working hours may be exceeded by up to five hours per week (one hour per day under a five-day weekly schedule) due to workload. Under a six-day weekly schedule, overwork covers work performed between the 41st and 48th hour. Overwork is paid with a 20% surcharge on the hourly wage (unless an offset clause is included in the employee's contract allowing set-off against the agreed salary exceeding the statutory minimum wage).

### Overtime

Any work above the 45-hour limit and nine hours per day is "overtime". Employees may perform overtime of up to four hours per day and up to 150 hours per year. Every hour of legal overtime is paid with a 40% surcharge on the hourly paid wage.

Overtime not complying with the statutory formalities and approval procedures is considered "illegal", and employees are entitled to the hourly wage plus 120% for such overtime.

A special permit for overtime beyond the 150 hour limit may be granted by the Ministry of Labor, if justified for specific reasons and extraordinary work. Such overtime is paid with a 60% surcharge on the hourly wage.

The provision of paid time off in lieu of statutory overwork or overtime compensation is not permitted.

The parties may agree that the part of the employee's salary exceeding the statutory minimum can be offset with overwork compensation; however, such offsetting is not allowed for overtime compensation.

### Work During Sundays/Public Holidays

Employees may not work on Sundays or public holidays, unless legally exempt. Compensation amounts to 75% on top of the legal hourly wage. In urgent cases, such work may be authorised by the authorities; otherwise, it is considered as "illegal". If work exceeds five hours on Sunday, the employee is entitled to a day off.

### Work on the Sixth Day

For employees under a five-day weekly schedule, work on the sixth day is not permitted and the employees are entitled to receive an increase of 30% on their normal hourly wage.

By exception, employees of undertakings of continuous operation with rotating shift systems, or undertakings which are not of continuous operation but may operate on a six-day (24/5 or 24/6) shift basis, may be required to work on the sixth day. Prior notification to the Labour Inspectorate and registration through the ERGANI II platform are required, and work is limited to eight hours (no overwork/overtime permitted), and is remunerated with a 40% surcharge on the hourly wage.

### Night Work

Night work is from 22.00 until 06.00 and is compensated with a 25% increase in the hourly wage.

### Executive Employees

Under Greek law, only executive employees are exempt from working time provisions and are therefore not entitled to compensation for overwork or overtime. Executive employees are managerial employees, as defined by law, declared as such in the ERGANI II platform, and employed under a contract reflecting their status.

## 4.4 Termination of Employment Contracts

### Termination of Indefinite-Term Contracts

#### *Requirements*

Termination of indefinite-term employment agreements does not require a "serious cause"; however, in case of litigation, the employer must demonstrate that the termination was justified and the "last resort".

The validity of the termination requires:

- written notification of the employee;
- payment of the severance amount; and
- employee's registration with the competent social security fund.

Where the employee has committed a criminal offence and the employer has filed a complaint, termination without severance may take place. In the event of the employee's acquittal, statutory severance becomes payable.

Employers are also required to notify the labour authorities.

#### *Notice period*

The employer may terminate the employment with prior notice or immediate effect. Where the statutory notice period is observed, the employee's severance is reduced by 50%.

#### *Severance payment*

The statutory severance in Greece consists of the basic severance, applicable to all employees on indefinite contracts, and the additional severance, applicable to employees who, as of 12/11/2012, have completed 17 years of service with the employer.

Basic severance amount (and applicable notice period) depends on the employee's length of service with the employer and is capped at 12 monthly salaries. It is calculated on the employee's total regular monthly remuneration of the last month before termination, multiplied by 14 (to include statutory allowances), and divided by 12, to produce a monthly average. Additional benefits provided regularly, without reservation of amendment or revocation, should also be included.

Employees who, as of 12 November 2012, had 17 years of service with the same employer are entitled to additional severance of one monthly salary per year beyond 17 years, up to 12 monthly salaries, based on last month's earnings under full employment, capped at EUR2,000.

### Termination of Fixed-Term Contracts

Fixed-term contracts are terminated automatically when their agreed term expires. Early termination is permitted for a "serious cause", without notice or severance. In the absence of serious cause, all salaries due until the initially agreed expiration date are payable.

### Redundancies

Any type of redundancy is considered a justified reason for dismissal. However, the employer should be able to demonstrate, in potential litigation, that the position was genuinely made redundant and that selection complied with statutory criteria. Available alternatives (eg, redeployment) should be assessed before termination.

Selection criteria apply to comparable employees and include performance (the prevailing criterion), seniority, age, family burdens, financial status and the possibility of finding a new job.

### Collective Dismissals

Specific provisions exist for collective dismissals. The procedure is triggered where an employer with 20-150 employees dismisses more than six employees in a calendar month, or where an employer with more than 150 employees dismisses more than 5% of its workforce and, in any event, more than 30 employees in a calendar month.

Specific information and consultation requirements exist for collective dismissals, as well as notifica-

tions to the Ministry of Labour. Failure to follow the prescribed procedure renders the dismissals null and void.

The general rules on valid termination and severance continue to apply.

### 4.5 Employee Representations

The establishment of employee representative bodies and participation therein is not generally mandatory and is exercised where the relevant legal requirements are met. Employee representation is primarily exercised through trade unions and works councils.

#### Trade Unions

Union membership is a fundamental right under the Greek Constitution, ensuring employees' freedom to organise and advocate collectively. Any adverse treatment, including dismissal, due to union involvement is prohibited.

Trade unions are structured at three levels:

- first-level unions (sectoral, occupational or company-level unions; local branches; and associations of persons);
- second-level organisations (federations and labour centres); and
- third-level confederations of federations and labour centres.

The establishment of a trade union requires at least 20 employees. Founding members apply for recognition to court, upon which the union acquires legal personality.

Trade unions aim to preserve and promote employees' labour, financial, insurance, social and collective interests. Their main rights include collective bargaining and the right to strike, as well as information and consultation rights in cases of collective dismissals, transfer of undertakings, restructuring, the introduction of new technologies, etc.

#### Works Councils

Works councils may be formed in enterprises employing at least 50 employees, or more than 20 employees, where no trade union exists. They are elected by employees and consist of three, five, or seven members, depending on the size of the workforce.

Their primary function is advisory, with information and consultation rights regarding matters affecting employees, including health and safety, introduction of new technologies, collective redundancies, transfers of undertakings and restructuring measures (in the absence of a trade union).

#### European Works Councils

For multinational enterprises, European Works Councils are established for the protection of employees' rights in a broader, multinational form. Employees from all countries in which the enterprise is engaged participate in an EWC.

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/ Employers

A taxpayer may be subject to taxation either based on their tax residence or because they derive income from a Greek source. Accordingly, any person who is considered a tax resident of Greece is subject to tax on their taxable income arising both in Greece and abroad earned during a specific tax year, whereas a taxpayer who is not a tax resident of Greece is subject to tax only on taxable income arising in Greece and earned during the relevant tax year. However, domestic law provisions apply subject to any double taxation treaty.

With respect to taxes imposed in the context of an employment relationship, employees are subject to progressive income tax brackets, while employers are liable for withholding such (payroll) tax and social security contributions calculated on the employee's income.

The following tax rates apply to the employee's income, from 1 January 2026 onwards, subject to applicable reductions:

- From EUR0 to EUR10,000, the tax rate is 9%.
- From EUR10,000.01 to EUR20,000, the tax rate is 20%.

- From EUR20,000.01 to EUR30,000, the tax rate is 26%.
- From EUR30,000.01 to EUR40,000, the tax rate is 34%.
- From EUR40,000.01 to EUR60,000, the tax rate is 39%.
- For income over EUR60,000, the tax rate is 44%.

With regard to tax breaks/incentives available for employees, from FY 2021, a taxpayer/employee who transfers their tax residence to Greece may qualify for a special tax regime if certain conditions are met, including prior non-residence in Greece and relocation from an eligible country (ie, an EU or EEA member state or from a state with which Greece has an administrative co-operation agreement in the field of taxation in force). Under this regime, 50% of employment income earned in Greece is exempt from income tax for up to seven tax years.

## 5.2 Taxes Applicable to Businesses

Under domestic tax rules, a company is subject to corporate income tax either based on its tax residence or if it maintains a permanent establishment under domestic rules or applicable double tax treaty provisions. Accordingly, a company is considered tax resident in Greece and subject to tax on its worldwide income if any one of the following conditions is met; in essence, a company is regarded as tax resident in Greece if it has been incorporated or established under Greek law, or if it has its registered seat in Greece, or if its place of effective management (POEM) is located in Greece for any period during the tax year.

With regard to taxable income and applicable tax rates, a Greek company and a permanent establishment are subject to corporate income tax at a rate of 22%, after deducting business expenses, provided that all the relevant conditions provided for the deduction under the Greek Income Tax Code (GITC) are met, as well as depreciation and provisions for doubtful receivables (with respect to a permanent establishment, subject to the provisions of any applicable double tax treaty, which may override domestic provisions).

Taxable business profits are generally determined on the basis of accounting profits, as adjusted by the specific rules and classifications set out in the GITC. In principle, they correspond to total revenues minus deductible business expenses, tax-allowable depreciation, and certain provisions for bad debts. As a rule, incorporated businesses are taxed on an accrual basis, while any profits not previously taxed become taxable upon distribution or capitalisation.

### Withholding Tax on Income: Interest, Royalties, Dividends

Income derived from interest, royalties, and dividends falls under the general category of investment income and is subject to withholding tax at a rate of 20% for Greek-source royalties, 15% for Greek-source interest, and 5% for dividends, subject to the provisions of any applicable double tax treaty) or, where applicable, the provisions of the EU Interest–Royalties Directive and the Parent–Subsidiary Directive.

In short, dividend exemption applies where the conditions of the EU Parent–Subsidiary Directive are met, including a minimum 10% participation held for at least 24 months, qualifying EU tax residency and inclusion in Annex I companies, as well as subject-to-tax requirements without exemption options; similarly, exemption from withholding tax on interest and royalties applies to payments between qualifying EU associated companies where a minimum 25% direct or indirect participation is held for at least 24 months, and the beneficiary satisfies the requirements of the EU Interest and Royalties Directive regarding qualifying entity status, EU tax residence (without third-country treaty residence), and full corporate tax liability without option or exemption. Until the minimum holding period is completed, a bank guarantee may be provided for the withholding tax due, instead of immediate payment of the withholding tax and subsequent refund claim.

A special anti-avoidance rule prohibits the withholding tax exemption on the qualifying dividend payments where the relevant exemption is claimed in the context of artificial arrangements.

### Pillar 2 Directive, Law 5100/2024

Greece has implemented EU Council Directive 2022/2523 (Pillar Two Directive) through Law 5100/2024, establishing a global minimum taxation

framework for multinational groups and large-scale domestic groups.

Under this regime, the GloBE Information Return (GIR) must generally be filed within 15 months after the end of the relevant reporting fiscal year (or 18 months for the transitional year). The corresponding tax return must then be filed by the last working day of the month following the submission of the GIR.

The law introduces the QDMTT safe harbour, the CbCR transitional safe harbour, and the UTPR transitional safe harbour. It also expressly provides that these safe harbours are to be interpreted in line with the OECD Model Rules.

### VAT Considerations

VAT is imposed on all transactions for consideration involving the supply of goods and the provision of services. The standard VAT rate is 24%, although reduced rates also apply in certain cases.

### Digital Transaction Duty (DTD)

The DTD is a tax introduced in Greece through Law 5135/2024 and codified by Law 5177/2025, imposing a proportional levy on specific transactions that fall outside the scope of VAT. The DTD applies to transactions where at least one party is a Greek tax resident or has a permanent establishment in Greece, provided that the transaction is connected to that establishment. The duty is calculated as a specific percentage of the financial value of the transaction or the highest debit/credit balance.

### Special Real Estate Tax (SRET)

The ownership of Greek real estate through non-transparent structures is addressed through the imposition of a special tax on property held as of 1 January each calendar year, calculated at a rate of 15% on the imputed/statutory value of the real estate. In practice, the tax does not apply to a significant number of incorporated entities holding real estate in Greece due to various exemptions, particularly where the owning company is not considered to be used as a vehicle for tax evasion or avoidance. Recent amendments to the special real estate tax framework have aligned the exemption for regulated investment vehicles with applicable domestic and EU legislation governing such schemes.

### Unified Real Estate Tax (URET)

The URET (ΕΝ.Φ.Ι.Α.) constitutes an annual property tax imposed on all real estate situated in the country. It is calculated on the basis of objective property values, considering factors such as floor area, age, and location, with main tax rates for buildings ranging from EUR2 to EUR16.20 per square metre.

### Capital Concentration/Accumulation Tax

CCT is levied at a flat rate of 0.2% on contributed capital, including share capital increases made in cash or in kind. This duty applies to commercial companies and corporate transformations, rather than to the initial establishment of a company.

### Listed Shares Sales Tax

Capital gains arising from the sale of listed and unlisted shares are treated as business income and are subject to corporate income tax at the standard CIT rate. However, where such gains are realised by foreign legal entities tax resident abroad, they are taxable in Greece only to the extent that the entity maintains a permanent establishment in Greece to which such gains can be attributed. In addition, the transfer of listed shares is subject to a transaction duty at a rate of 0.1%.

## 5.3 Available Tax Credits/Incentives

### Incentives Offered for All Enterprises

The GITC introduces tax incentives in the form of enhanced “super” deductions for specific business expenses. Scientific and technological research costs, including depreciation of related equipment, are deductible with a 100% uplift. Similar enhanced deductions apply to expenses related to the green economy, energy efficiency, and digitalisation for SMEs, as well as to costs connected with the listing of SME shares or equivalent securities on a regulated Greek market, also with a 100% uplift and a cap on the resulting tax benefit of EUR200,000. The provision aims to encourage investment in research, sustainable development, digital transformation, and capital market participation.

### Digital Business

Greece provides a broad set of tax incentives that may be relevant to digital businesses. Expenditure on scientific and technological research, including depreciation of relevant equipment and instruments, is deductible with an additional 100% uplift. Following amendments introduced by Law 5162/2024 (applicable from FY 2025), this enhanced deduction rises to 150% for eligible research costs linked to collaborations with entities registered in the National Startup Registry, accredited research centres, and universities that are independent from the recipient of the services, as well as for depreciation of research-related equipment. In certain cases, SMEs may benefit from an increased deduction of up to 215%.

Furthermore, GITC establishes a "Patent Box" regime, which allows, subject to specific conditions, tax exemption for income generated from self-developed, internationally recognised patents. Greece also offers a favourable regime for angel investors, providing income tax relief for certified investments in qualifying start-ups.

### Corporate Transformations

Corporate reorganisations, including mergers, demergers, transformations, spin-offs, and contributions of assets, are governed by two parallel legislative frameworks. From a corporate law perspective, Law 4601/2019 provides a comprehensive framework regulating all forms of corporate transformations. From a tax law perspective, rules have recently been introduced to consolidate and modernise the tax provisions and incentives applicable to corporate reorganisations (Articles 47–59 of Law 5162/2024), replacing the previously fragmented framework under Laws 1297/1972, 2166/1993, 2778/1998, and 4172/2013. At the same time, the incentive regime introduced by Law 4935/2022 – primarily aimed at micro, small, and medium-sized enterprises (SMEs) – remains in force. In addition, the special restructuring framework applicable to credit institutions under Law 2515/1997 continues to apply.

### Special Regime of Law 89/1967

Under Law 89/1967, a favourable regime is available to foreign companies operating in Greece that provide specific services to their parent companies, affiliated entities, or other non-Greek businesses, including consultancy, accounting support, quality control, planning, marketing, data processing, and similar activities. In essence, such entities are required to determine their gross revenues on a cost-plus basis, calculated by adding a pre-approved profit margin to total operating expenses and tax-allowable depreciation, excluding income tax, following an audit or review by the competent Committee. The profit margin is set by a committee appointed by the Minister of Development and Investments and is reassessed every five years, subject to significant changes in market conditions.

## 5.4 Tax Consolidation

No response was provided in this jurisdiction.

## 5.5 Thin Capitalisation Rules and Other Limitations

Interest deductibility in Greece is limited under the thin capitalisation (interest limitation) rules set out in GITC. Under these provisions, net interest expenses are generally deductible up to 30% of EBITDA (calculated on a tax basis). Any amount exceeding this threshold is not deductible in the relevant tax year. However, disallowed net interest expenses can be carried forward indefinitely and deducted in future tax years.

An exemption applies where net interest expenses do not exceed EUR3 million, in which case the limitation does not apply. In addition, certain entities – such as credit institutions, insurance and reinsurance companies, and pension institutions – are excluded from the scope of these rules.

## 5.6 Transfer Pricing

In Greece, transfer pricing is mainly regulated under the GITC, supplemented by administrative guidance from the Independent Authority for Public Revenue (IAPR). In addition, the Tax Procedure Code sets out the framework governing tax audits as well as the documentation and procedural requirements applicable to transfer pricing compliance.

Furthermore, the OECD Transfer Pricing Guidelines are recognised and applicable in Greece as an interpretative framework for applying the relevant legal provisions. In particular, the GITC stipulates that the

arm's length principle must be applied and interpreted in line with the general principles and the OECD Transfer Pricing Guidelines in relation to intra-group transactions.

Transfer pricing rules apply to transactions between "related parties" as defined under the GITC. Greek tax legislation adopts a broad definition of related parties, covering both direct and indirect relationships that may influence the pricing of intra-group transactions. In more detail, a 33% threshold is applied to determine related-party status, based on direct or indirect participation in capital or voting rights. In addition, parties may also be treated as related where one entity exercises managerial control or decisive influence over another, regardless of whether any participation in capital or voting rights exists.

### 5.7 Anti-Evasion Rules

Greece has introduced Controlled Foreign Corporation (CFC) rules, a General Anti-Abuse Rule (GAAR), and hybrid mismatch provisions in accordance with ATAD I and II, whereas there are special anti-avoidance rules regarding the taxation on corporate transformations.

The GAAR applies to both domestic and cross-border arrangements, provided that the relevant double tax treaty does not contain its own anti-abuse provisions, such as a Principal Purpose Test. Under this rule, the Greek tax authorities may disregard arrangements or series of arrangements that are primarily, or have as one of their main purposes, the obtaining of a tax advantage that contradicts the intent or purpose of the applicable tax law.

Under the revised CFC framework, even where all applicable conditions are met, the rules will not apply if the foreign entity is located in an EU or EEA jurisdiction and demonstrates genuine economic activity, such as having sufficient staff, premises, assets, and equipment.

Lastly, the hybrid mismatch rules aim to prevent double deductions or deductions without corresponding taxation arising from differences in the tax treatment of entities or instruments across jurisdictions, thereby safeguarding against base erosion.

### 5.8 Tariffs

Greece, as part of the European Union, is subject to the Union Customs Code (UCC). The aforementioned code was adopted in 2013, and its substantive provisions have applied since 1 May 2016, with the aim of bringing EU customs legislation into line with the requirements of the Lisbon Treaty. It supersedes the former Community Customs Code (CCC).

Having said that, tariff classification is governed by the Combined Nomenclature (CN) and specific tariff classification decisions and updates are formally adopted through Commission Implementing Regulations. The European Commission updates this list on an annual basis, with the most recent revisions adding specific subheadings for advanced technologies such as batteries, photovoltaics, hydrogen, and advanced materials (Commission Implementing Regulation (EU) 2026/360 and Commission Implementing Regulation (EU) 2026/333).

Countries with extensive trade agreements with the European Union benefit from significantly reduced or eliminated tariffs, creating heavily integrated market access. For example, the EU–South Korea Free Trade Agreement has eliminated customs duties on nearly all goods traded between the parties. In addition, it has reduced numerous non-tariff barriers affecting exports of products such as automobiles, pharmaceuticals, electronics, and chemicals. The agreement has also liberalised a wide range of services sectors, facilitating market access and investment opportunities for both EU and South Korean businesses. Another example is the EU–Central America Association Agreement, which has been provisionally applied since 1 August 2013 with Honduras, Nicaragua, and Panama; since 1 October 2013 with Costa Rica and El Salvador; and since 1 December 2013 with Guatemala.

## 6. Competition Law

### 6.1 Merger Control Notification

Greek merger control is governed by Law 3959/2011 (the "Greek Competition Act"), which is closely aligned with the EU Merger Regulation (EUMR). The system is primarily administered by the Hellenic Competition Commission (HCC) and operates on a mandatory and

suspensory basis. In the electronic communications and postal sectors, competition law enforcement powers are exercised exclusively by the Hellenic Telecommunications and Post Commission (EETT) within its sectoral remit.

### Transactions Covered

The Greek merger control regime applies to concentrations resulting in a lasting change of control.

Notifiable transactions include:

- mergers between previously independent undertakings;
- acquisitions of sole or joint control over all or part of a business; and
- the creation of "full-function" joint ventures performing on a lasting basis all functions of an autonomous economic entity.

The concept of control is interpreted consistently with EU merger control principles and may arise through shareholdings, contractual arrangements or veto rights.

### Jurisdictional Thresholds

A concentration must be notified to the competent competition authority prior to implementation where the following cumulative turnover thresholds are met:

- The combined aggregate worldwide turnover of all undertakings concerned exceeds EUR150 million.
- At least two undertakings concerned each generate turnover exceeding EUR15 million in Greece.

The Greek regime is exclusively turnover-based and does not provide for market share thresholds.

Transactions meeting the EU thresholds fall within the exclusive jurisdiction of the European Commission unless referred to the HCC under the EUMR referral mechanisms.

## 6.2 Merger Control Procedure

### Filing and Pre-Notification

Notification must be submitted prior to completion of the transaction. Although not mandatory, pre-notification contacts are frequently used in complex cases to discuss jurisdictional and procedural issues, as well as substantive matters.

Within seven working days after the filing, the HCC shall assess whether the notification form is incomplete and request the parties concerned to provide additional information. If they fail to submit complete and precise information as requested, the one-month time limit of Phase I does not commence; thereby, the progress of the procedure is delayed. In practice, it is common that the competent competition authority demands additional information, resulting in a delay of the procedure for 10 to 15 additional days.

### Phase I Review

The HCC conducts an initial review within one month from receipt of a complete filing.

During Phase I, the authority may:

- determine that the transaction falls outside the merger control regime;
- clear the concentration unconditionally; or
- initiate an in-depth Phase II investigation where serious competition concerns are identified.

Requests for additional information are common in practice and may suspend or delay the review timetable.

20 calendar days after the notification date, the parties may also offer commitments intended to address potential competition concerns.

### Phase II Investigation

Where the HCC opens an in-depth investigation, the statutory review period is generally 90 days from the decision initiating Phase II. The case is brought before the HCC within 45 days from that decision, and remedies may be proposed within 20 days from the case being brought before the HCC.

The Phase II investigation period is automatically extended by 15 days, if the parties propose remedies later than the 20-day limit. Thus, the maximum duration of Phase II is 105 days.

The authority may ultimately:

- approve the transaction unconditionally;
- clear it subject to remedies; or
- prohibit the concentration.

If the HCC fails to issue a decision within the applicable statutory deadline, the concentration is deemed approved.

### Gun-Jumping and Sanctions

The Greek merger control regime prohibits implementation prior to clearance.

Failure to notify a notifiable transaction, early implementation ("gun-jumping"), or breach of remedies may result in significant administrative fines. The HCC also has powers to impose behavioural or structural measures where necessary.

## 6.3 Cartels

### Legal Framework

Article 1 of the Greek Competition Act mirrors Article 101 TFEU and prohibits agreements, decisions by associations of undertakings and concerted practices that have as their object or effect the restriction of competition. Typical infringements include price-fixing, market sharing, output restrictions, bid-rigging and exchanges of commercially sensitive information.

The Greek Competition Act also recognises in its Article 1 (3) the equivalent of the Article 101 (3) TFEU exemption, allowing restrictive agreements where efficiency gains outweigh anti-competitive effects and consumers receive a fair share of the resulting benefits. EU Block Exemption Regulations also apply mutatis mutandis to agreements, decisions or concerted practices which are not likely to affect trade between EU member states.

### Additional National Rules

Greek law also prohibits invitations to collude and certain unilateral disclosures of future pricing intentions by large undertakings (Article 1A of the Greek Competition Act).

### Territorial Scope

Greek competition law follows the effects doctrine. Under Article 46 of the Greek Competition Act, the regime applies to anti-competitive conduct capable of affecting competition in Greece, irrespective of where the conduct occurred or whether the undertakings involved are established in Greece.

Accordingly, agreements concluded or implemented outside Greece may still fall within the jurisdiction of the HCC where they produce actual or potential effects on the Greek market.

## 6.4 Abuse of Dominant Position

### Abuse of Dominance

Article 2 of the Greek Competition Act mirrors Article 102 TFEU and prohibits abusive conduct by undertakings holding a dominant position in the Greek market or a substantial part thereof.

Unlike the EU system, Greek law expressly allows settlement procedures not only in cartel cases but also in abuse of dominance investigations.

As with cartel enforcement, the Greek abuse of dominance regime is based on the effects doctrine. Under Article 46 of the Greek Competition Act, abusive conduct may fall within Greek jurisdiction where it takes place in Greece or produces actual or potential effects on the Greek market, regardless of the location of the undertaking concerned. This allows the HCC to investigate foreign undertakings whose conduct materially affects competition in Greece, even absent a physical presence in the jurisdiction.

### Abuse of Economic Dependency

Greek law separately prohibits the abusive exploitation of economic dependency (under Article 18a of the Unfair Competition Act (Law 146/1914)), which may exist where a trading partner is substantially reliant on a commercial relationship and lacks an equivalent alternative.

Article 18a is enforced exclusively by the Greek civil courts, which may order the cessation of the abusive conduct and/or its non-repetition, award damages (actual loss and/or loss of profits) and impose fines of EUR5,000 to EUR50,000 on responsible natural persons. Furthermore, any agreement giving rise to the abusive conduct is void under Article 174 of the Greek Civil Code.

Foreign undertakings without a principal establishment in Greece may invoke Article 18a only if reciprocity is established, namely if Greek undertakings enjoy equivalent protection in the relevant foreign jurisdiction. Accordingly, beyond the existence of effects of the conduct in Greece, Article 18a is subject to an additional limitation, with reciprocity restricting access to protection under the provision.

## 7. Intellectual Property

### 7.1 Patents

#### Definition

A patent is an intellectual property right protecting technical inventions that are novel, involve an inventive step and are capable of industrial application. The main applicable framework in Greece is Law 1733/1987.

#### Length of Protection

Patents are protected for 20 years from the filing date, subject to annual renewal fees. Protection may be extended by up to five years for medicinal and plant protection products through a supplementary protection certificate.

#### Registration Process

Patent protection in Greece may be obtained through the following:

- National Patents: An application is filed with the Hellenic Industrial Property Organization (OBI). Following formal examination and a search report, OBI grants and publishes the patent.
- European Patents (European Patent Convention): A European patent application may be filed with the European Patent Office (EPO), designating Greece. Once granted, the patent must be validated in Greece by OBI.
- International Patents (Patent Co-Operation Treaty): Applicants may file an international application with OBI or WIPO. Upon entry into the European phase and grant of the European patent, the above validation process applies.

Greece has signed but has not yet ratified the Unified Patent Court Agreement.

#### Enforcement and Remedies

Patent rights are enforced primarily through civil proceedings, including injunctions, damages and the removal or destruction of infringing products. Damages may be based on lost profits, reasonable royalties or the infringer's profits. Information claims and publication of court decisions are also available.

### 7.2 Trade Marks

#### Definition

A trade mark is any sign capable of distinguishing the goods or services of one undertaking from those of another and of being represented on the register with clarity and precision.

#### Length of Protection

Protection in Greece is available through:

- national trade marks (Law 4679/2020);
- EU trade marks – EUTMs (Regulation (EU) 2017/1001); and
- international registrations under the Madrid Protocol.

Protection lasts ten years from the filing date/from the date of international registration and may be renewed indefinitely for successive ten-year periods.

#### Registration Process

A national trade mark application is filed with OBI. Upon its formal examination, the application is published and becomes subject to a three-month opposition period. If no opposition is filed, or any opposition is rejected, the trade mark is registered. A similar procedure applies to EUTMs before the European Union Intellectual Property Office (EUIPO).

For international registrations, the application is filed through the applicant's national or regional office and submitted to the World Intellectual Property Organization (WIPO). Following formal examination by WIPO, the designation of Greece is notified to OBI, which examines the application under national law. In the absence of a refusal, the mark enjoys protection in Greece as a national trade mark.

#### Enforcement and Remedies

Enforcement includes:

- cease and desist letters;
- civil proceedings seeking injunctions, damages and measures such as recall, removal or destruction of infringing goods;
- interim measures;
- criminal liability in counterfeiting cases;
- customs enforcement measures; and
- opposition, revocation and invalidity proceedings.

Signs that have acquired distinctive character through use may also enjoy protection without registration.

## 7.3 Industrial Designs

### Definition

Industrial designs, governed mainly by Presidential Decree 259/1997, protect the appearance of the whole or part of a product, provided it is new and has individual character.

### Length of Protection

Registered designs are protected for five years from filing, renewable for successive five-year periods up to a maximum of 25 years.

Unregistered Community designs are protected for three years from first disclosure within the EU.

### Registration Process

Protection is available through the following:

- National Designs: An application is filed with OBI. Following formal examination, OBI issues a registration certificate and the registered design is subsequently published.
- EU Designs (Regulation (EU) 2024/2822): Applications are filed with EUIPO and follow a similar registration procedure to national designs.
- International Design Registrations (Hague System): A single international application may be filed with WIPO, designating Greece. Following publication in the International Register and absent refusal, the design enjoys protection as if registered nationally.

### Enforcement and Remedies

Right holders may seek cessation of the infringement, injunctions against future infringements and damages. Courts may also order withdrawal, removal from the market or destruction of infringing goods. A design may additionally qualify for trade mark and/or copyright protection where applicable.

## 7.4 Copyright

### Definition

Copyright is an intellectual property right granted to original literary, artistic or scientific works in any form, including both economic and moral rights. The main applicable framework is Law 2121/1993.

### Length of Protection

Copyright lasts for the author's life plus 70 years, calculated from 1 January of the year following the author's death.

### Registration Process

In Greece, copyright is not subject to registration. Protection arises automatically upon creation of the work.

### Enforcement and Remedies

Enforcement mechanisms include:

- civil actions, including injunctions and damages;
- interim measures;
- criminal sanctions; and
- administrative enforcement measures, including notice-and-takedown procedures for digital content.

## 7.5 Others

Software is protected as a literary work under copyright law, covering source and object code. Software-related inventions may be patentable if they produce a technical effect.

Databases are protected through:

- a sui generis right, where there has been substantial investment in obtaining, verifying or presenting the contents; and
- copyright protection, where the selection or arrangement of the contents constitutes an original intellectual creation.

Law 4605/2019 protects trade secrets. Protection requires that the information be secret, have commercial value and be subject to reasonable confidentiality measures.

## 8. Data Protection

### 8.1 Applicable Regulations

#### Sources of Data Protection Law in Greece

- System Overview: The Greek data protection framework is based on a combination of constitutional provisions, EU law, national legislation, and regulatory guidance. Overall, the system is characterised by the primacy of the GDPR, supplemented by national laws and extensive regulatory guidance, including sector-specific lex specialis rules.
- Constitution: At the constitutional level, the Greek Constitution establishes core safeguards: Article 9A guarantees the protection of personal data and mandates an independent authority, while Article 19 protects the confidentiality of communications.
- GDPR and National Implementing Legislation: The primary legal instrument is the General Data Protection Regulation (GDPR), which is directly applicable in Greece and establishes the general rules on lawful processing. It is supplemented by Law 4624/2019, which implements the GDPR, transposes Directive (EU) 2016/680 and regulates the operation of the Hellenic Data Protection Authority (HDPA). The framework is further complemented by the residual provisions of Law 2472/1997, which had originally transposed Directive 95/46/EC into the Greek legal order. Notably, the Hellenic Data Protection Authority has clarified, in Opinion 1/2020, that national provisions which conflict with the GDPR, or which lack a valid legal basis under its opening clauses, should not be applied.
- Relevant and Sector-Specific Regulation: The framework is complemented by relevant and sector-specific laws, notably:
  (a) Law 3471/2006 on electronic communications (cookies, direct marketing, soft opt-in and opt-out rules);
  (b) Law 5002/2022 (confidentiality of communications);
  (c) Law 5086/2024 and Law 5160/2024 (cybersecurity); and
  (d) Law 5169/2025, and Law 4961/2022 (emerging technologies).
- Role of Supervisory Authorities: Competent supervisory authorities, such as the HDPA, issue binding decisions, guidelines, and recommendations, which play a key role in interpreting and enforcing the framework.

### 8.2 Geographical Scope

#### Cross-Border Application of Data Protection Law

- Territorial Scope Under the GDPR: The applicability of Greek and EU data protection rules in an international context is primarily governed by the GDPR territorial scope (Article 3). The GDPR applies not only to controllers and processors established in Greece or elsewhere in the EU, but also to non-EU entities where their processing activities relate to the offering of goods or services to individuals in Greece, or the monitoring of behaviour of individuals within Greece (eg, through tracking technologies or profiling). Accordingly, a foreign company targeting customers in Greece (eg, via a Greek-language website) will be subject to the GDPR.
- Supervisory Authority and One-Stop-Shop Mechanism: Enforcement is carried out by the HDPA where Greece is the relevant jurisdiction (eg, where data subjects are located or where a local establishment exists), subject to the GDPR's one-stop-shop mechanism for cross-border processing.

### 8.3 Role and Authority of the Data Protection Agency

#### Data Protection Authority and Regulatory Enforcement Framework

##### *The Hellenic Data Protection Authority*

Data protection in Greece is enforced primarily by the HDPA, established under Law 2472/1997 and operating within the framework of the GDPR, Law 4624/2019 and Law 3471/2006. The Authority exercises a broad range of powers, including monitoring compliance and issuing guidelines and recommendations.

Enforcement activity is largely complaint-driven, although the HDPA also initiates ex-officio investigations in cases of broader public interest. Proceedings before the HDPA follow administrative procedures and typically involve the preparation of a case file, a hearing, and the issuance of a reasoned, binding decision after the parties have been heard.

Where a breach of data protection law is established, the HDPA exercises its corrective powers, including the imposition of administrative fines. Decisions of the

HDPA are binding but may be challenged before the Council of State (see also below).

*Enforcement trends*

Recent enforcement practice indicates an increasing focus on high-risk areas, including employment-related processing and data breaches. Violations of data subject rights remain a consistent priority, with particular emphasis in the past year on the right of access.

Looking ahead, greater emphasis is expected on transparency obligations, in line with co-ordinated enforcement actions of the European Data Protection Board and the participation of the HDPA therein.

*Other relevant authorities*

The Hellenic Authority for Communication Security and Privacy is responsible for safeguarding the confidentiality of communications. It issues regulations, conducts audits, and investigates complaints, particularly in relation to telecommunications and lawful interception.

The Hellenic Cybersecurity Authority is responsible for cybersecurity oversight. It supervises the implementation of the NIS2 framework and co-ordinates incident reporting at the national level.

In the financial sector, additional supervisory responsibilities arise under the Digital Operational Resilience Act. These are exercised by authorities such as the Bank of Greece and the Hellenic Capital Market Commission, which oversee digital operational resilience and ICT risk management.

*Judicial proceedings*

- Civil Law – Compensation Claims: Individuals whose data protection rights are infringed may seek judicial protection before the civil courts. Claims may include compensation for both material damage (eg, financial loss) and non-material damage (eg, distress or reputational harm). Courts assess compensation on a case-by-case basis, considering factors such as the nature and seriousness of the infringement and the impact on the individual.
- Criminal Proceedings: Greek law provides for criminal liability in cases of serious violations of data protection legislation. Criminal proceedings are conducted before the competent criminal courts, either following a complaint by the affected individual or upon initiation by the public prosecutor.
- Administrative Proceedings: Decisions of the HDPA are binding on the parties concerned; however, parties whose rights or interests are affected may challenge such decisions before the Council of State.

Explanatory Note: The above avenues of redress operate independently; none is contingent upon the initiation of another.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

#### Merger Control: More Interventionist Enforcement and Procedural Modernisation

The most significant development in Greek merger control is not legislative but enforcement-driven. Recent cases suggest that the HCC is increasingly willing to subject transactions affecting concentrated domestic markets to rigorous scrutiny and, where necessary, require far-reaching remedies or allow transactions to be abandoned. This trend was illustrated by the proposed EUR217 million acquisition by Allwyn International of a controlling stake in Novibet's parent company, Logflex MT Holding. Following the issuance of a Statement of Objections in December 2025, the parties abandoned the transaction in March 2026 (HCC Decision No 904/2026). The HCC's concern was the elimination of OPAP's only meaningful competitor in the Greek online betting market. This follows the HCC's prohibition of the Alphabet/Delta transaction in July 2025, its first merger prohibition in over two decades. Parties considering acquisitions in concentrated sectors, particularly involving digital markets or the elimination of a key competitive constraint, should expect rigorous scrutiny. At the same time, Greece is continuing to modernise its merger control framework. Recent amendments have simplified certain procedural aspects of the notification process and further aligned domestic practice with EU standards. An additional point to watch will be

the interaction between Greek enforcement practice and the European Commission's ongoing review of the EU Merger Guidelines. While the Commission's draft guidelines emphasise innovation and efficiencies, recent HCC decisions reflect a comparatively cautious approach to consolidation in concentrated markets, a divergence that may become particularly relevant where jurisdiction could fall to either authority.

### Foreign Direct Investment Screening: From New National Regime to European Harmonisation

The most significant development in the field of foreign investment is the introduction of Greece's first comprehensive foreign direct investment (FDI) screening mechanism under Law 5202/2025, coupled with the ongoing reform of the EU FDI screening framework. As the regime is still in its infancy, a key issue for market participants will be how the competent authorities interpret and apply the new framework in practice, particularly with respect to jurisdictional questions, substantive assessment criteria and the types of mitigation measures that may be imposed. Further refinement of the recently enacted national framework is expected as the EU's new FDI Screening Regulation – approved on 8 June 2026 and expected to take full effect by early 2028 – will require member states to maintain screening mechanisms meeting common minimum standards and to extend mandatory screening to a broader set of strategic sectors – including artificial intelligence, quantum technologies, advanced semiconductors, electoral systems, designated financial entities and strategic raw materials. Investors should therefore expect the Greek FDI regime to remain a developing area over the next several years, with additional implementing measures and administrative guidance likely to emerge as both domestic and EU rules evolve. From a transactional perspective, deals involving strategic assets or sensitive sectors will increasingly require parallel merger control and FDI screening reviews, alongside any sector-specific regulatory approvals.

### Reform of Greek Succession and Family Law

Whilst not directly relevant to the sections set out above, it is worth noting that with Law 5303/2026 published in the Government Gazette on 22 May 2026, Greece has enacted its most comprehensive reform of succession and family law in eight decades. This reform is expected to give a boost to the attractiveness of Greece as a jurisdiction for high-net-worth individuals, family offices, and internationally mobile wealth. Combined with the existing non-dom tax regime and the Golden Visa programme, the reform adds a further dimension to Greece's offer as a destination for wealth relocation and long-term investment.

# Trends and Developments

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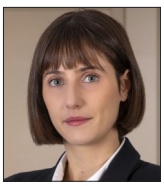
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### Introduction

Greece's economy is growing at a moderate but steady pace as it enters 2026. Following the debt crisis of the previous decade, the country has emerged as one of the more dynamic jurisdictions in the European legal and commercial landscape. The environment is defined by economic expansion, accelerating investment, and an increasingly dense regulatory framework driven by EU law.

The European Commission's Spring Economic Forecasts indicate that Greece will continue to outperform the EU and eurozone averages, even as the country's economic growth is expected to gradually moderate from 2.1% in 2025 to 1.8% in 2026 and 1.6% in 2027, mainly due to rising energy costs. Economic growth and investment are projected to remain strong in 2026, driven mainly by sustained investment inflows and the continued deployment of funds, particularly under the EU Recovery and Resilience Facility (RRF). The imperative to complete all RRF milestones by August 2026 is driving the pace and priorities of public procurement, infrastructure delivery and several key sectors, including energy, technology, healthcare, gaming and hospitality.

This economic momentum has produced a corresponding surge in transactional activity and regulatory output. The Greek M&A market reached unprecedented levels in 2025, recording record deal volumes and values across a wide range of sectors. At the same time, the legislative landscape has undergone substantial transformation, with new frameworks governing foreign direct investment screening, corporate governance, capital markets, employment, market surveillance, and sustainability all coming into force in rapid succession. For businesses operating in Greece – whether domestic companies or international investors – the environment is simultaneously opportunity-rich and compliance-intensive.

This article aims to provide an overview of the key trends, developments and challenges for doing business in Greece in 2026.

### 2025: An Exceptional Year for M&A – Setting the Scene for 2026

Greece experienced robust M&A activity in 2025, with landmark transactions mainly across financial services, healthcare, energy, gaming, technology, hospitality and real estate. Several defining deals characterised the year, including the following:

- financial services – Piraeus Bank's acquisition of Ethniki Insurance for EUR600 million;
- capital markets – the majority stake acquisition of the Athens Stock Exchange (ATHEX) by Euronext for approximately EUR400 million, which marked a structural integration of the Greek capital market into the pan-European trading infrastructure, with far-reaching implications for listed companies and investors alike;
- healthcare sector – the 60% acquisition of Hellenic Healthcare Group – the leading private healthcare provider in Greece and Cyprus – by Abu Dhabi-based Pure Health Holding for approximately EUR800 million;
- energy sector – the completion of the 100% acquisition of TERNA ENERGY by Masdar – valuing the company at approximately EUR3.2 billion follow-

ing consolidation – standing as the largest energy transaction ever recorded in Greece and a landmark deal for the broader European renewables market;
- gaming sector – the merger of Intralot with Bally's International Interactive Business, valued at EUR2.7 billion, underscoring the growing strategic importance of Greek gaming operators as consolidation targets in the global gaming industry (looking further ahead into 2026, the anticipated completion of the business combination between OPAP and Allwyn – valuing the combined entity at EUR16 billion and creating the second-largest listed gaming entertainment company globally – will define the corporate calendar and generate significant legal, regulatory, and capital markets work across multiple jurisdictions);
- technology sector – the announced acquisition of a majority stake in Skroutz – the leading online marketplace in Greece – by funds managed by Blackstone, the world's largest alternative asset manager, from CVC Capital Partners Fund VII, which is expected to close in the second half of 2026, subject to regulatory approvals; the transaction marks one of the most significant private equity investments in Greek technology to date and reflects growing international institutional appetite for market-leading digital platforms with dominant positions in high-growth Southern European markets; and
- hospitality and real estate – the acquisition by a leading Greek shipowner of the Four Seasons Astir Palace Hotel in Vouliagmeni – a landmark coastal resort comprising two five-star hotels on the Athens Riviera – bringing one of Greece's most iconic hospitality assets into full private ownership.

Beyond the ultra-luxury segment, mid-market hospitality transactions demonstrated equal vitality. A notable example was the strategic partnership between a renowned entrepreneurial Greek Cypriot Family and Donkey Hotels and Resorts and funds managed by AZORA, through which the parties formed a closed-ended joint venture to own, manage, and upgrade a portfolio of Greek hospitality assets.

This volume and diversity of transactional activity reflect both the increased attractiveness of Greek assets and a broader shift in investor confidence, underpinned by the country's achievement of investment-grade credit status.

Yet this dynamic environment also brings complexity. Deal timelines have extended considerably, driven by heightened regulatory scrutiny, more rigorous due diligence requirements, and persistent valuation gaps between buyers and sellers. Transactions that advance to late stages are failing to complete at higher rates than in previous cycles, a trend consistent with broader EMEA market conditions. For clients, this underscores the importance of comprehensive pre-deal preparation, robust structuring, and early engagement with experienced local counsel capable of navigating both the commercial and regulatory dimensions of each transaction.

The medium-term outlook remains cautiously optimistic, particularly in the mid-market segment, where inbound investor interest is sustained and family-owned businesses are increasingly exploring strategic alternatives. Sectors such as technology, hospitality, healthcare, and renewable energy are expected to continue generating deal flow, while Greece's improved macroeconomic fundamentals and regulatory clarity make it well-positioned to attract assets offering visible cash flows and long-term strategic value.

Notwithstanding the generally positive medium-term outlook, several geopolitical risks and sustained inflationary dynamics are likely to weigh on economic performance. Higher energy prices are anticipated to erode household purchasing power and slow private consumption growth. Consumer price inflation is projected to accelerate from 2.9% in 2025 to 3.7% in 2026, driven by rising energy expenditure, robust domestic demand and wage pressures, before moderating to an estimated 2.4% in 2027 as energy markets stabilise. Government measures, such as tax cuts, public sector wage increases and energy support policies, are expected to ease some pressure. Concurrently, imports will likely stay high, reflecting the high import content of ongoing investment activity. However, risks remain if the energy crisis deepens, impacted also by the recent geopolitical developments in the Middle

East, and begins to exert adverse effects on critical sectors such as transport and tourism.

### FDI Screening: Reshaping the Landscape of Cross-Border Transactions

One of the most consequential developments for transactional practice in Greece is the enactment of Law 5202/2025, which came into force in May 2025 and established the country's first comprehensive foreign direct investment (FDI) screening regime. Implementing EU Regulation 2019/452, the law introduces a two-tier screening mechanism: investments in sensitive sectors – including energy, transport, healthcare, and ICT and digital infrastructure – are subject to screening where a foreign (non-EU) investor acquires a stake exceeding 25%, while a more stringent 10% threshold applies to particularly sensitive sectors such as defence and national security, cybersecurity, artificial intelligence, ports and critical underwater infrastructure, and tourism infrastructure in border areas. The screening criteria apply both to direct third-country investors and to EU-based investors where the ultimate controlling entity or beneficial interest is connected to third-country individuals, undertakings, or governments.

For investors and advisers, the practical implications of this new regime are significant. In addition to the FDI screening framework, foreign investments remain subject to pre-existing restrictions on the acquisition of real estate in border regions and certain islands on national security grounds, as well as sector-specific licensing and approval requirements. Together, these overlapping frameworks demand earlier and more strategic engagement with regulatory authorities, more thorough due diligence processes, and carefully drafted transaction documentation.

### Capital Markets Reform and Renewed Investor Confidence

The revival of Greece's capital markets has been one of the defining features of the country's economic rehabilitation, and 2025 saw that revival deepen and broaden considerably. The acquisition of ATHEX by Euronext is significant from a structural perspective, providing Greek-listed companies with access to a deeper pan-European investor base and enhanced market infrastructure. The anticipated upgrade of Greece by MSCI – together with the country's investment-grade credit rating – further strengthens the case for international portfolio and strategic investment, improving the perception of Greek assets among institutional investors subject to index-linked mandates.

Against this backdrop, Law 5193/2025, enacted in April 2025, introduced significant capital markets reforms designed to modernise the Greek capital market regulatory framework, strengthen investor protection, improve financing access for Greek companies, and align Greek law with EU standards. Equity fundraisings and corporate bond issuances throughout 2025 drew oversubscribed interest from international investors, reflecting the scale of the improvement in sentiment towards Greek assets over a relatively short period.

For companies and their advisers, this environment creates a widened range of financing options. The improved capital markets framework means that equity fundraisings, initial public offerings, and bond issuances are increasingly viable alternatives to traditional bank lending, which, while improved, remains selective and pushes several businesses – particularly in the mid-market – towards alternative funding sources. The evolving regulatory landscape also demands careful attention to disclosure, corporate governance, and compliance requirements applicable to listed and pre-IPO companies, reinforcing the value of integrated legal and financial advisory support throughout the capital-raising process.

### Governance, Compliance, Regulatory Modernisation and Interconnection

The pace of legislative reform in the corporate governance sphere has been considerable, and its cumulative effect is to raise the baseline of compliance obligations applicable to Greek companies across several dimensions.

Law 5178/2025, enacted in February 2025, transposed Directive (EU) 2022/2381 on improving the gender balance among directors of listed companies into Greek law, introducing significant amendments to both Law 4706/2020 on corporate governance and Law 4548/2018 on *sociétés anonymes*. In particular,

the law raised the minimum representation threshold for the under-represented sex to 33% on the boards of listed non-SME companies, and – for the first time – extended the application of gender balance requirements to certain categories of non-listed companies (ie, companies bidding for public procurement or concession contracts). These developments reflect Greece's alignment with the broader EU agenda on corporate diversity and signal that governance standards will continue to be shaped by European policy priorities in the years ahead.

Law 5255/2025, enacted in November 2025, established the Independent Authority for Market Control and Consumer Protection, consolidating the market surveillance, consumer protection, and dispute resolution functions previously dispersed across several public authorities and administrative bodies into a single, unified regulatory entity. The consolidation is intended to improve regulatory coherence and enforcement effectiveness; businesses will need to familiarise themselves with the new authority's jurisdiction, procedures, and enforcement posture as it becomes fully operational.

Corporate formation and ongoing compliance have also been modernised. Full automation of the interconnection between the General Commercial Registry (GEMI) and the Independent Authority for Public Revenue (AADE) became operational in 2026, enhancing transparency and tax compliance across corporate registrations and ongoing reporting obligations.

Administrative penalties for GEMI non-compliance are now being enforced for the first time under Joint Ministerial Decision 46982/2025, which activated the administrative sanctions under Article 50 of Law 4919/2022 for breaches of corporate publicity requirements. Businesses that have not maintained up-to-date GEMI filings or have failed to meet statutory deadlines face a materially increased risk of administrative sanctions, and a proactive review of corporate records is strongly advisable for all entities operating in Greece.

In the employment sphere, Law 5239/2025 – re "Fair Work for All" – introduced a suite of digitalisation measures, including the "Fast Track Hiring" mechanism for expedited employment registrations and mandatory work-time monitoring through the ERGANI II digital platform. These measures bring greater transparency and accountability to employment relationships and provide a more auditable record of workforce management. Companies should ensure that their human resources, payroll, and operational processes are fully aligned with the new digital requirements to avoid administrative penalties and to be well-positioned in the event of employment disputes.

## Sustainability, Cybersecurity, Digital Regulation and Taxation: Navigating an Expanding Regulatory Landscape

### *Sustainability*

The regulatory agenda in Greece in 2026 extends well beyond corporate and transactional law. Three interconnected regulatory frameworks – sustainability reporting, cybersecurity, and digital finance – are placing growing and convergent compliance demands on businesses operating across virtually all sectors, and their combined effect represents one of the most substantial increases in regulatory complexity that Greek companies have faced in recent years.

On sustainability, Law 5164/2024 implemented the EU Corporate Sustainability Reporting Directive (CSRD) into Greek law, imposing mandatory sustainability reporting obligations on in-scope companies. However, the EU's 2025 "stop-the-clock" directive – which introduced a delay to the application timeline for certain categories of companies – has created planning uncertainty, as businesses must now carefully assess whether, and when, their own obligations are triggered. Despite this uncertainty, companies would be prudent to proceed with readiness assessments and internal data collection exercises rather than awaiting formal clarification: the underlying obligations are not in question, and early preparation will reduce both compliance risk and the operational disruption associated with a compressed implementation timeline when obligations do crystallise.

More broadly, Greece has placed particular emphasis on the implementation of the UN 2030 Agenda for Sustainable Development and its 17 Sustainable Development Goals, reflecting a wider institutional commitment to embedding sustainability considera-

tions across the regulatory and corporate landscape. In furtherance of this objective, the Athens Stock Exchange (now Euronext Athens) has developed a dedicated ESG Reporting Guide, which, while principally directed at Greek-listed companies, serves as a practical reference tool for non-listed entities seeking to adopt or enhance their own ESG reporting practices on a voluntary basis.

In addition, Greece is required to transpose Directive (EU) 2024/1760 – the Corporate Sustainability Due Diligence Directive (CSDDD) – into national law. The transposition deadline has been extended to 26 July 2028 by virtue of Directive (EU) 2026/470, affording Greek legislators and in-scope companies additional time to prepare for a regime that will require covered undertakings to identify and address adverse human rights and environmental impacts arising from their own operations, those of their subsidiaries, and those occurring across their chain of activities. The Directive is intended to promote a sustainable and responsible corporate culture, and its eventual implementation will impose significant due diligence, reporting, and remediation obligations on companies meeting the applicable size and activity thresholds. Businesses that anticipate falling within scope would be well advised to begin mapping their value chains and assessing their existing due diligence processes in advance of formal transposition, in order to mitigate the compliance burden when the obligations take effect.

In a related development reinforcing Greece's commitment to the green transition, the European Commission granted approval in February 2026 to a Greek state aid scheme valued at EUR400 million, designed to incentivise investment in clean technology manufacturing in furtherance of the objectives underpinning the Clean Industrial Deal and the broader transition to a net-zero economy. The scheme was authorised pursuant to the Clean Industrial Deal State Aid Framework (CISAF) and will deliver support to eligible undertakings through a combination of direct grants and tax incentives. The programme is open to companies operating in Greece and will remain in effect until 31 December 2030, providing a sustained and structured incentive framework for businesses seeking to establish or expand clean technology manufacturing operations in the country.

### *Cybersecurity*

In the cybersecurity domain, Law 5160/2024 transposed the NIS2 Directive into Greek law, significantly expanding the scope of entities subject to cybersecurity obligations and introducing more stringent incident reporting, risk management, and governance requirements. Financial sector entities face the additional layer of the Digital Operational Resilience Act (DORA), which imposes prescriptive requirements in relation to Information and Communication Technology (ICT) risk management, third-party provider oversight, and operational resilience testing. For many companies, the combined effect of NIS2 and DORA represents a substantial increase in the technical and organisational resources required for cybersecurity compliance. Legal advisers should be prepared to support clients in mapping their obligations, reviewing contracts with critical ICT third-party providers, and adapting internal governance frameworks accordingly.

### *Digital regulation*

In the domain of digital regulation, Regulation (EU) 2024/1689 – the Artificial Intelligence Act – entered into force on 1 August 2024 and is being implemented on a phased basis, with prohibitions on certain AI practices applying from February 2025 and obligations for high-risk AI systems taking effect progressively through 2026 and 2027. The AI Act establishes a risk-based classification framework for AI systems deployed or made available in the EU, imposing graduated compliance obligations ranging from transparency requirements for limited-risk systems to comprehensive conformity assessments, risk management, and human oversight obligations for high-risk systems. Companies operating in Greece that develop, deploy, or distribute AI systems should undertake a thorough classification exercise to determine whether their systems fall within the scope of the Regulation and, if so, which tier of obligations applies. Early engagement with the compliance requirements is strongly advisable, given the complexity of the conformity assessment procedures and the significant penalties – up to EUR35 million or 7% of global annual turnover – for non-compliance.

### *Taxation*

Tax law has also evolved considerably. Greece adopted the OECD's Pillar Two global minimum tax rules

through Law 5100/2024, extending minimum tax obligations to Greek-headquartered multinational groups and to Greek subsidiaries of foreign groups that fall within the scope of the rules. Law 5104/2024 modernised the Tax Procedure Code, introducing procedural changes relevant to tax audits, assessments, appeals, and enforcement. Taken together, these tax developments require businesses to ensure that their group structures, transfer pricing policies, and tax compliance processes are appropriately calibrated to the new international standards and that internal reporting capabilities can meet the associated data and documentation demands.

### Emerging Sector: Defence and Defence-Tech

The defence and defence-tech sector merits specific attention as a driver of deal activity and legal complexity in the period ahead.

Greece is emerging as an attractive destination for defence, automotive and aerospace investment. The country's twelve-year, EUR26 billion defence modernisation programme – supplemented by EUR787.7 million in SAFE funding – is generating substantial procurement and investment activity. The establishment of the Hellenic Centre for Defence Innovation as a state-backed co-ordinator for defence research, development, and commercialisation provides an institutional framework for private sector engagement with the national defence agenda. Dual-use technologies – commercial platforms with defence applications spanning robotics, cybersecurity, space services, and surveillance – are a particular area of interest for both strategic and financial investors.

While defence-tech M&A remains a niche segment compared to larger European markets, it presents emerging opportunities for strategic investors and consolidating players in the region as the sector matures.

Clients operating in this space should be alert to the convergence of FDI screening obligations, export control requirements, and national security clearance processes that together characterise defence-related transactions and demand a rigorous and co-ordinated regulatory approach from the outset of any deal process.

### Succession Law Reform: New Framework for Family Business Planning

Whilst not directly relevant with the sections set out above, it is worth noting that with Law 5303/2026 published in the Government Gazette on 22 May 2026, Greece has enacted its most comprehensive reform of succession and family law in eight decades. Key innovations include the introduction, for the first time in modern Greek law, of inheritance contracts – binding agreements executed before a notary that determine how specific assets will pass on death – alongside a recalibration of the reserved-share (forced heirship) framework. The reform also strengthens the position of surviving spouses in intestate succession, equalises the inheritance rights of civil union partners with those of married spouses, and tightens the validity requirements for holographic wills. Although Law 5303/2026 was published in May 2026, the majority of the substantive reforms – including inheritance contracts – will become effective on 16 September 2026. This reform carries direct practical implications for estate planning, business succession structures, and cross-border wealth management involving Greek assets and is expected to give a boost to the attractiveness of Greece as a jurisdiction for high net worth individuals, family offices, and internationally mobile wealth.

### Conclusion

The Greek legal and commercial landscape in 2026 reflects a striking balance of opportunity and complexity. Record levels of M&A activity, a revitalised capital market, and growing investment across sectors such as energy, healthcare, hospitality, gaming, technology and defence highlight a jurisdiction that has undergone meaningful and lasting transformation. The accelerating pace and breadth of regulatory change – encompassing corporate law, FDI screening, sustainability reporting, cybersecurity, digital transition and taxation – is placing increasing demands on businesses across all sectors and sizes. Yet this regulatory maturation, far from deterring investment, reinforces the institutional credibility and predictability that international businesses and investors increasingly require when committing capital to a market over the medium and long term. For businesses and investors prepared to engage with this evolving landscape, Greece – despite rising energy costs and inflationary

pressures – offers one of the most compelling commercial and investment environments in Southern Europe.

Looking ahead, Greece's strengthened credit profile and deepening capital markets infrastructure are expanding financing options and enhancing its appeal as a destination for both strategic and portfolio investment. The country has firmly established itself as a jurisdiction of genuine commercial and investment significance, where a dynamic deal environment, an ambitious reform agenda, and resilient economic fundamentals combine to create a compelling setting for businesses prepared to navigate both its opportunities and its complexities.

# INDIA




## Law and Practice

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**JSA Advocates & Solicitors** is one of India's leading full-service law firms, with a team of over 700 professionals operating across ten offices in seven cities (Ahmedabad, Bengaluru, Chennai, Gurugram, Hyderabad, Mumbai and New Delhi). Founded in 1991, JSA advises leading Indian and international corporations, private equity and venture capital funds, financial institutions, governmental and statutory authorities, and multilateral organisations on complex legal, regulatory and commercial matters. The firm is organised across the Corporate, Finance and Disputes practices, with deep sectoral expertise spanning technology, manufacturing, infrastructure, energy, financial services, healthcare, consumer products, media and telecommunications, among others. JSA is consistently recognised by leading legal directories and industry publications for its expertise across practice areas and sectors. Combining the resources and capabilities of a large national firm with a partner-led and client-centric approach, JSA is known for delivering commercially focused, innovative and practical legal solutions on high-value and strategically significant mandates.

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## 1. Legal System

### 1.1 Legal System and Judicial Order

India follows a common-law system, supplemented by a comprehensive written Constitution and an extensive body of statutory legislation.

The judiciary comprises a unified and integrated hierarchy headed by the Supreme Court of India, which is the apex judicial authority and the final court of appeal in constitutional, civil and criminal matters. The High Courts exercise jurisdiction over their respective states and union territories and supervise the subordinate judiciary within their territorial jurisdiction. The subordinate court system consists of the District and Sessions Courts, Magistrates' Courts and Civil Judges' Courts. District and Sessions Courts function as the highest courts at the district level for the adjudication of civil and criminal matters, respectively, while the Civil Judges' Courts and Magistrates' Courts form the lower tiers of the subordinate judiciary, exercising jurisdiction over less serious civil and criminal matters, respectively.

In addition to the ordinary court system, specialised tribunals have been constituted to adjudicate disputes in specific subject matters. Appeals from such tribunals generally lie before the High Courts or, where applicable, the Supreme Court.

## 2. Restrictions on Foreign Investments

### 2.1 Approval of Foreign Investments

Foreign investment in India is primarily governed by the Foreign Exchange Management Act, 1999 (FEMA), the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 ("NDI Rules") and the Consolidated FDI Policy issued by the Department for Promotion of Industry and Internal Trade (DPIIT).

A foreign investor may invest in India through, among others, the following routes:

- Foreign direct investment (FDI), under either the automatic route or the government approval route. Under the automatic route, no prior government approval is required, and foreign investments may be made up to the applicable sectoral cap, subject to the prescribed requirements. Investments falling under the government approval route require prior approval from the relevant authority. FDI is generally preferred for strategic and long-term investments in Indian businesses, including through wholly owned subsidiaries or joint ventures, particularly where the investor seeks to participate in the management/control of the entity.
- Investment as a Foreign Portfolio Investor (FPI), subject to prior registration with the Securities and Exchange Board of India (SEBI) and compliance with the applicable FPI regulations. The FPI route is preferred for portfolio investments in listed securities, where investors seek flexibility to deal in securities through stock exchanges without adhering

to the pricing guidelines and regulatory approval requirements applicable to FDI.
- Investment as a Foreign Venture Capital Investor (FVCI), subject to prior registration with SEBI and compliance with the applicable FVCI regulations. This route is preferred by venture capital funds and early-stage investors investing in start-ups and high-growth businesses.
- Investment by a Non-Resident Indian (NRI) or an Overseas Citizen of India (OCI): (a) on a repatriation basis through a recognised stock exchange in India, subject to the prescribed limits; or (b) on a non-repatriation basis, including through a company, trust or partnership firm incorporated outside India and owned and controlled by NRIs or OCIs, subject to the applicable sectoral caps and entry routes. These routes are preferred by NRIs and OCIs investing in India, to retain flexibility for repatriation of investment. Investments on a non-repatriation basis are generally treated as domestic investment.
- Investment in units of an Investment Vehicle, being an entity registered and regulated by SEBI under the applicable regulatory framework, including alternative investment funds, real estate investment trusts and infrastructure investment trusts.

The NDI Rules comprehensively regulate foreign investment in India and prescribe sectoral caps, entry routes, pricing guidelines, reporting requirements and sector-specific conditions applicable to foreign investments. The NDI Rules also prescribe additional conditions for certain sectors, including retail trading, e-commerce and construction and development.

### Prohibited Sectors

The Consolidated FDI Policy identifies certain sectors in which foreign investment is prohibited, including lottery business, gambling and betting, chit funds, Nidhi companies, atomic energy, trading in transferable development rights, real estate business or construction of farmhouses, and the manufacturing of tobacco or tobacco substitutes.

Further, as per the Press Note 3 issued in 2020, investments from entities situated in, or beneficially owned by persons resident in, countries sharing a land border with India (LBCs) require prior government approval. However, investments involving non-controlling beneficial ownership of up to 10% from such jurisdictions may be made under the automatic route, provided the applicable sectoral caps and sector-specific conditions are complied with. Additionally, the government has introduced a time-bound approval framework for LBC investments in certain specified sectors, including manufacturing of capital goods, electronic capital goods, electronic components, polysilicon and ingot-wafer.

## 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

Foreign investment falling under the government approval route requires approval before the investment is made. Applications are submitted through the Foreign Investment Facilitation Portal and examined by the relevant ministry or department. The application generally includes details relating to the investor, the investee entity, the proposed investment structure, the source of funds, beneficial ownership and compliance with applicable sector-specific conditions. Applications are generally processed within eight to 12 weeks.

All such applications are processed by DPIIT through the National Single Window System. DPIIT is responsible for processing such applications and co-ordinating with the competent authorities. Upon submission, the proposal is considered by the relevant competent authorities, such as the Ministry of Defence, the Ministry of Information and Broadcasting, the Department of Economic Affairs, etc. Applications requiring security clearance are examined by the Ministry of Home Affairs and the Ministry of External Affairs.

The FEMA framework also imposes certain post-investment compliance obligations, such as the requirement to file Form FC-GPR, Form FC-TRS and annual Foreign Liabilities and Assets returns with the RBI.

Making an investment under the government approval route without prior authorisation constitutes a violation of FEMA. Non-compliant transactions may face directions requiring the investment to be regularised, restructured or unwound, alongside potential monetary penalties or compounding proceedings before

the RBI or other competent authorities. Furthermore, both the company and its officers may be subject to regulatory scrutiny and enforcement action for non-compliance with the applicable foreign investment regulations.

### 2.3 Commitments Required From Foreign Investors

There is no general requirement for foreign investors to provide specific commitments as a condition for obtaining approval. However, investments falling under the government approval route may be subject to conditions or undertakings imposed by the relevant authorities on a case-by-case basis, having regard to the sector, the nature of the investment and any national security, public interest or regulatory considerations.

Such conditions may include compliance with sector-specific regulations, foreign investment limits, ownership and control requirements, national security and data protection norms, and reporting obligations.

In certain regulated sectors, including defence, telecommunications, insurance, broadcasting and financial services, additional conditions may apply pursuant to the applicable sector-specific regulatory framework.

### 2.4 Right to Appeal

There is no dedicated statutory appellate mechanism under the foreign investment approval regime against a decision refusing approval of a proposed foreign investment under the government approval route. Such decisions may, however, be challenged before the jurisdictional High Court through a writ petition under Article 226 of the Constitution of India.

The scope of judicial review is limited. Courts do not ordinarily reassess the commercial merits or policy considerations underlying an investment approval decision. Instead, judicial review is confined to examining the legality of the decision-making process.

A different position applies where the matter relates to an enforcement action or adjudication order under FEMA arising from an investment undertaken without the requisite approval. FEMA prescribes a statutory appellate mechanism for such adjudication orders, including appeals before the Special Director and the Appellate Tribunal. Further appeals on questions of law may be brought before the jurisdictional High Court in accordance with the provisions of FEMA.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

Businesses in India may be carried on through incorporated entities such as companies and limited liability partnerships (LLPs), or through unincorporated entities such as sole proprietorships and partnership firms. Foreign investors may also establish Branch Offices (BOs), Liaison Offices (LOs) or Project Offices (POs) for limited purposes. The principal characteristics of these vehicles are as follows.

#### 1. Sole Proprietorship

A sole proprietorship is owned and managed by a single individual and does not have a separate legal identity. The proprietor bears unlimited personal liability for all debts and obligations of the business. There is no minimum capital requirement, and the proprietor retains complete control over management and operations. Sole proprietorships are commonly used for small businesses, trading activities and consultancy services due to their ease of establishment and low compliance burden.

#### 2. Partnership

Partnerships may be constituted either as: (a) a partnership firm under the Indian Partnership Act, 1932; or (b) an LLP under the Limited Liability Partnership Act, 2008 (“LLP Act”).

A partnership firm does not have a legal identity separate from its partners, who are jointly and severally liable for the firm’s obligations. It is generally suited for professional practices, family-owned businesses and closely held ventures where partners actively participate in management.

An LLP is a separate legal entity with perpetual succession. The liability of each partner is limited to the extent of the partner’s agreed contribution. An LLP combines the operational flexibility of a partnership

with limited liability protection and is commonly used for professional service businesses, holding structures and joint ventures. There is no minimum capital requirement. An LLP must have at least two partners and two designated partners, one of whom must be resident in India.

### 3. Company

Companies are incorporated under the Companies Act, 2013 as either private limited companies or public limited companies.

A private limited company must have at least two shareholders and two directors, one of whom must be resident in India. Shareholders' liability is limited to the unpaid amount on their shares. There is no minimum capital requirement. Private companies are the most common vehicle for start-ups, greenfield projects, wholly owned subsidiaries and joint ventures due to their separate legal personality, limited liability and flexibility.

A public limited company must have at least seven shareholders and three directors. Listed public companies are subject to enhanced governance, disclosure and compliance requirements, including independent director requirements. Public companies are typically used where access to public capital markets is contemplated.

The Companies Act also recognises specialised forms such as One Person Companies (OPCs), small companies and Section 8 companies established for charitable or not-for-profit purposes.

### 4. Branch Office, Liaison Office and Project Office

Foreign companies may establish a BO, LO or PO in India, subject to applicable RBI regulations. These offices do not constitute separate legal entities and operate as extensions of the foreign company.

An LO may undertake only liaison and communication activities and cannot carry on commercial operations. A BO may conduct specified business activities permitted under applicable regulations, while a PO may be established for execution of a specific project in India. These structures are generally used where a foreign company wishes to maintain a limited presence in India without incorporating a subsidiary.

## 3.2 Incorporation Process

A company is incorporated by filing an application with the jurisdictional Registrar of Companies (RoC) through the Ministry of Corporate Affairs' integrated SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus) portal. The principal steps are as follows:

- reservation of the proposed company name;
- preparation and execution of the incorporation documents, including the memorandum of association and articles of association;
- filing of the incorporation application with the RoC, together with prescribed declarations, consents, particulars of the subscribers and first directors, proof of identity and address documents, and other required information;
- scrutiny and registration of the incorporation documents by the RoC; and
- issuance of the Certificate of Incorporation and allotment of a Corporate Identity Number.

Following incorporation, the company must complete certain initial compliance requirements, including verification of its registered office, appointment of its first auditor, holding its first board meeting, maintaining statutory registers and records, and filing the prescribed declaration for commencement of business.

The incorporation process is largely electronic, and where all documents are in order and no regulatory approvals are required, incorporation is typically completed within three to seven business days from the date of filing. Delays may arise where the RoC raises queries or additional approvals are required.

## 3.3 Ongoing Reporting and Disclosure Obligations

Private companies are required to file annual financial statements and annual returns with the RoC within the prescribed timelines. Financial statements must be approved by the board of directors and adopted by the shareholders at the annual general meeting prior to filing.

Additionally, private companies are required to make filings with the RoC in relation to various corporate actions and changes, including:

- appointments, resignations or changes in the particulars of directors and key managerial personnel;
- changes to the company's registered office;
- amendments to the memorandum of association or articles of association;
- increases, reductions or other changes to the company's share capital;
- allotment of shares;
- appointment or reappointment of statutory auditors;
- creation, modification or satisfaction of charges over company assets;
- mergers, demergers and other corporate restructuring transactions; and
- changes to the company's name or other constitutional matters.

Private companies must also maintain statutory registers and records, including registers of members and directors, records of related-party transactions and such other records as may be prescribed under the Companies Act.

Companies are further required to identify and maintain records of individuals who qualify as significant beneficial owners and to make the prescribed filings with the RoC. Companies must take reasonable steps to identify such beneficial owners and obtain the requisite declarations from them.

Failure to comply with the applicable filing, reporting and disclosure requirements may result in monetary penalties for the company and, in certain cases, for the officers in default.

### 3.4 Management Structures

India has adopted a board-centric management structure, under which the board of directors is responsible for the overall management of the company and the formulation of key strategic decisions. The board is authorised to exercise the prescribed powers on behalf of the company through resolutions passed at duly convened board meetings. It must be noted that certain matters also require shareholder approval in addition to board approval. While shareholders retain ownership rights and exercise control through general meetings, they do not participate in the day-to-day management of the company.

Conversely, an LLP does not have a board structure. Instead, it is managed by its partners in accordance with the LLP Act and the LLP agreement, which typically governs management rights, the decision-making framework, profit sharing and the allocation of responsibilities among the partners. The partners are responsible for ensuring compliance with the applicable statutory requirements.

Partnership firms as governed by the Indian Partnership Act and sole proprietorships do not have a statutorily prescribed management structure. A partnership firm is managed by its partners in accordance with the partnership deed, while a sole proprietorship is managed directly by the proprietor.

### 3.5 Directors', Officers' and Shareholders' Liability

Directors and officers of Indian companies owe statutory and fiduciary duties to the company under the Companies Act. These duties include acting in good faith to promote the objects of the company; acting in accordance with the company's articles of association; exercising their powers with due and reasonable care, skill and diligence; acting in the best interests of the company and all the stakeholders; and avoiding situations involving conflicts of interest or improper personal gain. Directors may incur civil and, in certain circumstances, criminal liability for breach of their duties, non-compliance with the Act, fraud, misstatements in public disclosures, failure to comply with regulatory requirements, or violations of other applicable laws.

As a general rule, a company is a separate legal entity and its shareholders, directors and officers are not liable for the company's debts and obligations solely by reason of their position. Directors and officers may, however, incur personal liability where specifically imposed by statute, where they have consented to, participated in or had knowledge of a contravention or where regarded as officers in default under the Act.

Personal liability may also arise under other applicable legislation.

Indian law recognises the doctrine of piercing the corporate veil, although it is applied sparingly and only in exceptional circumstances. Under this doctrine, courts may disregard the separate legal personality of a company and look beyond the corporate structure where it has been used to perpetrate fraud, evade legal obligations, defeat public policy, avoid taxes, circumvent statutory requirements, conceal the true nature of a transaction or otherwise abuse the corporate form. In such circumstances, liability may be imposed on the individuals or entities exercising control over the company. The doctrine has developed primarily through judicial decisions and is applied on a case-by-case basis.

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

India's labour and employment framework comprises both central and state legislation. At the central level, the framework is primarily based on the four Labour Codes, which consolidate and rationalise numerous existing labour laws:

- *Code on Wages*, *2019*: This consolidates laws relating to wages and bonus payments. Key features include the introduction of a floor wage, a revised definition of wages, equal remuneration for the same work, and powers of the government to fix minimum wages.
- *Code on Social Security*, *2020*: This consolidates social security laws and seeks to extend social security benefits to employees and workers across both organised and unorganised sectors.
- *Occupational Safety*, *Health and Working Conditions Code*, *2020* ("*OSH Code*"): This consolidates laws relating to occupational safety, health and working conditions. It prescribes employer obligations concerning workplace safety, working hours, leave entitlements and other welfare measures.
- *Industrial Relations Code*, *2020* ("*IR Code*"): This consolidates laws relating to trade unions, industrial disputes, grievance redressal, retrenchment, lay-offs, closures, strikes and lockouts.

In addition to the Labour Codes, several other employment-related statutes remain relevant:

- *Shops and Establishments Acts* ("*S&E Acts*"): State-specific legislation governing conditions of employment in shops and commercial establishments, including working hours, leave, wages, employment of women and young persons, and establishment registration requirements.
- *Sexual Harassment of Women at Workplace* (*Prevention*, *Prohibition and Redressal*) *Act*, *2013* (*commonly known as the POSH Act*): This establishes a framework for the prevention and redressal of workplace sexual harassment, including constitution of Internal Committees and implementation of prescribed compliance measures.
- *Other employment legislation*: Additional statutes include the Apprentices Act, 1961, the Rights of Persons with Disabilities Act, 2016 and the Transgender Persons (Protection of Rights) Act, 2019, each of which imposes specific obligations relating to non-discrimination, equal opportunity and workplace inclusion.

### 4.2 Characteristics of Employment Contracts

The Labour Codes mandate the employer to issue an appointment letter to every employee upon appointment in the form prescribed by the appropriate government.

Employment relationships are typically governed by employment letters and employment agreements setting out the terms and conditions of employment, including the scope of work, working hours, leave entitlements, notice periods, holidays, remuneration, confidentiality obligations, non-compete/non-solicit restrictions, overtime and dispute resolution mechanisms.

Employment may be for a fixed term or an indefinite term. Fixed-term employment terminates upon expiry of the agreed term, while employment for an indefinite term continues until terminated in accordance with the terms of the employment contract and applicable law.

### 4.3 Working Time

Working hours in India are principally governed under the OSH Code, along with the applicable state-spe-

cific S&E Acts. Under the OSH Code, workers are not permitted to work in any establishment for more than eight hours in a day or 48 hours in a week. Employers are required to obtain prior written consent of a worker and are required to pay overtime wages, generally at twice the ordinary rate of wages.

Additionally, state-specific S&E Acts may prescribe separate requirements relating to working hours, overtime and weekly rest periods. In the event of any inconsistency, employers are required to comply with the provisions that are more favourable to the employee.

### 4.4 Termination of Employment Contracts

Termination of individuals classified as workers under the IR Code is principally governed under the IR Code, whereas the termination of non-workers is regulated by the applicable state-specific S&E Acts, read with the terms of employment and the internal company policies. Employees may be entitled to statutory dues and benefits upon termination, including gratuity, provident fund, leave encashment and such other social security benefits as may be applicable under the Labour Codes.

In terms of the IR Code, termination of a worker for reasons other than disciplinary action, resignation, retirement, non-renewal of fixed-term contract, would ordinarily constitute retrenchment. A worker who has been in continuous service for not less than one year cannot be retrenched unless the worker is provided the prescribed notice or wages in lieu thereof, together with retrenchment compensation as prescribed under the IR Code. Further, in the case of industrial establishments employing 300 or more workers, prior permission of the appropriate government is also required to be obtained prior to any retrenchment.

### 4.5 Employee Representations

There is no general statutory obligation on employers to constitute employee representative bodies or to undertake prior information sharing/consultation with employees or their representatives in relation to ordinary business or management decisions.

However, employee representation and consultation rights may arise in relation to employees who qualify as workers under the IR Code. Recognised trade unions or negotiating unions/councils are empowered to represent workers in matters relating to collective bargaining, industrial disputes and matters involving proposed changes to conditions of service.

Industrial establishments employing 100 or more workers may be required to constitute a works committee. Such committee comprises representatives of both the employer and the workers engaged in the establishment. The principal function of this committee is to promote and maintain harmonious relations between the employer and the workers. The committee is also required to consider matters of common interest or concern to both parties and endeavour to resolve any material differences of opinion arising in relation to such matters.

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/ Employers

#### Direct Tax

An individual is taxable in India as a salaried employee if he or she is a resident in India (present for 182+ days in the tax year, or 60+ days in the tax year and 365+ days in the preceding four years); or he or she is a non-resident who receives salary income sourced in India and meets the threshold time limit and other conditions in the applicable treaty of his or her country of residence.

Under the default tax regime, salary income is taxed at progressive rates ranging from nil to 30%, with the highest rate applying to income exceeding INR24 lakh (approx. USD25,400 at time of writing). A surcharge is applicable at rates of 10%, 15% and 25% where total income exceeds INR50 lakh (approx. USD53,000), INR1 crore (approx. USD106,000) and INR2 crore (approx. USD212,000), respectively. Employees may alternatively opt for the old tax regime, which permits certain deductions and exemptions but is subject to different slab rates, with the highest rate of 30% applying to income exceeding INR10 lakh (approx. USD10,600). Under the old regime, the rate of surcharge remains the same, with an additional slab of surcharge at the rate of 37% for income exceed-

ing INR5 crore (approx. USD530,000). In all cases, a health and education cess of 4% is levied on the aggregate of tax and surcharge.

Employers are required to withhold income tax from employees' salaries and remit it to the government as an advance payment of the employees' tax liability.

### Indirect Tax

Services rendered by an employee to his or her employer in the course of or in relation to his or her employment are explicitly excluded from the definition of supply under the Central Goods and Services Tax Act, 2017. Accordingly, salaries, wages and other remuneration paid by an employer to its employees do not attract Goods and Services Tax (GST). Further, gifts not exceeding INR50,000 (approx. USD530) in value per employee per financial year are also exempt from GST.

Secondment arrangements are generally subject to closer scrutiny by GST authorities, as they may be characterised as services rendered by a foreign affiliate to the entity in India. Accordingly, the GST implications for such arrangements depend on the specific structuring and facts of each case.

Separately, services provided by directors to a company fall within the ambit of GST and are liable to tax under the reverse charge mechanism.

## 5.2 Taxes Applicable to Businesses

### Direct Tax

Companies are subject to a multi-tiered tax system primarily governed by the Income Tax Act, 2025, the GST laws and state-specific levies.

#### *1. Corporate income tax*

Domestic companies may opt for a concessional corporate tax regime at the rate of approximately 25.17%, subject to the specified exemptions and deductions. Alternatively, companies claiming the available deductions and incentives are generally taxed at 25% (where turnover for FY 2024–25 does not exceed INR400 crore (approx. USD42 million)) or 30% (where turnover exceeds INR400 crore), plus applicable surcharge and cess.

Foreign companies are taxed at the rate of 35% coupled with an additional surcharge ranging from 2% to 5%.

#### *2. Withholding tax*

Tax Deducted at Source (TDS) is a mechanism where the payer deducts tax before making certain payments, ensuring tax collection at the source of income. The rate depends upon the nature of income, and it differs for residents and non-residents. The table below illustrates the TDS rates applicable to non-residents for common income types, which are relevant for foreign companies and individuals:

1. Dividend: 20% + surcharge + cess
2. Interest: 20% + surcharge + cess
3. Rent: 30% + surcharge + cess

The TDS rate with a double tax avoidance agreement on all the above categories of income is between 10% and 15%, depending on the country of residence.

### Indirect Tax

Businesses in India are subject to a multi-layered tax regime comprising direct taxes (income tax/corporate tax) as well as indirect taxes (GST, customs duty and excise duty), the applicability of each being contingent upon the nature and scope of the business undertaken.

#### *1. GST*

GST is a destination-based consumption tax levied on the supply of goods and services, subsuming most of the previously existing central and state indirect taxes. GST rates vary based on classification of the goods or services, with rates ranging through 0%, 5%, 12%, 18% and 40%. The liability to discharge/pay taxes to the government devolves upon the supplier.

Exports of goods and services are treated as zero-rated supplies, enabling exporters to claim refunds of input tax credits or taxes paid. Since GST is a value-added tax, businesses are generally entitled to claim input tax credit for eligible taxes paid on procurements and utilise the same against output tax liabilities.

Petroleum crude, high-speed diesel, motor spirit (petrol), natural gas, aviation turbine fuel and alcoholic

liquor for human consumption remain outside the GST framework and continue to be subject to separate indirect tax regimes.

*2. Customs duty*

Customs duty is levied on import of goods into India. Certain key components of the customs duty payable are:

- Basic Customs Duty (BCD);
- Integrated Goods and Services Tax (IGST);
- Social Welfare Surcharge (SWS) levied at 10% on the aggregate of duties, taxes and cesses levied under the Customs Act, 1962;
- Agriculture Infrastructure and Development Cess (AIDC) levied on import of specified products, for the purposes of financing agriculture infrastructure and other development expenditure;
- health cess, which is levied on import of specified medical instruments to boost the domestic manufacturers of such products; and
- anti-dumping duties and safeguard duties, which are levied on import of specified goods/import from specified countries, in addition to the other duties/taxes/cesses that may be leviable.

The provisions under the Customs Act and rules and regulations framed thereunder cover the procedures, documentation, formalities and operations relating to international trade transactions, with the aim of simplifying, harmonising and standardising such transactions.

The Foreign Trade Policy (FTP) provides various export promotion schemes such as the Export Promotion Capital Goods scheme, the Export Oriented Units scheme, the Advance Authorisation scheme, and the scheme for remission of duties and taxes on exported products.

*3. Excise duty*

With the advent of GST, excise duty has been subsumed within GST for most goods. However, excise duty continues to survive on a limited category of goods kept outside the ambit of GST, namely petroleum crude, high-speed diesel, motor spirit (petrol), natural gas, aviation turbine fuel, alcoholic liquor for human consumption (state excise laws) and tobacco/tobacco products, on which excise duty continues to be levied in addition to GST.

## 5.3 Available Tax Credits/Incentives

### Direct Tax

The available incentives are a mix of income-based tax holidays, investment-based deductions and sector-specific benefits. The table below summarises the most common key incentives, on fulfilment of certain prescribed requirements:

Incentive: *Start-up tax holiday*

*Who can benefit*: Eligible start-ups (companies or LLPs)

*Benefit*:100% deduction on profits for three consecutive years in a ten-year block

Incentive: *GIFT City (IFSC) tax holiday*

*Who can benefit*: Units in the International Financial Services Centre

*Benefit*:100% tax holiday for 20 years within a 25-year block

Incentive: *Data centre services tax holiday*

*Who can benefit*: Foreign companies using Indian data centres

*Benefit*: Income tax exemption until 31 March 2047

Incentive: *Patent box regime*

*Who can benefit*: Eligible taxpayers earning royalty income from patents developed and registered in India

*Benefit*: Preferential taxation of qualifying patent royalty income

Incentive: *Scientific research*

*Who can benefit*: Businesses incurring qualifying scientific research expenditure

*Benefit*: Deduction for qualifying revenue and certain capital expenditure on scientific research

Incentive: *In-house R&D facility*

*Who can benefit*: Companies with approved in-house R&D facilities

*Benefit*: Deduction for qualifying in-house scientific research expenditure, excluding land and building

### Indirect Tax

The principal tax credit and incentive mechanisms available to businesses in India under the indirect tax regime may be summarised as follows:

- *Input tax credit under GST*: This is a credit mechanism whereby a registered person is entitled to avail themselves of credit for GST paid on inputs, input services and capital goods procured in the course or furtherance of business, and to utilise such credit towards discharge of output tax liability on outward supplies. Certain categories of inward supplies are statutorily excluded from the purview of input tax credit.
- *Central value-added tax*: Credit under excise law is allowed in respect of excise duty paid on inputs, capital goods and service tax paid on input services, to utilise such credit towards discharge of excise duty payable on manufactured goods which are not subsumed under the GST regime.
- *Credit/incentive mechanisms under customs law*: Customs law read with the FTP provides for certain export promotion schemes designed to neutralise the incidence of customs duty on inputs used in goods meant for export, including:
  (a) the Advance Authorisation scheme;
  (b) the Export Promotion Capital Goods scheme;
  (c) the Duty Drawback scheme;
  (d) preferential trade agreements (PTAs), free trade agreements (FTAs), etc with various countries to eliminate or reduce customs tariff and non-tariff barriers; and
  (e) to promote international and domestic trade and create competitiveness, India provides fiscal incentives by allowing companies to set up units in Special Economic Zones, Free Trade Zones, Export Oriented Units, software technology parks or the GIFT International Financial Services Centre, or for undertaking manufacture and other operations in customs warehouses, etc, along with required infrastructure, utilities and services in such areas.

## 5.4 Tax Consolidation

### Direct Tax

Under Indian tax law, tax consolidation for corporate groups (where a parent and its subsidiaries are treated as a single taxable entity) is not permitted. Each company within a group is treated as a separate legal entity and must independently file its tax returns and meet its tax obligations. This means that the losses of one group company cannot generally be offset against the profits of another group company.

### Indirect Tax

The position under GST law is similar. Each legal entity is required to be assessed and taxed independently.

## 5.5 Thin Capitalisation Rules and Other Limitations

Thin capitalisation rules (interest deduction limitation rules) are applicable in India, aligning with OECD BEPS Action Plan 4 to prevent base erosion through excessive interest deductions on debt from related parties.

They apply where an Indian company or a permanent establishment of a foreign company in India incurs deductible interest or similar expenditure exceeding INR1 crore (approx. USD106,000) payable to a non-resident associated enterprise (AE). The deduction for such interest paid to AEs is limited to the lower of (i) 30% of the company's EBITDA and (ii) the total interest paid or payable to AEs.

## 5.6 Transfer Pricing

India's income tax laws provide for transfer pricing regulations applicable to international transactions between AEs. Transfer pricing regulations also apply to certain specified domestic transactions.

The Indian tax authorities are empowered to adjust income arising from such transactions where the price charged is not at arm's length, as determined under the prescribed methods. Taxpayers are required to maintain appropriate documentation to substantiate the arm's length price. Taxpayers may also enter into unilateral or bilateral Advance Pricing Agreements and, in specified cases, opt for safe harbour provisions, and are required to maintain appropriate docu-

mentation to establish the adequacy of arm's length pricing.

Further, with effect from 1 April 2025, taxpayers have been given the option to opt for a block transfer pricing assessment regime, subject to satisfaction of the prescribed conditions.

While transfer pricing is primarily an income tax concept, a comparable mechanism exists under customs law through the Special Valuation Branch (SVB). Where goods are imported from related parties, customs authorities may examine whether such relationship has influenced the declared transaction value of the imported goods. The SVB reviews the nature of the relationship and the circumstances of sale, and determines whether the declared value is acceptable for customs purposes or requires adjustment.

## 5.7 Anti-Evasion Rules

### Direct Tax

India has a comprehensive anti-evasion framework comprising both general and specific anti-avoidance provisions.

- The General Anti-Avoidance Rule (GAAR) targets impermissible avoidance arrangements where the main purpose is to obtain a tax benefit. Such arrangements are carried out in a manner not normally employed for bona fide purposes, lack commercial substance (in whole or part) and create rights/obligations not ordinarily arising at arm's length, resulting in misuse/abuse of tax provisions.
- Specific Anti-Avoidance Rules (SAAR) address targeted tax avoidance strategies and often take precedence or complement GAAR, such as:
  (a) thin capitalisation rules, which limit interest deductions on borrowings from related non-residents;
  (b) transfer pricing rules, which require international transactions and specified domestic transactions between AEs to be conducted at arm's length;
  (c) Place of Effective Management provisions, which determine residency of foreign companies if key management and commercial decisions are made in India; and
  (d) Significant Economic Presence provisions, which seek to tax certain digital and business activities undertaken by non-residents.
- Additional anti-evasion measures include the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, which prescribes extensive reporting and disclosure requirements and stringent penalties and prosecution for wilful tax evasion, concealment and misreporting.

### Indirect Tax

Each indirect tax law in India prescribes its own compliance obligations and associated penalty framework. There is no unified anti-evasion regime that operates uniformly across the various indirect tax statutes.

## 5.8 Tariffs

India's tariff regime is principally governed by the Customs Act, 1962 and the Customs Tariff Act, 1975. It follows a multi-layered duty structure comprising BCD, IGST, SWS, AIDC and, where applicable, anti-dumping and safeguard duties.

The principal levies are as follows:

- *BCD*: Generally levied at 10% of the value of the goods.
- *IGST*: Levied at the applicable rate of GST on supplies made in India.
- *SWS*: Generally levied at 10% of the aggregate of levies under the Customs Act.
- *AIDC*: Levied on specified imported products to finance agricultural infrastructure and other development expenditure.
- *Health cess*: Levied on import of specified medical devices and equipment (generally at 5%) with a view to promoting domestic manufacturing.
- *Anti-dumping and safeguard duties*: Levied on specified goods and imports from specified countries to address dumping, import surges or injury to domestic industry. These duties are imposed in addition to other applicable duties, taxes and cesses.

Of the above levies, only IGST is generally creditable under the GST framework and may be claimed as input tax credit by eligible importers. The remaining levies ordinarily constitute a cost to the importer.

To facilitate trade and reduce tariff and non-tariff barriers, India has entered into various PTAs and FTAs. Recent and ongoing negotiations include arrangements involving the UK, the EU, New Zealand and Oman, among others.

## 6. Competition Law

### 6.1 Merger Control Notification

Combinations are governed by Sections 5 and 6 of the Competition Act, 2002 read with the Competition Commission of India (Combinations) Regulations, 2024, the Competition (Criteria for Exemption of Combinations) Rules, 2024 ("Exemption Rules") and any other notifications, rules and regulations issued by the Government of India (GoI) and/or the Competition Commission of India (CCI) from time to time.

A "combination" means an acquisition of control, shares, voting rights or assets, or a merger or amalgamation or formation of a joint venture, that exceeds the financial thresholds (based on asset value and turnover of the parties or group) or the deal value threshold prescribed under Section 5 of the Competition Act. If any of the aforesaid thresholds are met, the transaction will qualify as a combination and require the approval of the CCI, unless the transaction qualifies for a specific exemption provided under the Exemption Rules or the notifications/rules issued by the GoI.

#### Target Exemption/De Minimis Exemption

Under the Competition (Minimum Value of Assets or Turnover) Rules, 2024, transactions are exempt from requiring CCI approval if the target company's consolidated asset value in India does not exceed INR450 crore (approx. USD47.7 million) or its turnover does not exceed INR1,250 crore (approx. USD132 million). However, this de minimis exemption is not applicable if the deal value threshold is breached.

### 6.2 Merger Control Procedure

Once a transaction qualifies as a combination and requires approval from the CCI, the parties must file a notice with the CCI. This notice may be filed at any time after the execution of definitive or binding documents. Depending on the nature and extent of overlaps between the parties in India, the notice may be filed in any of the following forms:

- Green Channel Form: Can only be filed if there are no horizontal, vertical or complementary overlaps between the activities of the parties in India. Upon filing and receiving an acknowledgement, the combination is deemed automatically approved.
- Form I (short form).
- Form II (long form).

If there are overlaps between the activities of the parties in India, parties must file either Form I or a Form II notice. A Form II notice is preferred where the parties are: (a) competitors and have a combined market share of more than 15%; or (b) active in vertically linked markets and the combined or individual market share is more than 25%.

Upon filing, the CCI has 30 calendar days to form its prima facie view, failing which the combination is deemed approved. This timeline can be extended if the information submitted in the notice is incomplete or if the CCI requires additional information for its review.

The Indian merger control regime is mandatory and suspensory; therefore, parties cannot consummate the combination or any part thereof prior to receiving approval from the CCI or until 150 days from the date of notification of the combination have elapsed. If no decision is taken by the CCI within the said period, the combination will be deemed approved.

If a notifying party consummates a combination or any part thereof without seeking approval from the CCI, the CCI has the power to: (a) impose a penalty which can extend up to 1% of the combined asset value or turnover or deal value of the combination (whichever is higher) on the notifying party; and/or (b) require the notifying party to file a notice for such combination.

### 6.3 Cartels

The Competition Act seeks to prevent practices that have an appreciable adverse effect on competition (AAEC) in India.

Section 3 prohibits agreements which cause or are likely to cause an AAEC in India, and such agreements are considered void. These include agreements between competitors (horizontal agreements), enterprises at different levels of the production chain (vertical agreements) and other agreements that do not fall within either category but may nevertheless cause or are likely to cause an AAEC in India.

### Horizontal Agreements

Section 3 (3) identifies four types of horizontal agreements (ie, agreements between competitors), also known as cartel agreements, namely: (a) price-fixing agreements; (b) agreements to limit or control production, supply or markets; (c) market-sharing agreements; and (d) bid-rigging agreements. Such agreements are presumed to cause an AAEC in India. This presumption extends to enterprises that facilitate cartels or engage in hub-and-spoke cartels.

### Vertical and Other Agreements

Section 3 (4), among other things, deals with vertical agreements and provides a non-exhaustive list of such agreements, including: (a) tie-in arrangements; (b) exclusive supply agreements; (c) exclusive distribution agreements, including territorial allocation arrangements; (d) refusal to deal; and (e) resale price maintenance. These agreements are prohibited where they cause, or are likely to cause, an AAEC on competition in India. In addition to horizontal and vertical agreements, other forms of agreements may also be examined under Section 3 (4) where they cause, or are likely to cause, an AAEC in India.

The regulatory framework grants the CCI explicit extraterritorial jurisdiction. This means that it has the power to investigate and penalise abuse of dominant position and anti-competitive agreements formed or operating outside of India, provided that they cause, or are likely to cause, an AAEC in India.

## 6.4 Abuse of Dominant Position

Section 4 of the Competition Act prohibits an enterprise or a group from abusing its dominant position. To determine whether an enterprise is dominant, the CCI considers various factors, including the enterprise's market share, size and resources, its economic power and the competitive conditions in the relevant market. Market share is one of the important factors in this assessment. While a market share of 50% or more may indicate dominance, an enterprise with a lower market share may also be found to be dominant depending on the facts and circumstances of the case.

Section 4 (2) lists certain practices that may amount to abuse of dominant position when carried out by a dominant enterprise or group. These include imposing unfair or discriminatory prices or conditions, limiting production or technical development, denying market access, leveraging dominance in one market to enter or protect another market, engaging in tie-in arrangements, and other exclusionary or exploitative conduct.

The Supreme Court in *Competition Commission of India v Schott Glass India Pvt. Ltd.*, Civil Appeal No. 5843 of 2014, underscored the importance of an effects-based analysis in cases involving allegations of abuse of dominant position. The Court clarified that the conduct of a dominant enterprise should be assessed based on its actual or likely effects on competition and not merely on its form. The Court also recognised that objective and legitimate business justifications for the impugned conduct are relevant considerations in determining whether the conduct amounts to an abuse of dominance.

# 7. Intellectual Property

## 7.1 Patents

### Patent Protection

Governed by the Patents Act, 1970, a patent is a statutory right granted for an invention that is novel, involves an inventive step and is capable of industrial application. Patent protection confers upon the patentee the exclusive right to prevent third parties from making, using, selling, offering for sale or importing the patented invention without authorisation. Patent rights are territorial and enforceable only within India.

Patent protection is available for a term of 20 years from the filing date of the application, subject to payment of prescribed renewal fees. Upon expiry, the invention enters the public domain. Certain subject matter is excluded from patentability under Sections 3

and 4 of the Patents Act, including inventions contrary to public order or morality, traditional knowledge and specified biological processes.

### Registration Process

India follows a first-to-file system. A patent application may be filed by the inventor, assignee or legal representative with either a provisional or complete specification.

Applications are ordinarily published after 18 months from the filing or priority date, unless early publication is requested. Any person may file a pre-grant opposition after publication and before grant. Patent examination is initiated only upon filing a request for examination within the prescribed period. Following examination, the Patent Office issues a First Examination Report setting out objections, if any, which must be addressed by the applicant. Upon satisfaction of the statutory requirements, the patent may be granted. Post-grant opposition proceedings may also be initiated on prescribed grounds.

### Enforcement and Remedies

Patent rights are enforced through civil proceedings. Infringement generally occurs where a third party, without authorisation, makes, uses, sells, offers for sale or imports a patented product or process.

Proceedings may be instituted before the competent District Court or High Court having jurisdiction. The principal remedies available under the Patents Act include interim and permanent injunctions, damages or an account of profits, recovery of costs, and seizure, forfeiture or destruction of infringing goods and materials predominantly used in their manufacture.

## 7.2 Trade Marks

### Trade Mark Protection

Trade mark protection in India is governed by the Trade Marks Act, 1999. Under the Trade Marks Act, a trade mark is any mark capable of graphical representation and of distinguishing the goods or services of one person from those of another. Protection extends to words, names, logos, labels, devices, signatures, packaging, shapes, colours, sound marks, numerals and combinations thereof.

Registration confers an exclusive right to use the trade mark in relation to the registered goods or services and provides statutory remedies against unauthorised use. However, registration is not mandatory, as unregistered marks may also be protected through passing off actions. Indian law also recognises prior user rights, transborder reputation and protection of well-known trade marks.

A registered trade mark is protected for a period of ten years from the date of application and may be renewed indefinitely for successive periods of ten years.

### Registration Process

India follows the Nice Classification system and permits multi-class applications. The registration process generally involves filing an application, examination by the Trade Marks Registry, publication in the Trade Marks Journal, opposition proceedings (if any) and registration.

The application is examined for compliance with statutory requirements and potential conflicts with earlier marks. Following publication, any person may oppose registration within four months. If no opposition is filed, or if opposition proceedings are successfully concluded, the Registrar grants registration and issues a registration certificate. India is also a signatory to the Madrid Protocol, enabling international registration through a centralised filing system.

### Enforcement and Remedies

Trade mark infringement generally arises where a registered trade mark or a deceptively similar mark is used without authorisation in a manner likely to cause confusion or deception.

Trade mark rights may be enforced through civil and criminal proceedings. Registered proprietors may institute infringement actions, while proprietors of unregistered marks may pursue passing off claims.

Civil remedies include interim and permanent injunctions; damages or an account of profits; delivery up, seizure or destruction of infringing goods; and recovery of costs. Certain trade mark offences, including falsification of trade marks and dealing in counter-

feit goods, may also attract criminal liability, including imprisonment and fines. Trade mark owners may additionally utilise customs recordation and border enforcement mechanisms to prevent the import of counterfeit goods.

## 7.3 Industrial Designs

### Design Protection

Design protection in India is governed by the Designs Act, 2000. A design refers to the features of shape, configuration, pattern, ornamentation or composition of lines or colours applied to an article which, in the finished article, appeal to and are judged solely by the eye.

To qualify for protection, a design must be novel and original and capable of industrial application. Protection is not available for purely functional features, designs previously disclosed to the public, trade marks, artistic works protected under copyright law or subject matter contrary to public order or morality.

A registered design is protected for an initial term of ten years from the date of registration and may be extended by a further period of five years.

### Registration Process

Applications for design registration are filed with the Controller General of Patents, Designs and Trade Marks. Prior to filing, applicants typically undertake a design search to assess novelty. The design is classified under the Locarno Classification system, and the application is filed together with representations of the design and prescribed supporting documents.

The Designs Office examines the application for procedural compliance and registrability, including novelty, originality and proper classification. Where objections are raised, the applicant is required to respond within the prescribed period. Upon acceptance, the design is registered, a registration certificate is issued and the registration is published in the Designs Journal.

### Enforcement and Remedies

Unauthorised application of a registered design, or any fraudulent or obvious imitation thereof, to articles within the registered class constitutes piracy of a design under the Designs Act. Infringement also extends to the import, sale, publication or commercial dealing in infringing articles.

Design rights are primarily enforced through civil proceedings before the competent District Court or High Court. To succeed in an infringement action, the proprietor must generally establish valid registration and unauthorised copying or imitation of the registered design.

Available remedies include interim and permanent injunctions, damages or an account of profits, seizure or destruction of infringing goods, recovery of litigation costs and border enforcement measures under the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 (“Enforcement Rules”).

## 7.4 Copyright

### Copyright Protection

Copyright protection in India is governed by the Copyright Act, 1957. Copyright subsists in original literary, dramatic, musical and artistic works, cinematograph films and sound recordings.

Copyright arises automatically upon creation of an original work and does not require registration. However, registration serves as prima facie evidence of ownership and is commonly relied upon in enforcement proceedings.

The term of protection varies depending on the category of work, although for most literary, dramatic, musical and artistic works, copyright subsists for the lifetime of the author and 60 years thereafter. India is also a signatory to key international copyright treaties, including the Berne Convention.

### Registration Process

Copyright registration is administered by the Copyright Office. The applicant is required to file the prescribed application together with details of the work and supporting documents, including copies of the work and proof of ownership, where applicable.

The Copyright Office examines the application for compliance with statutory requirements. Details of the application are published, following which a pre-

scribed period is provided for third-party objections. In the absence of objections, or upon their resolution, the Copyright Office issues a registration certificate.

### Enforcement and Remedies

Copyright infringement occurs where a person, without authorisation, undertakes acts falling within the exclusive rights of the copyright owner, including reproduction, distribution, communication to the public, sale, importation or commercial exploitation of infringing copies.

Copyright may be enforced through civil and criminal proceedings. Civil remedies include interim and permanent injunctions, damages or an account of profits, seizure and destruction of infringing material, and recovery of litigation costs. Criminal infringement may attract imprisonment and monetary penalties under the Copyright Act.

Rights holders may also utilise border enforcement measures under the Enforcement Rules. In cases of online infringement, copyright owners frequently rely on intermediary takedown mechanisms, notice-and-takedown procedures and court-directed blocking orders.

## 7.5 Others

### Protection of Other Forms of Intellectual Property

India's intellectual property framework provides protection to several additional categories of intellectual property through dedicated legislation and common-law principles. These include the Geographical Indications of Goods (Registration and Protection) Act, 1999, the Protection of Plant Varieties and Farmers' Rights Act, 2001, the Semiconductor Integrated Circuits Layout Design Act, 2000 and the protection of biological resources and traditional knowledge under the Biological Diversity Act, 2002.

### Software Programs and Databases

Computer software is primarily protected as a literary work under the Copyright Act. In limited circumstances, software-related inventions demonstrating a technical effect or technical contribution may also qualify for patent protection. Databases do not enjoy sui generis protection in India but may be protected under copyright law if they satisfy the applicable requirements.

### Trade Secrets and Confidential Information

Trade secrets and confidential information are not governed by any standalone legislation in India and are protected through contractual arrangements and common-law principles relating to breach of confidence and fiduciary obligations. Further, the right to copyright is specifically preserved against any breach of trust or confidence under Section 16 of the Copyright Act. In practice, protection is typically strengthened through contractual confidentiality obligations and specific covenants.

# 8. Data Protection

## 8.1 Applicable Regulations

### Applicable Regulations

India's data protection framework is rooted in the decision of the Supreme Court in *Justice K.S. Puttaswamy (Retd.) v Union of India* (2017), which recognised the right to privacy as a fundamental right under Article 21 of the Constitution. Any restriction on privacy must satisfy the tests of legality, legitimate aim and proportionality.

The principal legislation governing personal data protection is the Digital Personal Data Protection Act, 2023 ("DPDP Act"), together with the Digital Personal Data Protection Rules, 2025 ("DPDP Rules"). Pending full implementation of the DPDP Framework, certain provisions of the Information Technology Act, 2000 ("IT Act") and the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 ("SPDI Rules") remain relevant.

### Digital Personal Data Protection Framework

The DPDP Act applies to digital personal data, including personal data collected offline and subsequently digitised. It regulates the processing of personal data by Data Fiduciaries and grants various rights to Data Principals.

Processing of personal data under the DPDP Framework is permitted either on the basis of the Data

Principal's consent or for specified legitimate uses, including compliance with law, employment-related purposes, public health emergencies, certain governmental functions, etc. Data Fiduciaries are required to implement reasonable security safeguards, establish grievance redressal mechanisms, ensure that personal data is processed only for the purpose for which consent has been obtained, facilitate the exercise of Data Principal rights and notify personal data breaches to the Data Protection Board of India (DPBI) and affected Data Principals in the prescribed manner.

The DPDP Act also recognises the concept of Significant Data Fiduciaries (SDFs), which are subject to enhanced compliance obligations, including audits and impact assessments. Data Principals are granted rights relating to access, correction, erasure, withdrawal of consent, grievance redressal and nomination. Non-compliance may attract significant monetary penalties.

The DPDP Rules operationalise the statutory framework by prescribing requirements relating to consent notices, security safeguards, breach notifications, processing of children's data and the functioning of the DPBI.

### Information Technology Framework

Until the DPDP Framework is fully operationalised, the IT Act and SPDI Rules continue to apply in certain respects. Section 43A of the IT Act imposes liability for failure to implement reasonable security practices, while Section 72A prescribes penalties for unlawful disclosure of personal information.

The SPDI Rules regulate the collection, use, retention, transfer and disclosure of sensitive personal data. The framework requires consent-based processing, purpose limitation, implementation of reasonable security practices and appointment of a grievance officer.

In addition, sector-specific regulators in areas such as financial services, insurance, securities and telecommunications continue to prescribe separate requirements relating to cybersecurity, operational resilience and data governance.

## 8.2 Geographical Scope

### Extraterritorial Application

The DPDP Act applies not only to entities within India but also to entities incorporated outside India that process the personal data of individuals located in India in connection with the offering of goods or services to them. Consequently, any organisation offering goods or services in India or processing data of individuals in India falls within the scope of the framework, regardless of where the organisation is located.

However, Section 17 of the DPDP Act contains various carve-outs, with one carve-out being of particular relevance to India's significant technology and business process outsourcing sector. Section 17 (1)(d) exempts from the core obligations the processing of personal data of individuals located outside India, where such processing is carried out within India by an Indian entity pursuant to a contract with a person outside India.

### Cross-Border Transfer Under the DPDP Framework

One of the more structurally distinctive features of the DPDP Framework is its approach to cross-border data transfers. Section 16 of the DPDP Act and Rule 15 of the DPDP Rules together adopt a negative list model, under which personal data may be transferred by a Data Fiduciary to any country or territory in the world, unless the Central Government has expressly restricted transfers to that jurisdiction. However, as of the date of writing, no countries have been placed on the restricted list.

Section 16 and the cross-border transfer obligations under Rule 15 become fully operational only from 14 May 2027, meaning that organisations have until then to map their global data flows, restructure international transfer arrangements and renegotiate contracts with overseas recipients.

Further, where sector-specific laws or regulations impose stricter transfer restrictions or localisation requirements, those requirements continue to apply alongside the DPDP Framework. Consequently, localisation mandates imposed by sectoral regulators continue to operate independently of the general transfer regime.

### 8.3 Role and Authority of the Data Protection Agency

#### The Data Protection Board

The DPBI, established under the DPDP Act, is the principal authority responsible for enforcement of India's data protection framework. The DPBI functions as a quasi-judicial body with powers to investigate non-compliance and enforce obligations under the DPDP Framework.

#### The DPBI's Mandate and Powers

The DPBI is empowered to inquire into personal data breaches and instances of non-compliance under the DPDP Framework, on the basis of breach notifications, complaints, government references or court directions. Following such inquiries, the DPBI may pass appropriate orders, including directions requiring mitigation, remedial measures or compliance actions, and adjudicate violations under the DPDP framework.

In exercising its functions, the DPBI possesses powers similar to those of a civil court for the purposes of conducting inquiries, including summoning, requiring production of documents and examining evidence. It may also accept voluntary undertakings from regulated entities as part of enforcement proceedings.

The DPBI has significant enforcement powers, including the authority to impose financial penalties of up to INR250 crore (approx. USD26.5 million) for specified contraventions under the DPDP Act. The enforcement regime is civil in nature and does not contemplate criminal penalties.

#### Appeal Mechanism

Appeals from orders of the DPBI lie before the Telecom Disputes Settlement and Appellate Tribunal within 60 days, with further appeals available before the High Court and the Supreme Court.

#### Operational Reality

Although the DPBI has been formally constituted under the DPDP Act, it is not yet fully operational. As of April 2026, appointments to certain leadership positions remained pending.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

India has, over the past year, demonstrated a consistent legislative and regulatory trajectory characterised by a dual policy objective: (i) facilitating ease of doing business through structural simplification and rationalisation of legacy frameworks; and (ii) simultaneously strengthening governance, transparency and compliance obligations across sectors.

Further legislative and regulatory developments are expected to continue this trend. In particular, the Corporate Laws (Amendment) Bill, 2026 signals an intent to recalibrate India's corporate governance architecture. This trend assumes heightened significance in the current global environment, characterised by geopolitical volatility, fragmented supply chains, elevated input costs and broader macroeconomic uncertainty. In such a context, regulatory systems are expected to increasingly balance investor protection and systemic stability.

The implementation of the Labour Codes and the DPDP Framework marks a significant regulatory transition. As both regimes move through the implementation phase, the focus is expected to remain on practical compliance, enforcement and operational integration. The coming year is likely to be shaped by how organisations adapt their internal processes and systems to meet these evolving regulatory requirements.

Overall, while no apparent legislative overhaul is currently underway, India is clearly moving towards a more digitised, compliance-intensive and structurally efficient regulatory environment with a particular emphasis on ease of doing business.

# Trends and Developments

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**JSA Advocates & Solicitors** is one of India's leading full-service law firms, with a team of over 700 professionals operating across ten offices in seven cities (Ahmedabad, Bengaluru, Chennai, Gurugram, Hyderabad, Mumbai and New Delhi). Founded in 1991, JSA advises leading Indian and international corporations, private equity and venture capital funds, financial institutions, governmental and statutory authorities, and multilateral organisations on complex legal, regulatory and commercial matters. The firm is organised across the Corporate, Finance and Disputes practices, with deep sectoral expertise spanning technology, manufacturing, infrastructure, energy, financial services, healthcare, consumer products, media and telecommunications, among others. JSA is consistently recognised by leading legal directories and industry publications for its expertise across practice areas and sectors. Combining the resources and capabilities of a large national firm with a partner-led and client-centric approach, JSA is known for delivering commercially focused, innovative and practical legal solutions on high-value and strategically significant mandates.

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## Introduction

In 2026, India has emerged as one of the world's most consequential business environments. With GDP growth projected at around 7% for FY2025–26 (IMF), the highest among major economies, and a clear trajectory towards becoming the world's third-largest economy by 2030, India presents a combination of scale, structural reform momentum and consumer market depth that only a few jurisdictions can match. Private consumption accounts for approximately 60% of GDP, underpinned by a median population age of 29 and consumer spending forecast to reach USD4.3 trillion by 2030.

The geopolitical context has simultaneously posed challenges and strengthened India's investment proposition. Ongoing conflicts in Europe and the Middle East have driven energy price volatility, increases in costs and disruption across global supply chains and trade routes. Additionally, the India–US trade deal framework has meaningfully mitigated tariff exposure for Indian exporters while further strengthening the strategic bilateral relationship.

The landmark India–EU Free Trade Agreement, covering approximately 25% of global GDP and expanding FTA coverage of Indian exports from 22% to 71%, further represents a structural shift of considerable commercial significance. Against this backdrop, sectors such as manufacturing, technology and AI, global capability centres (GCCs), service exports, renewable energy and electric vehicles are increasingly reflecting a durable long-term transformation rather than a cyclical growth opportunity.

## Regulatory Environment

India offers a codified legal framework for business operations, supported by comprehensive commercial legislation, sector-specific regulation and policy-driven government initiatives aimed at improving Ease of Doing Business (EODB).

### *Key regulations applicable to businesses in India*

The principal pieces of legislation governing business activities in India include:

*Companies Act*, *2013* (*Act*): This is the principal legislation governing corporate entities in India, regulating incorporation, financing, governance, mergers, amalgamations, capital reduction, restructuring, distribution of profits and winding up. The Act imposes strict governance requirements such as appointment of independent directors and woman directors for specified companies, constitution of audit and other specialised committees, appointment of key managerial personnel, stricter related-party transaction controls, vigil mechanisms, preservation of records, secretarial audits and compliance with prescribed accounting standards.

*Securities and Exchange Board of India Act*, *1992*: For listed companies, governance moves beyond the Act into a significantly more disclosure-intensive and enforcement-driven framework administered by the Securities and Exchange Board of India (SEBI), effectively acting as the principal gatekeeper of capital market behaviour, promoter conduct, public shareholder protection and takeover discipline. The key SEBI regulations include:

- *SEBI* (*Issue of Capital and Disclosure Requirements*) *Regulations*, *2018* (*ICDR*):These govern IPOs, follow-on public offers, rights issues, QIPs, preferential allotments and other capital raising exercises.
- *SEBI* (*Listing Obligations and Disclosure Requirements*) *Regulations*, *2015* (*LODR*): These prescribe continuous disclosure obligations and the governance framework for listed entities, governing board composition, independent directors, committee structures, material event disclosures, related-party approvals and disclosures, and governance reporting.
- *SEBI* (*Substantial Acquisition of Shares and Takeovers*) *Regulations*, *2011* (*Takeover Code*):These regulate acquisition thresholds and mandatory open offers. Once prescribed thresholds are breached, an acquirer must extend an exit opportunity to public shareholders through an open offer.
- *SEBI* (*Prohibition of Insider Trading*) *Regulations*, *2015*: These prohibit dealing in securities while in possession of unpublished price-sensitive information (UPSI), mandating robust compliance systems. In transactions involving listed companies, due diligence itself must be structured through an insider

trading lens, with UPSI protocols, structured digital databases and disclosure controls.
- *SEBI* (*Delisting of Equity Shares*) *Regulations*, *2021*:These govern voluntary and compulsory delisting. Particularly relevant in buyouts, take-private strategies and the restructuring of listed groups/entities.

In addition, the Securities Contracts (Regulation) Act, 1956 (SCRA) governs listing and trading of securities and operates alongside stock exchange compliance obligations.

*Indian Contract Act*, *1872* (*ICA*): This governs the formation, enforceability, performance and breach of contracts.

*Sale of Goods Act*, *1930*: This complements the ICA and governs contracts relating to the sale of goods.

*Indian Partnership Act*, *1932 and Limited Liability Partnership Act*, *2008*: These govern traditional partnerships and LLPs respectively, including formation, rights, liabilities, management and dissolution.

*Insolvency and Bankruptcy Code*, *2016* (*IBC*): This provides a consolidated framework for insolvency resolution, liquidation, bankruptcy and revival through the tribunal mechanism.

*Foreign Exchange Management Act*, *1999* (*FEMA*): This governs foreign exchange transactions, cross-border investments, overseas investments, capital flows and foreign direct investment. The Reserve Bank of India (RBI) is the principal regulatory authority administering FEMA through rules, regulations, notifications, circulars, master directions and operational guidelines.

*Competition Act*, *2002*: This regulates anti-competitive agreements, abuse of dominant position and combinations through the Competition Commission of India (CCI).

*Income Tax Act*, *2025 and Goods and Services Tax* (*GST*) *laws*: These govern direct and indirect taxation, including taxation of income, capital gains, dividends, mergers, demergers, and supply of goods and services, among other things.

*Digital Personal Data Protection Act*, *2023*: This regulates processing of digital personal data, consent management, data fiduciary obligations and privacy protection.

*Environmental laws*: Key pieces of legislation include the Environment (Protection) Act, 1986, the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Hazardous Waste Management Rules. These regulate pollution control, environmental clearances, waste management, sustainability obligations and industrial compliance.

*Labour and employment laws/Labour Codes*: India is transitioning from a fragmented labour and employment regulatory framework to four consolidated Labour Codes, namely, the Code on Wages, 2019; the Industrial Relations Code, 2020; the Occupational Safety, Health and Working Conditions Code, 2020; and the Code on Social Security, 2020. These govern wages, industrial disputes, employee benefits, workplace safety and labour welfare.

*Arbitration and Conciliation Act*, *1996*: This provides the legal framework for arbitration and conciliation in India.

*Negotiable Instruments Act*, *1881*: This governs the law relating to promissory notes, bills of exchange and cheques. It prescribes the liabilities and obligations of the drawer, drawee and holder in due course, and provides the legal framework for the use, transfer and enforcement of negotiable instruments in commercial transactions.

Other key pieces of legislation include the Consumer Protection Act, 2019, the Real Estate (Regulation and Development) Act, 2016, the intellectual property laws, the Customs Tariff Act, 1975, the Foreign Trade (Development and Regulation) Act, 1992, the Special Economic Zones Act, 2005 and various sector-specific pieces of legislation depending on the nature of business.

### *Key government policies*

India has increasingly adopted a policy-driven framework to promote manufacturing, exports, investment and innovation, with a strong focus on improving EODB. Flagship initiatives such as *Make in India* and *Atmanirbhar Bharat Abhiyaan* (ie, Self-Reliant India) were introduced to position India as a global manufacturing hub by reducing regulatory barriers, improving infrastructure, opening more sectors to investment and encouraging domestic value creation across key industries.

A major incentive in this regard is the Production Linked Incentive (PLI) Scheme, introduced across sectors such as electronics, semiconductors, automotive, textiles, pharmaceuticals and renewable energy. It provides direct fiscal incentives based on incremental sales, generally ranging from 4% to 15%, and is intended to boost domestic manufacturing and attract large-scale investments.

Export-oriented businesses benefit from Special Economic Zones (SEZs), which provide simplified operational regimes. Similar benefits are available under the Export-Oriented Units (EOUs), Electronics Hardware Technology Park (EHTP), Software Technology Park (STP) and Bio-technology Park (BTP) for units exporting their entire production. Additionally, the government has introduced the Free Trade and Warehousing Zone (FTWZ) scheme as a specialised SEZ focused on trading and warehousing infrastructure to facilitate import and export of goods and services with freedom to carry out trade transactions in free currency. Gujarat International Finance Tec-City (GIFT City) is India's first premier Greenfield Smart City, established to elevate India's position in the global financial-services ecosystem by offering a world-class hub for cross-border trade, banking, asset management and capital market activity.

Further, the *Start-up India* initiative supports DPIIT-recognised start-ups through income tax exemptions, labour law self-certification, IPR protection, exemption from certain compliance requirements and fast-track winding up under the Insolvency and Bankruptcy Code, 2016. Reflecting the strength of this ecosystem, India added 11 new unicorns in calendar year 2025, placing it third in the global unicorn rankings.

India is increasingly positioning itself as a preferred destination for GCCs, with several states introducing dedicated GCC policies to attract multinational enterprises seeking to establish offshore capability hubs.

### *Setting up in India*

The appropriate form of entity depends on the commercial objective, whether the focus is long-term scale, operational flexibility, market testing, project execution or strategic collaboration. Some of the most common forms of entities which businesses often use to commence commercial operations in India can be categorised into two types:

- **Incorporated Entities**
  - (a) *Private limited company*: The preferred structure for start-ups, foreign investment, fundraising and scalable operations. It has a separate legal entity status, limited liability and comparatively lighter compliance requirements than a public company.
  - (b) *Public limited company*: Suitable for businesses intending to access public capital markets or operate on a significant scale. It allows wider fundraising and listing opportunities but carries significantly higher disclosure and governance obligations.
  - (c) *Limited liability partnership* (*LLP*): An LLP is a hybrid structure combining partnership flexibility with limited liability. Commonly used for professional services, consulting businesses and closely held ventures. It functions as a distinct legal entity.
  - (d) *Section 8 company*: Incorporated for charitable or not-for-profit purposes. It cannot distribute its profits and must reinvest surpluses in furtherance of its stated mission. These entities offer credibility and enjoy tax incentives. They are commonly used by corporates undertaking social or philanthropic initiatives in India.
  - (e) *Wholly owned subsidiary* (*WOS*)/*joint venture* (*JV*): For foreign investors, a WOS offers the highest degree of control over Indian operations, while a JV with a local Indian partner is preferred where access to local know-how, distribution channels, shared financial resources or business contacts is of higher importance.
  - (f) *One Person Company* (*OPC*): An OPC is de-

signed for single entrepreneurs who seek the benefit of a corporate structure without the requirement of multiple shareholders, with limited liability.

- **Unincorporated Entities**
  (a) *Liaison office* (*LO*): Suitable for market testing, representation and communication. However, commercial activities are prohibited.
  (b) *Project office* (*PO*): Preferred for execution of specific projects or contracts in India.
  (c) *Branch office* (*BO*): Suitable for foreign companies undertaking trading, consultancy, research, IT services and other permitted commercial operations.

### *Trends and developments*

India's regulatory approach in recent years has been focused on replacing older, fragmented and compliance-heavy legal frameworks with consolidated and modern legislation aimed at improving EODB, reducing regulatory overlap and creating greater legal certainty for businesses. A significant example is the notification of the Labour Codes, consolidating 29 central labour laws into a simplified and modern framework.

A similar reform-oriented approach is visible in the corporate and foreign exchange regulatory space. The widening of the scope of fast-track mergers, permitting banks and financial institutions to finance mergers and acquisitions, automatic approval of permissible cross-border guarantees complying with underlying FEMA requirements and capping of penalties for compounding of offences under the FEMA framework, among other changes, reflect a clear move towards procedural efficiency and reduced regulatory friction.

Further, in order to attract investments, the government has introduced reforms under the Foreign Trade Policy (FTP), including permitting higher foreign investment in sectors such as insurance, banking and financial institutions, and contract manufacturing. Additionally, the clarification regarding beneficial ownership and the introduction of a specified approval timeline for Press Note 3 approvals in certain sectors further reflect a forward-looking policy approach aimed at enhancing regulatory certainty, improving EODB and fostering a more predictable investment environment for foreign investors.

Legislative modernisation has also been undertaken in the maritime and logistics sector. In 2025, India replaced several century-old laws with the Indian Ports Act, 2025, the Coastal Shipping Act, 2025, the Bills of Lading Act, 2025 and the Carriage of Goods by Sea Act, 2025, thereby modernising India's port and shipping regulatory framework and strengthening legal certainty in trade and logistics operations.

India's criminal justice framework has also undergone a significant overhaul with the enactment of the Bharatiya Nyaya Sanhita (ie, the erstwhile Indian Penal Code), 2023, the Bharatiya Nagarik Suraksha Sanhita (ie, the erstwhile Criminal Procedure Code), 2023, and the Bharatiya Sakshya Adhiniyam (ie, the erstwhile Indian Evidence Act), 2023, which replaced the colonial-era criminal laws and introduced reforms aimed at modernising criminal law, procedure and evidence.

### M&A in India

Despite global geopolitical uncertainty, tariff-related disruptions and supply chain realignments, India has emerged as one of the most preferred investment destinations as multinational businesses continue to diversify operations under the "China Plus One" strategy. India's expanding trade relationships and growing position within global supply chains are also contributing to increased inbound investment and cross-border transaction activity. At the same time, Indian corporates are increasingly deploying capital overseas to acquire technology, intellectual property, strategic capabilities and market access, reflecting India's evolution from a recipient of foreign investment to an increasingly significant source of outbound M&A activity.

The Indian M&A market remained active through 2025 and into 2026. While large-ticket transactions moderated amid global market volatility, deal volumes remained robust. Q1 2026 witnessed 271 M&A transactions, among the highest quarterly volumes recorded in recent years. Domestic transactions continued to anchor overall deal activity, while outbound M&A reached record levels.

The regulatory framework governing M&A transactions in India is well established. The Companies Act, 2013

provides the principal framework, with the National Company Law Tribunal (NCLT) exercising jurisdiction over such transactions. Cross-border transactions are additionally regulated under FEMA and regulations issued by the RBI, which, among other things, govern receipt of foreign investment, overseas investment and cross-border restructuring transactions. For listed entities, SEBI regulations, including the takeover, disclosure and listing frameworks, continue to play a central role in transaction structuring and execution. Additionally, transactions meeting the prescribed thresholds require approval from the CCI under the Competition Act, 2002, with competition law considerations becoming increasingly significant in big-ticket transactions.

M&A transactions in India are implemented through a variety of structures depending on commercial objectives, regulatory requirements and tax considerations. Transaction structures commonly adopted in India include share acquisitions, asset acquisitions, business transfers, mergers and demergers, joint ventures and strategic investments. Recent years have also witnessed increased use of cross-border restructuring mechanisms, including reverse-flip structures and inbound re-domiciliation exercises, supported by gradual liberalisation of India's cross-border merger framework.

Technology, manufacturing, financial services, healthcare, infrastructure and energy continue to drive M&A activity in India. Technology remains a particularly significant contributor, with increasing investment in artificial intelligence, digital infrastructure and software-enabled businesses. Data centres and digital infrastructure platforms have emerged as attractive investment targets as demand for cloud services, AI capabilities and digital transformation continues to grow.

Domestic consolidation remains a significant driver of deal activity, particularly in sectors where scale and operational efficiencies are becoming critical competitive advantages. At the same time, outbound acquisitions continue to gain momentum as Indian businesses pursue international expansion and strategic capability acquisition.

The regulatory environment is also influencing transaction execution in new ways. The staggered implementation of the Digital Personal Data Protection Act, 2023 over an 18-month period since its notification in November 2025 has introduced a significant additional dimension to due diligence exercises, particularly in technology, healthcare, financial services and consumer-facing businesses. Acquirers are increasingly scrutinising data governance practices, cybersecurity controls and compliance frameworks.

ESG considerations are becoming increasingly embedded in transaction processes, driven by investor expectations, disclosure obligations and evolving governance standards.

As the Indian market continues to mature, transaction structures, diligence exercises and contractual risk allocation mechanisms are becoming increasingly sophisticated.

### Trade With India

India represents a significant trading destination for foreign manufacturers and service providers seeking access to a large and diverse market. While many businesses choose to establish a presence in India, it is equally common to engage with Indian customers and counterparties through cross-border trade models without setting up operations in the country.

Imports and exports are governed by the Foreign Trade (Development and Regulation) Act, 1992, under which the Directorate General of Foreign Trade (DGFT) is responsible for formulating and implementing the FTP. The FTP provides the principal framework for export promotion and trade facilitation and supports multiple incentive schemes for businesses engaged in manufacturing, services and exports.

India's customs and foreign trade processes have been significantly modernised under FTP 2023, supported by high levels of digitalisation, transparent licensing rules and simplified classifications, with the DGFT, the Central Board of Indirect Taxes and Customs (CBIC) and sectoral regulators administering trade. A central feature of this transformation is India's EXIM digital ecosystem, whereby almost all export-import documentation is now processed electronically

through the Indian Customs EDI System (ICES) and its public interface, ICEGATE, across major ports, airports, inland container depots and SEZs, significantly improving compliance efficiency, cargo visibility and movement of goods.

### *Trends and developments*

India has become an increasingly attractive market for foreign manufacturers, exporters and service providers seeking access to a large and growing consumer base.

Consumer spending is on the rise, with over 30 international consumer and retail brands entering India in 2025. Sectors such as fashion, beauty, food and beverages, and lifestyle remain at the forefront. India is now the world's second-largest consumer market, with consumer spending projected to reach USD4.3 trillion by 2030, nearly doubling from 2024 levels.

At the same time, bilateral and multilateral trade agreements continue to strengthen India's global trade position and improve market access. Sectors witnessing significant growth include technology and artificial intelligence through initiatives such as BharatGenAI and the IndiaAI Mission; renewable energy and clean technology, with approximately INR2 lakh crore deployed; electric vehicles, with 77% annual growth; fintech and digital finance; and manufacturing and infrastructure.

## Trade Models

Foreign entities may structure their commercial engagement with India through a range of arrangements. The appropriate model depends on the nature of the business, the degree of commercial involvement and the allocation of rights and obligations between the parties.

- *Agency model*: The foreign company appoints an Indian company to act as its agent in India. The Indian company markets, stocks and distributes the goods and retains a part of the consideration paid by the customer as an agency fee. The balance is remitted to the foreign company. Additionally, the Indian company acts on behalf of the foreign company in relation to customer-facing activities.
- *Marketing and distribution arrangement*: The Indian company undertakes marketing, distribution and stocking of goods on behalf of the foreign company. Goods are stocked in India, and upon identification of a customer, the Indian company supplies them. However, contractual rights and payment obligations remain between the foreign company and the customer. The Indian entity is compensated by way of commission for its services.
- *Marketing arrangement*: A foreign company engages an Indian company to render marketing services on its behalf. The Indian company identifies customers and informs the foreign company, following which the foreign company directly enters into agreements with those customers and supplies goods to them. The Indian company receives a commission for the marketing services provided.
- *Sub-contracting model*: The foreign company engages an Indian company to manufacture goods. The Indian company exports the goods directly to the foreign company's customers. While exports are undertaken by the Indian entity, they are on behalf of the foreign company. The Indian company is compensated on a cost-plus basis along with a subcontracting fee, while the customer pays the foreign company.
- *Teaming agreements/joint development*: A foreign company and an Indian company collaborate to develop products for a specific customer. The foreign company provides technology, know-how and confidential information, while the Indian company undertakes manufacturing and supplies the goods to the customer.

## Conclusion

India's business and investment environment is entering a phase of increasing sophistication. While the country's growth trajectory continues to be supported by strong domestic consumption, favourable demographics and sustained policy support, the next stage of development is likely to be characterised by further regulatory refinement, institutional capacity building and deeper integration into global value chains.

Recent years have witnessed significant regulatory modernisation across multiple sectors. The implementation of the Labour Codes, phased implementation of the Digital Personal Data Protection framework,

liberalisation of foreign investment norms, expansion of the fast-track merger regime and continued simplification of foreign exchange regulations collectively reflect a broader policy objective of enhancing regulatory certainty while reducing compliance friction.

Looking ahead, the reform momentum is expected to continue. Proposed measures such as the Securities Markets Code, which seeks to consolidate India's securities law framework into a unified legislative regime, signal a broader shift towards simplification, regulatory harmonisation and technology-enabled compliance.

From an investment and M&A perspective, India is likely to remain a key destination for global capital. Continued supply chain diversification, increasing inbound investment, expanding GCC activity and growth in manufacturing, renewable energy, artificial intelligence and digital infrastructure, together with rising outbound acquisitions by Indian corporates, are expected to drive transaction activity. At the same time, growing scrutiny of data governance, ESG compliance, beneficial ownership structures and sector-specific regulatory requirements will continue to increase transaction complexity. Overall, the convergence of economic scale, policy stability and regulatory modernisation is expected to create substantial opportunities for businesses adopting a long-term strategic approach to the Indian market.

# INDONESIA




## Law and Practice

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**ABNR Counsellors at Law**

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**ABNR Counsellors at Law** was founded in 1967, is Indonesia's longest-established law firm and has played a pivotal role in shaping the development of international commercial law in the country, particularly during its economic reopening to foreign investment in the 1960s. Today, with a team of around 120 legal professionals – including 27 partners and 3 foreign counsels – ABNR stands as Indonesia's largest independent, full-service law firm. The firm is proud to have female practitioners at the partnership level, reflecting ABNR's commitment to diversity and inclusion. ABNR has consistently maintained its position as a top-tier law firm since its establishment. As the exclusive Indonesian member of Lex Mundi since 1991 – the world's leading network of independent law firms with representation in over 100 countries – ABNR provides seamless global reach for its clients. The firm would like to thank Jacob Zwaan and Ashary Arbaa at PT Alvarez & Marsal Indonesia for their assistance in preparing a response to the questions in section 5. Tax Law in this guide.

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## 1. Legal System

### 1.1 Legal System and Judicial Order

The Indonesian legal system adopts the civil law system, where statutory law constitutes the primary source of law. While judicial precedents may be considered by judges in rendering decisions, they do not carry binding authority as they do in common law systems.

The basic organisation of the judicial order in Indonesia is structured under the authority of the Supreme Court (*Mahkamah Agung*) and consists of four branches of courts, each with a two-tiered structure (first instance and appellate level), as follows.

- General Court (*Peradilan Umum*), which has jurisdiction over civil and criminal cases involving the general public.
- State Administrative Court (*Pengadilan Tata Usaha Negara*), which has jurisdiction over disputes arising from state administrative decisions (eg, issuance of government permits or sanctions).
- Religious Court (*Pengadilan Agama*), which has jurisdiction over personal and family law matters for Muslims (eg, marriage, divorce and inheritance).
- Military Court (*Pengadilan Militer*), which has jurisdiction over criminal offences committed by members of the military.

In addition to the Supreme Court, Indonesia also has the Constitutional Court (*Mahkamah Konstitusi*), which functions as a judicial body of first and final instance, with decisions that are final and binding. The Constitutional Court has jurisdiction over the following matters:

- judicial review of laws against the constitution;
- disputes concerning the authority of state institutions;
- disputes regarding the results of general elections;
- the dissolution of political parties; and
- the impeachment of the president or vice president.

## 2. Restrictions on Foreign Investments

### 2.1 Approval of Foreign Investments

As a general rule, foreign investors are not required to obtain prior approval to invest in Indonesia. Notwithstanding the above, every business undertaking in Indonesia, whether domestic or foreign-owned, is required to obtain the appropriate licences based on its business activities in order to operate legally in the country.

Under the current regulatory framework, business licensing is processed through the Risk-Based Approach Online Single Submission System ("RBA OSS System"), which is administered by the Indonesian Investment Coordinating Board (BKPM). The type of licence required depends on the risk level of the business activities, as classified within the RBA OSS System.

This risk classification directly affects the scope and complexity of the applicable licensing requirements. Business activities deemed to carry a higher level of risk are subject to more stringent licensing obligations. Conversely, if a business activity is considered low-risk – ie, it does not have a significant impact on health, safety, the environment, or the utilisation of resources – it will generally only require a Business Identification Number (*Nomor Induk Berusaha* or NIB) to operate, without the need for additional licensing.

Business activities classified as medium-low, medium-high, or high risk are subject to additional requirements, which may include standard certifications, business licences, and/or commercial or operating licences, depending on the risk level and the nature of the activity.

The applicable licensing requirements for each risk category are detailed in Government Regulation No 28 of 2025 ("GR 28/2025") on the Implementation of Risk-Based Licensing, which supersedes the previous Government Regulation No 5 of 2021 ("GR 5/2021"). These requirements are further regulated by implementing technical regulations, including ministerial regulations.

### Foreign Ownership Limitation

In addition to the above, businesses must also comply with applicable foreign ownership limitations.

Pursuant to Presidential Regulation No 10 of 2021 on Investment and Business Lines, as amended by Presidential Regulation No 49 of 2021 (the "Investment List"), all business sectors are generally open to foreign investment, except for those that are:

- expressly closed to investment; or
- reserved exclusively for the central government – namely, activities of a service-oriented nature or those related to defence and security that are considered strategic and cannot be conducted in co-operation with other parties.

Although the majority of business sectors permit up to 100% foreign ownership, certain sectors remain subject to foreign ownership restrictions or limitations as set out under the Investment List.

## 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

Investors seeking to operate in Indonesia may apply for business licences via the RBA OSS System. For businesses categorised as low-risk or medium-low risk, the licensing process is primarily self-assessed. Upon submission of a complete application, the system will automatically issue the relevant licence.

In contrast, businesses classified as medium-high or high risk are subject to an additional licensing process. These include the fulfilment of specific business requirements and verification by the relevant supervisory ministries. Once these requirements are met and verified, the RBA OSS System will proceed to issue the appropriate licence.

Operating a business in Indonesia without proper licensing may result in administrative sanctions under the Investment Law (Law No 25 of 2007, as amended). These sanctions include:

- written warnings;
- limitations on business activities;
- suspension of business operations and/or investment facilities; and
- revocation of business operations and/or investment facilities.

Additional sanctions, including criminal sanctions, may also be imposed in accordance with other applicable laws and regulations.

## 2.3 Commitments Required From Foreign Investors

Foreign investment (*penanaman modal asing* or PMA) companies are subject to a minimum investment requirement pursuant to BKPM Regulation No 5 of 2025 on the Guidelines and Procedures for the Implementation of Risk-Based Business Licensing and Investment Facility through the Electronically Integrated Business Licensing System ("BKPM Reg. 5/2025"). In general, the minimum investment for a PMA company must exceed IDR10 billion (approximately USD600,000), excluding the value of land and buildings, calculated per KBLI (Indonesian Standard Business Classification or *Klasifikasi Baku Lapangan Usaha di Indonesia*) code and per project location. Different minimum investment criteria apply to businesses engaged in certain activities, such as F&B, real estate, accommodation, agriculture, plantation, livestock, and aquaculture businesses. Certain business activities are also subject to a higher minimum investment threshold, including those in the financial institutions, port operations, and activities that depend on sea terminals or jetties.

The required investment amount may be funded through a combination of equity (capital injection), loans, retained earnings (applicable only to existing companies) and/or share premium. This investment is intended to support the company as a going concern and is not required to be fully expended at the outset. The realisation of the investment may be carried out gradually, in line with the company's operational and financial needs.

In addition to the minimum investment requirement above, PMA companies are also required to have a minimum issued and paid-up capital of at least IDR2.5 billion. This reflects one of the key updates introduced under BKPM Reg. 5/2025, which reduces the previous minimum issued and paid-up capital requirement of IDR10 billion.

Furthermore, to obtain the relevant business licences, investors may be required to fulfil additional business-specific requirements depending on the nature of their activities.

### 2.4 Right to Appeal

Generally, investments that meet all stipulated requirements should not be withheld by the authorities. Consequently, there is no dedicated investment-specific mechanism for investors to challenge the authorities' refusal to authorise an investment. However, unlawful refusals by the authorities may be challenged through the State Administrative Court.

Additionally, in accordance with the Investment Law, any disputes between the Indonesian government and foreign investors regarding investment activities must first be resolved through amicable means. If an amicable settlement cannot be achieved, the parties may seek resolution through international arbitration as mutually agreed by both parties. This process applies to investments that have been realised and are based on specific agreements between the investors and the government.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

The most common corporate vehicle for investment in Indonesia – particularly for profit-oriented ventures – is the limited liability company (*Perseroan Terbatas* or PT). The Investment Law explicitly requires that foreign direct investment be carried out through a PT.

#### General Overview of a Limited Liability Company

Law No 40 of 2007 on Limited Liability Companies, as amended ("Company Law") defines a PT as a legal entity that constitutes a capital partnership, established based on an agreement, and conducts business activities with authorised capital that is entirely divided into shares.

The definition also extends to individual legal entities that meet the criteria for Micro and Small Enterprises under applicable laws and regulations. However, this category is not further discussed herein, as the focus is on PMA.

A PT that is partly or wholly owned by foreign investors is classified as a PMA.

#### Minimum Number of Shareholders

Company Law requires that a PT have at least two shareholders, who may be individuals, legal entities, or a combination of both. If a PT becomes owned by a single shareholder, the law mandates that within six months either: (i) the sole shareholder must transfer part of their shares to another party, or (ii) the company must issue new shares to one or more additional parties.

#### Minimum Share Capital

A PT's capital structure consists of: authorised capital, issued capital, and paid-up capital.

The authorised capital refers to the total capital (or portfolio capital) of a company. The Company Law requires that at least 25% of the authorised capital be issued and fully paid-up, meaning the authorised capital may be up to four times the issued capital.

For PMA companies, the minimum issued and paid-up capital requirement is IDR2.5 billion. Previously, there was no specific rule on whether the issued and paid-up capital could be transferred, spent, and/or repatriated. BKPM Reg. 5/2025 explicitly regulates that the IDR2.5 billion minimum capital cannot be removed/transferred out of the PMA company's bank account in Indonesia for 12 months, unless for specific purposes, namely asset purchase, construction of building, and/or the operational costs of the investment.

### 3.2 Incorporation Process

The incorporation of a PT in Indonesia involves the following key steps.

- Preparation and execution of the Deed of Establishment (DOE) – the founders must prepare a draft DOE, which includes the company's Articles of Association (AOA). The DOE must be executed physically by the founders or their authorised proxies before an Indonesian Notary.
- Preparation and execution of ancillary documents – in addition to the DOE, the notary typically requires all founders, directors, and commissioners to execute various supporting documents. These

may include statements regarding capital payment, company domicile, tax registration, and identification of the company's beneficial owner. The timeline for this step depends on the availability of the relevant parties.
- Filing with the Ministry of Law (MOL) – within 60 calendar days of executing the DOE, the notary must file the DOE and its ancillary documents through the MOL's online system. Approval from the MOL may be granted on the same day following submission of all required documentation. Upon approval, the company obtains legal entity status and is authorised to conduct legal actions in its own name.

The formal incorporation process is quite straightforward and not too time consuming. The process can be completed within a few days. However, investors must consider the time required for the founders to prepare the AOA and ancillary documents, including execution of these documents.

## 3.3 Ongoing Reporting and Disclosure Obligations

Indonesian private PTs are subject to several mandatory filing and reporting requirements, including the following.

- Filing of company data with the MOL – in relation to company establishment and ongoing corporate governance matters – such as amendments to the AOA, changes in shareholding, and changes in the composition of the Board of Directors (BOD) or Board of Commissioners (BOC), every PT must submit filings to the MOL. These corporate actions must be formalised through a notarial deed, which is then submitted to the MOL for approval (in the case of establishment and certain AOA amendments) or notification, as applicable. In practice, these filings are facilitated by the notary who prepares the deed.
- Registration of beneficial owner (BO) – to support efforts in combating money laundering and terrorism financing, the Indonesian government requires corporations – including PTs, foundations, and cooperatives – to identify and report their beneficial owners. Pursuant to Presidential Regulation No 13 of 2018 on the Identification of Beneficial Owners of Corporations, companies must conduct a self-assessment to determine their individual BOs based on the following criteria:
  (a) ownership of more than 25% of shares;
  (b) control of more than 25% of voting rights as stated in the AOA;
  (c) entitlement to more than 25% of the company's annual profits;
  (d) authority to appoint or remove members of the board;
  (e) authority to control the company without requiring approval from others;
  (f) receipt of benefits from the company; and/or
  (g) actual ownership of the funds.

The BO information must then be submitted to the MOL. This submission is typically facilitated by a notary, acting under a power of attorney.

- Investment activity report – as mandated by BKPM Reg. 5/2025, all business entities are required to submit periodic investment activity reports (*Laporan Kegiatan Penanaman Modal* or LKPM). For PMA companies, LKPM must be submitted on a quarterly basis. These reports detail the realisation of the company's investment plans and are recorded in the OSS system.
- Other sector-specific reporting obligations – depending on the nature of its business activities, a PT may also be subject to additional reporting requirements, such as import realisation reports, environmental compliance reports, and manpower-related filings.

## 3.4 Management Structures

### Two-Tier Management Structure of PT

Indonesian PTs adopt a two-tier management structure comprising: (i) a BOD, responsible for day-to-day management and representation of the company; and (ii) a BOC, responsible for supervisory and advisory functions. A PT must have at least one director and one commissioner.

### BOD

The BOD is fully responsible for managing the company in accordance with its objectives and purposes, acting in the best interests of the company. It is authorised to represent the company both in and out-

side of court, formulate policies, and oversee daily operations.

The company's AOA may designate specific director(s) to represent the BOD in acting on behalf of the company.

The BOD's authority to represent the company is generally unlimited and unconditional, unless restricted by the Company Law, the AOA, or a resolution of the General Meeting of Shareholders (GMS). Any such resolution must not conflict with the law or the AOA.

In practice, the AOA often stipulates reserved matters that require prior approval from the BOC or the GMS. Additionally, the BOD must operate within the scope of the company's stated business activities and comply with applicable licences and permits issued by relevant authorities.

#### BOC

The BOC's primary role is to supervise the BOD's management of the company and provide strategic advice.

Unlike the BOD, BOC members do not have executive authority and may not act individually. All supervisory and advisory actions must be taken collectively through formal BOC resolutions. However, in the absence of all members of the BOD, the BOC may temporarily assume management responsibilities for a limited period in accordance with the applicable laws and regulations.

### 3.5 Directors', Officers' and Shareholders' Liability

As a general principle under the Indonesian Company Law, directors of a PT are not personally liable to third parties for corporate actions undertaken in the course of their duties, provided such actions fall within the scope of their authority as defined by the company's AOA, GMS resolutions, and applicable laws.

However, the Company Law recognises the doctrine of piercing the corporate veil, under which directors may be held jointly and severally liable to third parties for tortious acts if they act beyond the limits of their authority. A member of the BOD may be exempt from liability for company losses if they can demonstrate that:

- the losses were not caused by their fault or negligence;
- they managed the company in good faith and with prudence, in alignment with the company's objectives and purposes; and
- they took reasonable steps to prevent the occurrence or continuation of losses, including efforts to obtain information about management actions that led to such losses – such as through participation in BOD meetings.

As the name implies, a PT offers limited liability protection to its shareholders. Shareholders are not personally liable for the company's legal actions or financial losses beyond the value of their shares. However, this protection may be disregarded in certain circumstances where the corporate veil is pierced, including the following.

- The company has not obtained or fails to maintain its legal entity status.
- A shareholder, directly or indirectly, acts in bad faith by using the company for personal gain.
- A shareholder is involved in an unlawful act committed by the company.
- A shareholder unlawfully uses the company's assets, resulting in insufficient assets to cover liabilities.

Additionally, if a PT has only one shareholder for more than six months, that shareholder may be held personally liable for all obligations and losses of the company.

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

Employment relationships in Indonesia are primarily governed by Law No 13 of 2003 on Labour, as amended ("Labour Law"), along with its implementing regulations, including Government Regulation No 35 of 2021 on Fixed-Term Employment, Outsourcing, Working Hours and Rest Times, and Employment Termination ("GR 35/2021").

Under the Labour Law, an employment relationship is established through the existence of an employment contract between the employer and the employee. This contract may be structured as either:

- an indefinite-term employment agreement (permanent); or
- a definite-term employment agreement, which may only be used for:
  (a) completion of a specific task; or
  (b) a specific period not exceeding five years.

## 4.2 Characteristics of Employment Contracts

Under the Indonesian Labour Law, employment contracts, whether for a definite-term and an indefinite-term, are subject to distinct legal characteristics and formal requirements.

A definite-term employment contract must be made in writing, in the Indonesian language, and must include the following elements:

- name, address, and type of business of the company;
- name, gender, age, and address of the employee;
- job title or type of work;
- workplace location;
- amount of wages and the method of payment;
- terms of employment outlining the rights and obligations of both the employer and the employee;
- start date and duration of the employment contract;
- place and date the contract was made; and
- signatures of both parties involved in the contract.

An indefinite-term (permanent) employment contract may be made verbally or in writing. If made verbally, the employer is required to issue a letter of appointment once the employee is confirmed as permanent – typically after completing a probation period of up to three months. This letter must include at least the following:

- name and address of the employee;
- date the employee begins work;
- type of work to be performed; and
- amount of wages to be paid.

## 4.3 Working Time

The Indonesian Labour Law sets out clear standards for working hours and overtime, with flexibility for certain business sectors.

### Standard Working Hours

The law specifies two standard working hours arrangements:

- seven hours per day and 40 hours per week for companies operating on a six-day workweek; or
- eight hours per day and 40 hours per week for companies with a five-day workweek.

These provisions may not apply to companies in specific sectors that require continuous operations or have unique scheduling needs, where alternative arrangements are permitted.

### Overtime Work

- Employer instruction and employee consent – overtime must be explicitly ordered by the employer and agreed to by the employee, either in physical or digital form. Employers are required to maintain records of employees who consent to work overtime, including the duration of such work.
- Maximum duration and rest provisions – the maximum allowable overtime is four hours per day and 18 hours per week, excluding weekly days off and official public holidays. For employees working overtime for four hours or more, employers must provide adequate rest and food and beverages with a minimum caloric value of 1,400 kcal. This requirement cannot be substituted with monetary compensation.
- Overtime compensation – employers must pay overtime wages in accordance with the formula prescribed by applicable laws and regulations.

Employees in roles such as thinkers, planners, implementers, or supervisors, whose working hours cannot be standardised and who receive higher wages, are generally not entitled to overtime pay. However, this exemption must be clearly stated in the employment agreement, employee handbook, or collective labour agreement. If not explicitly stipulated, the employer is obligated to provide overtime compensation.

## 4.4 Termination of Employment Contracts

In Indonesia, all employment terms and conditions are governed by the employment contract between the employer and employee, as well as by applicable laws and regulations, including the Labour Law and GR 35/2021, the company's internal policies, and any relevant collective labour agreements. As such, termination of employment must comply with these legal frameworks, including the procedures and entitlements involved.

The Labour Law emphasises that termination of employment should be a last resort. Employers, employees, and the government are required to make every effort to avoid termination. However, if termination is unavoidable, it must be based on legally recognised grounds and follow proper procedures.

Employers are generally required to provide at least 14 calendar days' notice prior to termination, except in cases where:

- the employee resigns voluntarily;
- the employment contract expires;
- the employee reaches retirement age; or
- the employee passes away.

Under the Indonesian Labour Law, the legally recognised grounds for termination include the following.

### Corporate Actions and Business Conditions

- merger, consolidation, or division of the company, where either party refuses to continue the employment relationship;
- acquisition resulting in changes to employment terms, which the employee rejects;
- efficiency measures due to actual or potential losses;
- company closure due to continuous losses over two years;
- force majeure leading to closure or discontinued operations;
- suspension of payment (with or without losses); and
- bankruptcy.

### Employee-Initiated or Legal Grounds

- voluntary resignation;
- termination requested by the employee due to employer misconduct; or
- termination based on an industrial relations court ruling confirming no employer wrongdoing.

### Employee Conduct and Absence

- Absence without notice for five consecutive working days despite two written summonses.
- Violation of employment terms (employment contract, employee handbook, or collective labour agreement) after three written warnings.
- Serious misconduct as defined in the employment contract, employee handbook, or collective labour agreement.

### Detention and Criminal Cases

- Detention for more than six months, regardless of whether the employer suffers losses.
- Conviction in court before six months, with or without employer losses.

### Health and Retirement

- Inability to work for more than 12 months due to illness or work-related disability.
- Retirement.
- Death of the employee.

Terminated employees are entitled to compensation, which varies depending on the type of employment. Permanent employees are generally entitled to severance packages, while fixed-term employees receive compensation at the end of their contract. The amount is calculated based on factors such as the reason for termination and length of service, in accordance with GR 35/2021.

Employers and employees may also mutually agree to end the employment relationship through a Mutual Employment Termination Agreement, which must be documented in writing.

While Indonesian law does not specifically regulate collective redundancies or mass terminations, such actions are permitted provided they comply with the applicable legal procedures and ensure that all affected employees receive their statutory entitlements. All terminations – whether individual or collective – must follow the same legal process.

### 4.5 Employee Representations

Under the Indonesian Labour Law and Law No 21 of 2000 concerning Trade Unions/Labour Unions, as amended, every employee has the right to establish or join a labour union. While participation is voluntary, the law affirms and protects this right as part of broader labour protections.

A labour union must consist of at least ten members to be validly established. Once formed, the union must submit a written registration to the local office of the Manpower Agency and notify the employer of its registration. The employer is legally obligated to acknowledge this notification. A company may host multiple labour unions, and membership is typically evidenced by a union-issued membership card.

Labour unions are empowered to advocate for and protect the interests of their members. Their core functions include:

- negotiating collective labour agreements with employers;
- representing workers in industrial dispute resolution and labour institutions;
- establishing welfare-related initiatives; and
- engaging in other lawful labour-related activities.

Unions may also organise strikes, manage organisational finances, and participate in bipartite and tripartite co-operation forums.

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/ Employers

An employee is subject to Indonesian income tax at progressive rates ranging from 5% to 35%, if they meet the tax residency criteria. That means that they reside in Indonesia, stay in Indonesia for more than 183 days within any 12-month period, or are present during a fiscal year with the intention to reside (eg, evidenced by a work permit or employment contract).

Otherwise, the individual is treated as a non-resident and is subject to a final withholding tax on Indonesian-sourced income, typically at a flat rate of 20%, unless reduced by an applicable tax treaty.

The employer acts as the withholding agent and must calculate, withhold, pay, and report the employee's Article 21 Income Tax monthly and provide a yearly tax slip (Form 1721 A1).

Employees also contribute to social security programmes, including 1% for BPJS *Kesehatan* (health), 2% for BPJS *Jaminan Hari Tua* (pension savings), and 1% for BPJS *Jaminan Pensiun* (pension programme).

Employers, in turn, contribute 4% to BPJS *Kesehatan* (health), 3.70% to BPJS *Jaminan Hari Tua* (pension savings), 2% to BPJS *Jaminan Pensiun* (pension programme), 0.24–1.74% to BPJS *Jaminan Kecelakaan Kerja* (work accident protection), and 0.30% to BPJS *Jaminan Kematian* (death benefit).

These contributions by both employees and employers are calculated based on the employee's basic salary and fixed allowances.

However, some components of the BPJS programme are subject to a salary cap, meaning contributions are not calculated on the full salary. For example, BPJS *Kesehatan* (health) is capped at a maximum salary of IDR12 million/month, while BPJS *Jaminan Pensiun* (pension programme) is capped at IDR11,086,300/month (starting from 1 March 2026). Any salary exceeding these limits is not subject to additional contributions under those specific programmes.

### 5.2 Taxes Applicable to Businesses

A company is considered resident (and subject to tax on worldwide income) if it is established or domiciled in Indonesia.

Non-resident companies are taxed only on Indonesian-sourced income, generally through withholding tax.

Companies doing business in Indonesia are subject to several taxes, including corporate income tax at a standard rate of 22%; VAT effectively at 11%; and withholding tax (WHT) on payments to resident taxpayers, generally 15% for interest and royalties, and

2% for service fees, consulting, and rentals, except for land and building rentals, which are subject to 10% WHT. For non-resident recipients, WHT is typically 20% on dividends, interest, royalties, and service fees, unless reduced under a tax treaty. Other applicable taxes include final income tax for certain sectors (eg, micro, small, and medium enterprises, and construction), land and building tax, stamp duty, and excise tax on specific goods.

Effective 1 January 2025, Indonesia has committed to implement OECD Pillar Two, which targets large multinational groups with global revenues above EUR750 million to ensure a minimum 15% effective tax rate. To retain taxing rights and maintain investment competitiveness, Indonesia has introduced a Domestic Minimum Top-Up Tax (DMTT) aligned with OECD safe harbour rules.

Further regulations have been issued to provide the substantive and procedural framework for the implementation of the OECD Pillar Two in Indonesia. In particular, Minister of Finance Regulation No 136 of 2024 and Directorate General of Tax Regulation No 6 of 2026 set out the detailed rules, including the determination of in-scope taxpayers, the calculation of the effective tax rate and top-up tax, as well as the related compliance, filing, and administrative requirements.

## 5.3 Available Tax Credits/Incentives

### Tax Credits

In Indonesia, tax credits are relatively limited and mainly apply to taxes already paid, either domestically or abroad. The two primary credits are the Foreign Tax Credit (FTC), which allows resident taxpayers to credit foreign income tax paid on foreign-sourced income, and prepaid taxes, such as income tax withheld at source (eg, Article 21 on salaries, Article 22 on imports, Article 23 on rental and services, and Article 25 on monthly instalments, all of the Income Tax Law).

Additionally, input VAT incurred on purchases (goods or services) can be credited against output VAT collected on sales, provided it relates to taxable business activities, is supported by a valid tax invoice, and is claimed within three months of the invoice date.

### Tax Incentives

Additionally, while not formal credits, Indonesia offers several tax incentives that reduce taxable income or provide additional deductions. These include tax holidays for pioneer industries (5–20 years CIT exemption), tax allowances for labour-intensive or export sectors (eg, 30% investment deduction), Special Economic Zone incentives (CIT/VAT/customs relief), super deductions of up to 300% for R&D, dividend reinvestment exemptions, Free Trade Zone benefits (eg, Batam and Bintan), and green energy incentives including potential carbon credits.

Note that the tax holiday application must be submitted no later than 31 December 2025, meaning that taxpayers will no longer be able to apply for the facility starting from 2026. As of May 2026, there has been no further regulatory update on this matter. Nevertheless, it should be noted that the tax holiday facility remains available for taxpayers operating within a Special Economic Zone.

The implementation of the OECD's Pillar Two significantly reduces the effectiveness of Indonesia's tax holiday regime for large multinationals, as any corporate income tax exemption or reduction that brings the effective tax rate below 15% may trigger a top-up tax. This undermines the intended benefit of tax holidays and could make Indonesia less attractive to large-scale foreign investors.

## 5.4 Tax Consolidation

In Indonesia, tax consolidation is not generally available. Each legal entity is treated as a separate taxpayer, even within the same group.

## 5.5 Thin Capitalisation Rules and Other Limitations

Indonesia applies thin capitalisation rules by limiting the debt-to-equity ratio (DER) to a maximum of 4:1 for the purpose of interest deductibility. Any interest expense on debt exceeding this ratio is non-deductible for income tax purposes, aiming to prevent excessive debt used for tax avoidance through related-party financing.

This rule applies to most corporate taxpayers, with exceptions granted to banks, insurance companies,

mining companies under specific contracts (eg, Production Sharing Contracts or Contract of Works).

In addition, Indonesia has proposed introducing a thin capitalisation rule based on EBITDA, aligning with international best practices, to limit excessive interest deductions. However, as of now, this EBITDA-based limitation has not yet been implemented.

### 5.6 Transfer Pricing

Transfer pricing rules are fully applicable in Indonesia and are actively enforced by the Indonesian tax authority. They apply to transactions between related parties, including parent–subsidiary companies, sister companies (under common control), transactions with related non-residents and domestic related-party transactions if tax benefits arise (eg, different tax rates or a tax holiday/allowance).

### 5.7 Anti-Evasion Rules

Indonesia enforces both general (GAAR) and specific (SAAR) anti-avoidance rules to combat tax evasion and abusive arrangements. Under GAAR, the tax authority may re-determine taxable income or deny deductions if a transaction lacks a bona fide business purpose or is structured solely for tax benefits. They may apply the substance-over-form principle to disregard artificial arrangements without commercial substance.

SAAR covers targeted rules such as transfer pricing, thin capitalisation, beneficial ownership, and Controlled Foreign Company (CFC) provisions. A CFC in Indonesia refers to a foreign entity that is at least 50% owned (directly or indirectly) by an Indonesian taxpayer or jointly controlled (≥50%) by Indonesian residents. Under Indonesia's CFC rules, certain undistributed profits of such foreign subsidiaries may be deemed as dividends and taxed in Indonesia, even if not actually distributed and the CFC is located in a low-tax jurisdiction. These rules aim to prevent profit shifting and tax deferral through offshore entities.

### 5.8 Tariffs

Indonesia's tariff regime is based on the ASEAN Harmonized Tariff Nomenclature (AHTN), with import duties generally ranging from 0% to 40%. Preferential rates apply under various free trade agreements (eg, ASEAN, Japan and Australia). Tariffs are highest on goods intended to protect local industries, including agriculture (up to 40%), automotive (up to 50% + luxury tax), textiles, electronics, and processed food. Non-tariff measures like quotas and import licensing are also used in sensitive sectors.

Global developments, such as the Regional Comprehensive Economic Partnership (RCEP) which is a free trade agreement (FTA) among 15 Asia-Pacific countries, green trade measures (eg, EU CBAM), and supply chain realignment are influencing Indonesia's tariff strategy. The country is increasingly using tariffs to promote domestic manufacturing, downstream industries (eg, mining and EV), and import substitution, while maintaining competitiveness under international trade agreements.

Note that this information is based on general knowledge available within the firm's office, and the authors are not customs or tariff specialists.

## 6. Competition Law

### 6.1 Merger Control Notification

#### General Overview

Mergers, consolidations and acquisitions (whether of shares or assets) are subject to post-closing notification if the following criteria are cumulatively met:

- the transaction constitutes a merger, consolidation, or acquisition that results in a change of control (including a change from sole control to joint control, or vice versa);
- the transaction meets the applicable jurisdictional thresholds; and
- the transaction is carried out between non-affiliated entities.

Foreign-to-foreign transactions that satisfy the above criteria may have to be notified if they have a nexus with the Indonesian market. Currently, the Indonesian Competition Commission (KPPU) applies a dual-nexus approach, meaning that both undertakings involved in the transaction must have assets in, or sales to, Indonesia, either directly or indirectly through affiliates or subsidiaries.

Joint ventures are, in principle, subject to Indonesian merger control regulations unless they qualify as greenfield joint ventures. For the avoidance of doubt, any mergers, consolidations, or acquisitions undertaken by a joint venture after its establishment remain subject to merger control, provided that the above criteria are met.

### Jurisdictional Thresholds

The jurisdictional thresholds for mandatory post-closing notification are:

- the combined value of assets in Indonesia exceeds IDR2.5 trillion (approximately USD145 million) or, if all undertakings involved in the transaction are active in the banking sector, IDR20 trillion (approximately USD1.16 billion); and/or
- the combined turnover in Indonesia exceeds IDR5 trillion (approximately USD290 million).

Of relevance to the calculation are worldwide assets or sales (turnover) in Indonesia of the acquirer and all undertakings (including the target) that, following the acquisition, directly or indirectly control, or are controlled by, the acquirer. This includes the ultimate beneficial owner, which is the highest controller of a group of undertakings that is not controlled by any other undertaking. Accordingly, the Indonesian assets and/or sales include those of:

- the acquirer;
- the target;
- the ultimate parent entity of the acquirer;
- all controlled direct and indirect subsidiaries of the ultimate parent entity of the acquirer with sales and/or assets in Indonesia; and
- all controlled direct and indirect subsidiaries of the target with sales and/or assets in Indonesia.

The jurisdictional thresholds are also met if only one party involved in the transaction meets the threshold.

The asset value and turnover are calculated based on the consolidated audited financial report of the ultimate parent entity – or, if no consolidated financial report is available, the financial reports of the ultimate parent entity and each of its subsidiaries – in all cases that occurred during the last year before the transaction date.

Turnover includes sales of products produced domestically and imported products. Exported products should be excluded from the calculation.

If the asset or sales value of a party involved in the acquisition has decreased by 30% or more in an accounting year as compared with the year before, the value is calculated on the basis of the average of the past three years or, if the decrease occurred in under three years, the average of the past two years.

### Applicable Exemption

A transfer of assets (tangible or intangible) is equivalent to a share acquisition and, accordingly, should be notified to the KPPU if there is:

- a transfer of their management control or physical control; or
- an increase in the ability of the acquirer to control a relevant market.

However, the following asset transfers are exempt.

- A non-bank asset transfer transaction valued at less than IDR250 billion (approximately USD14.5 million).
- A bank asset transfer transaction valued at less than IDR2.5 trillion (approximately USD145 million).
- A transfer of assets that is carried out in the ordinary course of business (this depends on the business profile of the acquiring party and the purpose of the acquisition). Transactions in the ordinary course of business are:
  - (a) transfers of assets that are finished goods from one undertaking to another for resale to consumers by an undertaking that is active in the retail sector (ie, the sale of consumer goods by retailers); and
  - (b) transfers of assets that are supplies to be used within three months in the production process (ie, the purchase by an undertaking of raw materials and basic components from various sources for production).
- The assets have no relationship with the business activities of the undertaking acquiring the assets.

The transferred asset values in points 1 and 2 above are as cited in the latest financial statements, or as calculated at the sale, purchase or other legal asset transfer. The highest of these should be the basis for calculation of the threshold. If the transferred assets are privately owned, the asset value would be based on the value as referred to in the seller's tax filing.

If the transaction is carried out between affiliates, the transaction is also exempt. A company is an affiliate of another if:

- it either directly or indirectly controls, or is controlled by, that company;
- both it and the other company, directly or indirectly, are controlled by the same parent company; or
- there is a main principal shareholder relationship with the counterparty.

The principal shareholder should be a controlling shareholder. "Affiliation" means a relationship of control.

## 6.2 Merger Control Procedure

### General Overview

Indonesia adopts a post-merger notification system. A transaction that meets the relevant criteria should in principle be notified to the KPPU 30 business days from the date that the transaction becomes legally effective.

Notifications must be submitted through the KPPU's online portal. The portal is only accessible for submissions between 9am and 2pm (Western Indonesian Time) on business days, which excludes Saturdays and Sundays, official national holidays and joint leave.

If the target is an Indonesian limited liability company, a transaction becomes legally effective:

- for a merger, on the date of approval by the Minister of Law (MoL) of the amendment of the Articles of Association;
- for a consolidation, on the date of approval by the MoL of the deed of establishment of the new company;
- for an acquisition of shares, on the date of notification to the MoL; and
- for an acquisition of assets, on the date of the asset transfer.

A transaction involving a target that is a public company becomes legally effective on:

- the date on which the public disclosure letter for the transaction is submitted to the Financial Services Authority (OJK) for a merger, consolidation, or acquisition between public companies; or
- the final date of payment of shares or other equity securities in the exercise of a rights issuance, merger, consolidation or acquisition carried out by a private company in connection with a public company.

The legal effectiveness of foreign-to-foreign transactions is determined based on the closing date in the agreement between the parties or approval from the authorities in the jurisdiction in which the transaction is taking place.

If a transaction has more than one date on which the transaction will become legally effective, the final date will apply.

The following parties are responsible for a notification filing:

- for a merger, the surviving undertaking of the merger;
- for a consolidation, the undertaking resulting from the consolidation;
- for an acquisition of shares, the undertaking that acquires the shares; and
- for an acquisition of assets, the undertaking that acquires the assets.

A party may choose to engage in voluntary pre-merger consultation either in writing through the notification portal or verbally. If a party chooses the first option, the procedure is similar to the notification procedure. A consultation will not exempt the party from the obligation to submit a notification after the transaction has become effective. The outcome of the KPPU's assessment conducted as part of a consultation may be used for the post-merger notification, provided

there are no changes to the supporting documents, for up to one year from its issuance date.

### Notification Fees

As of May 2023, filing fees are required. They are calculated by multiplying the value of assets or sales in excess of the notification threshold, whichever is lower, by 0.004%.

The value of assets or sales is based on the total asset or sales value of:

- the surviving entity, the consolidating undertaking, or the acquiring entity and the target; and
- the undertakings that are directly or indirectly controlled by the surviving entity resulting from the merger, the consolidating undertaking, or the acquiring entity and the target.

If both the asset and sales value meet the threshold, the filing fee will be calculated using whichever value is lower and will only be payable if the KPPU finds that the transaction is notifiable. The maximum fee is IDR150 million (approximately USD8,750).

### General Overview of the Timeline

Notification comprises two phases.

1. A check on the completeness of notification documents.

2. An assessment, consisting of initial and comprehensive assessment sub-phases, with the latter only being applicable to transactions that raise potential concerns from the Indonesian competition law perspective.

The first phase, which is applicable to all notified transactions, also consists of a check regarding if the transaction is notifiable. This check should be completed within three business days of the notification being submitted. If the notification documents are complete, the KPPU will issue a notification registration number and official confirmation on whether the transaction is notifiable. If the notification documents are not complete, the KPPU will request the notifying party to provide additional documents or information as deemed necessary.

If the transaction is notifiable, the notification will continue to the assessment phase. Thereafter, the KPPU has 90 business days from the date the notification is declared complete to conduct its review and issue an opinion.

## 6.3 Cartels

The general cartel prohibition can be found in Article 11 of Law No 5/1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition as amended by Law No 6 of 2023 on the Stipulation of Government Regulation No 2 of 2022 on Job Creation into Law and further amended by Law No 1 of 2026 on the Adjustment of Criminal Sanctions (ICL) and several KPPU Guidelines. The ICL contains several provisions for the cartel prohibition which, apart from the general cartel provision, relate to:

- price fixing (Article 5 of the ICL);
- market allocation (Article 9 of the ICL);
- group boycotts (Article 10 of the ICL);
- bid rigging (Article 22 of the ICL); and
- a general prohibition on anticompetitive agreements with foreign parties, which could also apply to cartels with a cross-border element (Article 16 of the ICL).

While certain provisions impose a “per se” or “hard-core” cartel prohibition – such as those relating to price fixing and group boycotts – most are assessed using a “rule of reason” approach. Under this approach, sanctions may only be imposed if it can be proven that the restrictive agreement potentially causes adverse effects on the market resulting in monopolistic practices and/or unfair business competition.

Under the ICL, prohibited conduct or agreements are punishable by both administrative and criminal sanctions. However, only the refusal to co-operate with a KPPU investigation or failure to disclose significant information for such an investigation is subject to criminal sanctions. These criminal sanctions include a maximum fine of IDR5 billion (approximately USD290,000) or imprisonment of up to one year (if the fine is not paid). Other prohibited conducts and agreements are subject solely to administrative sanctions.

The administrative sanctions under the ICL and Government Regulation No 44 of 2021 on Prohibition of Monopolistic Practices and Unfair Business Competition ("GR No 44/2021") include:

- a decision to cancel an agreement;
- an order to discontinue vertical integration;
- an order to discontinue behaviour that causes unfair business competition or harms the public;
- an order to discontinue abuse of dominant position;
- a decision to cancel a merger or consolidation of undertakings and shares acquisition;
- a decision to order payment of damages; and/or
- a decision to impose a fine of at least IDR1 billion (approximately USD60,932), by taking account of the fine amount under the government regulation.

GR No 44/2021 and KPPU Regulation No 2 of 2021 on Guidelines for Imposing Administrative Fines further stipulate that the KPPU can impose a base penalty of IDR1 billion (approximately USD58,000), plus an additional specified amount. The final calculation of fines is subject to the following limits:

- up to 50% of the net profits earned by the undertaking in the relevant market during the violation; or
- up to 10% of the total sales in the relevant market during the violation.

The amount of the fine is calculated based on:

- the negative impact caused by the violation;
- the duration of the violation;
- mitigating factors;
- aggravating factors; and
- the ability of the undertaking to pay.

Cartel conduct taking place outside Indonesian jurisdiction may still fall within the scope of the prohibition of the ICL if one or more of the undertakings involved are domiciled in Indonesia or are directly or indirectly conducting business in Indonesia. Indirect business activities include those carried out by an undertaking's Indonesian subsidiary, which, according to the Single Economic Entity doctrine established in the Temasek case, is considered part of the same economic entity as its parent company.

The existing ICL does not contain provisions for a leniency programme.

### 6.4 Abuse of Dominant Position

Article 25 of the ICL specifically defines abuse of a dominant position. Undertakings are prohibited from taking advantage of their dominant position, either directly or indirectly, to:

- impose trade terms with the intention to prevent or hamper consumers from acquiring competitive goods or services, on price or quality;
- restrict the market and technological development; or
- hamper other undertakings, with the potential to become competitors, from entering the relevant market.

Under Article 25 (2) of the ICL, there is dominance if:

- one undertaking controls 50% or more of the market share for one type of product or service; or
- two or three undertakings or groups of undertakings control 75% or more of the market share for one type of product or service.

The above provision should be read in conjunction with Article 1 (4) of the ICL, which defines "dominant position" as a situation in which an undertaking has no meaningful competitors in the relevant market in view of the market share that it holds, or the undertaking holds a higher position among competitors in the relevant market in view of financial capability, the ability to access supplies and sales, and the ability to adjust offer and demand of certain products and services.

Article 25 constitutes a "per se" prohibition, meaning that once the required elements are fulfilled, the KPPU can conclude that a violation has been legally and convincingly proven. Nonetheless, in practice, the KPPU frequently strengthens its findings by assessing and demonstrating the impact of the abuse to substantiate the evidence and justify the imposition of sanctions.

While Article 25 outlines specific forms of abuse, other types of abusive conduct may still fall under different provisions of the ICL. Undertakings that engage in

abusive conduct may still fall within the scope of other provisions under the ICL, even if they do not meet the market share thresholds for dominance, as long as they possess market power. Market power exists when an undertaking can profitably raise prices above competitive levels. This power may arise from dominance or a substantial market share, or from specific factors such as:

- ownership of intellectual property rights or exclusive licences;
- special positions granted by government regulations;
- control over distribution networks;
- financial backing (eg, from a parent company); or
- high entry barriers.

Provisions applicable to undertakings with market power include Article 6 (Price Discrimination), Article 11 (Cartels), Article 14 (Vertical Integration), Article 15 (Exclusive Agreements), Article 19 (Market Control), and Article 20 (Predatory Pricing) of the ICL.

## 7. Intellectual Property

### 7.1 Patents

Patent protection in Indonesia is governed by Law No 65 of 2024, the third amendment to Law No 13 of 2016 on Patents ("Patent Law"). A patent is an exclusive right granted by the state to an inventor for a technological invention, allowing personal exploitation or licensing to others for a specified period.

A patent is granted for an invention that:

- is novel (new);
- involves an inventive step; and
- is industrially applicable.

The invention may take the form of a product or a process that introduces a new method or offers a technical solution to a problem.

Indonesia recognises two types of patents.

- Standard patents – granted for inventions with a higher level of inventiveness; protection lasts 20 years from the filing date (non-renewable).
- Simple patents – granted for inventions with a lower level of inventiveness, typically improvements to existing products or processes; protection lasts ten years from the filing date (non-renewable).

#### Patent Registration Process

1. Application submission – filed with the Directorate General of Intellectual Property of the Ministry of Law (DGIP) and includes a request form, description, claims, abstract, and drawings (if applicable).

2. Administrative examination – DGIP reviews formal compliance.

3. Publication – application is published in the official gazette.

4. Substantive examination – must be requested within 36 months of filing; DGIP assesses novelty, inventive step, and industrial applicability.

5. Granting of patent – if approved, the patent is granted and published.

Foreign applicants must appoint a registered Intellectual Property Consultant in Indonesia.

Enforcement includes civil remedies (damages and injunctions) and criminal penalties. Patent disputes are adjudicated by commercial courts.

### 7.2 Trade Marks

Trade mark protection is governed by Law No 20 of 2016 on Trademarks and Geographical Indications. A trade mark is any sign capable of being graphically represented – such as images, logos, names, words, letters, numbers, colour arrangements (in two or three dimensions), sounds, holograms, or combinations thereof – used to distinguish goods or services of one party from those of others.

Trade mark protection lasts ten years from the filing date and is renewable for subsequent ten-year terms. Renewals must be filed within six months before expi-

ration, with a six-month grace period available post-expiration (subject to additional fees).

### Trade Mark Registration Process

1. Application submission – via DGIP's online system, including applicant details, mark representation, goods/services list, and supporting documents.

2. Administrative examination – DGIP verifies completeness.

3. Publication – mark is published for a two-month opposition period, during which third parties may file written objections.

4. Substantive examination – DGIP assesses registrability and considers any oppositions.

5. Registration – approved marks are registered and published; a certificate is issued.

Foreign applicants must appoint a registered Intellectual Property Consultant.

Enforcement includes civil and criminal remedies, including damages, injunctions, fines and imprisonment.

## 7.3 Industrial Designs

Industrial design rights are governed by Law No 31 of 2000 on Industrial Design. An industrial design refers to a creation of form, configuration, or composition of lines or colours – either in two-dimensional or three-dimensional form – that gives an aesthetic impression and can be applied to a product, goods, industrial commodity, or handicraft.

Protection of industrial design lasts ten years from the filing date and is non-renewable.

### Industrial Design Registration Process

1. Application submission – filed via DGIP's online system in Indonesian, including design description, drawings/photos, priority documents (if applicable), and designer details.

2. Administrative examination – DGIP checks for completeness; applicants have three months to rectify deficiencies.

3. Publication – design is published for three months.

4. Opposition period – third parties may file oppositions; applicants may rebut within three months of notification.

5. Substantive examination – DGIP considers oppositions and rebuttals.

6. Registration and certificate issuance – upon approval, DGIP issues a certificate.

Foreign applicants must appoint a registered Intellectual Property Consultant.

Enforcement includes civil and criminal remedies.

## 7.4 Copyright

Copyright is governed by Law No 28 of 2014 on Copyright, which provides automatic protection upon creation, based on the declarative principle. Protection applies once a work is expressed in tangible form.

Protected works include:

- literary works (books, articles, poetry and scripts);
- artistic works (paintings, sculptures and photography);
- musical compositions;
- films and audiovisual works; and
- computer programs and software.

Copyright consists of two distinct rights.

- Moral rights – these are perpetual and remain with the creator, regardless of ownership.
- Economic rights – these grant the creator or rights holder the ability to commercially exploit the work.

The duration of economic rights varies depending on the type of work and the rights holder, ranging from 20 to 70 years.

Although registration is not required to obtain copyright protection, recordation with the DGIP is strongly recommended to establish legal certainty and facilitate enforcement.

#### Copyright Recordation Process

1. Application submission – via DGIP's online system in Indonesian, including application form, copy of the work, identity documents, and statement of ownership.

2. Verification – DGIP reviews originality and completeness.

3. Certificate issuance – DGIP issues a certificate upon approval.

Foreign applicants must appoint a registered Intellectual Property Consultant.

Enforcement includes civil and criminal remedies.

### 7.5 Others

#### Software Protection

Software is protected under the Copyright Law as a literary work, with automatic protection upon creation. A computer program is defined as a set of instructions expressed in the form of language, code, schemes, or any other form intended to enable a computer to perform a specific function or produce a particular result.

Software is protected for 50 years from the date of first publication.

#### Database Protection

Databases are also protected under the Copyright Law, specifically for their structure and organisation, not the raw data.

Protection lasts 50 years from the date of first publication.

#### Trade Secrets

Trade secrets are governed by Law No 30 of 2000 on Trade Secrets, which protects confidential business information with economic value. A trade secret is defined as information in the field of technology and/or business that is not publicly known, has commercial utility, and is subject to confidentiality measures.

The scope of protection includes:

- production methods;
- processing techniques;
- sales strategies; and
- other proprietary business or technical information.

Protection is automatic and remains valid as long as confidentiality is maintained. No registration is required.

Enforcement includes civil and criminal remedies.

## 8. Data Protection

### 8.1 Applicable Regulations

Personal data protection in Indonesia is primarily governed by Law No 27 of 2022 on Personal Data Protection ("PDP Law"), which serves as the country's principal legal framework for regulating the processing of personal data. This includes activities such as the collection, use, storage, and disclosure of personal data. The PDP Law is substantially modelled on the European Union's General Data Protection Regulation, reflecting Indonesia's commitment to aligning its data protection standards with global best practices.

The PDP Law officially came into force on 17 October 2024, marking a significant milestone in Indonesia's digital governance landscape. Since its enactment, the Indonesian government, through the Ministry of Communication and Digital (MOCD), has been tasked with overseeing its implementation. The government is currently developing a Draft Government Regulation on Personal Data Protection, which will provide detailed guidance on the implementation and enforcement mechanisms. However, as of mid-2026, no definitive timeline has been announced for the finalisation of this implementing regulation.

In addition to the PDP Law, personal data protection requirements are also stipulated under:

- pre-existing regulations that remain valid insofar as they do not conflict with the PDP Law;
- specifically for children's personal data, in regulations regarding child protection; and
- sector-specific laws and regulations, such as those governing telecommunications, electronic transactions, medical records, and financial services.

### 8.2 Geographical Scope

The PDP Law has a notable extra-territorial effect, extending its reach beyond the country's borders. As stipulated in Article 2, the law applies to all legal acts involving personal data processing that are conducted:

- within the jurisdiction of Indonesia; and
- outside the jurisdiction of Indonesia, if such acts result in legal consequences:
  (a) within Indonesia; and/or
  (b) for data subjects who are Indonesian citizens located abroad.

This provision ensures that foreign-based data controllers – including individuals, public agencies, and international organisations – are subject to the PDP Law if their activities affect Indonesian citizens or have legal implications within Indonesia.

Consequently, a foreign company without a legal presence in Indonesia that provides services to Indonesian users must still comply with the PDP Law. If it fails to process the personal data of those users in accordance with the law's requirements, it may be subject to enforcement actions and sanctions, despite operating from outside Indonesia.

### 8.3 Role and Authority of the Data Protection Agency

At present, the enforcement of PDP Law is overseen by the Directorate General of Digital Space Supervision (DG) under MOCD.

While the PDP Law mandates the establishment of an independent Data Protection Authority (DPA) – tasked with regulatory, supervisory, and enforcement responsibilities – this authority has not yet been formally constituted.

In the interim, pursuant to MOCD Regulation No 1 of 2025 on Organisation and Work Procedures, the DG continues to serve as the competent authority for personal data protection matters. Its responsibilities include:

- formulating and implementing policies related to digital space supervision and personal data protection;
- executing those policies;
- monitoring, analysing, evaluating, and reporting on digital space and data protection activities;
- managing internal administration of the DG; and
- carrying out additional functions as assigned by MOCD.

The MOCD has publicly stated its intention to expedite the formation of the DPA, signalling that its establishment remains a high priority for the government. However, as of mid-2026, no definitive timeline has been announced for the establishment of the DPA.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

#### Updates to the KBLI and Business Licensing System

On 27 March 2026, the Ministry of Investment and Downstream Industry/Head of BKPM, the MOL, and the Central Statistics Agency (BPS) issued a Joint Circular Letter to facilitate the implementation of the 2025 Indonesian Standard Business Field Classification (KBLI 2025) within the risk-based licensing framework.

The Joint Circular Letter follows the issuance of BPS Regulation No 7 of 2025, which introduces KBLI 2025 and replaces the previous KBLI 2020 classification. The updated framework includes, among others, the consolidation and splitting of various business classification codes.

Under the new regime:

- Existing licences and approvals issued prior to the implementation of KBLI 2025 remain valid.

- However, companies registered with the MOL must align their KBLI classification when undertaking corporate actions – such as amendments to their Articles of Association that affect their business purposes or activities – in accordance with applicable regulations.

Importantly, no action should be required where the adjustment relates solely to changes in numerical KBLI codes without affecting the substance of the company's business activities. In such cases, the alignment will be processed automatically through the Ministry of Law's system and the OSS Risk-Based Approach (OSS RBA) system.

The transition to KBLI 2025 across both the OSS RBA and the MOL's systems is expected to be completed by 18 June 2026, after which all integrated systems will reflect the updated classification.

### Competition Law

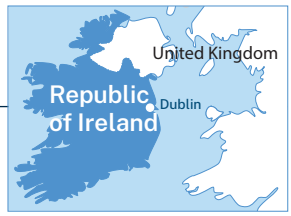
As part of the 2025–2029 National Legislation Program, the Indonesian legislature intends to introduce a new competition bill to amend the existing ICL. However, the timeline for its promulgation remains unclear.

### New Regulation on Outsourcing

The government has recently issued Minister of Manpower Regulation No 7 of 2026 on Outsourcing on 30 April 2026. While outsourcing was previously not subject to specific job-type limitations, the regulation now restricts outsourcing to supporting activities such as cleaning services, food and beverage provision, security services, drivers and worker transportation, operational support services, and supporting activities in the mining, oil, gas, and electricity sectors.

Upon its entry into force, ie, 30 April 2026, existing outsourcing agreements remain valid until expiry. However, outsourcing companies are required to align the types of outsourced work with the regulation within two years from its promulgation. Any violation is subject to administrative sanctions in the form of written warning and suspension of business activities.

# IRELAND




## Law and Practice

**Contributed by:**
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**Matheson LLP**

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**Matheson LLP** is the law firm of choice for internationally focused companies and financial institutions doing business in and from Ireland. Established in 1825 in Dublin, Ireland, Matheson LLP celebrates its 200-year anniversary in 2025. The firm has offices in Dublin, Cork, London, New York, Palo Alto and San Francisco, almost 900 people work across the firm's six offices, including 127 partners and tax principals and over 600 legal, tax and digital services professionals. The firm's expertise is spread across more than 30 practice groups. Its clients include over half of the world's 50 largest banks, seven of the world's ten largest asset managers and seven of the top ten global technology brands, and it has advised the majority of the Fortune 100 companies.

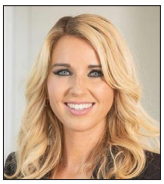
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# 1. Legal System

## 1.1 Legal System and Judicial Order

The judicial system in Ireland is established by the Constitution and the principal courts are the district courts and circuit courts (with limited jurisdiction), the High Court (with unlimited jurisdiction in civil and criminal matters), the Court of Appeal (with appellate jurisdiction) and the Supreme Court (which usually exercises final appellate jurisdiction only). The judiciary is independent of the legislature and the executive.

Ireland is a member state of the EU and of the UN. The Irish legal system is similar in many respects to that of the UK and the US. Irish law is based upon the common law, statute and the Constitution. The EU also represents an important source of Irish law, and decisions of the Court of Justice of the European Union (CJEU) exercise significant influence over Irish law.

Ireland is the only fully EU common law jurisdiction (as Cyprus and Malta have mixed legal systems), making it an attractive jurisdiction to establish operations and litigate international commercial disputes in. Other factors, such as the ease of doing business and the fact that it is the only Eurozone country in which English is the main language spoken, make Ireland one of the best destinations for foreign direct investment (FDI).

# 2. Restrictions on Foreign Investments

## 2.1 Approval of Foreign Investments

### The FDI Screening Regulation

The EU Investment Screening Regulation (Regulation (EU) 2019/452, the "FDI Screening Regulation") came into force in October 2020. The FDI Screening Regulation sets out rules which enable scrutiny of investment ventures pursued within the EU by third countries. Individual member states retain discretion as to whether they implement a screening system, but any such system must then meet basic criteria concerning confidentiality, transparency and the application of review timeframes.

### The Screening of Third Countries Transactions Act 2023

The Screening of Third Country Transactions Act 2023 (the "Screening Act") came into effect on 6 January 2025. The regime provided for in the Screening Act is suspensory (with criminal sanctions) and involves very low thresholds. It covers a wide variety of sectors (eg, critical utilities and infrastructure sectors, hi-tech and personal data focused businesses and media businesses) and needs to be considered in parallel with other foreign investment regimes, as well as Irish and international merger control rules.

## 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

Under the Screening Act, a new mandatory notification to the Minister for Enterprise, Tourism and Employment (the "Minister") would be required for certain transactions that involve third-country or foreign-controlled undertakings that are parties to a transaction if the following conditions are met:

- a third-country undertaking or a connected person is a party to the transaction;
- the value of the transaction is at least EUR2 million;
- the transaction relates to certain defined critical infrastructure, critical technologies and dual use items, supply of critical inputs, access to sensitive information including person data or the freedom and pluralism of the media; and
- the transaction relates to change of control of an asset or a defined change in share or voting rights in an undertaking in the state.

## 2.3 Commitments Required From Foreign Investors

Irish authorities currently impose no specific commitments on foreign investors in relation to their investments. However, the Act does empower the Minister to attach conditions to a notifiable transaction. Section 18 (4) of the Screening Act contains the collective or individual measures that the Minister may require the transaction parties to undertake in order to safeguard the State's security or public order.

## 2.4 Right to Appeal

The parties to a transaction may appeal a screening decision to an adjudicator within 30 days. Adjudica-

tors' decisions may be appealed further within 30 days to the High Court on points of law only. These appeal proceedings are generally not held in public, though there are limited exceptions.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

The Companies Act 2014 (the "Companies Act") provides for the creation of various types of corporate vehicles in Ireland. A company of any type may be incorporated with a single shareholder.

#### Company Limited by Shares (LTD)

The LTD is the model form of private company limited by shares and the most common form of corporate vehicle used by foreign investors. The LTD has unlimited legal capacity and a single document constitution. Its internal regulations may be set out in simplified form in that constitution. An LTD is prohibited from offering equity or debt securities to the public.

#### Designated Activity Company (DAC)

The DAC is an alternative form of private limited company. A key distinction between a DAC and an LTD is the existence of an objects clause in the DAC constitution (memorandum of association). A DAC may be a suitable vehicle where an objects clause is needed (eg, to restrict the corporate capacity of a joint venture vehicle) or for companies listing debt securities on a stock exchange.

#### Unlimited Company

The Companies Act recognises three distinct types of unlimited company, which are:

- a private unlimited company with a share capital (ULC);
- a public unlimited company with a share capital (PUC); and
- a public unlimited company without a share capital (whose liabilities are guaranteed by its members) (PULC).

Members of an unlimited company may be held liable on an unlimited basis for the debts of the company in the event of it entering insolvent liquidation. ULCs may not offer for sale or list any new securities, but a PUC and PULC may list debt securities.

#### Public Limited Company (PLC)

The key distinction between PLCs and private companies is that only PLCs may list their shares on a stock exchange and offer them to the public. PLCs must have a minimum issued share capital of EUR25,000, at least 25% of which must be fully paid up before the company commences business or exercises any borrowing powers. A *Societas Europaea* (SE), the European model company, is regarded as a PLC under the Companies Act.

#### Guarantee Company (CLG)

A CLG does not have a share capital and is a popular type of company for charities, sports and social clubs, and property management companies. The members' liability is limited to the amount they undertake to contribute to the assets of the CLG in the constitution of the company in the event of its winding-up.

### 3.2 Incorporation Process

To incorporate a company in Ireland, certain documents, including the company's constitution, must be filed with the Companies Registration Office (CRO). Incorporation papers must contain the company name, registered office, directors' and secretary's details, subscriber details, the company's principal activity and the place in Ireland where it proposes to carry on that activity. The incorporation form includes a declaration that the Companies Act requirements have been complied with.

Under an express incorporation scheme, a company can typically be incorporated within five working days. Otherwise, it typically takes two to three weeks to incorporate a company. On incorporation, the CRO will issue the company with a certificate of incorporation. CRO fees are EUR50, and the process is completed online.

### 3.3 Ongoing Reporting and Disclosure Obligations

#### Documents Presented at the AGM

Irish companies must generally present audited financial statements to the annual general meeting (AGM) and then publicly file a copy with the company's

annual return in the CRO (including certain disclosures concerning directors' remuneration). A directors' report on the state of affairs of the company and its subsidiaries must be attached to the balance sheet presented before the AGM. For all LTDs and other company types with one member (other than PLCs), a written procedure is available in place of an AGM. Small and micro companies are subject to fewer public disclosures and more relaxed reporting requirements.

### Directors' Additional Disclosures

Directors may need to make additional disclosures to the company if, for example, they hold shares representing more than 1% of the company's share capital. Directors of companies (with the exception of unlimited companies) with assets exceeding EUR12.5 million and a turnover exceeding EUR25 million must also make a prescribed form of compliance statement in their directors' report.

### Internal Register on Ultimate Beneficial Owner

Most Irish companies must maintain internal registers on individuals considered under law to be their ultimate beneficial owners. The EU (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 also require in-scope entities to file their beneficial ownership details on a central beneficial ownership register to which there is currently greatly restricted public access. Where the company has no beneficial owner or the beneficial owner cannot be identified, details of the company's senior managing officials (directors) must instead be provided. Companies whose shares are listed on a regulated market that is already subject to disclosure requirements are exempt from these obligations.

### Filings in Regard to Changes

Among other matters, CRO filings must be made in respect of changes to:

- the company name;
- the directors or company secretary;
- the registered office;
- the annual return date or financial year end; and
- the share capital or the company constitution.

Details of mortgages or charges made regarding a company must also be filed with the CRO.

### Sustainability Reporting

Irish companies can be subject to requirements to report sustainability information in accordance with the Corporate Sustainability Reporting Directive (CSRD) (see **9.1 Upcoming Legal Reforms**) and the Non-Financial Reporting Directive, which continues to apply in Ireland alongside the CSRD.

## 3.4 Management Structures

Irish companies are managed by a single-tier board of directors. All companies, other than LTDs, must have a minimum of two directors. The secretary may be one of the directors of the company. An LTD may have one director but there must be a separate company secretary in that case. A body corporate may act as secretary to another company, but not to itself. A body corporate may not act as a director.

At least one of the directors of an Irish company must be a resident of a member state of the European Economic Area (EEA) unless:

- the company posts a bond to the value of EUR25,000, which will be used to discharge the company's liability in the event that it fails to pay a fine or penalty imposed under company law or tax legislation; or
- the company holds a certificate from the CRO confirming that the company has a real and continuous link with one or more economic activities carried on in Ireland.

## 3.5 Directors', Officers' and Shareholders' Liability

Directors' common law fiduciary duties are codified in the Companies Act and include the duty to:

- act in good faith and in the interests of the company;
- act legally and in accordance with the company's constitution;
- avoid conflicts of interest between the director's duty to the company and their other interests; and
- exercise the care, skill and diligence which would be exercised by a reasonable person in the same

circumstances, accounting for the director's specific knowledge and experience.

An additional duty, to have regard to the interests of creditors, may apply in certain cases (eg, on insolvency).

Where a breach of duty by a director is proved, they may be required to account to the company for any personal gain made and indemnify the company for any loss or damage resulting from the breach. Generally, parent companies are not liable for the acts of limited liability subsidiaries, but they may be liable under parent company guarantees.

Directors' duties are owed (to varying degrees) to the company, the shareholders, the company's employees and the company's creditors. Directors may be found criminally liable for certain breaches of the Companies Act and other offences including in respect of environmental, data protection, health and safety, and tax law.

However, subject to certain limitations in the Companies Act, a company is permitted to indemnify a director in respect of liability incurred in defending proceedings. In practice, the directors of Irish subsidiaries of multinational companies benefit from group-wide D&O insurance policies.

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

Employment protection laws in Ireland apply to all employees working in the country, irrespective of the employee's nationality.

Employment law is primarily governed by:

- the Constitution;
- statutes and EU law;
- judicial precedents;
- common law (including contract law);
- statutory mechanisms put in place by the state to regulate certain sectors, including Sectoral Employment Orders (SEOs) which require acceptance by the Minister of State at the Department of Enterprise, Tourism and Employment following a recommendation from the Labour Court;
- collective bargaining agreements; and
- custom and practice in the workplace and workplace or industry rules.

### 4.2 Characteristics of Employment Contracts

#### The Employment (Miscellaneous Provisions) Act 2018

Under the Employment (Miscellaneous Provisions) Act 2018, which was updated by the European Union (Transparent and Predictable Working Conditions) Regulations 2022, employers must notify employees in writing, within five days of commencement of employment, of the following core terms of employment:

- the full names of the employer and the employee;
- the address of the employer;
- the expected duration of the contract in the case of a temporary contract, or the end date if the contract is for a fixed-term;
- the rate or method of calculation of the employee's pay;
- any terms or conditions relating to hours of work, including overtime and the number of hours the employer reasonably expects the employee to work per normal working day and normal working week;
- the place of work, or where there is no fixed or main place of work, a statement stating that there are various places or that the employee is free to set their own place of work or to work at various places;
- the date the employment started;
- the job title, grade or nature of the work; and
- the duration and conditions relating to the probation period (if any).

#### The Terms of Employment (Information) Act 1994

Under the Terms of Employment (Information) Act 1994, all employers are obliged, within one month of commencement of employment, to provide their employees with a written statement setting out certain fundamental terms of their employment.

Additionally, if the work pattern is entirely or mostly unpredictable, the employer must provide the employ-

ee with information about the number of guaranteed hours, the hours and days the employee may be required to work and the minimum notice of a work assignment.

For temporary agency contracts, the employer must also provide the identity of the person or firm hiring the agency worker. The statement must be signed by both the employee and the employer. Any change to the statutory particulars must be notified to the employee, in writing, no later than the day on which the change takes effect.

## 4.3 Working Time

An employer may not permit any employee to work for more than an average of 48 hours per week over a particular reference period (usually four months). This reference period varies depending on the type of employment in question. Working time should only take account of time spent working (ie, it should exclude rest breaks).

Employees cannot opt out of the 48-hour average working week.

### Overtime

Generally speaking, there is no statutory entitlement to overtime under Irish law or payment for overtime, however such an entitlement may be contained in their employment contract or established by custom and practice. Employers that require employees to work on Sundays are required to compensate them for doing so, whether in terms of paying a Sunday premium or specifically considering that they may be required to work on a Sunday in calculating the rate of pay.

## 4.4 Termination of Employment Contracts

An employer can, under common law, terminate an employment contract without cause, provided this is in accordance with the terms of the contract. Notwithstanding any express contractual right to terminate, employees are afforded statutory protection against unfair or discriminatory dismissal. Under the Unfair Dismissals Acts 1977 to 2015 (UDA), an employer cannot lawfully dismiss an employee unless substantial grounds exist to justify termination.

Generally, a dismissal will only be justified if it is based on one of the following grounds.

- The capability, competence or qualifications of the employee for the work concerned.
- The conduct of the employee.
- The redundancy of the employee.
- The employee is prohibited by law from working or continuing to work (eg, not holding a valid work permit where one is required).

If one of these grounds cannot be established, there must be other substantial grounds to justify the dismissal.

### Ending a Contract of Employment

Where an employee or an employer wishes to end a contract of employment, minimum periods of notice apply where an employee has been in continuous service for at least 13 weeks. The notice period to be given by an employer depends on the employee's length of service. It varies from one week, applicable where an employee has been employed for up to two years, to eight weeks', applicable where an employee has been employed for 15 years and more. Employees are only obliged to give notice of one week, irrespective of their length of service.

However, these are only the minimum periods and a contract of employment may specify a longer notice period on either side. There is no requirement to pay an employee severance in the event of dismissal unless it arises because of redundancy.

#### *PEA procedures*

The Protection of Employment Acts 1977 to 2014 (PEA) prescribe the procedures to be followed in a collective redundancy. Employers must initiate consultation at the earliest opportunity and, in any event, at least 30 days before the first notice of dismissal is given.

The PEA require employers to provide employee representatives and the Minister for Enterprise, Tourism and Employment with certain written information, such as the proposed number of redundancies and a description of the employees the employer proposes to make redundant. The Minister must also be notified

of the proposals at least 30 days before the first notice of redundancy is given.

*Statutory redundancy pay*

Statutory redundancy pay is currently two weeks' pay for each year of service, plus one extra week's pay. A week's pay for these purposes is currently subject to a ceiling of EUR600 a week. For both ordinary dismissals and collective redundancies, it is commonplace for employers to offer employees an ex gratia payment upon termination of employment in exchange for employees waiving all employment law claims against the employer.

### 4.5 Employee Representations

The concept of employee representation under Irish law relates to both unionised and non-unionised employees and is derived from a number of statutory and non-statutory sources.

#### Trade Union Representation

Any employee has the right to join a trade union, although trade unions may not legally compel employers to recognise and negotiate with them. The degree to which trade unions may embark upon industrial action is regulated principally by the Industrial Relations Act 1990. Employee representatives are appointed by way of a secret ballot.

#### Information and Consultation Representation

In addition to any local representation arrangements (whether with trade unions or otherwise), employees may be entitled to representation in certain circumstances as a matter of statute. This form of representation can arise in transfers of undertakings, in collective redundancy situations or where the employees are covered by a local or European-level works council.

The Transnational Information and Consultation of Employees Act 1996 (as amended) (the "1996 Act") requires undertakings with at least 1,000 employees in the EU and 150 or more employees in each of at least two member states to set up European works councils to inform and consult with their employees on a range of management issues relating to transnational developments within the organisation. Under the 1996 Act, a special negotiating body (SNB) is established to negotiate with the employer.

The Employees (Provision of Information and Consultation) Act 2006 obliges employers with at least 50 employees to enter into a written agreement with employees or their elected representatives setting down formal procedures for informing and consulting with them. The legislation will only apply if a prescribed minimum number of employees request it.

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/ Employers

The primary Irish taxes applicable to employees and employers in the context of an employment relationship are income tax, pay-related social insurance (PRSI) and the universal social charge (USC).

#### Income Tax

Irish tax law generally imposes income tax on an individual where they are resident or ordinarily resident in Ireland in the year of assessment or if employment is exercised in Ireland in the year of assessment.

An individual will be considered resident in Ireland in a year of assessment if they are present in Ireland for at least 183 or 280 days in that year and the preceding year when taken together (provided that the individual has been present for at least 30 days in each of these two years). An individual will be regarded as ordinarily resident in Ireland for tax purposes if the person has been resident in Ireland for three consecutive years immediately preceding the year of assessment.

Different income tax rate bands apply depending on an employee's circumstances. The current standard rate of income tax is 20%, which applies to the first EUR44,000 per year earned by a single person without children and to the first EUR53,000 per year earned by a married person or a person in a civil partnership. A higher 40% rate is applied to any remaining balance.

#### PRSI

PRSI is Ireland's equivalent of social insurance or social security contributions. Subject to certain limited exceptions, anyone employed in Ireland is generally subject to PRSI and payments are generally collected by the employer through the PAYE system.

The amount of PRSI paid by an employee depends on the employee's income and the PRSI class of the employee.

The most common PRSI class for private sector employees in Ireland is Class A (employees in industrial, commercial and service-type employment with gross earnings of EUR38 or more in a week). A Class A employee's PRSI contribution will generally be 4.2% of all "reckonable earnings" (including employee share-based remuneration and any benefit in kind). The employer must separately make a PRSI contribution of 9% on weekly earnings up to EUR552 and 11.25% on weekly earnings over EUR552. From 1 October 2026, the rate of PRSI for a Class A employee will increase to 4.35% and for an employer to 9.15% on weekly earnings up to EUR552 and 11.40% on weekly earnings over EUR552.

### USC

Employees in Ireland are also subject to a further tax payable on total income, known as USC. For 2025, the first EUR12,012 of an individual's aggregate annual income will be taxed at a rate of 0.5%, the following EUR16,688 at 2%, the following EUR41,344 at 3% and the remaining balance at 8%. An additional surcharge of 3% applies to individuals who are self-employed or whose non-employment-related income exceeds EUR100,000 in a year.

## 5.2 Taxes Applicable to Businesses

The primary Irish taxes applicable to businesses are corporation tax on income and chargeable gains, VAT, withholding tax and stamp duty.

### Corporation Tax

A company resident in Ireland for Irish tax purposes will be subject to corporation tax on its worldwide profits and gains regardless of where those profits arise. A company that is not tax resident in Ireland is liable to corporation tax in Ireland if it carries on a trade in Ireland through a branch or agency.

A non-Irish tax resident company may be subject to corporation tax on gains realised on the disposal of Irish-situated assets used for such a trade carried on in Ireland or realised on the disposal of certain specified Irish assets, including Irish land or buildings or shares in a company that derive the greater part of their value from Irish land or buildings. Where a non-Irish tax resident entity sells Irish patent rights in return for a capital sum, a charge to Irish tax at a rate of 25% can also arise. A company will generally be considered tax resident in Ireland if it is incorporated in Ireland or centrally managed and controlled in Ireland, regardless of where it is incorporated.

The rate of corporation tax payable on a company's profits will depend on whether the profits arise from trading (broadly, operational activities) or non-trading (eg, passive investment) activities. A low rate of 12.5% applies to trading profits, with a 25% rate applying to non-trading income. Losses incurred by a company in respect of trading operations can generally be carried forward indefinitely for use against future profits of that trade. Losses can also be surrendered to other companies within a group for Irish corporation tax purposes.

### OECD Pillar Two Minimum Tax

Ireland has implemented the OECD's Two-Pillar solution to address the tax challenges arising from the digitalisation of the economy in line with the EU Implementing Directive. The Directive obliged EU member states, including Ireland, to introduce a minimum tax rate of 15% for multinationals with annual revenue over EUR750 million. Ireland introduced its legislation in Finance (No 2) Act 2023 and it came into force on 31 December 2023.

The existing 12.5% corporation tax rate continues to apply to multinationals and domestic businesses operating in Ireland that do not exceed the EUR750 million group revenue threshold.

### Chargeable Gains

Chargeable gains realised by an Irish tax resident company on the disposal of a capital asset are generally subject to corporation tax at an effective rate of 33%, where relief or exemptions are not available. A non-Irish resident company will be subject to corporation tax in a similar manner on gains realised on the disposal of specified Irish assets (broadly, Irish branch assets and Irish land and buildings, Irish minerals and exploration rights, or shares deriving their value from such assets or Irish branch assets).

### VAT

Supplies of goods and services in Ireland are generally subject to VAT. The standard rate of VAT in Ireland is 23%. Reduced rates ranging from 0% to 13.5% may apply to supplies of certain specified goods and services, and full exemptions apply to certain goods or services. A business engaged in an activity subject to VAT should typically be entitled to recover the VAT it incurs on purchases, subject to certain exceptions.

The obligation to account for VAT on supplies made by a company may arise for the supplier or customer, depending on the relevant circumstances, such as whether the supply involves a cross-border element. Businesses are generally obliged to register for VAT in Ireland.

### Withholding Tax

Ireland imposes withholding tax on payments of distributions and dividends by Irish-resident companies at a rate of 25% and payments of interest, patent royalties and certain annual payments at 20%. However, there are broad exemptions from these withholding requirements. As a result, withholding tax will generally not arise on payments made to persons resident in another EU member state or in a jurisdiction with which Ireland has agreed a double taxation treaty.

### Stamp Duty

Irish stamp duty applies to certain documents that transfer property and are executed in Ireland, relate to property situated in Ireland (such as Irish real estate or shares in Irish companies), or relate to a matter or thing done or to be done in Ireland.

However, there are various exemptions and reliefs from Irish stamp duty, including an exemption for transfers of certain IP rights and broad reliefs for intra-group transfers and group reorganisations and mergers. Where an exemption is not available, stamp duty generally applies at a rate of 1% to transfers of shares and 7.5% for transfers of commercial property.

## 5.3 Available Tax Credits/Incentives

There are a number of tax credits and incentives available in Ireland, including research and development (R&D) tax credits and capital allowances for specific types of capital expenditure. Ireland also offers a digital games tax credit to incentivise developers to produce digital games that contribute to the promotion and expression of Irish and European culture. The credit is available on expenditure incurred in the design, production and testing stages of the development of qualifying digital games, provided certain conditions are satisfied.

### Research and Development Tax Credit

Irish tax legislation provides a tax credit regarding certain expenditures on R&D activities, buildings, and plant and machinery. Credit is available for 35% of the allowable expenditure (in addition to a general tax deduction at 12.5%).

A number of conditions must be satisfied for the credit to be available, including a requirement that the research and development seeks to achieve scientific or technological advancement and involves the resolution of scientific or technological uncertainty.

The R&D tax credit is currently regarded as a "qualifying refundable tax credit" for the purposes of the OECD's Pillar Two rules and is expected to also qualify as a "qualified tax incentive" for these purposes.

### Capital Allowances Regime for Capital Expenditure on the Provision of Certain Intellectual Property

A special capital allowances (tax depreciation) regime is available for capital expenditure incurred to acquire certain categories of intellectual property (specified intangible assets) for a company's trade. Specified intangible assets for these purposes include patents, trade marks, brands, copyrights or computer software, among other categories of IP.

Capital allowances on qualifying expenditure may either be claimed: (i) in accordance with amortisation charged to the profit-and-loss account of the company; or (ii) on a straight-line basis over 15 years at the rate of 7% for the first 14 years and 2% in the final year. Capital allowances are available to offset taxable profits earned from the specified intangible assets subject to an 80% cap.

Revenue will expect a robust valuation report to support the arm's length nature of the capital expenditure, and taxpayers must maintain documentation

and records used to prepare the intellectual property valuation.

### Participation Exemption for Certain Foreign Distributions

A participation exemption for certain foreign distributions was introduced in Finance Act 2024 and applies to distributions received after 1 January 2025. The key conditions are, broadly, as follows:

- the parent company must hold at least 5% of the ordinary share capital of the foreign subsidiary for at least 12 months;
- at the time of the distribution and for the previous three years, the foreign subsidiary must have been resident for the purposes of a foreign tax in a "relevant territory" and not have been generally exempt from tax; and
- the distribution must be made out of profits or, if not, made out of the assets of a company in respect of which a disposal of that company's shares would qualify for the substantial shareholders' exemption from capital gains tax.

The new exemption sits alongside Ireland's existing tax and credit regime and must be claimed by a taxpayer in its corporation tax return.

## 5.4 Tax Consolidation

Tax consolidation is not available under Irish tax law, and a company subject to corporation tax must prepare and file its tax return for corporation tax purposes for each assessment period. However, Irish tax law does provide for group relief, which permits companies within the same corporate group to surrender certain losses to other profitable group companies.

## 5.5 Thin Capitalisation Rules and Other Limitations

Ireland does not have any specific thin capitalisation rules, but there are a number of circumstances where interest payments may be considered non-deductible in calculating the taxable profits of a company.

Ireland has introduced anti-hybrid rules and anti-reverse-hybrid rules, in accordance with the EU Anti-Tax Avoidance Directives (ATAD I and II). These rules can deny tax deductions in respect of certain arrangements between associated enterprises, giving rise to tax mismatches as a result of hybrid instruments or entities. These rules can also apply to treat certain transparent Irish entities as subject to tax.

Ireland has also implemented interest limitation rules in accordance with EU ATAD. These rules apply to cap deductions for net interest expense at 30% of earnings before interest, taxes, depreciation and amortisation (EBITDA) in certain circumstances.

In addition, Ireland has introduced defensive measures in respect of certain outbound payments made after 1 April 2024. These measures operate to remove exemptions from withholding taxes on certain outbound payments of interest, royalties and distributions to an associated entity who is resident in a "zero-tax" or "no-tax" jurisdiction or in a jurisdiction listed on the EU Blacklist.

## 5.6 Transfer Pricing

Irish transfer pricing rules apply the arm's length principle to trading transactions between associated enterprises. In this context, "arm's length" is to be construed in accordance with OECD guidelines. The Irish transfer pricing rules were significantly amended from 1 January 2020 to align with the 2017 OECD guidelines, including enhanced documentation requirements. Ireland's transfer pricing rules are currently to be construed in accordance with the 2022 version of the OECD guidelines.

Broadly, Ireland's transfer pricing rules require that if the actual consideration payable or receivable by a trader in a transaction with an associated enterprise is other than at arm's length, then any understatement in the trader's profit will be reversed so that the full arm's length profit of the trader will be taxed.

Ireland's transfer pricing rules have also been extended to non-trading transactions (save for certain non-trading transactions between two Irish residents). The Irish transfer pricing rules can now also apply to capital transactions where the market value of the asset exceeds EUR25 million.

### 5.7 Anti-Evasion Rules

Ireland has strict anti-evasion rules that impose criminal sanctions on those who fraudulently evade tax and anyone who facilitates such evasion. Anyone found guilty of an offence may be fined and/or imprisoned.

#### Anti-Avoidance Rule

Ireland also has a general anti-avoidance rule that applies in respect of tax-avoidance transactions. Broadly, a tax avoidance transaction in this context is a transaction which gives rise to a tax advantage and is undertaken primarily to claim a tax advantage and not for bona fide commercial reasons. In such cases, Revenue may deny or withdraw the relevant tax advantage.

#### Exit Charge

Ireland introduced an ATAD-compliant exit tax in October 2018. The exit tax is charged at a rate of 12.5% and applies to unrealised capital gains inherent in assets where:

- a company migrates its place of residence from Ireland to any other jurisdiction; or
- assets or a business of an Irish permanent establishment (PE) are allocated from the PE back to its head office or to a PE in another jurisdiction (this limb of the charge only applies in respect of companies that are resident in an EU member state other than Ireland).

The exit charge does not apply to assets that remain within the Irish tax charge. A higher 33% exit charge can apply where the transaction forms part of an arrangement to subsequently dispose of the relevant assets.

Where the relevant company/assets have been migrated to an EU/EEA country, the exit charge may be deferred and, in such circumstances, is payable in instalments over five years. If the exit charge is unpaid, Revenue may pursue any other Irish-resident group company or a director who has a controlling interest in the company subject to the charge.

### 5.8 Tariffs

As a member of the EU, Ireland is subject to directly applicable EU customs rules. There is tariff-free trade on goods sold within the EU. The EU typically applies the WTO "most favoured nation" principle, which entails that third countries are generally treated equally in terms of trade benefits, including customs duties and other charges. Reduced tariffs can apply to imports originating in territories which have entered into a free trade agreement (FTA) with the EU.

In response to recent developments in US tariff and trade policy and the threat of EU retaliatory measures, the EU and US reached a framework agreement on tariffs. The EU–US trade deal provides for a single, all inclusive tariff rate of 15% on most EU goods exports to the US and a tariff rate of 0% on certain US goods exports to the EU.

Most recently, the EU and India concluded negotiations on a landmark Free Trade Agreement that aims to strengthen economic ties between the two territories. Once formally approved, it will represent the largest trade agreement that both the EU and India have ever concluded.

The EU also has the "Anti-Coercion Instrument" (ACI) at its disposal, which provides for the possibility of restricting importations or exportations, excluding participation in public tenders, and also allows for the non-performance of international obligations in numerous fields (international property rights, insurance, banking). Given the wide-ranging nature of the measures under the ACI, this instrument is perhaps more likely to be used as a last resort or for negotiation purposes.

## 6. Competition Law

### 6.1 Merger Control Notification

The Irish merger control regime applies to "any merger or acquisition" defined in the Competition Acts 2002 to 2022 (the "Act"), as amended, including transactions where:

- two or more undertakings, previously independent of one another, merge;
- one or more individuals who already control one or more undertakings or one or more undertakings

acquire direct or indirect control of the whole or part of one or more other undertakings; or
- the acquisition of part of an undertaking, although not involving the acquisition of a corporate legal entity, consists of acquiring assets that constitute a business to which a turnover can be attributed (here, "assets" include goodwill).

### Turnover Thresholds

Mergers and acquisitions that meet the turnover thresholds set out in the Act are subject to mandatory notification to the CCPC, where, for the most recent financial year:

- the aggregate turnover within Ireland of the undertakings involved is not less than EUR60 million; and
- the turnover within Ireland for each of two or more of the undertakings involved is not less than EUR10 million.

The simplified merger notification procedure can be used for transactions that meet the financial thresholds for notifications but pose no risk of substantial lessening of competition in Ireland, for example, where there is no horizontal or vertical overlap between the undertakings involved, where the combined market shares are less than 15% in cases of horizontal overlap and 25% in cases of vertical overlap, or where there is a change from joint to sole control in a pre-existing joint venture.

Where these requirements are not met, mergers may still be notified to the CCPC on a voluntary basis and the CCPC can also investigate mergers falling below the turnover thresholds, where they believe the merger could present competition issues.

### Joint Ventures

Only full-function joint ventures (ie, those which perform, on a lasting basis, all the functions of an autonomous economic entity) constitute a merger for the purposes of the Irish merger control regime. Where a joint venture does not qualify as full function, the CCPC may assess it under Section 4 of the Act, based on Article 101 of the Treaty on the Functioning of the European Union (TFEU). Typically, the CCPC will have regard to the European Commission's Guidelines on Horizontal Cooperation Agreements and the Guidelines on Vertical Restraints when undertaking such an assessment.

## 6.2 Merger Control Procedure

A filing must be submitted to the CCPC prior to implementing the merger and may be made as long as the undertakings involved demonstrate a good faith intention to conclude an agreement.

### Phase I

A Phase I clearance determination must be issued by the CCPC within 30 working days of the "appropriate date", which means the date on which a complete filing by the merging parties is made unless either the CCPC has used its power to "stop and restart the clock" by issuing a formal requirement for information (RFI). The clock will restart when the RFI is complied with or when the parties and the CCPC commence negotiating remedies, in which case, the Phase I period is extended to 45 working days. The CCPC also issues "informal" requests for information that do not stop and restart the clock.

### Phase II

A Phase II clearance determination must be issued by the CCPC within 120 working days of the appropriate date. If the CCPC issues a formal RFI in the first 30 working days of the Phase II period, this has the effect of stopping and restarting the clock in the same way as in Phase I. If the parties and the CCPC are negotiating remedies, the Phase II period is extended to 135 working days.

### Obligations and Failure to Notify

A suspensory obligation is included in the Act, which imposes a prohibition on the merging parties putting a merger that has been notified (both mandatorily and voluntarily) into effect prior to the issuing of a clearance determination.

In terms of the Act, failure to notify a merger that meets the turnover thresholds is a criminal offence punishable by fines of up to EUR250,000, plus EUR25,000 per day for a continued breach. The CCPC can now also impose administrative fines or could also seek (with the Director for Public Prosecutions) criminal sanctions.

### 6.3 Cartels

Anti-competitive agreements and practices are prohibited under the Act, based on Article 101 of the TFEU. The Act sets out a non-exhaustive list of agreements, decisions and/or concerted practices that are prohibited as they have as their object or effect the prevention, restriction or distortion of competition in trade in any goods or services in Ireland or any part of Ireland. The Act applies to businesses operating in Ireland and international businesses where an agreement is found to restrict competition in Ireland.

It is a criminal offence to enter into or implement an agreement, decision or concerted practice prohibited under the Act. The CCPC operates a Cartel Immunity Programme with the Director of Public Prosecutions and a separate Leniency Programme which provides for the possibility of immunity or leniency from prosecution or civil action for the company/business to come forward to report certain competition offences.

### 6.4 Abuse of Dominant Position

Abuse of a dominant position is prohibited by the Act and Article 102 of the TFEU. The Act mirrors Article 102 of the TFEU, except that it refers to the abuse of a dominant position in trade for any goods or services in Ireland or any part of Ireland. While the Act refers to trade in goods and services in the state, its provisions are also likely to apply to international businesses/trade that are/is found to be dominant and where there is an effect on trade in Ireland.

#### Definition of Dominance

There is no definition of dominance within the Act. The Irish courts and the CCPC have adopted the definition formulated by the CJEU in case 27/76, United Brands v Commission [1978] ECR 207: "[a] position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by affording it the power to behave to an appreciable extent independently of its competitors, customers and ultimately of its consumers".

The Act also sets out several examples of what constitutes abuse of dominance. These are:

- directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- limiting production, markets or technical development to the prejudice of consumers;
- applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; and
- making the conclusion of contracts subject to the acceptance by other parties of supplementary obligations that according to commercial usage have no connection with the subject of such contracts.

#### Remedies

As in the case of cartels, the Act makes abuse of a dominant position a criminal offence that can be prosecuted before the Irish courts and is punishable by financial penalties. The Act also includes specific provisions for aggrieved persons and the CCPC to take civil proceedings before the Irish courts seeking remedies for abuse of a dominant position. The remedies available in civil proceedings include a court declaration, damages, imposing structural measures and an injunction.

## 7. Intellectual Property

### 7.1 Patents

#### Definition

Any inventive product/process is patentable under Irish law if it:

- is susceptible to industrial application;
- is new; and
- involves an inventive step.

Certain subject matter is excluded from patentability under Irish law, including discoveries or scientific theories, computer programs and methods of doing business to the extent that they are claimed "as such".

#### Length of Protection

Patent protection lasts for up to 20 years from the date of the application, subject to the payment of renewal fees. Irish law also provides for the extension of full-term patents for pharmaceuticals for human or animal use for up to five years.

Irish law also provides for short-term patents, which have a ten-year duration. The test of inventiveness for a short-term patent is lower than for a full-term patent. Short-term patents may be converted to full-term patents where they meet the requirements for a full-term patent.

### Registration

Applications for Irish patents are filed at the Intellectual Property Office of Ireland (IPOI). The specification forming part of the application must include the title of the invention, description of the invention and claim or claims and drawings, if any, referred to in the description.

It is also possible to file a patent application at the European Patent Office (EPO) under the European Patent Convention (EPC) or at the World Intellectual Property Organisation (WIPO) under the Patent Cooperation Treaty (PCT) and to designate Ireland for patent protection. The EPC and the PCT both facilitate the application for patents in a number of jurisdictions, but these are effectively a bundle of applications to a number of states.

There are plans to reform both registration and enforcement under the Unified Patent Court Agreement. This reform consists of two pillars: (i) the creation of a new European patent with unitary effect; and (ii) the establishment of the Unified Patent Court.

The Agreement on a Unified Patent Court was signed in February 2013 by 25 EU member states, including Ireland. However, as at the time of writing, Ireland has not ratified the Agreement and the Department of Enterprise, Tourism and Employment omitted any reference to the ratification of the Unified Patent Court in its September 2025 "Action Plan on Competitiveness and Productivity".

### Enforcement and Remedies

Patents in Ireland are enforced through civil claims against infringing parties. A patent owner can prevent direct or indirect use of their invention by third parties in Ireland without consent.

The courts have a wide range of civil remedies available to them to compensate aggrieved owners. These include a declaration of the validity of a patent and that it has been infringed, damages for infringement, injunctive relief and orders to account for profits, and to seize, destroy and/or hand over infringing goods to the patent holder. This will be subject to change upon ratification of the Unified Patent Court Agreement.

## 7.2 Trade Marks

### Definition

A trade mark under Irish law is any sign capable of both:

- distinguishing the goods or services of one undertaking from those of other undertakings; and
- being represented on the register in a manner which enables the competent authorities and the public to determine the clear and precise subject matter of the protection afforded.

A trade mark may consist of words (including personal names), designs, letters, numerals or the shape of goods or their packaging.

Unregistered trade marks have a limited protection in Ireland through the law of passing off, in a manner similar to that applying in other common law jurisdictions.

### Length of Protection

All registered trade marks are registered initially for ten years but, uniquely among intellectual property rights, this term can be renewed indefinitely for successive ten-year terms on payment of a renewal fee.

A trade mark registration is liable to revocation if, within a continuous period of five years, the trade mark has not been put to genuine use in Ireland (or EU, for EU trade marks) in connection with the goods or services for which it is registered and there are no proper reasons for non-use.

### Registration

There are three options open to trade mark proprietors carrying on business in Ireland.

#### *An application for an Irish trade mark at the IPOI*

An IPOI examiner scrutinises the application to ensure that it can be considered a trade mark under Irish law

and generally examines the application to see if its use would infringe pre-existing Irish/EU trade marks or if it otherwise falls within a prohibited form of trade mark. If satisfied with the application, the IPOI publishes it in the Official Journal. Third parties then have three months to oppose the application by filing a notice of opposition.

If there is no opposition, or if the opposition proceedings are unsuccessful, the application will proceed to registration on payment of the registration fee.

#### *An application for an EU trade mark at the European Union Intellectual Property Office (EUIPO)*

EU trade marks are filed with the EUIPO and undergo an examination, publication and opposition procedure prior to registration, similar to that described for Irish trade marks above. However, unlike the IPOI, EUIPO do not investigate whether the trade mark would infringe pre-existing EU trade marks. If the application is accepted, the EU trade mark is published in the EU Trade Mark Bulletin. This is followed by a three-month opposition period, during which time any third party can object to the trade mark's registration. EUIPO also carries out a European Union Search Report and, in the event that the application identifies any existing trade marks which are similar or identical to the trade mark being applied for, EUIPO notifies proprietors of those existing trade marks to give them an opportunity to oppose the application. If no objections were filed or if opposition proceedings were unsuccessful, the EU trade mark will proceed to be registered and the registration published. An EU trade mark is a unitary European-wide property right and protects the trade mark proprietor in all member states of the EU.

#### *An international application designating certain states, including Ireland, under the Madrid Protocol*

On request, the IPOI will forward a trade mark application or registration to the International Bureau of the WIPO in Geneva. The Irish or EU trade mark application or registration serves as a base on which the proprietor may designate the mark for registration in other Madrid Protocol countries, eg, the UK and the US. The International Bureau notifies the trade mark offices designated in the international filing, which, in turn, decide whether to accept the application for registration in their territory.

A Madrid Protocol filing can be a cost-effective and efficient way to obtain trade mark protection in multiple jurisdictions outside of the EU.

### Enforcement and Remedies

An infringement will occur where a mark that is the same as or similar to a registered mark is used in the course of trade in relation to the same or similar goods or services as the registered mark. The reliefs available for trade mark infringement include damages, injunctions and orders for an account of profits, and the destruction or delivering up of infringing goods.

An unregistered trade mark can be enforced through the vehicle of "passing off". To succeed in an action for passing off, the plaintiff must show (i) the trader has goodwill or reputation in the product, (ii) the defendant makes a misrepresentation in the course of trade to prospective customers which leads to confusion between the goods of the trader and the defendant and (iii) such misrepresentation causes or is likely to cause the plaintiff damage.

## 7.3 Industrial Designs

### Definition

Under Irish law, a "design" is defined as the appearance of the whole or part of a product resulting from the features of a product or its ornamentation, including the lines, contours, colour, shape, texture or materials of the product itself or its ornamentation. In order to be registerable, a design must be "new" and have "individual character". Unregistered designs are also granted a level of protection under Irish law.

An EU regulation entered into force in November 2023 which requires member states to put in place a legal framework for geographical indication (GI) protection for craft and industrial products. The Regulation will apply from 1 December 2025.

### Length of Protection

The total term of protection for designs under Irish law is 25 years, renewable at five-year intervals.

An unregistered design exists for three years from the date the design is first made available to the public within the EU, where the disclosure could reasonably have become known to those in the sector concerned, operating within the EU.

### Registration

Designs are registered with the IPOI. An examiner will examine the application for compliance with the Designs Act and, if accepted, the design proceeds to registration and is published in the Office Journal. The examiner does not carry out novelty checks on the design applications and the onus is on the applicant to establish the novelty of the design. An application for a Registered Community Design is made with the EUIPO. The EUIPO also does not carry out an examination into the novelty and individual character of the design.

### Enforcement and Remedies

The reliefs available for industrial design infringement include damages, injunctions and orders for an account of profits.

An unregistered design does not confer a monopoly, unlike a registered design, and infringement can take place only if copying can be established.

## 7.4 Copyright

### Definition

Copyright is an intellectual property right which features mainly in but is not exclusive to the cultural, arts and information technology sectors. It is the legal form of protection used by the creators or authors of such works to protect the tangible form of all or part of their individual works. Irish law specifically recognises copyright in computer software as a literary work.

### Length of Protection

The duration of copyright protection varies according to the format of the work, but ranges from 50 to 70 years after the death of the author, or publication, recording, transmission or creation.

There are some exceptions under Irish law which reflect instances where the wider public interest, or the interests of particular groups, make it necessary to restrict or limit the rights granted to copyright owners.

### Registration

There are no registration formalities in Ireland for obtaining copyright protection. Copyright arises automatically on the creation of an original work.

### Enforcement and Remedies

Copyright in Ireland is enforced by way of both civil and criminal liability. Copyright holders may bring actions for damages, injunctive relief, search and seize orders, and orders for an account of profits. Infringements that may occur include:

- unauthorised copying of the work;
- performing the work;
- making the work available to the public; and
- adaptation of the work.

The District Court and the Circuit Court now have jurisdiction to determine intellectual property claims, including claims in relation to copyright infringement.

## 7.5 Others

### Databases

Irish law provides protection for both original databases and "non-original" databases where substantial investment has been incurred in obtaining, verifying or presenting the contents of the database. Original databases are those in which the contents constitute the original intellectual content of the author.

The protections for databases under Irish law prevent the unlawful extraction or re-utilisation of a substantial part of the database. Where a copyrighted work is included in a database, copyright will subsist separately in that work in addition to the database right.

The protection of databases under Irish law expires 15 years from the end of the calendar year in which the making of the database was completed, although updated editions of the database may successively attract a new period of 15 years' protection if a substantial new investment is present.

### Trade Secrets

Irish law provides for the protection of trade secrets. Trade secret protection is afforded without registration and can last without limitation in time, generally as long as confidentiality is maintained.

Where a trade secret is unlawfully used, various remedies under Irish law, including injunctions, orders for accounts of profit, corrective measures such as recall or destruction of infringing goods and damages, are available to protect the trade secret owner. A person who contravenes or fails to comply with court orders commits an offence and is liable to a fine and/or imprisonment for up to six months.

The EU (Protection of Trade Secrets) Regulations 2018 gave effect to the EU Trade Secrets Directive and came into force on 9 June 2018 by way of SI No 188/2018. The Regulations provide civil remedies in circumstances where a trade secret is unlawfully used and allow for measures limiting access to court hearings and documents to ensure the confidentiality of trade secrets in court proceedings, including making it a criminal offence to contravene such measures.

## 8. Data Protection

### 8.1 Applicable Regulations

#### Principal Data Protection Laws

The principal data protection legislation in Ireland is Regulation (EU) 2016/679 (the General Data Protection Regulation or GDPR), as supplemented by the Irish Data Protection Acts 1988 to 2018 (DPA) as amended.

Irish law-specific nuances, as permitted or required under the GDPR, as well as the administrative powers and procedures of the local supervisory authority, the Data Protection Commission, are set out in the DPA.

The GDPR has general application to the processing of personal data in the EU, setting out extensive obligations on controllers and processors and providing strengthened protections for data subjects. The GDPR carries the potential for large fines of up to 4% of a firm's worldwide annual turnover from the preceding financial year, or EUR20 million (whichever is higher).

In May 2023, the CJEU judgment of *UI v Osterreichische Post AG* (Case C-300/21) confirmed that a mere infringement of the GDPR does not give rise to the right to compensation in itself but that there must be a breach, some damage and a causal link between the two, as in most negligence cases. Claimants do have to prove damage of some kind in order to recover compensation for non-material loss following a GDPR infringement.

On 5 December 2025 the Circuit Court in *Walsh v Irish Prison Service* [2025] IECC 8 affirmed this view and applied the principle set out in *Kaminski v Ballymaguire Foods* [2023] IECC 5 that "mere upset" is not sufficient non-material harm to warrant compensation under the GDPR.

The European Commission is required to conduct a review of GDPR rules every four years. As part of this process, the Commission will likely look at problematic areas identified, such as the exercise of Data Subject Access Requests, the applicability of GDPR to SMEs, and international data transfers.

#### Other Relevant Legislation

Ireland has transposed the ePrivacy Directive via SI No 336/2011 – European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (the "ePrivacy Regulations"). The ePrivacy Regulations deal with security and data breach reporting obligations for certain telecommunications companies and, more generally, electronic direct marketing rules. The same implementing legislation addresses the local Irish requirements around obtaining consent for the use of cookies and similar technologies.

Social welfare legislation such as the Social Welfare Act 2005 strictly prohibits the use of the Irish Personal Public Services Number (PPSN) for purposes other than dealing with specified government bodies.

### 8.2 Geographical Scope

The GDPR applies to the processing of personal data by controllers and processors established in the EU (regardless of whether the processing itself takes place in the EU).

The GDPR also applies to controllers and processors not established in the EU, where the organisation's processing activities involve either the offering of goods or services to data subjects in the EU or the monitoring of the behaviour of data subjects in the EU.

### 8.3 Role and Authority of the Data Protection Agency

The Irish Data Protection Commission (DPC) is the independent authority responsible for enforcing the GDPR and the DPA in Ireland. The DPC has extensive investigative powers to examine complaints from individuals in relation to potential infringements of data protection law and can order corrective measures where necessary.

The DPC co-operates with other European supervisory authorities and will act as the lead supervisory authority in respect of cross-border processing of personal data by organisations that have their main establishments (from a data processing perspective) in Ireland.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

There have been a number of recent developments in Irish and EU law, with additional legislative reforms expected in the near future.

#### Corporate Law

##### *Corporate Sustainability Reporting Directive (CSRD)*

The CSRD (enacted in January 2023) introduced mandatory sustainability reporting requirements for many companies, requiring them to include extensive sustainability related disclosures in a dedicated section of their annual reports. The CSRD was first transposed into Irish law by Ministerial regulations in 2024.

In early 2025, the European Commission announced the first "omnibus simplification package", which proposed to simplify certain EU ESG laws, including the CSRD. One component of these proposals (the "Stop the Clock" directive) was transposed into Irish law in 2025, delaying the application of the CSRD to most companies by two years. The EU agreed on other, more substantive changes to the CSRD in early 2026. EU member states, including Ireland, now have until 19 March 2027 to transpose the changes to the CSRD into national laws.

#### Employment Law

##### *Pay Transparency Directive*

The EU Pay Transparency Directive aims to enhance pay transparency for employees and candidates for employment and improve access for redress for pay-based discrimination claims. Ireland has until 7 June 2026 to transpose the Directive. Once implemented, Irish employers will be subject to new obligations which are designed to end pay secrecy, enforce the principle of equal pay between men and women and combat discrepancies in pay between men and women.

#### Tax Law

##### *Research and Development Tax Credit*

Earlier this year, the Department of Finance published the Research and Development Tax Credit and Innovation Compass (the "R&D Compass"). This policy document outlines several measures the Irish government is considering to strengthen the R&D tax credit and ensure Ireland remains competitive in the global market. Updates to the R&D tax credit will likely be introduced through a phased approach over the coming years.

#### Technology and Data Protection Law

##### *EU Data Act*

The EU Data Act entered into force on 11 January 2024, and became applicable on 12 September 2025. It establishes rules on access to and use of data generated by connected products and related services, and lays down obligations on data holders to make such data available to users, data recipients and, in certain circumstances, public sector bodies.

Key features include transparency requirements, data access rights for users, obligations on data holders, interoperability requirements, regulation of smart contracts, and rules facilitating switching between cloud and edge services. Certain obligations under the Act apply on a delayed basis.

##### *EU AI Act*

The EU AI Act entered into force on 1 August 2024 and will become applicable on a phased basis over the following years up to August 2027. It imposes differing obligations according to the classification of AI systems.

Prohibitions on unacceptable-risk AI practices have applied since 2 February 2025, governance and general-purpose AI models obligations have applied since 2 August 2025, and the Act will apply generally from 2 August 2026, with an extended transitional period to 2 August 2027 for certain high-risk AI systems.

# JAPAN




## Law and Practice

**Contributed by:**
Junichi Ueda, Etsuko Hara, Nobuto Shirane, Takahiro Hayase, Yutaka Shimoo and Miki Goto
**Anderson Mori & Tomotsune**

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**Anderson Mori & Tomotsune** is a full-service law firm with more than 600 professionals, which is best known for serving overseas companies doing business in Japan since the early 1950s. The team's combined expertise enables it to deliver comprehensive advice on all legal issues that may arise in the course of a corporate transaction (including those related to M&A, finance, capital markets and restructuring/insolvency) and litigation/arbitration. Most Anderson Mori & Tomotsune lawyers are bilingual and experienced with communicating, drafting and negotiating across borders and around the globe. The firm's main office in Tokyo is supported by offices in Osaka, Nagoya, Beijing, Shanghai, Singapore, Hanoi, Ho Chi Minh City, Bangkok, Jakarta, Hong Kong, London and Brussels. The firm's associate, Risa Sakayori, helped write this article.

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# 1. Legal System

## 1.1 Legal System and Judicial Order

In general, Japan is a civil law jurisdiction. Most of Japan's modern legal systems are based on continental European civil law systems. However, the end of the Second World War also saw the introduction of some Anglo-American legal influences.

Under the Constitution, judicial power is held by the courts, which are expressly guaranteed as being independent from other branches of the government. The Japanese court system can broadly be categorised into three tiers, as follows.

- In the first tier, district courts are the main court of first instance for most cases. However, summary courts may act as the court of first instance for small civil claims and minor criminal offences. This tier also broadly includes family courts, which hear family and juvenile delinquency matters. District courts also act as the first level of appeal for some summary court matters.
- In the second tier, there are eight high courts. These act as the general appellate court for district court cases, as well as for some summary court matters.
- In the third tier is the Supreme Court. The Supreme Court will generally only hear appeals of cases that involve specific questions of law.

Cases are generally determined by professional judges. However, in some serious criminal cases (eg, offences that carry a capital sentence), there is a limited use of a jury of laypersons at the court of first instance. As a civil law system, there is no principle of binding judicial precedent in Japan. That being said, Supreme Court decisions are considered to be strongly persuasive and are usually taken into consideration where appropriate.

# 2. Restrictions on Foreign Investments

## 2.1 Approval of Foreign Investments

There is no general requirement for approval of all forms of foreign investment. However, along with certain actions against invested companies by investors, some foreign investments will require prior notification to the authorities (ie, the Minister of Finance and the competent minister). For foreign investments, investors will generally have to wait for 30 days while the authorities examine the investment. These foreign investments include:

- investments from countries with which Japan does not have existing treaties regarding inward direct investments, such as Iraq and North Korea; and
- foreign investments in certain industries, such as agriculture, fishery, manufacturing, infrastructure projects, telecommunications and IT-related industries.

There are several types of exemptions from the prior notification requirement, which depend on the category of investor (ie, qualified financial institutions or not), the category of industries and companies invested in (ie, listed or not), acquired ratio, etc.

During these 30 days, the authorities can issue a legally binding order for the investment to be modified or suspended in particular cases, as explained in **2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance**. Therefore, the requirement for prior notification is, in practice, a form of approval.

## 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

If an investor is required to provide prior notification, the notification should be made from six months to 30 days prior to the intended commencement of the investment.

The authorities will examine the investment from the perspective of national security and the potential effect of the investment on the domestic economy. The authorities may recommend a modification or cancellation of the investment. The investor will still have the discretion to accept or reject the recommendation. However, should the investor reject the recommendation, the authorities can issue a legally binding order for the investment to be modified or suspended.

If an investor is required to provide prior notification but fails to do so, that investor is generally liable to a sentence of imprisonment of up to three years and/

or a fine that will be calculated based on the total value of the investment. However, where the investor is a corporation, a sentence of imprisonment is not applied. The authorities also have the power to order the investor to perform all acts necessary to undo an illegal investment, including disposing of any capital the investor acquired as a result of the illegal investment.

### 2.3 Commitments Required From Foreign Investors

There are no typical conditions. However, as previously mentioned in **2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance**, if an investor is required to provide prior notification, the authorities may recommend a modification or cancellation of the investment and – should the investor reject the recommendation – the authorities can issue a legally binding order for the investment to be modified or suspended.

### 2.4 Right to Appeal

An affected investor can challenge a decision of the authority that negatively affects or suspends the investment to the higher authorities or in court. The challenge to the higher authorities can be made within three months of the date on which the investor becomes aware of the decision of the authorities and within one year of the date on which the decision of the authorities is made. The challenge in the court can be made to the district court within six months of the date on which the investor becomes aware of the decision of the authorities and within one year of the date on which the decision of the authorities is made.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

The most common types of corporate vehicles in Japan are the stock company (*kabushiki kaisha*) and the membership company (*mochibun kaisha*). A stock company is the vehicle that is typically used. In a stock company, the liability of shareholders is limited to the value of their shares and there is generally no assumption of additional liability by the shareholders to creditors of the stock company.

In order to establish a stock company, there is no specified minimum amount of share capital or a minimum number of shareholders. There is also generally no limitation on the purposes for which a stock company can be established to the extent it is commercial, and a stock company can be established for more than one purpose.

As for membership companies, there are three types in Japan:

- the general partnership company (*gomei kaisha*);
- the limited partnership company (*goshi kaisha*); and
- the limited liability company (*godo kaisha*).

The general partnership company and the limited partnership company are less commonly used. The most common membership company is the limited liability company.

In the case of a limited liability company, the liability of the members of the company is limited in the same way as a stock company. The main difference between a limited liability company and a stock company is that, in the case of a limited liability company, only members of the company can hold positions of management – whereas the management of a stock company is not exclusive to members of the company.

### 3.2 Incorporation Process

The main steps involved in the incorporation of a stock company are:

- preparation of the articles of incorporation and the certification of the articles by a notary public;
- determination of the share issuance, share subscription and shareholders at the point of incorporation;
- determination of the appointment of key organs such as the directors; and
- registration of the stock company for incorporation with the relevant authorities.

There are two ways in which share subscription can be done when incorporating a stock company. The party or parties incorporating the stock company may subscribe to all the shares at the time of incorporation, or they may only partially subscribe to the shares, with

the remainder of the shares being subscribed to by external investors. Share subscription that involves external investors typically involves more stringent procedures, in order to provide some degree of protection for the external investors.

### 3.3 Ongoing Reporting and Disclosure Obligations

A stock company must provide, for the inspection of shareholders, the annual financial statements of the stock company at its head office and branch offices at least two weeks before its annual shareholders' meeting. In addition, changes of management and amendments to certain items in articles of incorporation must be registered with the relevant authorities.

A listed stock company has more stringent disclosure obligations, namely:

- financial statements must be disclosed on a semi-annual basis; and
- material corporate information such as a change of the representative director and the declaration of dividends must also be disclosed from time to time.

### 3.4 Management Structures

Although it is possible for a stock company without a board of directors to make decisions concerning the organisation, operations and management via director(s) or the shareholders' meetings, many stock companies have a board of directors that is in charge of making the day-to-day decisions of the company. Depending on the stock company, it may also have other responsibilities, such as appointing:

- company auditor(s);
- a board of company auditors;
- accounting auditor(s);
- accounting adviser(s); and
- other committees.

The company's management structures will be set out in the articles of incorporation.

A shareholders' meeting can make decisions on the operation, etc, of the company. A company must hold at least one shareholders' meeting in a year.

For companies with a board of directors, the types of decisions that can be made by a shareholders' meeting are limited to those that are stipulated in the Companies Act and the articles of incorporation. In general, decisions relating to the management of the company should be decided by the board of directors.

The board must consist of at least three directors, who are to be elected at the shareholders' meeting. Resolutions of the board must be passed via a majority vote of the directors present at the meeting.

There must be at least one representative director. Representative directors have the power to represent the company – for example, they may execute documents as a representative of the company with third parties.

The company should be audited by the company auditor(s), the board of the company auditors, or external auditors (as the case may be), who will also audit the directors' execution of duties.

### 3.5 Directors', Officers' and Shareholders' Liability

The directors of the stock company have a legal duty of care to execute their duties according to the standard of a reasonably prudent manager. The directors also owe a duty of loyalty to the stock company and must comply with the relevant laws and regulations when executing their duties.

If the directors neglect their duties, they may be liable to the company for the damages caused as a result of the neglect. A director can be exempt from liability via a unanimous vote of all shareholders. There are no articles in the Companies Act that state directors may be liable to the company for damages arising from the performance of the directors' functions, where the performance does not amount to a neglect of duties.

While there is some recognition of piercing the corporate veil in Japan, this is not founded on statutory law and only exists as a matter of judicial precedent.

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

There are many labour-related and employment-related laws and regulations in Japan, all of which were enacted to embody the fundamental principles and rights contained in the Constitution. In particular, the Labour Standards Act (LSA) and the Labour Contracts Act (LCA) provide for the fundamental principles of individual employment relationships, whereas the Labour Union Act (LUA) provides for the fundamental principles of collective labour relationships.

Japan is a country with a civil law system, in which judicial precedents do not have legally binding force. However, in the field of labour and employment law, judicial precedents are considered very important, as it is often difficult to make decisions based solely on the laws and regulations. This is because most of the provisions under those laws and regulations only provide for the basic rules and are therefore abstract in nature.

### 4.2 Characteristics of Employment Contracts

#### Form of Employment Contract

An employment contract may be executed verbally. However, to avoid any misunderstandings regarding major working conditions, the LSA and other applicable laws and regulations require an employer to prepare a document clearly describing those major working conditions and to deliver it to a new employee upon entering an employment contract (eg, Article 15 of the LSA). Examples of major working conditions include:

- the term of employment;
- the location of the workplace (including whether and to what extent the location of the workplace may be subsequently changed);
- the job description (including whether and to what extent the job description may be subsequently changed);
- the working hours;
- whether overtime work or work on holidays will be necessary;
- a description of holidays;
- the leave policy;
- the wages to be paid; and
- the grounds and procedures for termination of employment.

In addition, if an employer usually employs ten or more employees, the employer must establish the rules of employment, which consist of a set of documents stipulating the specific details of the working conditions. A copy of the rules of employment must also be submitted to the Labour Standards Inspection Office together with a written opinion regarding the rules of employment from either:

- a trade union to which a majority of the employees of the workplace concerned belong (majority trade union); or
- if such a union does not exist, an employee representing a majority of the employees at the workplace concerned (employee representative) (Articles 89 and 90 of the LSA).

The contents of the rules of employment must be made available to the employees at all times for inspection (Article 106 of the LSA).

#### Duration of Employment Contract

The two main types of employment contract that exist in Japan are:

- those with a fixed term; and
- those with an indefinite term.

In practice, regular employees are usually hired for an indefinite term.

Under the LSA, the maximum duration of each fixed-term employment contract is three years. However, the maximum duration of each fixed-term employment contract is five years for:

- certain specialists; and
- employees who are 60 years of age or older (Article 14 of the LSA).

Although the maximum duration of each fixed-term employment contract may not exceed three years (or five years in the case of employees who are 60 years of age or older and certain specialists), the employer

may renew the fixed-term employment for more than the maximum duration.

There is no explicit minimum duration for a fixed-term employment contract. However, the LCA provides that an employer must not set a shorter term than is necessary (Article 17, paragraph 2 of the LCA).

Under the LCA, a fixed-term contract employee who has been, or is expected to be, employed by their employer for more than five years is allowed to convert their employment contract to an indefinite-term employment contract upon request to their employer (Article 18 of the LCA). In addition, even if a fixed-term contract employee has not been (or is not expected to be) employed by their employer for more than five years when the employer decides not to renew the fixed-term employee's contract upon its expiry, the employer must have an "objectively legitimate and socially justifiable cause" (see **4.4 Termination of Employment Contracts**) for such non-renewal if:

- the status of the fixed-term employment contract is not substantively different from an employment contract without a definite period (eg, as a result of repeated renewals of the contract); or
- the fixed-term contract employee has a reasonable expectation that their fixed-term employment contract will be renewed (Article 19 of the LCA).

## 4.3 Working Time

### Basic Working Time Regulations

As a general rule, employees' working hours may not exceed eight hours per day or 40 hours per week (Article 32 of the LSA). Any work exceeding eight hours per day or 40 hours per week is recognised as statutory overtime work.

A rest period of at least 45 minutes must be granted during working hours to employees who work for more than six hours per day and a rest period of at least 60 minutes must be granted to employees who work for more than eight hours per day. As a general rule, the employer must grant all of its employees a simultaneous rest period (Article 34 of the LSA).

Employees are also entitled to take at least one day of holiday per week (statutory weekly holiday) (Article 35 of the LSA).

### Article 36 Agreement

In order to have employees perform statutory overtime work or work on a statutory weekly holiday, the employer is required to execute a labour management agreement (*saburoku kyotei*, or "Article 36 agreement") with the majority trade union (or, if such a union does not exist, with the employee representative) and submit it to the Labour Standards Inspection Office prior to having the employees commence any statutory overtime work or work on statutory weekly holidays (Articles 32, 35 and 36 of the LSA). In addition, the employer must refer to the possibility of statutory overtime work and work on statutory weekly holidays in the rules of employment (if any) in advance of requiring the overtime or holiday work.

### Extra Wages

When an employee has performed statutory overtime work or work on a statutory weekly holiday, the employer must pay extra wages for that work calculated at the rate of:

- 125% of the normal salary per hour of statutory overtime work for up to 60 hours per month and 150% thereof if the statutory overtime work hours exceed 60 hours per month; or
- 135% of the normal salary per hour of work on a statutory weekly holiday (Article 37 of the LSA).

In addition to the above-mentioned extra wages, an employee working between 10pm and 5am is entitled to an extra payment in accordance with a late-night work compensation at the rate of at least 25% of the normal salary per late-night working hour (Article 37 of the LSA).

### Employees in Managerial Positions

Employees in managerial positions are entitled to receive an extra wage for late-night work but are not entitled to receive extra wages for statutory overtime work and work on statutory holidays (Article 41 of the LSA). Whether an employee is in a managerial position depends on various factors, such as:

- the actual content and nature of the work performed by the employee;
- the authority, responsibility and manner in which work is performed; and
- the salary and other compensation.

The scope of employees in managerial positions is generally quite narrowly interpreted based on judicial precedents.

## 4.4 Termination of Employment Contracts

### Unilateral Dismissal in General

When an employer unilaterally dismisses an employee, the employer must have an "objectively legitimate and socially justifiable cause" for the dismissal (Article 16 of the LCA). Otherwise, the dismissal is deemed to be an abuse of right and would therefore be null and void. There is no doctrine of employment at will in Japan. It is generally understood that the following five reasons constitute an "objectively legitimate and socially justifiable cause" for a unilateral dismissal:

- inability of the employee to offer their labour to an employer, mainly because of physical or mental disability or extremely poor performance;
- infringement of the disciplinary rules in the workplace by the employee's serious misconduct;
- redundancy;
- termination due to an agreement with a trade union; or
- termination due to an employer's liquidation if an employer is a corporate entity.

In addition, the employer must give the employee at least 30 days' prior notice of the unilateral dismissal or make payment in lieu of the notice (LSA, Article 20). Except as agreed in an employment contract or the rules of employment, an employee is not entitled to any other monetary compensation upon a unilateral termination of employment.

### Redundancy

A unilateral dismissal due to redundancy may occur where an employer wishes to continue business operations in Japan with a reduction in the number of employees. In this case, the employer must demonstrate an "objectively legitimate and socially justifiable cause" for the dismissal by satisfying all of the following factors.

- The shedding of employees is justified by a strong financial or business necessity, such that it would be extremely difficult for the employer to continue its business without implementing a reduction in the number of employees (and not merely the fact that the employer would be more profitable if the employees were dismissed).
- The employer has already endeavoured to take all reasonable means to avoid dismissal of employees, such as facilitating intra-company transfers (or, in some cases, associated-company transfers), offering voluntary resignation with a certain amount of severance compensation, and reducing other operating costs.
- The selection of employees for termination was conducted in a fair manner and in accordance with a reasonable and objective standard established by the employer. In other words, the selection criteria must be fair and rational, and must not be based on the employees' gender, membership of a trade union, race, creed, or any other discriminatory reason.
- Sincere attempts at discussion or negotiation were undertaken, either with employees or their representatives (including a trade union, if applicable), but were unsuccessful.

The regulations regarding notice period and monetary compensation are the same as those applicable to unilateral dismissal due to redundancies.

## 4.5 Employee Representations

### Employee Representative

As explained in **4.2 Characteristics of Employment Contracts**, when an employer establishes the rules of employment, the employer must obtain a written opinion of the majority trade union (or, if such a union does not exist, of the employee representative). Similarly, if an employer intends to execute certain labour management agreements (eg, an Article 36 agreement), these agreements must be executed with the majority trade union (or, if such a union does not exist, with the employee representative). An employee representative must be elected by a majority vote or majority consent of the employees.

### Trade Union

Under the Constitution, workers have the right to:

- form and join unions;
- bargain collectively through the unions to which they belong; and
- engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection (Article 28 of the Constitution).

A union may represent its members' interests in bargaining with their employer(s) in relation to their working conditions or other treatment of those members. A union does not need authorisation from administrative agencies to represent its members in bargaining with their employer(s).

If a union requests a collective bargaining session, the employer may not reject that request without a reasonable cause (Article 7, item 2 of the LUA).

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/ Employers

Employees are subject to income tax and local inhabitant tax in relation to their salary, and their employers must pay the taxes to national and local governments.

For the purpose of Japanese income tax, an individual (including an employee) is categorised as:

- a permanent resident;
- a non-permanent resident; or
- a non-resident.

A resident is defined as any individual who has their residence (*jusho*) in Japan or who has had their temporary residence (*kyosho*) in Japan for more than one year. A permanent resident is defined as a resident other than a non-permanent resident (as defined below) and is subject to income tax with regard to all of their income (including salary, hereinafter the same in this section) accrued inside and outside Japan.

On the other hand, a non-permanent resident – who is defined as any individual who is a resident of Japan, but who is not a Japanese national and who has had residence in Japan or temporary residence in Japan for five years or fewer in total during the past ten years – is subject to income tax only with regard to income other than foreign-sourced income and any amount of foreign-sourced income that is paid in or transmitted to Japan. A non-resident (ie, any individual other than any type of resident) is subject to income tax only with regard to domestic (Japan)-sourced income. This type of income includes salaries received for work or personal services carried out in Japan or, if outside Japan, by a person acting as an officer of a Japanese corporation.

For the employment earnings of a permanent resident or a non-permanent resident who has submitted a certain application and whose individual income does not exceed JPY20 million per year, such an employee will only be subject to withholding tax and need not file their own tax return. Instead, the employer will be responsible for the calculation and payment of the employees' taxes. This system, especially the year-end recalculation procedure of the system, is called the "year-end adjustment system" (*nenmatsu chousei*) of tax payment. The income tax rates are progressive and the maximum rate is 45% (excluding local income tax).

In addition, reconstruction special income tax will be imposed on income tax at a rate of 2.1% from 2013 to 2047 (from 2027, a rate of 1% will be replaced for defence special income tax). Please see the following progressive income tax rates (including reconstruction special income tax):

- 5.105% (for the portion of taxable income of JPY1.95 million or less);
- 10.21% (for the portion of taxable income of more than JPY1.95 million to less than JPY3.3 million);
- 20.42% (for the portion of taxable income of JPY3.3 million to less than JPY6.95 million);
- 23.483% (for the portion of taxable income of JPY6.95 million to less than JPY9 million);
- 33.693% (for the portion of taxable income of JPY9 million to less than JPY18 million);
- 40.84% (for the portion of taxable income of JPY18 million to less than JPY40 million); and

- 45.945% (for the portion of taxable income of JPY40 million or more).

Employees and their employer jointly contribute in equal parts to employee social expenses, such as national health insurance premiums and employees' pension insurance premiums.

In addition, if an employee dies, their heirs would be subject to inheritance tax. In general, inheritance tax is imposed both on domestic and foreign assets. However, depending on the nationalities and residence period of the decedent and their heirs in Japan, the taxable assets may be limited to domestic ones in some situations. By way of example, in cases where foreign individual Japanese residents with certain types of working visas die in Japan, their heirs without Japanese nationality would be subject to inheritance tax only on domestic assets, as long as they:

- are not Japanese residents at the time of the decedent's death; or
- have lived in Japan with certain types of visas for a period not exceeding ten years in the past 15 years before the decedent's death.

### 5.2 Taxes Applicable to Businesses

A company doing business in Japan is subject to various taxes.

Corporate income tax must be paid where a company has its head office or principal office in Japan (such a company is a domestic corporation). If a company does not have its head office or principal office in Japan, such a company is a foreign corporation. For foreign business operators, several exceptional rules would apply. The company must only pay corporate income tax on domestic-sourced income. As for some categories of income, such as dividends and interest, income tax will be withheld at the time of payment, but corporations can credit the amount of such income tax from the amount of corporate income tax subject to certain limitations.

Inhabitant tax and enterprise tax must be paid if a company has its head office or principal office in Japan or has its permanent establishment in Japan.

Consumption tax, which is a type of VAT, must be paid if a company conducts certain kinds of transactions, such as:

- sales of goods, leases of goods and provisions of services in Japan;
- certain categories of digital services provided to Japan; and
- importation transactions.

Notwithstanding the foregoing, with some exceptions (eg, where a company's capital is JPY10 million or more), consumption tax will be exempted if the amount of taxable sales in the base period – which is the fiscal year two years prior to the current fiscal year – is less than JPY10 million. Under the qualified invoicing system, a buyer who claims an input (purchase) consumption tax credit is required to receive and retain invoices that are issued by a registered seller and include certain types of information.

In addition to the foregoing, there are other taxes, including:

- fixed property tax;
- stamp duty;
- registration tax; and
- real estate acquisition tax.

Regarding Pillar Two of the OECD's Two Pillar solution, the Income Inclusion Rule (IIR) was firstly implemented under the 2023 tax reform in Japan and came into force on 1 April 2024. The IIR specifically applies to the ultimate parent corporation of a multinational corporation group, the consolidated revenue of which is equivalent to no less than EUR750 million in two or more accounting business years in the four most recent consolidated accounting business years.

In addition, the Undertaxed Profits Rules (UTPR) and the Qualified Domestic Minimum Top-up Tax (QDMTT) also apply to the financial years starting on or after 1 April 2026.

The IIR has a certain exemption that is equivalent to the de minimis rule. In addition, there are transitional safe harbours according to the content of country-by-country (CbC) reporting – for example, the de minimis

test, simplified effective tax rate test and routine profits test. Based on the side-by-side package agreed by the OECD on 5 January 2026, these safe harbours will be amended under the 2026 tax reform in order to maintain consistency with that package.

### 5.3 Available Tax Credits/Incentives

Corporations can credit the amount of income tax withheld at source from the amount of corporate income tax imposed. Income tax withheld at source is theoretically recognised as corporate income tax that is collected in advance and therefore this amount can be deducted from the final tax amount.

Domestic corporations are eligible to credit the amount corresponding to corporate income taxes paid in foreign countries from the amount of corporate income tax imposed in Japan – although the amount of this credit is subject to certain limitations. The purpose is to avoid the multiple imposition of tax in different countries on the same income. Foreign corporations that have permanent establishments in Japan are also allowed to claim foreign tax credit with regard to income, which is attributable to their permanent establishments in Japan and taxable status in Japan.

There are also various tax exemptions or tax reductions that encourage investments and R&D in Japan. By way of example, companies that file a blue form tax return are eligible to credit a certain percentage of R&D expenditure from the amount of corporate income tax.

### 5.4 Tax Consolidation

There are two regulatory frameworks in Japan in respect of a group taxation scheme: the full controlling interest framework and the group calculation framework.

The full controlling interest framework is mandatory and applies to intra-group transactions (including transactions involving transfers of assets, losses, dividends and interest) where all companies in the group are wholly owned (whether directly or indirectly) by the ultimate parent of the group, regardless of whether the ultimate parent is a foreign or domestic company or individual, provided that the parties to the relevant transaction are domestic companies. Under this regulatory framework, taxation on intra-group profits from transfers of certain kinds of assets – such as fixed assets, securities, monetary claims and deferred assets ("qualifying assets") – is deferred until those assets are transferred outside the group.

Additionally, intra-group contributions, donations and dividends are disregarded. If the full controlling interest framework is applied, certain tax incentives to which corporations with stated capital of JPY100 million or less are normally entitled would no longer be available to an SME that is fully controlled by a large corporation with a stated capital of JPY500 million or more.

On the other hand, the group calculation framework – if approved by the Commissioner of the National Tax Agency (NTA) – is only applicable to groups in which all companies are wholly owned (whether directly or indirectly) by the ultimate parent of the group and where the companies of the group consist only of domestic companies. Under this framework, corporate income tax is calculated on a group-wide basis (ie, offsetting profit and loss among the group corporations), but is payable by each group corporation.

For group corporations, unrealised profits and losses of qualifying assets will not be imputed to taxable income or losses, as long as certain requirements (which are consistent with those of tax-qualified reorganisation) are met (eg, where these subsidiaries are expected to remain directly or indirectly wholly owned). The Certain Net Operating Loss (NOL) Limitation or Japanese Separate Return Limitation Year Rule is also applied to group corporations.

In addition, under the group calculation framework, taxation on profits from intra-group transfers of assets is deferred until those assets are transferred outside the group. Intra-group contributions, donations and dividends are also disregarded under the group calculation framework.

### 5.5 Thin Capitalisation Rules and Other Limitations

Japanese tax law includes thin capitalisation rules. Under these rules, if interest is paid to a foreign controlling shareholder by a domestic corporation while

the payer's average interest-bearing debt to the foreign controlling shareholder in the financial year exceeds three times the value of the foreign controlling shareholder's equity interest in the payer in the said financial year, the interest income related to the excess debt will not be deductible from the payer's taxable income.

However, a domestic corporation may apply a different debt-to-equity ratio (instead of three times) if it can prove that a different ratio is appropriate in light of the debt-to-equity ratio of similar corporations. A domestic corporation may also benefit from the safe harbour provision if the average aggregate debt in the financial year does not exceed three times the value of the equity interest in the payer in said financial year.

In addition, under the earnings-stripping rules – with some exceptions – when interest payments (excluding those that are included in the taxable income of a recipient under Japanese tax laws) exceed 20% of the statutory adjusted income of the payer, the portion of interest payments exceeding 20% of the statutory adjusted income of the payer is generally not deductible from the payer's taxable income in the financial year. The earnings-stripping rules are also applicable to the calculation of a foreign corporation's Japan-sourced income, even if such income is not attributable to the permanent establishment of the foreign corporation in Japan or if the foreign corporation has no permanent establishment in Japan.

However, the excess portion is carried forward for seven financial years (ten financial years for the financial years starting from 1 April 2022 to 31 March 2025) and can be used as deductible expenses until the total amount of deductible expenses reaches a 20% threshold in each of the following seven financial years.

## 5.6 Transfer Pricing

Under Japanese transfer pricing rules, a domestic corporation that transacts with related foreign entities (such as a foreign parent corporation) will – if the transaction involves non-arm's length consideration – be liable for tax calculated based on an arm's length consideration imputed on the transaction. In calculating the appropriate arm's length consideration, the tax authority will apply the most suitable statutory method of calculation available.

The tax authority will typically request further information from the taxpayer in order to help the authority calculate an appropriate arm's length consideration. Where a taxpayer fails to adequately respond to these requests, or does not promptly provide this information, the tax authority will have the right to determine the arm's length consideration as it deems fit based on reasonable assumptions applicable to the relevant statutory method of calculation.

In addition, in terms of transfer price documentation, four types are required:

- a Notification for Ultimate Parent Entity (NUPE) form;
- a CbC report;
- a master file; and
- a local file.

Of these, the former three types of documentation are applicable to subsidiaries or branches in Japan that are constituent entities of a specified multinational enterprise (MNE). The local file is applicable to all corporate taxpayers engaging in transactions with foreign affiliates.

## 5.7 Anti-Evasion Rules

Japanese tax laws contain general avoidance rules such as the disallowance of acts or calculations:

- by family-owned corporations;
- in relation to organisational restructuring;
- by corporate groups of the group calculation framework; and
- regarding foreign entity profits that are attributable to a permanent establishment.

These anti-evasion rules have recently been applied especially to several corporate intra-group reorganisations. Those cases subsequently developed into tax disputes.

## 5.8 Tariffs

Tariffs are imposed on various types of imported goods. However, certain goods, such as iron ore,

wool, cotton, photographic film, rubber tyres and machinery, are generally exempt from tariffs.

The applicable tariff rate depends on the classification of goods under the International Convention on the Harmonized Commodity Description and Coding System (the "HS Treaty"). Additionally, countries or regions that are members of the World Trade Organization (WTO) or have executed relevant treaties with Japan, such as an Economic Partnership Agreement (EPA), may benefit from tariff exemptions or preferable tariff rates.

For more details of applicable tariff rates, Japan Customs provides "Japan's Tariff Schedule", which is accessible on its website.

## 6. Competition Law

### 6.1 Merger Control Notification

Prior notification is required for share acquisitions, mergers, splits, joint share transfers and acquisitions of business or assets, etc, that meet certain criteria.

The filing thresholds are different for each of these transactions. The major transactions and their thresholds are as follows.

- For share acquisitions:
  - (a) the total sales in Japan of the acquiring company and other companies within the same combined business group as the acquiring company must exceed JPY20 billion;
  - (b) the total sales in Japan of the acquired company and all of its subsidiaries must exceed JPY5 billion; and
  - (c) the ratio of voting rights of the acquiring company upon the acquisition must newly exceed 20% or 50%.
- For mergers:
  - (a) the total sales in Japan of at least one party to the merger and other companies within the same combined business group as the party must exceed JPY20 billion; and
  - (b) the total sales in Japan of at least one other party to the merger and other companies within the same combined business group as the other party must exceed JPY5 billion.
- For acquisitions of business or assets, etc:
  - (a) the total sales in Japan of the acquiring company and other companies within the same combined business group as the acquiring company must exceed JPY20 billion; and
  - (b) the total sales in Japan attributable to the business or assets to be acquired by the acquiring company must exceed JPY3 billion.

Please note that the "combined business group" of a party refers to a group consisting of the ultimate parent company of the party and the subsidiaries of the ultimate parent company. No filing is required for a transaction within the same combined business group.

For joint ventures, it is necessary to analyse whether each step of a transaction to establish a joint venture constitutes one of the above-mentioned types of transactions that would be subject to the prior notification requirement, and whether the relevant filing thresholds are met.

Even where a contemplated transaction is not subject to the prior notification requirement, if the transaction would substantially restrain competition in any relevant market, the transaction would be prohibited under the Antimonopoly Act.

According to the Policies Concerning Procedures of Review of Business Combination (as amended in 2026), the Japan Fair Trade Commission (JFTC) recommends voluntary consultation for transactions that do not meet the mandatory filing thresholds only because the acquired company does not satisfy the monetary thresholds, but that have an acquisition value exceeding JPY40 billion, if one or more of the following factors are met:

- the business base or R&D base of the acquired company is located in Japan;
- the acquired company conducts sales activities targeting Japanese consumers, such as providing a website or a pamphlet in Japanese; or
- the total sales in Japan of the acquired company and its subsidiaries exceed JPY100 million.

### 6.2 Merger Control Procedure

If a contemplated transaction is subject to the prior notification requirement, the relevant enterprises are prohibited from closing the transaction for a period of 30 calendar days after formal filing (Phase I review period, commonly referred to as the waiting period). If the JFTC forms the view that the transaction does not give rise to concerns about competition, the JFTC issues a clearance within the Phase I review period. However, if the JFTC forms the view that a more detailed review is required, the review process moves into a Phase II review.

At the beginning of the Phase II review, the JFTC will request additional information and the Phase II review will continue for 120 calendar days from the formal filing or 90 calendar days from the date of the receipt of all the additional information requested – whichever is the longer period.

Parties planning to file a notification may consult the JFTC not only on the descriptions of the notification form, but also on substantive issues such as market definition and competitive assessment at the pre-notification stage. In practice, unless the transaction is very straightforward without any potential substantive issues, it is common to go through the pre-notification consultation, and the JFTC commences its review of the market situation and the potential substantive issues at the pre-notification stage.

If it is evident that the transaction would not restrain competition in any relevant market and the notifying parties request the JFTC to shorten the waiting period in writing, the JFTC may shorten the waiting period.

### 6.3 Cartels

Certain anti-competitive agreements and practices such as price fixing and bid rigging are prohibited as an unreasonable restraint of trade under the Antimonopoly Act. Unreasonable restraint of trade is defined as business activities by which any enterprise, in concert with other enterprises, mutually restricts or conducts their business activities in such a manner as to fix, maintain or increase prices, or to limit production, technology, products, facilities or counterparties, thereby causing a substantial restraint of competition in any relevant market.

As for the interpretation of the elements of unreasonable restraint of trade, it is worth noting that – although "substantial restraint of competition" is one such element – the JFTC can easily prove that such a requirement is satisfied in the case of extreme cartel behaviour such as price fixing and bid rigging. It would therefore be difficult to justify extreme cartel behaviour in practice.

Major methods of enforcement against unreasonable restraint of trade are cease-and-desist orders and surcharge payment orders. However, criminal penalties are also available. The amendment to the surcharge payment system came into effect on 25 December 2020. The amount of surcharge is calculated by multiplying the amount of sales of the target products or services during the period in which the unreasonable restraint of trade occurred (the maximum period is ten years) by the surcharge percentage rate. The rate is 10% in principle but can be lower, depending on the size of the alleged violators, or higher if there are aggravating factors (such as repeated violation).

A leniency system for an unreasonable restraint of trade is available in Japan. The surcharge reduction rate, which was amended on 25 December 2020, is determined in accordance with the order of application for leniency as well as the degree of co-operation by the offender with the JFTC. In addition, a determination procedure was introduced on 25 December 2020 to protect attorney–client communications in respect of legal advice regarding the alleged violations to which leniency is applicable (the "Specified Communication"). The scope of the protection under the determination procedure is limited compared to that which is available in similar circumstances in the USA or the EU. The requirements for qualifying for protection under the determination procedure include that:

- the fact that the contents of the Specified Communication are recorded is indicated on the document itself (eg, "Specified Communications under JFTC Investigation Rules" is written or printed on the cover);
- the documents are stored separately from other documents that are not subject to the determination procedure;

- the scope of persons who are aware of the contents of the relevant documents is limited to those who need to know them (eg, persons who are, or were, responsible for consulting with attorneys on behalf of the company); and
- the company submits an application form for the determination procedure as well as a privilege log that states an outline of the relevant documents.

A Supreme Court decision confirmed that, even where the alleged price cartel occurred outside Japan, the Antimonopoly Act can apply if the cartel impedes competition in the Japanese market.

### 6.4 Abuse of Dominant Position

Certain types of unilateral conduct and economic dependency are prohibited as private monopolisation and unfair trade practices under the Antimonopoly Act.

Private monopolisation is defined as any conduct that excludes or controls the business activities of other enterprises, thereby causing a substantial restraint of competition in any relevant market. The methods of enforcement against private monopolisation include:

- cease-and-desist orders;
- surcharge payment orders; and
- criminal punishment.

Various types of conduct are designated as unfair trade practices, such as:

- refusal to trade;
- unjustly low-priced sales;
- resale price restrictions; and
- abuse of superior bargaining positions.

Under economic dependency regulations, abuse of superior bargaining positions is the major type of misconduct to be considered, and enterprises are prohibited from imposing terms and conditions that are disadvantageous to other enterprises by unjustly leveraging their superior position over other enterprises.

All types of unfair trade practices can be subject to cease-and-desist orders. However, the surcharge payment order and/or criminal penalties are only applicable to certain types of unfair trade practices.

For conduct to be considered as private monopolisation, it is necessary to prove that it results in a substantial restraint of competition. On the other hand, a tendency to impede competition is all that is required for conduct to fall within the scope of unfair trade practices. In other words, it can be said that a higher threshold (regarding detrimental effect) needs to be satisfied in order to show the existence of private monopolisation, in comparison to unfair trade practices.

Although extraterritorial applicability of regulations on private monopolisation and unfair trade practices is not such a prominent topic of discussion, it nevertheless appears the same approach is taken towards unreasonable restraint of trade as is likely to be taken in relation to private monopolisation.

The commitment procedure, which is a scheme for voluntarily resolving suspected violations via mutual consent between the JFTC and the relevant enterprise, came into effect in December 2018. As of June 2026, 27 cases regarding private monopolisation and unfair trade practices have been resolved through the commitment procedure.

## 7. Intellectual Property

### 7.1 Patents

The Intellectual Property Basic Act of Japan recognises the importance of IP protection as well as the idea of creating a vibrant economy and society by creating new IP. In Japan, IP is mainly protected by:

- the Patent Act;
- the Utility Model Act;
- the Trademark Act;
- the Design Act;
- the Plant Variety Protection and Seed Act;
- the Act on the Circuit Layout of Semiconductor Integrated Circuits;
- the Copyright Act; and
- the Unfair Competition Prevention Act.

Patent rights, etc, are granted by registering with the Japan Patent Office. The Copyright Act, on the other hand, protects copyrights without requiring any special formalities. Although there is no property right

attached to trade secrets, the Unfair Competition Prevention Act protects trade secrets as "legally protected interests".

Japan is a party to:

- the Patent Cooperation Treaty;
- the Paris Convention for the Protection of Industrial Property;
- the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks;
- the Hague Agreement Concerning the International Registration of Industrial Designs;
- the Berne Convention;
- the International Convention for the Protection of New Varieties of Plants; and
- other major IP-related treaties.

A person that invents an invention with industrial applicability is entitled to obtain a patent for that invention. "Invention" in the Patent Act is defined as a highly advanced creation of technical ideas utilising the laws of nature.

A person applying for a patent must submit a written application to the Japan Patent Office. A description, scope of claims, required drawings and a summary must be attached to the application. The legal requirements for obtaining a patent are:

- industrial applicability;
- novelty; and
- inventive step.

A patent right will become effective upon successful registration. The duration of a patent right, in principle, expires after a period of 20 years from the filing date of the original application. The patent holder has an exclusive right to commercially exploit the patented invention.

As for remedies for infringement, the patent holder may file a claim for:

- an injunction;
- disposal of infringing compositions, etc;
- damages;
- restoration of credibility; or
- restitution of unjust enrichment.

There are presumptive provisions regarding the amount of damages that may arise as a result of the infringement of patent rights.

Acts of importing products that infringe patent rights are subject to border control measures under the Customs Act. Any intentional infringement of a patent right is also subject to criminal penalties.

### 7.2 Trade Marks

An applicant may apply to register a trade mark to be used in connection with goods or services pertaining to the business of the applicant. "Trade mark" in the Trademark Act is defined as:

- any character, figure, sign or three-dimensional shape or colour, or any combination thereof;
- sounds; or
- anything else specified by cabinet order that can be perceived by people.

A person requesting a trade mark registration must submit a written application to the Japan Patent Office. Upon filing an application, one or more goods or services for which the trade mark will be used must be described in the written application. The legal requirements for the registration of a trade mark are that:

- the trade mark is to be used in connection with the goods or services for which the trade mark is registered;
- the trade mark is capable of distinguishing itself from other goods or services; and
- the trade mark is not unregistrable for reasons of public interest.

A trade mark right will become effective upon successful registration. The duration of a trade mark right is ten years from the date of registration, but may be renewed by the holder of the trade mark right by filing an application for registration of renewal.

The holder of a trade mark right will have an exclusive right to use the registered trade mark in connection with the designated goods or designated services. The holder of the trade mark right may also prohibit a third party from using a trade mark that is similar to the registered trade mark.

As for remedies for infringement, the holder of a trade mark right may file a claim for:

- an injunction;
- disposal of infringing compositions, etc;
- damages;
- restoration of credibility; and
- restitution of unjust enrichment.

There are presumptive provisions regarding the amount of damages that may arise as a result of trade mark infringement.

Acts of importing goods that infringe trade mark rights are subject to border control measures under the Customs Act. Any intentional infringement of a trade mark right is also subject to criminal penalties.

### 7.3 Industrial Designs

A creator of a design that is industrially applicable may be entitled to obtain a design registration for that design. "Design" in the Design Act is defined as:

- the shape, patterns or colours – or any combination thereof – of an article (including a part of an article) or a building (including a part thereof); or
- a graphic image on a screen (including a part thereof; but such protection of a graphic image or a part thereof is limited to those for use in the operation of a device or those displayed as a result of a device performing its functions) that creates an aesthetic impression through the eye.

Building interior designs are also eligible for a design registration under the Design Act.

A person requesting a design registration must submit a written application to the Patent Office. Drawings, photographs, models or specimens must be attached to the written application. The legal requirements for obtaining a design registration are:

- industrial applicability;
- novelty; and
- that the design is innovative and without precedent.

A design right will become effective upon registration. The duration of a design right, in principle, expires 25 years from the date of the application for design registration. The holder of a design right has the exclusive right to commercially exploit the registered design and designs similar thereto.

As for remedies for infringement, the holder of a design right may file a claim for:

- an injunction;
- disposal of infringing compositions, etc;
- damages;
- restoration of credibility; or
- restitution of unjust enrichment.

There are presumptive provisions regarding the amount of damages that may arise as a result of an infringement of design rights.

Acts of importing products that infringe design rights are subject to border control measures under the Customs Act. Any intentional infringement of a design right is also subject to criminal penalties.

### 7.4 Copyright

A person who creates a work (the author) enjoys the moral rights of an author and the copyright with regard to the work. "Work" in the Copyright Act is defined as a creatively produced expression in which thoughts or sentiments are expressed and that falls within the literary, academic, artistic or musical domain.

The moral rights of authors include:

- the right to make a work public;
- the right to attribution; and
- the right to integrity.

The copyright includes the right of:

- reproduction;
- stage performance and musical performance;
- on-screen presentation;
- public transmission;
- recitation;
- exhibition;
- distribution;

- transfer;
- rental; and
- adaptation.

Certain neighbouring rights are also granted to performers, producers of phonograms, broadcasters, and cable-caster organisations.

There are no formalities that have to be met in order to enjoy legal rights under the Copyright Act.

The duration of a copyright begins at the time the work is created. A copyright subsists for a period of 70 years after the death of the author.

The copyright does not prohibit (and hence does not restrain other persons from):

- the reproduction of the work for private use;
- the exploitation of works concerning incidental subjects;
- work in the course of consideration; and
- any other exceptions separately provided for in the Copyright Act.

In recent years, a number of more flexible exceptions have been introduced to promote the use of AI and big data.

If the ownership of copyright is transferred to another person, the licensee has the right to continue to use the work as a matter of course.

As for remedies for infringement, the author, the copyright holder, the holder of the right of publication, the performer or the holder of the neighbouring rights may file a claim for:

- an injunction;
- disposal of infringing compositions, etc;
- damages;
- restoration of credibility; or
- restitution of unjust enrichment.

There are presumptive provisions regarding the amount of damages that may arise as a result of an infringement of copyrights.

Acts of importing products infringing copyrights are subject to border control measures under the Customs Act.

Any intentional infringement of a copyright is also subject to criminal penalties. A copyright infringement is, in principle, a crime subject to prosecution after a complaint has been made. However, following the conclusion of the Trans-Pacific Partnership Agreement, distributing pirated copies of movies over the internet has become a crime in and of itself, and no longer requires a complaint.

### 7.5 Others

Devices relating to the shape or structure of an article or a combination of articles are protected by the Utility Model Act without any requirement for a substantial examination to be conducted.

Computer programs contained in software are mainly protected by the Copyright Act as copyrighted works of program. Software-related inventions may also be granted patents, provided that they involve hardware control or process-using hardware. Designs, flowcharts and manuals contained in software are protected by the Copyright Act as copyrighted works of language or of diagrams.

No sui generis database right exists in Japan. Copyright protection extends to databases if they constitute a creation by reason of the selection or systematic construction of information contained therein.

Trade secrets are protected by the Unfair Competition Prevention Act. “Trade secret” in this Act is defined as technical or business information useful for business activities, such as manufacturing or marketing methods, that are kept secret and that are not publicly known. A trade secret infringement may give rise to a suit for an injunction, a claim for damages or a claim for recovery of credit, etc.

There are presumptive provisions regarding the amount of damages that may arise as a result of an infringement of trade secrets. In a lawsuit for the infringement of business interests by unfair competition, if a court decides that it is necessary to maintain the secrecy of trade secrets held by a party to the

lawsuit, a confidentiality protective order or a suspension of disclosure (including omitting an examination of the parties) may be issued. A trade secret infringement with a high degree of illegality is also subject to criminal penalties.

New plant varieties are protected by the Plant Variety Protection and Seed Act.

The circuit layout of semiconductor integrated circuits is protected by the Act on the Circuit Layout of Semiconductor Integrated Circuits.

## 8. Data Protection

### 8.1 Applicable Regulations

The Act on the Protection of Personal Information (APPI) is the main piece of legislation governing the handling of personal information by business operators (information handlers) in Japan. Examples of APPI regulations with which information handlers are required to comply are as follows.

#### Purposes of Use

An information handler must specify the purposes for which it will process personal information and must not process personal information beyond the scope of the specified purpose without first obtaining the consent of the relevant data subject (Articles 17 and 18 of the APPI).

An information handler must not process personal information in manners that could facilitate or lead to illegal or improper activities (Article 19 of the APPI).

#### Collection of Personal Information

An information handler must not collect personal information using fraudulent or other unjust means. In principle, an information handler must not acquire certain sensitive personal information without obtaining the data subject's prior consent (Article 20 of the APPI).

If personal information is collected, an information handler must promptly notify the relevant data subject of or announce the relevant purposes of use (Article 21 of the APPI).

#### Limitation on Transfer of Personal Data to Third Parties

In principle, an information handler must not transfer personal data to third parties, including its affiliated companies, without the prior consent of the data subject (Article 27 of the APPI). An information handler must also obtain the prior consent of the relevant data subject before providing their personal data to a third party in a foreign country and provide certain information to the relevant data subjects when obtaining their consent (Article 28 of the APPI).

An information handler must keep records regarding the transfer and receipt of personal data (Articles 29 and 30 of the APPI).

#### Security Measures

An information handler must take reasonable steps to keep personal data as accurate and up to date as is necessary to achieve the purposes of use and must endeavour to delete the personal data without delay when it becomes unnecessary to use the data (Article 22 of the APPI). An information handler must also take all necessary and proper measures to ensure that personal data is kept secure from loss and from unauthorised access, use and disclosure (Article 23 of the APPI).

In addition, an information handler must exercise necessary and appropriate supervision of its employees who handle personal data and of its data management outsourcing entities to ensure they implement and comply with security measures (Articles 24 and 25 of the APPI).

Data incidents, such as leakages of, loss of or damage to personal data, must be reported to the Personal Information Protection Commission (PPC) and the relevant data subject must be notified thereof when the incident reaches a certain threshold (Article 26 of the APPI).

#### Data Subject's Right

Upon the request of a data subject, an information handler must inform them about the purposes their personal data was used for, grant access to it, correct or delete it, or take other appropriate measures (Articles 32 to 39 of the APPI).

### Proposed Amendment to the APPI: An Overview of the 2026 Bill

Japan is preparing a major amendment to the APPI, following Cabinet approval of the relevant bill on 7 April 2026. The amendment aims to respond to two competing policy needs: promoting the legitimate use of data, including for AI and statistical analysis, while strengthening safeguards against increasingly sophisticated privacy risks. The bill is expected to come into force within two years from promulgation, subject to the Cabinet Order.

A key feature is the promotion of appropriate data utilisation. The amendment would exempt certain processing from consent requirements where personal data or publicly available sensitive personal information is used solely to create statistical information, including AI development that can be characterised as statistical analysis. It would also relax consent requirements where the processing is clearly not contrary to the individual's intention and is unlikely to harm the individual's rights or interests.

At the same time, the amendment introduces more risk-based protections. Special rules would apply to personal information of children under 16, including involvement of legal representatives and a duty to consider the best interests of the child. New rules would also apply to facial feature data and similar biometric information, including notification requirements, relaxed conditions for suspension requests, and restrictions on opt-out third-party transfers.

The bill also addresses improper data use. It would regulate information that is not necessarily personal information but can be used to approach or influence specific individuals, and would strengthen obligations when using the opt-out system for third-party transfers. Finally, enforcement would be significantly enhanced through more flexible PPC orders and recommendations, measures against third parties assisting violations, increased criminal penalties, and the introduction of an administrative surcharge system for serious violations involving large volumes of personal data.

### 8.2 Geographical Scope

The APPI regulates the processing of personal information by information handlers in Japan. Foreign companies doing business in Japan must therefore comply with the APPI when they process personal information.

In principle, the APPI does not apply to the processing of personal information outside Japan. However, if a foreign company that does not have an office in Japan processes personal information of a data subject in Japan in relation to sales of goods or provision of services to individuals or entities in Japan, the foreign company is required to comply with the APPI even if personal information of that data subject is processed outside Japan (Article 171 of the APPI).

### 8.3 Role and Authority of the Data Protection Agency

The PPC is the primary authority with oversight over the APPI. The PPC is an independent administrative commission that ranks at a national administrative level similar to that of the JFTC and the National Public Safety Commission. The PPC is composed of a chairperson and eight members, as well as a secretariat.

An information handler must notify the PPC about data incidents. The PPC can request a report from an information handler or conduct an on-site inspection, if necessary, for compliance with the APPI. If an information handler breaches the provisions of the APPI, the PPC will first advise the information handler to cease or correct the violation. If this advice is not followed, the PPC will then issue a formal order to take the action requested in the earlier advice if the violation of important individual rights is imminent. An information handler who fails to comply with the formal order may be subject to a fine of up to JPY1 million and/or a prison sentence of up to one year (in the case of an individual) and to a fine of up to JPY100 million (in the case of a corporation) (Articles 148, 178 and 184 of the APPI).

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

No information has been provided in this jurisdiction.

# Trends and Developments

**Contributed by:**
Norihiro Sekiguchi, Daisuke Mure, Yuki Kuroda and Ryosuke Sogo
**Oh-Ebashi LPC & Partners**

**Oh-Ebashi LPC & Partners** is a full-service law firm with over 180 attorneys and its main offices are in Tokyo and Osaka. It was originally established in Osaka in 1981 but now has an equivalent-sized operation in Tokyo. It was the first Japanese law firm to open an office in China and, together with its Nagoya office, currently has offices in four locations. Its legal practice covers a broad range of fields, including corporate/M&A, risk management and compliance, IP law, life sciences, restructuring/insolvency, competition and antitrust/consumer protection, dispute resolution, finance and insurance, employment law, administration/regulatory law and tax law. It also provides an international practice, a China/Asian practice, a private practice and a pro bono practice.

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### M&A

#### *Key developments in M&A law and regulations*

The most notable regulatory development in Japan's M&A landscape during 2025–26 has been the ongoing reform of the Companies Act, which is expected to materially affect transaction structuring and execution. While the recent amendments to the tender offer (TOB) regime coming into effect in May 2026 have already been widely discussed, the forthcoming Companies Act reforms are particularly relevant for practitioners and investors structuring acquisitions in Japan.

A central feature of the proposed reform relevant to M&A practice is the acceleration of squeeze-out transactions. Under the current regime, a bidder can compulsorily acquire minority shares only after reaching a 90% voting threshold. Where this threshold is not met, alternative methods such as share consolidation must be used, which require shareholder approval and significantly prolong the process. The proposed amendment would allow a squeeze-out at a two-thirds ownership level, subject to the establishment of a majority of minorities condition as the minimum tender condition in the preceding tender offer. This change is expected to substantially enhance the speed and certainty of going-private transactions.

Another key development would be the expansion of stock-for-stock acquisition structures. The current share delivery framework (*kabushiki kofu*), which enables the use of an acquirer's shares as consideration, is subject to practical limitations – this scheme cannot be used for increasing ownership in existing subsidiaries and the target company is limited to domestic corporations (*kabusiki kaisha*). The proposed amendments aim to relax these constraints, thereby enabling greater flexibility in stock-for-stock transactions, including cross-border deals.

In addition, the reform introduces mechanisms to identify beneficial shareholders. Japanese companies have faced practical difficulties in identifying ultimate beneficial owners behind nominee custodians. The new framework would allow listed companies to request such custodians registered as shareholders to disclose information on beneficial owners, with an administrative fine in case of non-compliance due to intentional misconduct or gross negligence. If a beneficial shareholder, who holds more than 5% of the shares of a listed company, fails to file a large shareholding report under the securities regulations, its voting rights would be suspended. This development seeks to enhance transparency and address concerns regarding undisclosed stakebuilding.

Taken together, these reforms point towards a legal environment that increasingly emphasises speed, flexibility and transparency. For deal makers, this translates into more efficient take-private processes, broader structuring options, and a reduced ability to accumulate stakes anonymously.

### *Recent trends in the M&A market*

Alongside regulatory developments, Japan's M&A market has undergone a notable shift towards a more competitive and dynamic environment.

One of the most significant trends is the rise of unsolicited and non-consensual transactions. Historically, hostile takeovers were rare in Japan, where friendly negotiations were the norm. However, the number of unsolicited transactions has increased in recent years, and a meaningful proportion of these deals have been successfully completed. This reflects broader changes in corporate governance, investor expectations and the influence of global M&A practices.

At the same time, not all unsolicited approaches have succeeded. A high-profile example is the attempted acquisition of Seven & i Holdings by Alimentation Couche-Tard. Despite offering a substantial premium and signalling a willingness to engage constructively, the bidder was unable to secure meaningful co-operation from the target and ultimately withdrew its proposal. This case highlights that, while unsolicited bids are becoming more common, execution risks remain significant, particularly where target engagement is limited.

In contrast, the Fujitec transaction illustrates the continued importance of strategic responses such as white knight interventions. Faced with pressure from an activist investor (Oasis Management), the target company (Fujitec) underwent governance changes, and the founding family partnered with a private equity sponsor (EQT) to execute a management buyout. The transaction ultimately gained support from the activist shareholder. This case demonstrates that activism, governance reform and private equity participation are increasingly interconnected in Japan.

Another important trend is the emergence of competitive bidding dynamics, as illustrated by the acquisition of Shibaura Electronics. The company became the subject of competing takeover bids from a foreign strategic buyer (Yageo) and a domestic white knight (MinebeaMitsumi). The process evolved into a de facto bidding contest, with the ultimate outcome driven by price and execution certainty. This case signals a shift towards auction-like dynamics in Japanese M&A, where multiple bidders compete openly for control of listed companies.

Underlying these developments is a broader shift in the role of boards of directors. Japanese boards are increasingly expected to prioritise shareholder value and to engage seriously with credible acquisition proposals, even if unsolicited. This trend is reinforced by evolving soft-law guidance, in particular, the Guidelines for Corporate Takeovers published by the Japanese government in 2023, and judicial scrutiny of transaction fairness, particularly the FamilyMart case, which emphasises not only formal processes but also substantive outcomes.

### *Conclusion*

Japan's M&A market is undergoing a structural transformation. On the legal side, proposed Companies Act reforms are set to streamline key transaction steps and expand structuring flexibility. In parallel, market practice is evolving towards greater openness to unsolicited bids, increased competition among bidders, and heightened expectations regarding transaction fairness.

## Energy

### *Introduction*

In Japan, the promotion of renewable energy has been a central element of national energy policy, with the development of renewable energy generation being strongly supported by the Feed-in Tariff (FIT) scheme, which enabled project operators to sell electricity at fixed prices over long periods.

In recent years, however, revisions to the FIT system, a gradual transition to the Feed-in Premium (FIP) scheme and a diminishing supply of land suitable for renewable energy development have caused newly developed primary projects to decrease, while transactions involving existing projects – commonly referred to as secondary transactions – have increased.

At the same time, battery storage businesses have attracted growing attention to address challenges in maintaining a stable supply–demand balance in the face of fluctuating weather conditions.

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This chapter of the guide provides an overview of secondary transactions in renewable energy generation projects and battery storage businesses in Japan.

### *Secondary transactions in renewable energy generation projects*

Under the FIT regime, renewable energy projects expanded rapidly because investors could expect stable and relatively high electricity sale prices over extended periods. In recent years, however, reductions in FIT prices, the introduction of the FIP scheme and the scarcity of suitable development sites have limited opportunities for new greenfield projects. Against this backdrop, secondary transactions involving the acquisition and sale of existing renewable energy projects have become increasingly prevalent.

Secondary transactions offer several advantages for investors. Existing projects may continue to benefit from FIT prices granted under earlier certification conditions, which are often more favourable than current rates. In addition, given that the facilities are already constructed and operational, purchasers are not exposed to construction or completion risk. The existence of an operational record also allows investors to evaluate actual generation performance. Moreover, as electricity generation has already commenced, the time required to achieve stable revenue generation is significantly shorter than in primary project development.

From a transactional perspective, secondary acquisitions are typically structured either as share transfers or asset transfers. In a share transfer, the buyer acquires equity interests in the project company that owns and operates the renewable energy facilities. In an asset transfer, the buyer acquires specific assets and contractual positions, such as power generation facilities, land use rights and related contracts.

Due diligence is a critical aspect of secondary transactions. Where the project company is organised as a special purpose company, its activities are generally limited to a single renewable energy project. Accordingly, due diligence differs from that conducted in the acquisition of a diversified operating company and focuses primarily on project-specific issues. At the same time, it also differs from due diligence in primary projects, which often commence before assets and contractual relationships are fully established. In secondary transactions, existing facilities, permits, certifications, grid connection arrangements, land rights and key contracts must be carefully reviewed to confirm their validity, legal compliance and transferability.

Recent amendments to the Act on Special Measures Concerning Procurement of Electricity from Renewable Energy Sources by Electricity Utilities have also introduced requirements for community briefings and prior public notice. Where applicable, these procedures must be incorporated into the transaction schedule. The timing of explanatory meetings with local residents and advance notice measures may have a direct impact on the closing of a transaction, making early assessment of these requirements particularly important.

### *Battery storage businesses*

Renewable energy output fluctuates depending on weather conditions, so ensuring a stable electricity supply remains a persistent challenge. In response, battery storage businesses have emerged as an important means of mitigating volatility and supporting grid stability. In Japan, battery storage businesses can broadly be classified into co-located battery storage and grid-scale battery storage.

Co-located battery storage systems are installed alongside generation facilities or demand facilities and are not directly connected to the transmission or distribution grid. These systems are typically used to store surplus electricity during periods of excess generation and may also serve as emergency power sources during outages. Their primary functions are improving self-consumption efficiency and enhancing energy resilience.

Grid-scale battery storage systems, by contrast, are directly connected to the power grid. Electricity is charged from the grid and discharged back when demand or prices are higher, allowing operators to generate revenue by utilising price differentials. Grid-scale battery storage is therefore increasingly regarded as an independent business model rather than merely an ancillary function of renewable energy facilities.

The main markets available to grid-scale battery storage businesses in Japan include:

- the wholesale electricity market;
- the supply-demand adjustment market; and
- the capacity market.

Although participation in these markets can generate revenue, income levels are subject to volatility, and cash flows are not necessarily stable. This variability has posed challenges in securing external financing, as financial institutions typically prefer predictable income streams.

To address this issue, mechanisms aimed at stabilising cash flows have attracted attention, including participation in the Long-Term Decarbonized Power Source Auction operated by the Organization for Cross-regional Coordination of Transmission Operators (OCCTO), as well as entering into contracts with third parties that provide for the receipt of fixed consideration. If such mechanisms succeed in stabilising cash flows, they are expected to facilitate financing through bank loans and other methods, including project finance.

## Labour and Employment

### *Amendments to the Whistle-blower Protection Act and their impact*

In Japan, the Whistle-blower Protection Act was enacted in 2004, and it was subsequently amended in 2022. It has now been further revised, with the latest amendments scheduled to come into force on 1 December 2026.

The main points of the amendment include the following:

1. *expansion of the scope of whistle-blowers* to include freelancers (Article 2, paragraph 1, item 3 of the amended Act);

2. *prohibition of acts that obstruct whistle-blowing* (Article 11-2 of the amended Act);

3. *prohibition of acts aimed at identifying the whistle-blower* without justifiable grounds (Article 11-3 of the amended Act);

4. *introduction of a presumption rule* (*shift in the burden of proof*) concerning dismissals or disciplinary actions taken on the grounds of whistle-blowing (Article 3, paragraph 3 of the amended Act); and

5. *introduction of criminal penalties* for dismissals or disciplinary actions taken on the grounds of whistle-blowing (Articles 21 and 23 of the amended Act).

Among these, items 4 and 5 are particularly attracting attention as having a significant practical impact.

First, with regard to item 4, under the current law, disadvantageous treatment, including dismissal, on the grounds of whistle-blowing is already prohibited (Article 5 of the current Act). Such disadvantageous treatment is interpreted broadly to include, for example, demotion, salary reduction, disadvantageous reassignment, and disciplinary actions. The amended Act introduces a presumption that any dismissal or disciplinary action taken within one year from the date of whistle-blowing is deemed to have been made on the grounds of the whistle-blowing. In other words, the burden of proof is shifted to the employer to demonstrate that the action was not based on the whistle-blowing.

Next, regarding item 5, such criminal penalties do not exist under the current law and will be newly introduced by the amendment. However, the above-mentioned provision on the shift in the burden of proof does not apply to these criminal penalties.

The persons subject to penalties are individuals who were involved in the decision-making process concerning a dismissal or disciplinary action in violation of this provision. Specifically, this may include not only company representatives but also heads of human resources departments and members of disciplinary committees, among others. As for the level of penalties, individuals may be subject to imprisonment for up to six months or a fine of up to JPY300,000 (Article 21, paragraph 1), while a business operator that is a legal entity may be subject to a fine of up to JPY30 million (Article 23, paragraph 1, item 1).

With respect to these items 4 and 5, there was a debate as to whether personnel transfers or reassign-

ment should be included within the scope thereof. As a result, personnel transfers and reassignments have initially been excluded from the scope, but this point is to be reviewed in three years, as stipulated in the supplementary resolutions of the National Diet. In Japan, where employment is predominantly based on a membership-type system rather than a job-based system, personnel transfers are carried out routinely and are considered to fall within the employer's broad discretion. It was therefore determined that including personnel transfers within the scope of items 4 and 5 would have an extremely significant impact on business practices; and, for this reason, such inclusion was deferred on this occasion.

From a practical perspective, it is not uncommon for problematic employees to make whistle-blower reports for the purpose of advancing their own interests – for example, to avoid strict supervision, seek more favourable personnel treatment, or evade undesirable assignments or workplace relationships. It is important to be mindful that such potentially abusive or opportunistic whistle-blowing may increase in the future.

### *Mandatory measures against customer harassment (amendment to the Act on Comprehensive Promotion of Labour Policies)*

On 4 June 2025, the Act Partially Amending the Act on Comprehensive Promotion of Labour Policies and Related Laws was passed, and it was promulgated on June 11 of the same year.

The Act defines customer harassment as "conduct by customers, business partners, users of facilities, or other persons having a relationship with the business activities of the employer (hereinafter referred to as 'customers, etc.') that, in light of the nature of the duties in which the employed workers are engaged and other relevant circumstances, exceeds the range considered acceptable under social norms and thereby harms the working environment of workers."

With respect to such customer harassment, the Act establishes guidelines setting forth the measures that employers are required to take. Specifically, the guidelines provide for the following obligations of employers:

- *clarification of the employer's policy and dissemination/awareness-raising*, including informing workers (including managerial and supervisory personnel) of the content of customer harassment and the predetermined methods of response;
- *establishment of a system necessary for appropriately responding to consultations from workers*, including setting up a consultation desk, informing workers of its availability, and ensuring that the personnel in charge respond appropriately;
- *prompt and appropriate post-incident responses to customer harassment*, including swift and accurate fact-finding, measures to give due consideration to the affected worker, and the implementation of measures to prevent recurrence; and
- *deterrence measures necessary to ensure the effectiveness of responses to customer harassment*, including establishing and disseminating policies for dealing with particularly malicious cases.

These provisions are scheduled to come into force on 1 October 2026.

## Japan's APPI Amendment Bill: Key Changes

The Personal Information Protection Commission (PPC) began its triennial review of the Act on the Protection of Personal Information (APPI) in November 2023 and the cabinet submitted a formal amendment bill to the Diet on 7 April 2026. The bill was passed by the Diet on July 10th.

### *Promotion of proper data utilisation*

*Statistical processing exception (AI development)*

Under the current APPI, acquiring publicly available sensitive personal data or providing personal data to a third party generally requires prior consent. The bill introduces a new exception: consent will not be required where personal data is used exclusively for "creation of statistical information", expressly including AI model development classifiable as statistical processing. To qualify, parties must:

- publicly disclose key information (identities and nature of processing);
- enter into written agreements; and
- strictly refrain from any use or transfer beyond the permitted purpose.

Violation of these conditions may lead to administrative monetary penalties (see Section 4).

*Other relaxations of consent requirements*

Processing that clearly does not conflict with a data subject's wishes will be permitted without consent – for example, sharing a customer's booking data with the hotel at which the customer has reserved a room, or sharing remitter data between banks to process an overseas transfer.

### *Rules to appropriately address risks*

The following rules apply.

- *Children's data* – Consent requests and notices must be directed to the legal representatives of children under 16. Such children (or their representatives) will have a right to request cessation of use or deletion without having to demonstrate a legal violation, and businesses must prioritise minors' best interests when handling their personal data.
- *Biometric data* – Biometric data can be collected without individuals' knowledge and used to track behaviour indefinitely, so specific obligations apply. Businesses must publicly disclose key processing details (business name, purpose and opt-out procedures), individuals will have an enhanced right to request cessation of processing, and it will be prohibited to transfer biometric data to third parties under the opt-out regime.
- *Outsourced processing* – Processors will be explicitly prohibited from using entrusted data beyond the scope of the delegated work. Where a processor acts solely on the controller's instructions and appropriate monitoring agreements are in place, it may be exempted from most obligations under Chapter 4 of the APPI.
- *Breach notification* – Individual notification following a breach may be replaced by alternative measures where there is little risk to data subjects' rights and interests (for example, where only internal system identifiers that are meaningless to third parties have been leaked).

### *Prevention of improper use*

The bill extends certain APPI protections to information that does not qualify as "personal information" but nonetheless enables contact with a specific individual – such as email addresses, telephone numbers and Cookie IDs. Even where no specific individual can be identified from such information alone, its misuse can facilitate phishing attacks, investment fraud and other serious harms. Improper use and unlawful acquisition of such information will be prohibited in the same manner as for personal information.

### *Rules to ensure effective compliance*

The following rules apply.

- *Enhanced orders* – Emergency orders may now be issued where harm is imminent, without waiting until harm has occurred or first issuing a recommendation. Orders may also require businesses to notify or publicly disclose to affected individuals the existence of a violation.
- *Administrative monetary penalty* (*surcharge/kachoukin*) – A surcharge equal to financial gains from the violation will apply where: specific provisions are violated with insufficient preventative care; individual rights are infringed or at imminent risk; and at least 1,000 data subjects are affected. This is designed to remove the economic incentive for large-scale violations that existing tools have not fully deterred.
- *Criminal penalties* – Maximum imprisonment for unlawful database provision will increase from two to three years; other data offences from one to two years, with corresponding fine increases. A new offence will cover obtaining personal data through fraud, unauthorised access or other conduct undermining the data controller's management.

### *Takeaway*

The bill balances relaxing consent requirements to facilitate AI and data-driven business with significantly stronger enforcement tools. Subject to Diet deliberations, it is expected to come into force within two years of promulgation. Businesses processing personal data in Japan should assess the impact on their AI/data analytics operations, handling of children's data, processing of biometric data, and vendor management arrangements.

# KOSOVO




## Law and Practice

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## 1. Legal System

### 1.1 Legal System and Judicial Order

Kosovo observes a legal system largely derived from the continental civil law tradition. The main sources of law consist of the Constitution at the top of the legal hierarchy, followed by codes, laws and international conventions incorporated as part of the internal legal system via ratification in the Assembly of Kosovo.

The judicial system is established in the Constitution as well as Law No 06/L-054 on Courts and its subsequent amendments. The court system consists of seven basic courts, the court of appeal and the Supreme Court, as well as the Commercial Court and the Administrative Court, which have jurisdiction over economic and administrative disputes. Finally, the Constitutional Court operates independently and handles all cases that involve the interpretation or conformity of laws with the Constitution.

## 2. Restrictions on Foreign Investments

### 2.1 Approval of Foreign Investments

Foreign investors and investments in Kosovo are afforded the same legal rights and obligations as domestic investors, pursuant to Law No 08/L-209 on Sustainable Investments. As such, no general governmental approval is required solely on the basis that an investment is made by a foreign investor. However, specific approval requirements may apply in relation to strategic investments and investments that may affect public order or national security.

An investor can apply for strategic investment status in order to benefit from priority treatment, economic facilitations and specialised state support. This status is given to investors aiming to invest in the following priority sectors:

- manufacturing and processing;
- agriculture;
- information and communication technology;
- education and training, research and innovation;
- health;
- tourism;
- sewage and waste administration;
- transport;
- energy; and
- mines.

An investment must reach a minimum value of EUR10 million to be eligible for designation as a strategic investment.

A strategic investment can be subject to “additional verification” screening if it is likely to affect public order or state security. The screening is particularly relevant for investments involving the following sectors:

- critical infrastructure;
- critical technology and dual-use goods under applicable legislation;
- supply of critical goods, including energy, raw materials and food;
- access to or control over sensitive information; and
- media freedom and pluralism.

Additional approvals may be required where a strategic investment involves the use of public immovable property. Depending on the ownership of the relevant property, approval may be required from the Assembly of Kosovo, the relevant municipal assembly or the competent public enterprise. Public immovable property may be made available for strategic investment projects for up to 99 years.

### 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

Since there is no general pre-approval requirement that applies to foreign investments at large, there are also no statutory sanctions if investment proceeds without approval. Foreign investors must obtain specific approvals to gain strategic investment status, or if their investment is subject to screening for public order and security reasons.

There are no direct consequences of investing without approval, but if the investment is subject to screening and is found to affect public order or state security, and does not meet authorisation requirements, the Investment Council may prohibit or order the removal of the investment. Alternatively, the Council may issue a decision that sets specific conditions and deadlines to mitigate the threats posed by the investment. The Council may also cancel the decision for a strategic investment ex-post if the investor provided incorrect data or concealed information that influenced the initial approval.

### 2.3 Commitments Required From Foreign Investors

There is no general statutory requirement providing that conditions or commitments automatically apply to all foreign investments in Kosovo. Most foreign investments are not subject to negotiated obligations unless the investment falls within specific regulated categories. If an investment is granted strategic investment status, approval generally requires an implementation arrangement between the investor and the government, which includes the specific commitments of the investor for the project, the defined timelines for its execution and mechanisms for protection of the interests of the Republic of Kosovo in case the deadlines are not met or the project is abandoned. However, the particulars of these commitments would be subject to negotiations between the government and the specific investor.

For investments undergoing additional verification for security reasons, the Investment Council can issue a decision that sets specific conditions and deadlines to mitigate threats to public order or state security. If an investor fails to demonstrate compliance with these conditions, the Council may issue sanctions as described in **2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance**.

### 2.4 Right to Appeal

A lawsuit for an administrative conflict is allowed against certain decisions, namely Council decisions (including refusals), cancelling or repeal investment status, or screening decisions. The recently established Administrative Court has jurisdiction over these matters.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

In Kosovo, the most common corporate vehicles for business registration are limited liability companies (LLCs) and joint stock companies (JSCs). The Law on Business Organizations also recognises several other forms, though they are generally less common for larger corporate structures:

- individual business – the owner has unlimited liability for all debts;
- general partnership – all partners have unlimited liability; and
- limited partnership – consists of at least one general partner (unlimited liability) and at least one limited partner.

#### Limited Liability Companies

The LLC is the most common form of business organisation in Kosovo and is generally preferred for private ownership and subsidiary operations. The LLC is a distinct legal person, separate from its shareholders, and is itself liable for its own debts and obligations. There is no minimum capital requirement for an LLC in Kosovo.

The LLC must have at least one managing director. Establishing a board of directors is optional and must be explicitly mentioned in the charter if desired. Within the company structure, the shareholder assembly holds the most power and decision-making authority.

### Joint Stock Companies

JSCs are typically recommended for businesses with multiple shareholders or those intending to trade shares publicly. Shareholders have limited liability, with their ownership interest represented by shares. The minimum capital requirement for a JSC is EUR10,000. A JSC must have a board of directors and must have at least one shareholder at incorporation.

### Branch of Foreign Organisations

In some cases, it is also appropriate to establish a branch. Unlike LLCs or JSCs, a branch is not a separate legal entity but is considered an extension of the parent company located outside Kosovo. The parent organisation assumes unlimited liability for all the rights and obligations of the branch in Kosovo.

## 3.2 Incorporation Process

Businesses in Kosovo have to be registered with the Kosovo Business Registration Agency (KRBA).

### Incorporation of Limited Liability Companies

The authorised representative must submit the following to register an LLC:

- the KRBA registration form, with relevant information provided for shareholders and directors;
- the company charter, which should specify, among other requirements, the company name, address, business activity, corporate governance structure, decision-making procedures and, where applicable, share classes and voting rights;
- the memorandum of incorporation, which should detail who the founders are, share allocation, payment terms, contributions (in cash and in kind), management structure and incorporation costs – if there is only one founder, an act of establishment is filed instead of the memorandum; and
- a copy of the personal identification document of the authorised representative.

### Incorporation of Joint Stock Companies

The authorised representative must submit the following to register a JSC.

- The KRBA registration form.
- The company charter, which should specify the company's name, address, business activity, management structure and detailed rules on share capital. This includes any applicable rules regarding common and preferred shares, their rights, issuance limits and non-monetary contributions. The charter must also comply with gender representation quotas requiring minimum female participation on the board of directors.
- The memorandum of incorporation, with requirements similar to those applicable to LLCs.
- A copy of the personal identification document of the authorised representative.

### Registration of Branches

Pursuant to Article 35, a branch of a foreign business organisation is not a separate legal entity and must submit the following for registration:

- the KRBA registration form;
- a registration certificate of the foreign business organisation from its home country (not older than three months);
- the decision to establish the branch of the foreign business organisation in Kosovo; and
- a copy of the personal identification document of the authorised representative.

According to the Law on Business Organizations, the KBRA must make an entry in the registry and publish the information no later than two working days after receiving the initial application. If an application fails to meet requirements, the KBRA notifies the applicant and sets a deadline of up to ten working days for corrections.

## 3.3 Ongoing Reporting and Disclosure Obligations

All business organisations are required to update their registered data and ensure permanent accuracy. If there is a change related to the business information, an amendment must be submitted to the KRBA within 15 days of the change.

An application for amendment must also be submitted to the KBRA in the event of the appointment, removal or change in the right of representation of a managing director or board member.

When shareholders wish to amend the charter of an LLC, the authorised representative must complete and submit the forms prepared by the KBRA. This filing must include a copy of the shareholder decision regarding the amendment and the full text of the amended charter. The amendment is considered to have entered into force only after registration and publication by the KBRA.

#### Ultimate Beneficial Ownership

Under Law No 08/L-265 on the Register of Beneficial Owner, all commercial companies are required to declare their beneficial owners in the Beneficial Ownership Register within 30 calendar days of incorporation. The Register is a centralised electronic database managed by the KRBA. Any subsequent change to beneficial ownership must also be reported and updated within 30 calendar days of the change occurring. Notwithstanding this, due to missing sub-legal acts, the Beneficial Ownership Register is not yet operational; hence, beneficial owners are not yet being declared.

### 3.4 Management Structures

#### Limited Liability Companies

LLCs are managed by at least one managing director and may optionally appoint of a board of directors if stipulated in the charter. In the absence of a board, the shareholder assembly is the highest decision-making body, holding the power to elect or remove managing directors charged with day-to-day operations and legal representation. If a board is established, the provisions governing the board of directors of a JSC apply.

#### Joint Stock Companies

Each JSC is required to have a board of directors responsible for managing and directing the company's activities. The system is structured as a one-tier model, with board members appointed by the shareholders' assembly. The board appoints at least one managing director to represent and manage the company. This managing director reports and functions under the direction of the board. The roles of chairperson of the board and managing director should be separate; the chairperson of the board of directors may not simultaneously serve as the managing director. In addition, no officer, manager or other employee of the JSC is permitted to serve as a director on the board.

### 3.5 Directors', Officers' and Shareholders' Liability

In exercising their functions, managing directors, members of the board and officers are obliged to act with fairness, loyalty and full care in due account of the interests of the company and other partners or shareholders. As such, they are expected to protect company assets and confidential information, avoid exploiting corporate opportunities for personal gain, refrain from competing with the business and prevent personal interests from negatively impacting the company. If these persons act contrary to these duties, they are liable to compensate the company for damages and must repay any personal profit acquired through the infringement.

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

Employment relationships are governed by Law 03/L-212 on Labour, applicable to all employees and employers in the private and public sector in Kosovo, including foreign nationals working in Kosovo. Certain categories are excluded from its scope, namely:

- employment relationships within the context of international missions;
- diplomatic and consular missions of foreign states;
- international military presence in Kosovo under the Comprehensive Proposal for the Status Settlement; and
- international governmental organisations.

The Law on Labour forms the main framework regulating employment relationships, supplemented by individual employment agreements as well as collective contracts and the employer's internal act where applicable. The employment agreement forms the legal basis for an employment relationship. Collective agreements and internal rules may grant employees

more favourable rights and working conditions than those provided by law but they cannot go below the statutory minimum protections.

In addition, occupational safety and health is regulated separately under the Law on Safety and Health at Work, which establishes mandatory obligations for employers regarding workplace conditions and safety.

### 4.2 Characteristics of Employment Contracts

An employment contract must be concluded in written form and signed by both the employer and the employee. The agreement may be for an indefinite period, a fixed period or for specific tasks (not exceeding 120 days within a year).

The contract must include the following particulars:

- data on the employer, including designation, residence and business register number;
- data on the employee, including name, surname, qualification and dwelling;
- designation, nature and form of labour, and the job description;
- the place of work or a statement that work is performed at various locations;
- working hours and working schedule;
- the date of commencement of work;
- the duration of the employment contract;
- the basic salary and any other allowance or income;
- the vacation period; and
- provisions for the termination of the employment relationship.

If a trial period is included, it must be defined in the contract and cannot last more than six months.

### 4.3 Working Time

Full-time working hours are 40 hours per week. For employees under 18 years of age, the maximum hours are 30 hours per week. For jobs involving hazardous impacts on health, working hours may be reduced, at most to 20 hours per week.

Employees are entitled to rest periods, including a daily rest of at least 12 continuous hours between two work days and a weekly rest of at least 24 continuous hours.

Overtime is permitted in extraordinary cases when workload is significant but is limited to a maximum of eight hours per week. Overtime allowance is to be calculated at 30% per hour of the basic salary. The employer may also decide to compensate overtime with days off if this mechanism is stipulated in the employment contract or internal act.

Specific restrictions on overtime include:

- employees working on reduced or part-time hours cannot work more than full-time hours;
- overtime work is not permitted for employees under 18 years of age;
- employers shall not extend working hours for pregnant employees, single parents with a child under three years old or parents with a child with disabilities; and
- pregnant women and mothers with children under three years of age cannot be obliged to work longer than full-time hours.

### 4.4 Termination of Employment Contracts

An employment relationship may be terminated in three ways.

- Mutual written agreement between the employer and employee.
- By operation of law, which applies, for instance, in the following circumstances:
  - (a) expiry of a fixed-term contract;
  - (b) death of the employee or the employer, with no successor;
  - (c) the employee has reached retirement age;
  - (d) a decision has been issued that verifies loss of working capacity;
  - (e) a decision by a competent court; or
  - (f) bankruptcy or liquidation of the employer.
- By unilateral termination initiated either by the employee or by the employer.

An employee may terminate the contract with a notice period of 15 days for fixed-term contracts and 30 days for indefinite-term contracts. No notice period is required if the employer has committed a serious

breach of its obligations under the employment contract.

Unilateral termination by the employer is permitted if one of the following legal bases applies:

- the employee is no longer capable of performing their duties;
- the termination is necessary for economic (eg, loss of revenue, cost-reduction measures), technical (eg, automation of functions or replacement of certain tasks) or organisational (eg, changes to operational structure, elimination of certain functions) reasons; or
- there has been serious misconduct or dissatisfactory performance of work duties.

For indefinite-term contracts, the notification periods are based on seniority:

- for six months to two years of service, the notice period is 30 days;
- for two to ten years of service, the notice period is 45 days; and
- for more than ten years of service, the notice period is 60 days.

For fixed-term contracts, the notice period is 30 days.

There are two cases in which the employer is permitted to terminate the contract without complying with the notice periods described in the foregoing: (i) the employee repeatedly commits less serious misconduct or breaches employment obligations, or (ii) the employee's performance is unsatisfactory despite a previous written warning.

However, immediate dismissal in these cases is conditioned on the following:

- the employee has previously been issued a written description of the dissatisfactory conduct or performance;
- the employee has been provided a reasonable period within which they could have improved this situation; and
- the employee was provided a clear warning that failure to improve within that period could result in dismissal without further notice.

In any case, the employer must hold a meeting with the employee to explain the grounds before issuing a warning or terminating employment. In this meeting, the employee is entitled to be accompanied by someone of their choosing, and this right should be communicated to them beforehand, usually in the formal invitation.

The decision to terminate employment must be issued in writing and state the legal and factual grounds therefor. Additionally, the employer is obliged to pay all outstanding salary and other allowances up to the effective date of termination.

### Collective Redundancies

A collective dismissal occurs when at least 10% of employees, but no fewer than 20%, are discharged within a six-month period for economic, technical or organisational reasons. If this threshold is not met, the termination of employment relationships is treated as unilateral termination for organisational reasons, per the rules described in the foregoing.

The employer must notify employees and trade unions in writing at least one month in advance, specifying the number of employees affected and measures taken to alleviate consequences. The employer must also notify the employment office in writing.

Employees with indefinite-term contracts are entitled to a single severance payment upon termination, the sum of which is relative to the years of service with the employer.

## 4.5 Employee Representations

As mentioned in **4.4 Termination of Employment Contracts**, when an employer holds a meeting to explain the termination of an employment contract or to issue a warning, the employee is entitled to be accompanied by a representative of his or her choice. Excluding this situation, there is no statutory requirement for employee representation in Kosovo.

Nevertheless, employees are guaranteed freedom of association and trade-union action without interference. Trade unions have the legal role of organising strikes for the protection of employee rights. If an employer plans a collective dismissal, they are required to notify the employees' trade union in writing at least one month in advance (provided a union is active).

With regard to collective bargaining, employee organisations or their representatives are the necessary parties for concluding collective contracts at the state, branch and enterprise levels.

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/ Employers

Pursuant to Law No 05/L -028 on Personal Income Tax, taxation applies to income generated from wages, salaries, bonuses and other forms of compensation. Taxes are primarily through a withholding at source system, where employers deduct income tax and pension contributions from employees' gross salaries and remit them to authorities. Tax residents are taxed on all income, whereas non-residents are taxed only on income earned within Kosovo.

Taxable income from employment is calculated after deducting mandatory pension contributions. Both the employer and the employee are required to contribute 5% of the gross salary each to the pension fund, with optional additional contributions of up to 10%. These contributions are paid into the Kosovo Pension Savings Fund or licensed alternatives.

Following the deduction of pension contributions, personal income tax is applied on a progressive basis, as follows:

- 0% on annual income from EUR0 to EUR3,000;
- 8% on annual income from EUR3,000 to EUR5,400; and
- 10% on annual income above EUR5,400.

For employees that receive income from a secondary employer, a flat rate of 10% applies to the secondary employment income.

### 5.2 Taxes Applicable to Businesses

Corporate taxation is primarily governed by Law No 06/L-105 on Corporate Income Tax, Law No 05/L-037 on Value Added Tax, Law No 05/L-028 on Personal Income Tax and Law 08/257 on Tax Administration and Procedures, supplemented by relevant administrative instructions issued by the Tax Administration of Kosovo (*Administrata Tatimore e Kosovës* – TAK).

#### Corporate Income Tax

Corporate income tax is set at a flat rate of 10% on taxable income.

#### VAT

Companies engaged in the supply of goods or services are generally subject to VAT. The standard VAT rate is 18%, while a reduced rate of 8% applies to certain goods and services, typically those considered essential. Certain activities of public interest are exempt from VAT, including other activities in financial and insurance services, such as loans granted by financial institutions, life insurance and reinsurance, amongst others.

VAT registration is mandatory once an entity's annual taxable turnover exceeds EUR30,000, although voluntary registration is permitted below this threshold. VAT is also applied to imports of goods, whereas export of goods is exempted of VAT.

#### Withholding Tax

Withholding tax obligations apply to specific categories of cross-border and domestic payments, including interest, royalties, rent and certain service payments made to non-residents. Applicable rates are as follows:

- 10% for interest and royalties;
- 9% for rent; and
- 5% for qualifying services paid to non-resident entities.

Dividends are exempt from taxation in Kosovo.

### Payroll Obligations
Employers are required to comply with payroll-related obligations, including the withholding personal income tax and pension contributions defined in **5.1 Taxes Applicable to Employees/Employers**.

### OECD Pillar Two
Pillar Two of the OECD's Two Pillar Solution has not been implemented in Kosovo.

## 5.3 Available Tax Credits/Incentives
Dividend income received by resident and non-resident persons is exempt from taxation.

### Strategic Investments
Investments that meet national objectives or fall within priority sectors benefit from additional facilitations, including simplified or preferential treatment for imports used in manufacturing or processing (such as machinery, raw materials, semi-products or other inputs), as well as exemption from export duties.

### Temporary VAT Exemption on Raw Materials
As per the Law on Economic Recovery, raw materials that are produced from registered and active businesses in Kosovo, regardless of whether they are exported or internally traded, are exempt from chargeable VAT until 31 December 2028.

### Tax Reduction for New Assets
A one-time 10% deduction applies for corporate income tax purposes for taxpayers that purchase and first put into use new heavy machinery classified under the 10% depreciation category. This deduction is not available if the taxpayer already benefits from other tax exemptions or incentives.

### VAT Exemption for Certain Imports
Article 29 of Law No 05/L-037 on Value Added Tax provides that production lines, production machinery and raw materials used in the manufacturing process qualify for VAT-exempt import. The specific categories of machinery are not listed, and communication with TAK is required to ensure compliance.

### Tax Credits
For the avoidance of double taxation, Kosovo residents who earn business income abroad and pay income tax to a foreign country are entitled to a tax credit in Kosovo for the amount paid. This credit acts as a deduction on their owed Kosovo income tax. The deduction cannot go over the amount of tax Kosovo would have originally charged on that specific foreign income.

### Customs Duties Exemption
Manufacturers are granted exemption from customs duties on imports of raw materials, semi-finished goods, production machinery and IT equipment. This is limited to approval entities, as authorised by TAK, and is implemented through a unique customs declaration, which must include the manufacturer's fiscal number. Kosovo Customs records relevant data in the automated system for customs data (ASYCUDA) and informs TAK for compliance.

### Free Trade
Kosovo also applies free trade agreements (FTAs), which eliminate or reduce customs tariffs on certain goods traded with partner countries. For more information, please refer to **5.8 Tariffs**.

## 5.4 Tax Consolidation
Tax consolidation is not available in Kosovo

## 5.5 Thin Capitalisation Rules and Other Limitations
There are no applicable thin capitalisation rules in Kosovo.

## 5.6 Transfer Pricing
Transfer pricing rules are set out in the Law on Corporate Income Tax and Administrative Instruction No 02/2017 on Transfer Pricing, and apply to all controlled transactions with related parties. Controlled transactions arise where there is a special relationship between the parties that could influence the terms and conditions of the transaction, making them potentially non-compliant with the arm's length principle.

"Related parties" refers to the following situations:

- one party holds or controls 50% or more of the shares or voting rights in another entity;
- one party directly or indirectly controls another party;

- two parties share a common controlling third party; or
- parties are related individuals up to the third degree, as per the Law on Heritage of Kosovo.

The taxpayer has to ensure that their controlled transactions are conducted in accordance with the market standards. When requested by TAK, transfer pricing documentation must be submitted within 30 days.

### 5.7 Anti-Evasion Rules

Kosovo's anti-tax evasion framework is primarily set out in Law No 08/L-257 on the Administration of Tax Procedures, which establishes the rights, obligations and enforcement powers of TAK. For instance, TAK may disregard transactions that lack "substantial economic effect" or re-characterise them if their form does not reflect their economic substance. This includes re-characterising elements of transactions entered into specifically as part of a scheme to avoid tax liability.

#### Transfer Pricing Adjustments

With respect to transfer pricing, when controlled transactions do not reflect the open market value, TAK may adjust taxable income and allocate revenues and expenses between related parties to reflect the outcome that would have arisen between independent entities.

#### Fictitious Invoices

TAK does not recognise expenses for income tax purposes or input credits for VAT purposes if they are based on fictitious transactions or invoices. A fictitious invoice is defined as one issued by an unregistered person or for a transaction/supply that did not take place.

#### Payment Restrictions

Since June of 2026, any transaction concluded between a business and a non-business individual is subject to mandatory electronic payment requirements, with cash payments being capped at EUR2,000.

#### Enforcement and Inspection

TAK officials have "full and free access" to any facility where economic activity occurs or where records are stored. These inspections may be carried out at any time, and/or with prior notice, for verifying compliance or recovering outstanding tax obligations. TAK may also conduct visits, without prior notice to the taxpayer, to confirm compliance with applicable tax laws, obtain information pertinent to subsequent audit activity and collect past due tax debts as considered necessary.

### 5.8 Tariffs

Kosovo's tariff system is regulated by the Customs and Excise Code and is based on harmonised system (HS) of the World Customs Organization and the combined nomenclature (CN) of the EU.

Customs duties range from 0% to 10%. A standard 10% duty applies to imports from countries with which Kosovo does not currently have a preferential or free trade arrangement. Preferential tariff treatment applies under Kosovo's FTAs and other applicable frameworks, including the Central European Free Trade Agreement (CEFTA), the Stabilisation and Association Agreement (SAA), the European Free Trade Association (EFTA) and preferential agreements with Turkey, the USA and the UK.

Goods originating from CEFTA members are generally not subject to any custom duty, nor are certain industrial, agricultural and fishery imports from the EU under the Stabilization and Association Agreement.

In addition to customs duties, Kosovo applies excise taxes on specific goods, primarily for public policy purposes. These taxes are calculated as fixed amounts per quantity and apply to products such as tobacco, alcoholic beverages and petroleum products.

## 6. Competition Law

### 6.1 Merger Control Notification

M&A transactions are governed by Law No 08/L-056 on Protection of Competition (LPC). Under the LPC, concentrations have to be approved by the Competition Authority if defined thresholds are met. A concentration is defined as any "steady change of control of enterprises when independent enterprises join together or parts thereof; one or more enterprises

acquire direct or indirect control over all or part of other enterprises, in particular by earning shares, by gaining the majority of voting rights and in other ways provided by the legislation in force".

The following are exceptions and are not considered concentrations:

- transactions which constitute a temporary financial holding;
- transactions which refer to an internal restructuring;
- bankruptcy-related acquisitions; and
- joint ventures.

If there is a concentration that does not constitute one of these exceptions, it must be notified to the Competition Authority if either of the following conditions are met:

- the undertakings concerned have combined worldwide turnover exceeding EUR20 million and at least one undertaking has turnover exceeding EUR1 million in Kosovo; or
- at least two undertakings each have turnover exceeding EUR3 million in Kosovo.

In its turnover calculation, the undertakings should take into account the entire "group of associated enterprises", excluding intra-group transactions for the preceding financial year. An associated enterprise is any entity over which a party exercises decisive influence through ownership, voting rights or management control.

### 6.2 Merger Control Procedure

When a concentration meets the defined thresholds and does not constitute any of the listed exemptions, it has to apply to the Competition Authority for approval.

The application is to be submitted by the enterprise that acquires control over the other, or all concentration participants by mutual agreement. It is generally to be submitted upon conclusion of the contract of the transaction or after the concentration is made public, but before the concentration is carried out.

The application for permitting the concentration should include, but is not limited to, the following:

- the contract or other legal document forming the basis for the transaction (original or certified copy);
- the annual financial report of the participants for the preceding financial year;
- information on the participants, including the names, registered addresses and relevant business activities;
- the shareholder structure before and after the concentration;
- a list of other enterprises in the same market where the parties hold 10% or more of the shares/voting rights, as well as any overlapping board of directors or supervisory board members;
- disclosures of any other foreign competition authorities currently reviewing (or that will review) the same concentration;
- total annual revenues for each participant (excluding VAT and taxes);
- identification of the relevant markets, the parties' market shares before and after the transaction, and an evaluation of their main competitors; and
- the legal and economic reasons for the concentration.

Upon receipt of the full application, the Authority initiates its concentration assessment and publishes a public announcement of the proposed transaction. At this stage, interested third parties may submit remarks regarding the concentration and its potential effects. The Authority has 30 days to determine whether the proposed concentration raises competition concerns. If no concerns are identified and no formal assessment procedure is initiated within that period, the concentration is considered permissible, and the parties may be issued a certificate confirming this.

If, during the initial assessment, the Authority suspects the transaction may significantly harm market competition, particularly through the creation of a dominant position in the market, it may launch a formal assessment of the transaction. During this review, the parties may propose corrective measures to address concerns, including proposed timelines. The Authority may approve the proposed remedies, modify them or impose its own conditions if necessary.

Within 60 days of the initiation of the assessment procedure, the Authority issues a final decision either prohibiting the concentration, approving it unconditionally or approving it subject to specified conditions. If the permit is conditional, the parties are required to comply with imposed conditions; otherwise, the approval decision may be revoked.

## 6.3 Cartels

Article 5 of the LPC prohibits agreements, decisions and concerted practices between undertakings that are aimed at preventing, restricting or distorting competition in a relevant market. In particular, the following are considered anti-competitive:

- directly or indirectly fixing selling or purchasing prices or other trading conditions;
- restricting production, markets, technical development or investment output;
- market sharing/allocation;
- applying dissimilar conditions to equivalent transactions; and
- making the conclusion of contracts subject to supplementary obligations that have no connection to the object of the contract.

Notwithstanding the foregoing, certain agreements may be exempted under certain conditions where otherwise they would be considered anti-competitive. These exemptions are granted for agreements that contribute to improving the production or distribution of goods, or promote technical or economic progress, while allowing consumers a fair share of the resulting benefits. Additionally, these agreements must not impose unreasonable restrictions that go beyond what is necessary to achieve their objectives, nor may it eliminate competition in respect of a substantial part of the products or services concerned.

Block exemptions are also provided for certain categories of agreements, as follows:

- vertical agreements, particularly exclusive distribution agreements, selective distribution agreements, exclusive purchase and exclusivity agreements;
- horizontal agreements in research, development and specialisation agreements;
- tech transfer agreements;
- agreements for distribution and servicing of vehicles;
- insurance agreements; and
- agreements between enterprises in transport sector.

### Scope of Application

The scope of the Law on Protection of Competition is not limited to conduct within Kosovo, but to conduct that produces effects on the Kosovo market, regardless of where the undertakings are established or where the relevant activity takes place. If an anti-competitive agreement is concluded between foreign undertakings, it may still fall in within these prohibitions if it affects competition within Kosovo.

## 6.4 Abuse of Dominant Position

An undertaking is considered to hold a dominant position when, due to its power in the market, it can operate independently of actual or potential competitors, consumers, purchasers or suppliers in the relevant market. Dominant position is especially considered if the undertaking has no significant competitors in the relevant market and has substantial power compared to other competitions, for instance, in reference to their position in the market, financial strength access to suppliers or ability to impose market conditions on its supply or demand.

A rebuttable presumption of dominance is established if the relevant undertaking holds a share of 40% or more in a relevant market. A group of undertakings may also be presumed dominant if their joint market share exceeds 60% and they operate jointly or are able to operate independently of market conditions.

Article 9 of the LPC prohibits the misuse of a dominant position. Examples of abusive conduct include:

- directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- limiting production, markets or technical development at the expense of consumers;
- applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

- making the conclusion of contracts subject to supplementary obligations that have no connection to the object of the contract;
- imposing prices that restrict market entry or force competitors to leave the market; and
- denying other enterprises a resource necessary or indispensable for competition in the market for certain suppliers.

If the Authority determines a misuse of dominance, it may adopt a decision prohibiting the unlawful conduct, imposing surveillance or structural measures for avoiding the anti-competitive effects of the conduct and imposing administrative fines.

## 7. Intellectual Property

### 7.1 Patents

Law No 08/L-059 on Patents determines the process for patent protection in Kosovo. A patent is defined as an exclusive right granted for an invention in all fields of technology, if that invention is new, involves an inventive step and is capable of industrial application.

Patent protection entails the right to prevent third parties from making, offering for sale, selling, using, exporting, importing or stocking the patented product or a product that results from a patented process.

#### Length of Protection

The term of a patent is 20 years from the filing date of the application. For pharmaceutical or plant protection products, a supplementary protection certificate (SPC) may extend protection for a period equal to the time elapsed between the filing date and the first market authorisation, reduced by five years. The maximum duration of an SPC cannot exceed five years.

#### Registration Process

The Industrial Property Agency (IPA) is responsible for the legal protection of inventions and the patent registration procedure. The procedure consists of the following steps.

- Application for the patent is submitted to the IPA; this must include a request for recognition, a description of the invention, patent claims, drawings and an abstract of the invention. At the request of the applicant, the IPA can issue a certificate of the right of priority, acquired on the date of submission of the patent application.
- Once the application procedure is completed, the IPA performs a formal examination to check for completeness and fee payment. If the IPA determines that the conditions for the patent application have not been met, it may request the applicant to correct the issues concerned. If the applicant does not correct these issues, the IPA may issue a decision rejecting the patent application.
- The IPA also conducts a substantive assessment to determine whether the subject matter meets the patentability requirements and whether it complies with the rule on the unity of invention.
- The IPA grants patent applications that meet all formal and substantive requirements. Once the patent is successfully registered, the patent owner receives an official certificate and specification, which officially establishes their enforceable rights against third parties. To maintain protection beyond the tenth year, the owner must submit written evidence of patentability from recognised national or international offices; otherwise, the patent protection lapses (or may be amended or invalidated) on the date of the expiry of the tenth year of the patent term.

#### Enforcement and Remedies

Claims for protection may be initiated by the patent holder, authorised representatives or exclusive licensees.

There are two primary legal avenues for right holders in cases of infringement; they may request a court order to terminate current violations or prohibit future ones (where infringement is imminent), and/or they may request a court order to seize and remove all infringing products as well as the materials or tools used in their manufacturing from the market.

Right holders can additionally claim for damages in proportion to actual damage, including lost profits and moral prejudice. Alternatively, compensation may be calculated as a lump sum based on elements such as hypothetical licensing fees applicable had the infringer pursued a licence to use the patent. If an

offender acted without knowledge of the infringement, the court may order the return of profits gained from unauthorised use.

Legal entities may face fines between EUR2,000 and EUR6,000 for using products or services in violation of patent rights, while natural persons may be fined between EUR1,000 and 3,000.

## 7.2 Trade Marks

Pursuant to Law No 08/L-075 on Trademarks, a trade mark may be "any mark, in particular words, including personal names or drawings, letters, numbers, colours, the shape of goods or their packaging, or the sounds-voices", provided they distinguish goods or services of one particular entity and are clearly defined in the register.

Trade mark rights are acquired through registration in the Trademark Register maintained by the IPA. This registration entails an exclusive right and allows the holder to prohibit third parties from using identical or similar signs for identical or similar goods or services in commercial business without their prior consent.

### Length of Protection

Trade marks are registered for an initial period of ten years from the date the application is submitted. Registration may be extended for subsequent periods of ten years through a renewal process.

### Registration Process

The procedure begins with a submission to the IPA containing the application for trade mark registration, data on the applicant, a list of goods and services for which registration is required based on the Nice Classification system, and the appearance of the mark.

After the application is submitted, the IPA conducts a formal examination for completeness and fee payment. It also examines absolute grounds for refusal, including a lack of distinctive features, the likelihood of misleading the public and whether the mark is contrary to public policy.

If the requirements are met, the application is published in the IPA bulletin. Within three months of publication, holders of earlier trade marks or authorised representations may oppose the registration based on relative grounds, such as similarity to their earlier mark. If no grounds for refusal exist and no opposition is successful, the IPA registers the trade mark.

### Enforcement and Remedies

Enforcement procedures and remedy options closely observe the same actions outlined in **7.1 Patents**. However, unique to trade mark protection, right-holders have the additional option to request courts to prevent continuous infringement by ordering a fine of EUR5,000 to EUR10,000 for each infringement.

General sanctions for violations include fines between EUR 5,000 and EUR15,000 for unauthorised use by legal persons, while natural persons may be fined between EUR200 and EUR3,000 depending on their business status.

## 7.3 Industrial Designs

Protection for industrial designs is covered by Law No 08/L-055 on Industrial Designs, pursuant to which an industrial design is protected if it is new and possesses individual character. A design is considered to be new if it is not identical to any other design made available to the public before the filing or priority date; and it considered to have individual character if the overall impression it produces on an informed consumer differs from the impression left by any previous design.

Protection grants the owner the exclusive right to use the design and prevent unauthorised third parties from activities including processing, offering, marketing, importing and exporting products incorporating the design.

### Length of Protection

The initial term of protection is five years from the date the application is submitted. This registration may be extended for additional five-year periods up to a maximum total duration of 25 years.

### Registration Process

The procedure is initiated by filing an application with the Agency for Industrial Property (AIP). The application must include a request for registration, applicant identification, a representation of the design suitable

for reproduction and the names of the relevant products. Once the application is submitted, the applicant has the right of priority over any other future applicant for registration of the same design and may be issued a priority certificate upon request.

The AIP then conducts a formal examination to verify compliance with filing requirements and fee payments. It may reject the registration if the design does not meet legal definitions, is contrary to public interest and moral principles, or constitutes an unauthorised use of the products outlined in Article 6 of the Paris Convention for the Protection of Industrial Property.

### Enforcement and Remedies

Enforcement procedures and remedy options closely observe the same actions outlined in **7.1 Patents**. Legal entities infringing industrial design protection face fines between EUR3,000 and EUR9,000, while natural persons in business may be fined between EUR1,000 and EUR3,000.

## 7.4 Copyright

The framework for copyright is set out in Law No 08/L-205 on Copyright and Related Rights. Copyright protection applies to "works", which are original intellectual creations in the fields of literature, art or science. This includes literary works, computer programs, musical works, audiovisual works, works of fine art, architecture and photographic works.

Authors possess exclusive economic rights under Article 23 to authorise or prohibit the use of their works, including reproduction, distribution, rental, public performance, broadcasting and communication to the public. Moral rights are also protected, namely the right of disclosure, the right to claim authorship, the right of integrity and the right of withdrawal.

### Length of Protection

The exclusive economic rights are protected for the life of the author and for 70 years after their death. Moral rights are protected without time limit.

### Registration Process

Authors enjoy copyright protection by the sole fact of creating the work. No registration or other formality is required for the copyright.

### Enforcement and Remedies

Unique to copyright, claims may also be filed by collective management organisations or professional protection bodies, in addition to right holders and authorised licensees. The statute of limitations for filing a lawsuit is three years from the moment of discovery of the infringement.

Courts may issue interim injunctions to prevent infringement, order the seizure of suspected infringing goods, order a recurring penalty payment or block financial assets and bank accounts in cases of wider commercial-scale infringement. Once a final verdict is issued confirming the infringement, the court implements permanent corrective actions, including:

- ordering the definitive recall from the channels of commerce;
- removal from the market; or
- destruction the infringing goods and the tools used in their manufacturing.

With respect to damages, compensation is to take into consideration financial losses, lost profits, moral damages and any unfair profits the infringer generated. Alternatively, they can be set as a lump sum payment, which, at a minimum, are to be equal to twice the normal licensing fee an infringer would have been subject to pay had they sought licensing, or three times if the infringement was conducted for commercial gain.

With respect to administrative sanctions, legal persons using works without authorisation face fines between EUR5,000 and EUR20,000, and individual businesses face fines between EUR500 and EUR3,000.

## 7.5 Others

### Software

Treatment of software IP is treated within the framework of the Law on Copyright and Related Rights, where computer programs are expressly listed as protected works.

### Databases

Databases are offered dual protection under Copyright Law.

- They are protected as works as long as the creation, selection or arrangement of their contents represents an original intellectual creation. However, copyright protection for databases is limited specifically to the structure or arrangement of the information and does not extend to the contents themselves, nor does it cover the software used to operate the database.
- Pursuant to Article 78, a database creator who has made a substantial investment in gathering, verifying or presenting data has the right to prevent the extraction or re-utilisation of all or of substantial parts of those contents. This right is independent of copyright eligibility, which means the database can be protected under copyright for its structure as well as through the sui generis right for its contents. This right is protected for 15 years, calculated from January 1 of the year following the date of completion or when it was made available to the public.

### Trade Secrets

Trade secrets are protectable under Law No 08/L-076 on the Protection of Trade Secrets, under which a trade secret is any information that is not generally or readily accessible within the circles that normally deal with the kind of information in question, has commercial value due to its secrecy and has been subject to reasonable steps by the person lawfully in control of the information to be kept secret.

Protection is granted against the unauthorised acquisition (accessing or copying documents/files), use or disclosure of the secret, especially when it involves a breach of a confidentiality agreement or a duty to limit use.

This protection ends if the information becomes generally known or readily accessible over time, or if a court order is issued confirming that the secret does not meet legal requirements.

## 8. Data Protection

### 8.1 Applicable Regulations

Law No 06/L-082 on the Protection of Personal Data (LPPD) constitutes the relevant regulation in Kosovo for data protection obligations. It is designed to be in compliance with the EU's General Data Protection Regulation (EU) 2016/679 (GDPR). The competent authority for the supervision and implementation of this law is the Information and Privacy Agency.

The LPPD applies to the processing of personal data by both public and private bodies (bar processing for purely personal purposes), including Kosovo's diplomatic and consular offices abroad, as well as data controllers not established in Kosovo who use Kosovo-based equipment, automatic or otherwise, for processing purposes.

Under the LPPD, a data controller is defined as any natural or legal person, public authority, agency or other body that, alone or jointly with others, determines the purposes and means of personal data. When two or more controllers jointly determine the purposes and means of processing, they are considered joint controllers.

A data processor is defined as any natural or legal person from the public or private sector who processes personal data for and on behalf of a data controller. If a processor acts beyond its instructions and determines the purposes and means of processing, they are legally considered to be a controller relative to those specific processing activities.

Data processing is considered lawful only if at least one of the following bases applies:

- consent of the data subject;
- performance of a contract;
- compliance with a legal obligation;
- protection of vital interests;
- performance of a public task; or
- legitimate interest.

### 8.2 Geographical Scope

The LPPD extends its scope to data controllers established outside of Kosovo if they use automatic or other equipment within the territory for the purpose of processing personal data, unless that equipment is used only for transit.

Foreign controllers are obliged to designate a representative registered in Kosovo to handle processing issues and ensure compliance with the LPPD.

The obligation to designate a local representative does not apply if:

- the processing in question is occasional;
- the processing does not include large-scale processing of special categories of data (ie, data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, identifiable biometric data and other categories as expressly listed in Article 8 of the LPPD);
- the processing is related to criminal convictions; and
- the processing is unlikely to pose a risk to the rights and freedoms of natural persons.

Additionally, foreign public bodies or authorities are exempted from the obligation to designate a local representative.

### 8.3 Role and Authority of the Data Protection Agency

The Information and Privacy Agency (the "Agency"), led by the Commissioner, is the independent authority responsible for supervising the implementation of Law on the Protection of Personal Data and other regulations concerning personal data protection and access to public documents.

The Agency is additionally tasked with providing advice to public and private bodies on data protection-related issues, informing the public on relevant developments, issuing decisions about complaints from data subjects, supporting the fundamental right of personal data protection, carrying out inspections, carrying out periodic reviews of issued certificates to data controllers, and providing opinions for public institutions and advising the Assembly of Kosovo and the government on legislative measures.

The Agency has the authority to carry out inspections and audits ex officio to monitor compliance with data protection rules. If a violation is identified during the inspection, the Agency can order the elimination of processing irregularities or deficiencies, including the erasure, blocking, deletion or anonymisation of relevant data. Other available measures are temporary or definite bans on data processing or transfers, orders directed to controllers to meet data subjects' requests for the exercise of their rights and fines. In cases of serious and great violations, the Agency may impose fines between EUR20,000 and EUR40,000, or for companies, an amount representing 2% to 4% of their general turnover from the previous fiscal year.

The Agency also holds specific authorisation powers; for instance, private sector controllers may only implement biometric measures upon receiving authorisation.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

Kosovo may see several legislative reforms in the near future, although their timing and adoption remain uncertain given that the country has held three general elections within 18 months. Based on the government's Draft Laws Programme 2026–28, potential reforms may affect taxation, customs, investment and financial markets, public-private partnerships, state aid, business organisations, trade, consumer protection, employment, occupational safety and competition.

However, these reforms should be treated as indicative rather than confirmed until a fully mandated government and assembly advance them through the legislative process.

# KUWAIT




## Law and Practice

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**ASAR – Al Ruwayeh & Partners** is a Tier 1-ranked corporate law firm and has operated in Kuwait for over 35 years. As one of the region's premier law firms to both domestic and foreign companies, it has a strong network of contacts throughout the MENA region. With its team of lawyers, its expertise extends over a wide range of areas that cater to the needs of local and foreign multinational corporations, banks and investment companies, industrial conglomerates, governments and state authorities, and private clients. Its work cuts across various sectors and includes IPOs, capital markets, M&A, banking and finance, real estate, government projects, securities, taxation, construction, corporate and commercial matters, franchising, commercial litigation and arbitration. ASAR is also regularly retained by leading international law firms and has won numerous awards for legal services rendered. The firm has multilingual capabilities, including being able to provide services in English, Arabic and French.

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## 1. Legal System

### 1.1 Legal System and Judicial Order

Kuwait is a civil law jurisdiction, and the judiciary of Kuwait is structured in three levels: the Court of First Instance, the Court of Appeals and the Court of Cassation. The structure of the judicial system is briefly as follows.

#### The Court of First Instance

The Court of First Instance is made up of several circuits/divisions, each with its separate jurisdiction. These circuits/divisions include:

- the Small Claims/Summary Court;
- the Administrative Court;
- the Civil and Commercial Government Court;
- the Civil and Commercial Court;
- the Labour Court;
- the Court of Rent;
- the Criminal Court;
- the Court of Personal Matters; and
- the Court of Minors' Affairs.

The Court of First Instance also has three important support divisions:

- the Authentication Department, which authenticates signatures, etc;
- the Experts Department, which reviews any technical and complicated matters that the court may refer to it, etc; and
- the Execution Department, which is tasked with executing the judgments of the court.

#### The Court of Appeals

The jurisdiction of the Court of Appeals is generally limited to the review of issues being appealed from the Court of First Instance, but it is empowered to make a de novo review of appealed cases as well. The Court of Appeals regularly conducts trials de novo. Judgments rendered in the Court of Appeals are final, except for those appeals taken to and accepted by the Court of Cassation.

#### The Court of Cassation

The Court of Cassation may be viewed as the supreme court of Kuwait. It has final jurisdiction over matters relating to the proper application, interpretation and enforcement of Kuwaiti law, and rectifies procedural and substantive defects committed by the courts below it. The Court of Cassation is divided into commercial, civil and criminal divisions, and its judgments are typically respected and followed, even though they are not legally binding on the lower courts (ie, Kuwait is a civil law jurisdiction without binding court precedents).

## 2. Restrictions on Foreign Investments

### 2.1 Approval of Foreign Investments

Certain restrictions may apply, depending on the nature and extent of the foreign investment being made (including in relation to foreign ownership limitations).

As a general premise, but subject to certain limited exceptions, Article 23 of Law No 68 of 1980 (the

"Commercial Code") requires that foreign entities conducting business in Kuwait do so either through a local agent or through a Kuwaiti "partner" (typically facilitated through the establishment of a Kuwaiti company with Kuwaiti or GCC participants owning at least 51% of the capital). Significantly, Article 24 of the Commercial Code was amended (under Law No 1 of 2024) to allow for the establishment of a Kuwaiti branch of a foreign business (an "Article 24 Branch"). Under these reforms, a foreign entity can, strictly speaking, operate in Kuwait without the need for a Kuwaiti sponsor or an agent (assuming they operate through a branch). In this regard, the authorities are currently in the process of formulating new regulations setting out the relevant practices and rules for its implementation and the establishment of such an Article 24 Branch. At present, these reforms are not being implemented in practice.

An exception to these conduct of business rules is the establishment of a company or branch under Law No 116 of 2013 (the "Foreign Direct Investment Law" – FDIL). The primary purpose of the FDIL is to improve the overall investment climate in Kuwait with respect to foreign investors, and to encourage foreign investment in Kuwait by offering certain benefits to foreign investors (owning up to 100% of a Kuwaiti entity, tax credits, etc). The Kuwait Direct Investment Promotion Authority (KDIPA) was also established under the FDIL, and has regulatory oversight over matters relating to the FDIL. To obtain an investment licence from KDIPA, the prospective foreign investor must satisfy the criteria set out under Article 29 of the FDIL (see **2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance**).

Certain activities are excluded from benefiting under the FDIL but these are narrowly defined activities relating to certain sectors, such as the extraction of petroleum and natural gas, security and investigative services and the manufacture of fertilisers.

GCC individuals and GCC companies wholly owned by GCC nationals may establish branches of their businesses in Kuwait and/or own more than 51% of the shares of a Kuwaiti company (see Ministerial Resolutions No 141 of 2002 and No 237 of 2011 – the "GCC Exemption"). Except in limited instances, GCC nationals are afforded the same rights to establish and to do business in Kuwait as Kuwaiti nationals.

## 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

Any approvals that may be required will depend on the nature of the investment and how it will be made. As a general premise, the following may be of significance.

### Requirements to Open a Wholly GCC-owned Company Under the GCC Exemption

GCC nationals and GCC companies wholly owned by GCC nationals may take advantage of the GCC Exemption to open a Kuwaiti company or a Kuwaiti branch of their operations. The process and timing will vary, depending on various factors such as the desired corporate form and the relevant activities to be undertaken.

During the establishment process, the authorities will also seek to confirm that the relevant investor is a GCC national or a GCC company wholly owned by GCC nationals. This is typically evidenced by the relevant identification documents in the case of GCC nationals (ie, the passport of the GCC national, etc) and/or the constitutional documents of the GCC company (including the shareholder details). See also **3.2 Incorporation Process** for details of the process generally followed to establish certain Kuwaiti companies.

### Requirements to Open a Branch Under the GCC Exemption

Foreign investors must satisfy the following conditions in order to open a branch under the GCC Exemption.

- The relevant GCC entity must be wholly owned by GCC nationals, whether directly or indirectly. If at any time a non-GCC shareholder acquires an interest in the relevant GCC entity, the Ministry of Commerce and Industry (MOCI) may cancel the branch licence.
- The relevant GCC entity must have been in existence for at least three years before the submission of the branch establishment application to the MOCI.
- The activities of the relevant GCC entity must be permitted in the GCC region, and the Kuwaiti

branch activities must be covered under the relevant GCC entity's licensed activities.
- The establishment of a GCC branch in Kuwait should be completed within one to two months from the date all required documents are submitted to the MOCI. Generally, the documents required for submission are the MOCI establishment application form, the constitutional documents of the foreign entity and the details of its partners/shareholders. The identification documents must be attested and legalised at the Kuwaiti Embassy in the country of issuance and then attested and legalised in Kuwait before being submitted to the MOCI.

### Requirements to Obtain an Investment Licence From KDIPA

To qualify for an investment licence under the FDIL, the foreign entity has to satisfy certain special requirements set out in the FDIL and its executive regulations. As a key factor, the foreign entity has to demonstrate that its activities will benefit Kuwait as a whole and satisfy the criteria set out in Article 29 of the FDIL (that the activities will result in the transfer of technology, modern methods of governance and practical/technical experience to Kuwait; create employment opportunities and training for national labour; enhance the use of national products, etc). KDIPA will also take into account 15 sub-criteria pursuant to Decision No 329 of 2019, which elaborates on the criteria as set out in Article 29.

The steps to obtain the investment licence are as follows.

- Application request: the submission of the application request online through the KDIPA portal is the first formal step in the application to be licensed under the FDIL. The application request should briefly summarise the proposed investment/project that the foreign party wishes to undertake in Kuwait under the FDIL. Once the application request is finalised and submitted, KDIPA will review the application and will typically respond to the applicant within two/three business days regarding the success of the preliminary application.
- Formal application: if KDIPA believes that the investment/project as set out in the application request complies with and addresses the points required under the FDIL, the applicant will proceed to the second stage of the application process. As part of this process, the applicant will have to submit an application form appropriate to the vehicle it will use to pursue the project.
- Consultation: KDIPA and the relevant applicant discuss and consult on the application and the supporting documents (which will include a business study/plan); KDIPA may require additional information on particular aspects of the project that should be addressed.
- Consideration: once the application and business study are finalised and formally submitted along with the attested, legalised and translated constitutional documents of the applicant, KDIPA is to respond to the applicant within 30 days regarding the success or failure of the application.
- KDIPA approval and investment licence: if the application is approved, the necessary formal steps to give effect to the investment/project are put in place, and an investment licence is issued by KDIPA following the completion of the incorporation process and the issue of the trading licence by the MOCI. If the application is rejected, a written explanation will be given. The applicant may challenge this decision within 30 days.

## 2.3 Commitments Required From Foreign Investors

Certain commitments may be required by KDIPA in order for it to issue an investment licence, as set out under **2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance**. Such commitments are typically agreed on the basis of the relevant business plan. If the agreed commitments are not adhered to, this may have an impact on the investor's licence and the benefits being enjoyed under the FDIL.

## 2.4 Right to Appeal

See **2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance**.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

Law No 1 of 2016 (the "Companies Law") provides for several types of companies that may be established. The more common forms used by foreigners when investing into Kuwait are the Single Person Company (SPC) or the With Limited Liability Company (WLL).

SPCs and WLLs are largely subject to similar rules/regulations, with a significant difference being that an SPC may only have a single shareholder while a WLL is required to have between two and 50 shareholders. If an SPC has more than one shareholder, it is automatically converted into a WLL. WLLs are the most common form of corporate entities established by foreign parties in Kuwait.

The objects of an SPC/WLL have to be selected from a pre-approved list issued by the MOCI. An entity is not authorised to undertake activities that are not consistent with its objects as listed in its memorandum of association (MOA). The minimum required share capital of an SPC/WLL is currently KWD100 per licensed activity, which will be cumulative: the minimum share capital of each registered object (ie, licensed activity) will be added together to reach the required minimum share capital of the relevant SPC/WLL. The capital amount is usually dependent on the objects selected and approved by the MOCI for inclusion in the MOA of the SPC/WLL.

The liability of shareholders of an SPC/WLL is limited to the extent of their share capital contribution in the company. However, in relation to an SPC, the owner may also be liable for the debt of the SPC if the shareholder:

- liquidates the SPC in a mala fide manner before its expiry or the realisation of its objectives; or
- does not separate the financial rights and obligations of the SPC from its other activities to the prejudice of bona fide third parties.

Investors may also establish a Kuwaiti Joint Stock Company (KSC). There are two types of KSCs: Public Joint Stock Companies (KSCPs) and Closed Joint Stock Companies (KSCCs). KSCCs are more common than KSCPs but, given that KSCs are subject to certain additional taxes (such as Zakat and contributions to the Kuwait Foundation for Advancement of Science) and increased regulation, and have greater minimum capital requirements compared to an SPC/WLL (the minimum required capital is KWD10,000 for KSCCs and KWD25,000 for KSCPs), investors prefer to establish SPCs/WLLs unless the particular project requires a KSC. SPCs/WLLs are also easier to set up and administer, are subject to less stringent regulations and are relatively cheaper to establish and operate than a KSC. In light of this, what follows in this chapter does not address issues in relation to KSCs, focusing instead on SPCs/WLLs.

### 3.2 Incorporation Process

As a high-level summary, in order to incorporate an SPC/WLL, an application must be submitted to the MOCI using a standard Arabic application form accompanied by the required documentation/information. This is submitted online through the MOCI's website. Certain information must be provided as part of the online application, including the names of the shareholders/manager, the capital amount, the manager's authority, the company name, the ultimate beneficial owner (UBO) details, etc.

As an initial step, the UBO must approve their inclusion and be named as such in the application. Currently, only Kuwaiti nationals or expatriates holding a Kuwaiti Civil ID can be listed as a UBO. Under Resolution No 4 of 2023 on the Procedures for the Identification of the Actual Beneficiary (the "UBO Resolution"), the actual beneficiary of a corporate entity is the party that directly or indirectly owns or controls 25% or more of the capital or voting rights of the entity or otherwise has the right to appoint and remove the majority of the board of directors. Where it is not possible or practical to identify the UBO on that basis, the UBO is the person who has actual control over the relevant corporate entity. Where this is not possible or practical, the UBO is the person responsible for the management of the relevant corporate party.

Once the UBO has approved their inclusion, the MOCI must approve one of the proposed names. The online application is then referred to the Ministry of the Interior (the MOI) for its approval regarding the partners

and manager of the SPC/WLL. After obtaining the MOI's approval, the MOA of the company should be signed by all partners (or their representatives) before the Notary Public at the Ministry of Justice. Following the signing of the MOA, the MOCI issues a certificate confirming the registration of the SPC/WLL on the Commercial Registry.

After completing the Commercial Registration application, an online application must be submitted to the MOCI for the issuance of the SPC's or WLL's trading licence. At this point, the lease agreement and rent receipt of the SPC's/WLL's premises must be submitted to the MOCI. During this process, the approvals of the Municipality and Fire-Fighting Administration should also be obtained, after which the trading licence should is issued for the SPC/WLL. Additional approvals may also be required, depending on the business of the SPC/WLL.

The incorporation of the SPC/WLL takes approximately three weeks (from the date all required documentation and information is submitted), provided that no substantial changes are made to the standard MOA proposed by the MOCI.

### 3.3 Ongoing Reporting and Disclosure Obligations

Companies are subject to various ongoing reporting/disclosure obligations after establishment. While the particular obligations will depend on the company itself and the activities it undertakes, examples of what may be required include:

- changes of management must be registered with the MOCI, as well as any amendments to a company's constitutional documents;
- financial statements must be submitted to the MOCI annually for review/approval;
- any change in the shareholding must be registered with the MOCI;
- if the company is licensed under the FDIL, KDIPA will require ongoing disclosures evidencing compliance with commitments made during the licensing process; and
- the UBO and any update thereto must be registered with the MOCI.

### 3.4 Management Structures

An SPC is managed by its owner, but such an owner may appoint one or more managers to manage the company on its behalf. A WLL is managed by one or more managers (and not by a board of directors, which is typically charged with managing KSCs). Managers can be of any nationality, but must have a Kuwait civil ID card and be a resident of Kuwait.

The MOA of the company sets out the powers of the managers. In the absence of any provisions regarding the powers of the managers, the managers have the full power to act on the SPC's/WLL's behalf (it is common to provide in the MOA that the manager has full authority to act on behalf of the WLL) but this can be restricted in the company's MOA or by the ordinary general meeting of the partners (although certain restrictions apply in practice). In relation to a WLL, if the manager is named in the MOA, their termination/replacement should be approved by an extraordinary general meeting. The manager would be considered an employee of the company, so their relationship with the company would be subject to Law No 6 of 2010 (the "Labour Law").

### 3.5 Directors', Officers' and Shareholders' Liability

Managers are jointly liable towards the company, the partners and third parties for breaches of the law or the MOA, or for mismanagement (Article 105 of the Companies Law).

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

Generally speaking, all employers/sponsors in the private sector in Kuwait are required to comply with the provisions of the Labour Law regarding matters such as working hours, overtime, rest days, sick leave, annual leave, holidays, etc, and other statutory benefits, regardless of whether or not such benefits have been waived in an employment contract. In this regard, the Labour Law provides for the minimum rights for employees in Kuwait, but employment contracts can provide for more beneficial rights.

The Ministry of Social Affairs and Labour (MOSAL) regulates employment matters in Kuwait and issues regulations, which should be complied with by employers/sponsors in addition to those in the Labour Law (eg, in respect of the minimum wage). While the Labour Law provides certain express protections for unions and collective bargaining arrangements, in practice these are quite rare and are typically only seen in certain sectors where Kuwaitis, rather than foreigners, form the majority of the sector's workforce.

### 4.2 Characteristics of Employment Contracts

The employment contract is used to obtain the necessary work permits, residence visas and any other government approvals required for an employee, and the Labour Law sets out the basic information required to be included in employment contracts. According to Article 28, the employment contract should be in writing (although an employment relationship can be evidenced through all means of proof) and must include the contract date (both the date of conclusion and the date of validity), the wage payable and the duration of the contract (if a fixed-term contract). The employment contract must also be filed with the MOSAL.

The duration of an employment contract can be either fixed (ie, for a specific period) or indefinite. Depending on the applicable duration, this affects notice periods to be afforded prior to termination, end-of-service benefits payable upon conclusion of the contract, etc.

### 4.3 Working Time

As a general premise, Article 64 of the Labour Law provides that employees are not to work more than eight hours per day or 48 hours per week, except as specified in the Labour Law. Article 66 stipulates that workers may work overtime if the necessity arises, provided that the overtime work does not exceed two hours a day, three days a week, 180 hours a year or 90 days a year. Workers are entitled to a 25% increase on their original remuneration for the period of overtime worked, and employers must maintain overtime records detailing the dates, overtime hours and wages.

Employees are also afforded certain rest periods under the Labour Law. In this regard, during the month of Ramadan, the working hours should not exceed 36 hours per week (Article 64). In addition to public holidays, employees are entitled to a one-hour break after working for five consecutive hours (Article 65) and to at least one 24-hour rest day every six days (Article 67). If employees are required to work on a rest day or holiday, then employers must pay such employee an additional 50% for rest days or an additional 100% for holidays, and must afford the employee an alternative rest day/holiday, as applicable.

### 4.4 Termination of Employment Contracts

Kuwait is not an employment-at-will jurisdiction. Under Article 41 (a) of the Labour Law, an employer may terminate the services of an employee without notice, compensation or benefit if:

- the employee has committed a mistake that resulted in a significant loss for the employer;
- the employee obtained employment through cheating or fraud; or
- the employee divulged secrets related to the establishment that caused or could have caused real losses.

Article 41 (b) provides that an employer may dismiss an employee (subject to the payment of the employee's end-of-service benefits) if the employee:

- has been found guilty of a crime that relates to honour, trust or morals;
- has committed an act against public morals at the work site;
- has assaulted one of their colleagues, the employer or their deputy during work or for a work-related reason;
- breached or failed to abide by any of the obligations imposed on them by contract or under the Labour Law; or
- is found to have repeatedly violated the instructions of the employer.

Employees also have the right to terminate their employment contracts without notification and shall be entitled to their end-of-service benefits if:

- the employer does not abide by the terms of the contract or the provisions of the law;

- the employee was assaulted by either the employer or their deputy;
- continuing work will endanger their safety and health pursuant to the decision of the medical arbitration committee at the Ministry of Health;
- the employer or their deputy committed an act of cheating or fraud with regard to work conditions upon signing the contract;
- the employer accused the worker of committing a punishable act and the final verdict acquitted the worker; or
- the employer or their deputy commits an act against the employee that violates public morals (Article 48).

If the term of the work contract is not specified (ie, an indefinite-term contract), both parties have the right to terminate by providing three months' prior notice of termination (assuming the employee is paid on a monthly basis – this notice period is one month for contractors paid on another basis (Article 44)). In relation to fixed-term contracts, Article 47 of the Labour Law provides that, where the contract is unlawfully terminated prior to the expiry date, the terminating party shall compensate the other party for damages suffered, provided that the amount of compensation does not exceed the remuneration of the worker for the remaining period of the contract. The damage suffered is typically determined in light of trade custom, the nature of the work and the unexpired portion of the contract. All amounts due to the other party may be deducted from the value of the compensation.

Except in limited instances (eg, termination under Article 41 (a) of the Labour Law), employees are generally entitled to certain end-of-service benefits following the conclusion of the relevant employment relationship. In this regard, according to Article 51 of the Labour Law, employees paid on a monthly basis are entitled to 15 days' salary for each of their first five years of service and 30 days' salary for each subsequent year. Other employees (eg, employees paid on a commission basis or an hourly, daily or weekly basis, etc) are entitled to ten days' salary for their first five years of service with the employer and 15 days' salary for each subsequent year. The total end-of-service indemnity is based on the latest monthly salary (including all regular, customary and ordinary payments made to the employee, such as regular benefits, allowances and grants) and should not exceed one and a half years' salary. Other factors that affect the calculation of the end-of-service benefits include whether the employee was on a fixed-term contract, the term of employment and whether the employee resigned.

### 4.5 Employee Representations

Articles 98 to 132 of the Labour Law address employees' rights to organise/form unions, collective employment contracts and collective labour conflicts. Such issues are rarely encountered in practice unless an employment field is populated primarily by Kuwaiti employees, and such arrangements are by no means mandatory.

Article 109 of the Labour Law requires employers to provide their employees with copies of all laws and regulations relating to their rights and duties. Additionally, Article 35 of the Labour Law requires employers to inform employees in advance of the penalties to which they may be subject.

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/ Employers

Natural persons are not generally subject to tax in Kuwait. As such, no taxes are typically payable in the context of an employment relationship. However, with respect to the employment of Kuwaiti nationals, such persons and their employers are subject to the Social Security Law of Kuwait and are obliged to make certain social security contributions (ie, 10.5% of the employee's salary from the employee and 11.5% from the employer).

### 5.2 Taxes Applicable to Businesses

There have been certain developments regarding the application of income tax in Kuwait. The following are particularly noteworthy.

- Decree Number 3 of 1955 (the "Corporate Income Tax Law"): this law applies generally and provides that tax will be levied at a flat rate of 15% on the net profits generated in Kuwait by any corporate body "carrying on business" in Kuwait. As a matter

of practice, natural persons, both Kuwaiti and non-Kuwaiti, are currently not subject to the Corporate Income Tax Law unless acting in a nominee capacity for a foreign company. Persons subject to the MNE Tax Law (defined below) are also excluded from the scope of the Corporate Income Tax Law.
- Law of Taxation on Multinational Entities No 157 of 2024 (the "MNE Tax Law"): this law was issued pursuant to the global "base erosion and profit shifting" (BEPS) initiatives and the OECD Pillar II Model Rules. Under the MNE Tax Law, and subject to certain exemptions/qualifications, multinational entities operating in Kuwait which form part of a group which generates annual revenues of EUR750 million or more are subject to a tax of 15% on their Kuwaiti profits. The MNE Tax Law covers various entity types, including companies, joint ventures, and permanent establishments of foreign entities in Kuwait. However, government entities, non-profit organisations, international organisations, pension funds, investment funds, real estate investment vehicles, and certain entities directly owned by any of these excluded entities may be able to take advantage of exemptions under the Law.

It is noteworthy that these two tax laws do not apply in parallel. Where an entity is subject to the MNE Tax Law, the Corporate Income Tax Law does not apply.

The Department of Income Tax (DIT) also seeks to tax foreign corporate bodies under the Corporate Income Tax Law in their capacity as shareholders in a Kuwaiti company by taxing their percentage interest. The DIT would likely seek to apply the same practice to foreign corporate shareholders of GCC companies operating in Kuwait and/or where a foreign corporate shareholder appoints an individual nominee to hold its shares in a Kuwaiti company on its behalf.

While, strictly speaking, there is currently no "withholding" tax in Kuwait, there is a requirement under the Corporate Income Tax Law for government agencies and private entities in Kuwait to notify the DIT of all contracts entered into by them, and to retain 5% of the contract value (in practice, this is achieved by retaining 5% of all payments made to the counterparty) until the counterparty provides a tax clearance certificate. Although this procedure is sometimes loosely referred to as a withholding tax, it is, in essence, a retention mechanism to secure the counterparty compliance with its Kuwait income tax obligations, rather than a tax as such. That said, while this remains subject to formal confirmation, entities subject to the MNE Tax Law may be exempt from such retention requirements.

While Kuwait has not yet introduced a value added tax (VAT), it is expected to implement a 5% VAT in line with the GCC Framework Agreement on VAT signed in 2016. As briefly mentioned in **3.1 Most Common Forms of Legal Entity**, KSCs may be subject to additional taxes (Zakat, etc) compared to other corporate forms such as WLLs.

### 5.3 Available Tax Credits/Incentives

Given the restricted scope of taxes in Kuwait (relatively low flat tax rates, etc), there is limited scope for additional tax credits and incentives.

It is of particular significance, however, that several tax credits are provided to parties operating under the FDIL. These tax credits are related to the commitments made to KDIPA and are set out below (with the figures given being the set percentage/multiplier value for calculating annual benefits).

- Technology transfer: specialised equipment cost – 20% of the value of the specialised equipment cost.
- Creating job and training opportunities for Kuwaiti nationals:
  - (a) total expenditure on salaries paid to Kuwaiti employees – five times the annual salaries paid to the Kuwaiti employees in excess of the percentage covered under the applicable laws; and
  - (b) total number of Kuwaiti employees – KWD36,000 for each Kuwaiti employee.
- Expenditure on training of Kuwaiti employees – ten times the annual expenditure on training of Kuwaiti employees.
- Utilisation of local resources:
  - (a) rental of the local head office of the investment entity – equivalent to the value of the annual contracts with local suppliers;
  - (b) contracts with local suppliers (especially in-

cluding SMEs) for the provision of local products and services – equivalent to the value of the annual contracts with local suppliers; and
(c) raw material and other material from local sources – double the annual value of inputs used from local sources.

Article 8 of the executive regulations to the Corporate Income Tax Law is also significant, as it provides that the profits accrued by corporate bodies from trading on the Kuwait Stock Exchange are exempt from taxation.

## 5.4 Tax Consolidation

While there is no express rule restricting tax consolidation, the Corporate Income Tax Law provides that every taxpayer must file an income tax declaration (Articles 1 and 8 of the Corporate Income Tax Law), and this requirement is applied in practice by the DIT. In practice, consolidation is permitted in relation to affiliates and is expected to develop further with the introduction of the MNE Tax Law and its requirements.

## 5.5 Thin Capitalisation Rules and Other Limitations

The Corporate Income Tax Law does not expressly address thin capitalisation (where a company is primarily financed by debt rather than equity) or the tax consequences thereof; however, it is of possible significance that Executive Rule No 38 provides that the DIT may scrutinise financial costs/expenses to detect whether a taxable transaction has occurred (considering, amongst other things, the necessity of loans/interest in relation to loans from banks and related parties, and the surrounding documents, inter-group interest charges and interest paid in relation to foreign financing). Executive Rule No 38 provides as follows (informal translation).

### First: Bank Interest

The interest locally paid on bank facilities and loans used in the main activity of the incorporated body shall be accepted after ensuring the necessity of the loan and also the supporting documents. The interest on the loans utilised in financing the capital operations shall be capitalised and added to the asset value.

All interest charged by the head office for its current account in the incorporated body's branch in the State of Kuwait shall be discarded. The same applies to the interest charged by the agent.

The interest paid abroad shall be discarded unless it is proved that such interest has been paid for loans and bank facilities to finance the incorporated body's activities in the State of Kuwait.

### Second: Letter of Guarantee's Commission Paid Abroad

This commission shall be allowed if it is only paid to a foreign bank to issue a letter of guarantee from a local bank and the letter of guarantee is related to a taxable project in Kuwait. Commissions related to a letter of guarantee where the revenue is not taxable shall not be allowed.

## 5.6 Transfer Pricing

Save for certain limited guidance in the executive regulations (see Article 5) and the Executive Rules, little is expressly provided in the tax laws/regulations on how taxes should be treated between a branch and its head office.

That being said, Executive Rule No 38 does provide that no interest charged by a head office in relation to its account with the Kuwaiti branch shall be deductible. In practice, however, such interest charges may be allowed if the Kuwaiti tax authorities are satisfied that the interest is a legitimate charge that relates to a Kuwaiti project. Also of significance, Executive Rule No 49 provides that the tax authorities may inspect intergroup transactions to ensure that such transactions are not concluded for illegal tax purposes. Executive Rule No 49 goes on to provide that each entity is responsible for its own taxes but that, in special cases, related entities can be treated differently after consulting with the tax authorities.

It is also understood that, in practice, the DIT applies limits on the deductibility of expenses incurred outside Kuwait in relation to a head office, related entities and third parties to varying degrees. The following are provided as examples:

- costs of imported materials to be resold in Kuwait – deductions cannot exceed 85–95% of the related value;
- design costs incurred outside of Kuwait – deductions cannot exceed 75–85% of the related value; and
- foreign consulting expenses – deductions cannot exceed 70–80% of the related value.

Depending on an entity's status (ie, whether it is a head office, a related party or a third party), the applicable deduction allowed may be greater or lower within the range provided. Transfer pricing rules are also introduced under the MNE Tax Law, which broadly provides for concepts which align with the OECD Transfer Pricing Guidelines (including arm's length principles etc).

### 5.7 Anti-Evasion Rules

See **5.6 Transfer Pricing** regarding the scrutinisation of related party transactions. Where there are reasonable grounds to believe that a taxpayer will not comply with its tax obligations, Article 35 of the executive regulations to the Corporate Income Tax Law empowers the DIT to make preliminary attachments (and potentially seek to dispose of the assets) and to ban the relevant management of the taxpayer from travelling. The following may also be of possible relevance.

- See **5.2 Taxes Applicable to Businesses** in relation to the 5% tax retention required to be made from payments being made to counterparties.
- Under Executive Rule No 57, the authorities can institute precautionary attachments when the Tax Department becomes aware that the taxpayer intends to:
  (a) leave the country forever;
  (b) cease its activity; or
  (c) dispose of its assets with the aim of evading the tax due.
- Under Article 36 of the executive regulations to the Corporate Income Tax Law, if the final and payable taxes and penalties are not paid on the required date, the Tax Administration may approach the courts to attach the property of the taxpayer (including such assets of the taxpayer as may be in the possession of a third party). With respect to penalties, Article 34 of the executive regulations to the Corporate Income Tax Law provides that a penalty of 1% per month (calculated on the taxes due) shall be imposed for failing to submit a tax return as from when the tax return was meant to be filed, and a further 1% per month (calculated on the taxes due) for failing to actually pay taxes as from when the tax was due to be paid.
- Under Article 44 of the executive regulations to the Corporate Income Tax Law, the Tax Administration may cancel any agreement or procedure that has the intention of tax avoidance.

Significantly, the MNE Tax Law also includes new rules regarding tax avoidance/evasion. The following is of particular importance.

- Unlike previous tax legislation in Kuwait, the MNE Tax Law includes a provision which expressly seeks to combat manipulative structures which are aimed at reducing tax liability. In this regard, it is provided that an agreement/transaction shall be disregarded where its principal purpose or one of its principal purposes is to reduce, defer or be exempt from tax.
- Without prejudice to any stricter penalty, a person can be subject to imprisonment for up to three years and/or a fine of up to three times the tax liability in relation to tax evasion by committing or contributing to forgery, fabrication, concealment or destruction of records.

The MNE Tax Law also includes provisions for, amongst other things, precautionary attachments, administrative penalties (for late filing and payment of taxes) and increased penalties for repeat offences.

### 5.8 Tariffs

The tariffs (customs duties) are regulated under the Unified Customs Law (enacted in Kuwait by Law No 10 of 2003) and the Kuwaiti regulations issued under the Unified Customs Law by Decree 200 of 2003. The General Administration of Customs (GAC) is the government entity responsible for undertaking all tasks and duties related to the customs affairs, including implementing decisions issued by the government ministries and other departments in the State of Kuwait with respect to the importation of goods.

The standard customs duty rate in Kuwait is 5% of the cost, insurance, and freight value of the imported goods. However, certain categories of products are subject to different duty rates or exemptions depending on their nature, purpose or country of origin. For example:

- Kuwait applies unified customs duties with other GCC countries and there are certain preferential agreements with other Arab countries which impact the applicable customs duties;
- tobacco and its derivatives, amongst other products, are subject to higher customs duties;
- items imported for official use by government institutions may be exempt; and
- raw materials and machinery used in industrial production by Kuwaiti entities may be eligible for exemptions or reduced rates.

Personal belongings and items accompanying a person moving to Kuwait are often exempt.

## 6. Competition Law

### 6.1 Merger Control Notification

Kuwait has recently overhauled its competition regulatory regime, with a new Competition Law (No 72 of 2020) promulgated during November 2020. The Competition Protection Authority (CPA) has been tasked with implementing the Competition Law and regulating competition matters generally in Kuwait. The CPA issued implementing regulations, which were published during July 2021 (under CPA Resolution 14 of 2021) and which have since been supplemented; these regulations give further effect to the Competition Law. The Competition Law and its implementing regulations have brought about a number of significant changes to M&A, which should be accounted for going forward.

When acquiring or merging with another business, certain reporting obligations and approval requirements arise in the context of what is considered to be an "economic concentration". Such economic concentration is defined under the Competition Law to include "a permanent change of control in the relevant market, arising by way of merger or acquisition". Such control may also be exercised in concert with other persons, whether directly or indirectly.

Article 10 of the Competition Law provides that such economic concentration is deemed to be present in the following instances:

- the merger of two or more persons or parts of their businesses that results in control or an increase of control;
- the acquisition of direct or indirect control over another one or more persons through acquiring, amongst other things, assets, equities, usufruct and/or shares; or
- the existence of a partnership between two or more persons that leads to a permanent and independent economic or commercial activity, whatever the legal form or activity that is practised.

Article 10 of the Competition Law has been drafted in broad terms and is largely duplicated in the implementing regulations. However, the definition of what is to be considered an economic concentration provides that there should also be a change of control of a particular market. Of particular significance is the fact that, while the previous and now repealed Competition Law (No 10 of 2007) provided that control would be established where a person (or group of persons), directly or indirectly, controls 35% or more of a particular market, this has not been carried over into the current Competition Law or its implementing regulations. However, Article 12 of the Competition Law does provide that such reporting obligations are triggered where the value of the underlying registered assets or annual sales in Kuwait subject to the economic concentration exceeds certain thresholds. These thresholds are set out in CPA Resolution No 26 of 2021 on Controls of Aggregate and Individual Thresholds, as amended by Resolution No 32 of 2026.

### 6.2 Merger Control Procedure

As indicated in **6.1 Merger Control Notification**, the Competition Law provides that the participants of an economic concentration situation are required to obtain the approval of the CPA before completing such economic concentration. A CPA application is required only if the relevant registered assets or annual sales in Kuwait exceed the applicable thresholds.

The application to be submitted to the CPA should include confirmation of the payment of an administration fee in an amount equal to 0.1% of the paid capital or the aggregate value of the assets of the relevant persons in Kuwait, whichever is less, subject to a maximum of KWD100,000. The CPA should then examine the application to determine the possible negative consequences of the economic concentration on free competition. Given the timelines afforded to the CPA in evaluating such application, this process may take several months to complete, but currently, in practice, this would take two months.

### 6.3 Cartels

The Competition Law guarantees the freedom of exercising economic activity in a manner that does not affect free competition for all in Kuwait. The Competition Law also contains a general prohibition on acting in an anti-competitive manner (by stating that all agreements, practices, etc, that are harmful to free competition are prohibited) and elaborates on particular agreements/practices that are restricted. The Competition Law provides that it shall apply to all acts perpetrated abroad that affect competition in Kuwait.

The Competition Law has introduced the concepts of horizontal relationships and vertical relationships into Kuwaiti law.

Persons are in a horizontal relationship when they are on the same level of production/distribution level in a particular market, whereas a vertical relationship exists when they are on different levels of a production or distribution chain of a particular market.

In a horizontal relationship, parties are restricted from:

- setting the prices of products, either directly or indirectly, whether by increasing, decreasing, fixing the price or imposing any commercial restrictive requirements relevant to the sale or distribution of commodities or the provision of service or any other form contrary to ordinary market forces;
- dividing the product markets according to areas, volume of sales or purchases or products being sold in any other manner;
- fixing the quantity of production, distribution or sale for commodities or determining a specific method or means for the provision of a service;
- restricting the technical development or investment in connection to the production, distribution or sale of a commodity or provision of a service; and
- colluding in submitting bids or offers for the sale, purchase or provision of any commodity.

Significantly, the Competition Law provides that the CPA is to provide further guidance on what is permitted/restricted in relation to persons in vertical relationships; such guidance remains outstanding.

### 6.4 Abuse of Dominant Position

See **6.1 Merger Control Notification** and **6.3 Cartels**.

## 7. Intellectual Property

### 7.1 Patents

Law No 71 of 2013 (the "Patent Law") addresses patent protection issues in Kuwait. Although the Patent Law does not expressly define the word "patents", Article 3 provides what should not be considered as a patent, including:

- discoveries, scientific theories, mathematical methods and computer programs;
- schemes, rules and methods of doing business, practising pure mental activities, and playing a game;
- plants and animals and the biological processes used to produce plants or animals, with the exception of microbiology processes and the products of these processes; and
- methods for treating the human or animal body surgically or therapeutically, and methods of diagnosing disease applied to the human or animal body, with the exception of products that are used in any of these methods.

The Patent Law does not protect plant varieties and animal species.

According to Article 15, patents are valid for a period of four years, but can be renewed for cumulative periods of up to 20 years.

At present, the Patent and Trademark Office (PTO) processes applications for industrial designs, while other patent applications are directed to the GCC Patent Office in Riyadh, Saudi Arabia. When approved, a registration in the GCC Patent Office in Riyadh may be enforced in Kuwait.

An owner or rights holder of a patent, a drawing, a design or a utility model may file a complaint under the Patent Law to protect their rights. During a civil or criminal lawsuit, a rights or title holder may ask the court to issue an order to take precautionary measures, which may include the seizure of the contravening goods and the equipment and machines used for committing the offence. Where necessary, the order issued for taking such measures may require the appointment of an expert and other court officers to assist in its execution.

Unlike under Law No 13 of 2015 (the "TM Law" – see **7.2 Trade Marks**) and Law No 75 of 2019 (the "Copyright Law" – see **7.4 Copyright**), which specifically allow a rights or title holder to seek an order from a Kuwait court for the enforcement of precautionary measures prior to the filing of a substantive infringement action (and on an ex parte basis when necessary) to prevent patent infringements and violations, the Patent Law grants such a right only after the substantive claim for patent infringement or violation of the Patent Law has been filed.

The 1970 Patent Cooperation Treaty (as amended) (PCT), an international patent law treaty, is also of significance, and was ratified by the State of Kuwait on 9 September 2016. The PCT makes it possible to seek patent protection for an invention simultaneously in a number of countries by filing an "international" patent application; such an application may be filed by anyone who is a national or resident of a contracting state with the national patent office of the contracting state or, at the applicant's option, with the International Bureau of WIPO in Geneva. However, it should be noted that the PCT application does not itself result in the automatic granting of a patent, and the granting of a patent is at the discretion of each national or regional authority. In other words, a PCT application establishes a filing date in all contracting states but must be followed up on by entering into national (or regional) efforts to obtain one or more patent registrations.

## 7.2 Trade Marks

Trade mark protection is regulated under the TM Law, which is largely based on a treaty between the various GCC states. The TM Law defines "trade marks" as "anything which takes a distinct form or style in the form of names, words, signatures, letters, symbols, numbers, titles, stamps, drawings, graphs, inscription or combination of same, or any signs or group of signs if used or intended to be used to distinguish such products or services of an organisation or entity relevant to such products or services from products or services of other entities or to indicate the performance of a service or to control or check such products or services" (informal translation).

Trade marks, service marks, logos and trade names may be registered in Kuwait under the TM Law in accordance with international classification standards, except those relating to certain prohibited items (ie, alcohol and pork products) and certain restricted activities (such as gambling). These registrations are valid for up to ten years from submission of the application for registration, and may be renewed for similar periods. When foreign marks are to be used in Kuwait, the owner thereof is typically recommended to consider registering them locally in accordance with the TM Law as this affords the mark owner more protection than when the marks have not been registered.

In the case of an infringement of a registered trade mark, the remedies available to the trade mark owner under the TM Law include:

- filing a criminal action (see Articles 2, 3 and 4 of the TM Law);
- seeking injunctive relief, which may take the form of confiscating infringing items, impounding the tools used in infringing the mark and/or the destruction of unlawful marks and property (see Article 40 of the TM Law);
- if the infringing party manages to register the infringing mark, filing a case to de-register the trade mark of the infringing party (see Articles 22 to 24 of the TM Law);

- seeking damages (see Article 41 (1) and (2) of the TM Law); and
- filing an application with the Customs Department to prevent the entry of counterfeit goods (see Article 38 of the TM Law).

Of significance, a complainant should file a substantive action with the relevant court within 20 days of the granting of a precautionary order/injunctive relief.

### 7.3 Industrial Designs

Industrial designs are also protected in Kuwait (but not separately defined, strictly speaking) under Law No 4 of 1962 (the Patent, Designs and Industrial Models Law), Article 35 of which provides that "any arrangement of lines or any type of figure, whether coloured or uncoloured, designed for use in industrial production by a mechanical, manual or chemical process shall be considered a design or industrial model" (informal translation). Although industrial designs are regulated similarly to patents, they are subject to certain different rules. For example:

- the initial protection period for industrial designs is ten years from the application date;
- industrial designs may be renewed for one further period of five years; and
- industrial models are registered with the PTO on the Register of Designs and Industrial Models.

### 7.4 Copyright

The Copyright Law governs copyright issues and defines a "work" as "any creative literary, artistic or scientific work of whatever kind, expression, importance or purpose" (informal translation), and provides for the protection thereof. Article 23 of the Copyright Law provides that copyright protections will typically endure for the lifetime of the author and for 50 years after the author's death; additional considerations may apply, depending on the nature of the work and the author involved (joint works, juristic entities, etc). Certain limited exceptions from the copyright protection are provided for (copying short portions for educational purposes, etc).

A party seeking to protect its copyright does not need to register the copyright locally in order for it to be granted protection under the Copyright Law; however, it may wish to apply and file a request with the Kuwait National Library (KNL) to deposit works sought to be protected in order to enhance the ability to evidence the author's entitlement to copyright protection. The KNL is authorised to accept applications for the deposit of works from authors or creators, their descendants or their official representatives. Only one classification of work will be allowed for each application. If the material is accepted for deposit, the KNL will classify the material and issue a certificate indicating the serial number, the date of deposit and an international classification.

Under Article 35 of the Copyright Law, a complainant may petition a court to grant interim relief (an order restricting the publication, presentation, performance or copying of the work for a certain period of time, seizure of the revenue generated from the exploitation of the work, etc) when there is a violation of any rights stipulated under the Copyright Law. Significantly, a complainant should file a substantive action with the relevant court within 15 days of the granting of the interim relief.

### 7.5 Others

While certain laws protect trade secrets (eg, the Companies Law restricts directors from sharing company secrets), there is no formal registry for such information.

While a database can enjoy protection under the Copyright Law, depending on its nature, the authorities have not issued a directive as to the basis on which software is protected. Depending on the type/format of the software, possible arguments can be made that it should be protected under copyright or as a patent. In this regard, the Copyright Law expressly provides for the protection of "computer programs" but, as provided in **7.1 Patents**, the Patent Law states that patents "shall be granted in accordance with the provisions of this Law for any new invention which is utilisable in industry, whether it concerns a new industrial product, original industrial process and techniques or a new application of know industrial process or techniques" (informal translation), and it is conceivable that certain software could also satisfy this language in the Patent Law.

## 8. Data Protection

### 8.1 Applicable Regulations

Data protection considerations and restrictions are addressed in various laws of Kuwait, including:

- the Kuwaiti Constitution;
- the Electronic Transactions Law (the "ET Law");
- Law No 37 of 2014 on the Establishment of the Communications and Information Technology Regulatory Authority (CITRA);
- the Evidence Law;
- the Right to Access Information Law and its implementing regulations;
- Law No 9 of 2019, Concerning the Exchange of Credit Information and its implementing regulations;
- various resolutions/regulations issued by CITRA, such as:
  (a) CITRA Resolution No 26 of 2024 on the Regulations of Data Privacy Protection (DPR); and
  (b) the Cloud Computing Regulatory Framework ("Cloud Regulations") issued by CITRA;
- Decree No 37 of 2022 regarding the establishment of the National Cyber Security Center (NCSC); and
- various resolutions/regulations issued by the NCSC, such as:
  (a) Resolution No 35 of 2023, "Concerning the National Framework for Cybersecurity Governance";
  (b) Resolution No 1 of 2025, "Concerning the National Framework for Cybersecurity Governance"; and
  (c) Resolution No 2 of 2026 "Concerning the National Controls for Cybersecurity."With respect to data protection generally, the ET Law applies to all records and information recorded electronically relating to civil, commercial and administrative transactions, unless the parties agree otherwise. Regarding the collection, use and disposal of personal information, the ET Law provides that, except as otherwise authorised, all government and private entities may not unduly or illegally disclose any personal data documented in electronic form unless and until it has been agreed to by the data subject. These restrictions on the collection, use and disposal of personal data and items that may be considered as personal data are further expanded upon in the provisions of the DPR and the Cloud Regulations. However, the DPR and Cloud Regulations are more specific in the application and considered sectoral resolutions that apply only to regulated entities which are operating in the telecommunications sector (mobile network operators, ISPs, cloud service providers, etc).

### 8.2 Geographical Scope

Companies that are doing business "in" Kuwait are typically required to abide by Kuwaiti laws, regardless of whether or not they have a physical presence in Kuwait; such laws include the ET Law. While this is decided on a case-by-case basis, the likelihood of the foreign entity being subject to Kuwait's laws increases according to the strength of the link between the activities of the foreign entity and Kuwait. Having noted this, there are restrictions on the export of certain government and sensitive information (although these points are currently being looked into and new reforms are expected).

### 8.3 Role and Authority of the Data Protection Agency

There is no particular agency in Kuwait that is specifically charged with and dedicated to enforcing Kuwaiti data protection rules. The agency that may have jurisdiction will depend on the specific data protection rules that are being contravened. For instance, CITRA would be the authority in charge of overseeing the application of the DPR and Cloud Regulations when it is related to a company which is licensed by CITRA to conduct telecommunication services, while the Central Bank of Kuwait would be the primary authority in relation to entities which it may regulate (such as banks).

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

With respect to business reforms in 2026 and beyond, it is expected that a number of reforms will be issued to facilitate foreign parties seeking to do business directly in Kuwait. Perhaps the most significant of

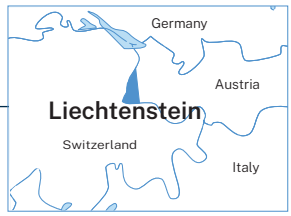
these are the regulations to be issued permitting the establishment and operation of an Article 24 Branch.

Furthermore, Kuwait now has a new Digital Commerce Law No 10 of 2026 (the "Digital Commerce Law") published in the Kuwaiti Official Gazette on 1 March 2026. The Digital Commerce Law will enter into force one month after the publication of its Executive Regulations (which are still pending issuance). The Executive Regulations must be issued within one year of the Law's publication. The legislation introduces a framework governing commercial activities conducted through websites, digital platforms, applications and social media channels, with the objective of enhancing transparency, strengthening consumer protection and bringing greater structure to digital commercial practices in Kuwait's online marketplace.

There have also been discussions on the following developments.

- A new mortgage law that aims to address the nation's housing challenge: this legislative move seeks to regulate the housing finance system and expand homeownership opportunities for Kuwaiti citizens. Under the proposed law, a Kuwaiti citizen could access mortgage loans with flexible repayment periods. This move will invigorate the financial and real estate sectors.
- Overhauling of Kuwait's data privacy and information security policies: no details have been disclosed save for certain discussions/market speculation.

# LIECHTENSTEIN




## Law and Practice

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**Gasser Partner** is an international law firm recognised for legal excellence, strategic clarity and a strong client-focused approach. The firm brings deep expertise in private client work, banking and financial services, corporate/M&A and litigation. As one of Liechtenstein's leading practices, Gasser Partner advises private clients, family offices, financial institutions and businesses on sophisticated legal matters, including transactions, cross-border structuring and high-stakes disputes. With offices in Schaan, Zurich and Vienna, and a global network, the firm delivers seamless cross-border advice and representation.

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## 1. Legal System

### 1.1 Legal System and Judicial Order

Liechtenstein is located at the heart of Europe, bordered by Switzerland and Austria. With around 40,000 residents and the highest GDP per capita in the world, the principality combines the ways of a small jurisdiction with genuine economic depth.

Liechtenstein is a constitutional hereditary monarchy on a democratic and parliamentary basis. Under the Constitution of 1921, state power is vested jointly in the Reigning Prince, as the Head of State, and the People. The Parliament (*Landtag*) consists of 25 members elected by proportional representation for four-year terms. The *Landtag* proposes laws, and the government, a collegial body of five ministers including the Prime Minister, is responsible for day-to-day administration. Liechtenstein has pronounced direct democratic rights, where citizens may launch a referendum to put parliamentary decisions to a popular vote or initiate constitutional amendments. For a law to enter into force, it must be approved by both Parliament and sanctioned by the Reigning Prince, reflecting the dualistic principle of shared sovereignty.

Liechtenstein is a civil law jurisdiction with strong historic ties to Austria and Switzerland, and their respective legal traditions. The cornerstone of civil law is the General Civil Code (*Allgemeines bürgerliches Gesetzbuch*, ABGB), adopted from the Austrian model and in force since 1812. Key procedural laws, including the Code of Civil Procedure (ZPO), the Jurisdiction Act (JN) and the Execution Code (EO), are also derived from Austrian law. By contrast, property law is based on the Swiss model, and company law is governed by the Persons and Companies Act (*Personen- und Gesellschaftsrecht*, PGR), which draws heavily on Swiss corporate law. Employment law and social security law likewise follow the Swiss model.

The Liechtenstein judicial system is organised into three main branches. The first is the ordinary jurisdiction for civil and criminal matters, operating through a three-tier court system. The second branch comprises the administrative courts, with the Administrative Court (*Verwaltungsgerichtshof*) as the highest administrative tribunal. The third branch is the constitutional jurisdiction, exercised exclusively by the Constitutional Court (*Staatsgerichtshof*). This court serves as an extraordinary court of appeal and may be petitioned against final decisions for alleged violations of constitutional rights, rights guaranteed by the European Convention on Human Rights, or rights under the European Economic Area Treaty. All courts are located in Vaduz.

Liechtenstein has maintained a customs union with Switzerland since 1923 and shares the Swiss franc as its currency. Since 1995, it has also been a member of the European Economic Area, giving Liechtenstein-based service providers passporting rights across the EU single market. This dual access, Swiss and European, is unmatched by any other jurisdiction.

## 2. Restrictions on Foreign Investments

### 2.1 Approval of Foreign Investments

Unlike some larger jurisdictions, Liechtenstein does not operate a general foreign direct investment screening regime. A foreign investor therefore does not generally require stand-alone investment approval merely because it is acquiring shares in, establishing or financing a Liechtenstein business.

Approval requirements arise instead from sector-specific regimes and rules governing particular assets. The most important practical examples are regulated financial services, including banks, investment firms, funds and insurance undertakings, where acquisitions of qualifying holdings or control (meaning in general, if the investor has at least 10% of capital or voting rights or another possibility to exercise considerable influence) may require prior notification to, or approval by, the Liechtenstein Financial Market Authority (FMA).

Other regulated activities, such as gambling, telecommunications, energy or certain professional services, may also require an operating licence or regulatory consent irrespective of the investor's nationality. Liechtenstein's European Economic Area (EEA) membership is of importance in this context: EEA investors generally benefit from the free movement of capital and establishment, but that benefit does not displace generally applicable licensing, fit-and-proper, pruden-

tial, anti-money laundering, sanctions or real estate rules.

With regard to the acquisition of domestic real estate, the express aim of the Real Estate Acquisition Act is that ownership of real estate in Liechtenstein should be distributed in a way which is socially acceptable and consistent with the size of the country.

Generally speaking, all transfers of ownership of domestic real estate or economically equivalent rights thereto (hereinafter each a Transfer and collectively Transfers) are within the material scope of the Real Estate Acquisition Act, wherefore an approval by the relevant authority is required. This also includes the acquisition of shares in legal persons or partnerships whose assets consist wholly or predominantly of domestic real estate or equivalent rights.

In order for an investor to be granted the authorisation of the transfer, the investor may have to prove that he has a legitimate interest in the transfer.

Yet, in principle, a legitimate interest is to be considered apparent if the applicant, in this case the investor, requires business premises for a duly authorised business within Liechtenstein and if it has no other premises available.

### 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

Where approval is required, the process depends on the relevant sector or asset.

In financial-sector transactions, the investor typically files information on its identity, business, beneficial owners, financial soundness, source of funds and governance arrangements with the FMA before closing. The FMA then assesses the suitability of the acquirer, the sound and prudent management of the regulated entity and compliance with applicable prudential and anti-money laundering requirements. If the FMA does not object within the assessment period (approximately 60 working days), the acquisition or increase is deemed approved; the FMA may impose conditions and obligations as prerequisites for approval.

For real estate, legal transactions requiring approval must be submitted to the Office of Justice within four months after conclusion. Until approval is granted, the Transfer remains ineffective and becomes void if it is not submitted in time, if approval is finally refused, or if approval is finally revoked.

The consequences of non-compliance depend on the applicable regime.

In real estate transactions, intentional circumvention of the approval requirement may be punished by imprisonment of up to six months or a monetary penalty of up to 360 daily rates; negligent conduct may be punished by a fine of up to CHF20,000.

In the banking sector, failure to notify, completion during the assessment period, or completion despite an FMA objection may result in rather high administrative fines; if a qualifying holding is acquired or increased despite an FMA objection, the acquirer's voting rights may not be exercised, and any vote cast is void.

### 2.3 Commitments Required From Foreign Investors

Since Liechtenstein has no general FDI screening authority, there is no standard set of national security or public interest undertakings imposed on foreign investors as a condition to closing.

Commitments arise mainly in regulated sectors and are tailored to the regulatory concern identified by the competent authority. In financial services, commitments may relate to governance, capital adequacy, risk management, substance in Liechtenstein, reporting lines, anti-money laundering controls, etc.

In real estate matters, approval may be linked to a legitimate interest and the permitted use of the property and compliance with land-transfer conditions.

### 2.4 Right to Appeal

A refusal or conditional approval by a Liechtenstein administrative authority may generally be challenged through the applicable administrative appeal route. The precise forum and deadline depend on the respective legal grounds under which the decision was issued and on the form of the decision.

In financial-sector matters, in general (ie, unless special provisions apply) FMA decisions and orders may be challenged within 14 days from service of the decision before the FMA Complaints Commission; decisions of the FMA Complaints Commission may then be challenged within 14 days from service of the decision before the Administrative Court.

With regard to the acquisition of domestic real estate, decisions of the Office of Justice may be appealed within 14 days from the date of service of the decision to the Administrative Complaints Commission; decisions of that Commission may be appealed within 14 days from service to the Administrative Court.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

#### General Features of Liechtenstein Corporate Law

Liechtenstein's corporate law offers a remarkably broad range of legal entities and is characterised by a high degree of organisational flexibility, with comparatively few mandatory provisions. Several features are common to all or most corporate forms.

- Capital may be denominated in francs, euros or United States dollars.
- Minimum capital requirements are low by international standards, starting from CHF/EUR/USD10,000.
- Liechtenstein follows the incorporation principle, meaning that the law of the state in which the entity is registered governs its legal status, providing certainty for cross-border structures.
- There is no mandatory employee participation in the board of directors (*Verwaltungsrat*).
- The AG and the GmbH are EU-harmonised corporate forms; as an EEA member, Liechtenstein implements the relevant EU company law directives, making these vehicles internationally recognised and widely accepted in cross-border dealings.
- Both natural and legal persons may serve as members of the board of directors, regardless of nationality or domicile.
- All entities must designate a representative (*Repräsentant*) for official communication with Liechtenstein authorities, unless a domestic delivery address is specified, and must generally appoint at least one qualified board member with a nexus to Liechtenstein (see **3.4 Management Structures** for details).

The most common corporate vehicles used in practice are the following.

#### *Company limited by shares (Aktiengesellschaft, AG)*

The AG is the most widely used corporate vehicle in Liechtenstein, with approximately 4,857 AGs registered as of 31 December 2025. It is a company with a predetermined share capital divided into shares. The minimum share capital is CHF/EUR/USD50,000, which must be fully paid up at incorporation. At least two founders are required, though immediately after formation all shares may be held by a single shareholder (one-person AG).

The AG is well-suited for businesses of all sizes, with main areas of application including active international trading companies, holding structures, regulated financial services entities, and joint ventures. The AG may issue both registered shares (*Namenaktien*) and bearer shares (*Inhaberaktien*); bearer shares remain available in Liechtenstein, subject to mandatory deposit with a registered custodian. As an EU-harmonised vehicle, the AG avoids the recognition difficulties that may arise with Liechtenstein-specific forms such as the Establishment.

#### *Limited liability company (Gesellschaft mit beschränkter Haftung, GmbH)*

The GmbH has gained significantly in popularity following a comprehensive reform aimed at increasing its attractiveness and is currently one of the fastest-growing corporate forms in Liechtenstein, with approximately 1,376 registrations as of 31 December 2025. The minimum share capital is CHF/EUR/USD10,000, which must be fully paid up. The GmbH is an internationally well-known corporate form and is particularly suited for small and medium-sized enterprises (SMEs). For the GmbH, a single founder suffices.

### *Establishment (Anstalt)*

The Establishment is a corporate form unique to Liechtenstein with no direct equivalent in foreign legal systems. As of 31 December 2025, 4,030 Establishments were registered, making it the second most popular corporate form after the AG. Conceived as an intermediary form between a corporation and a foundation, the Establishment offers maximum flexibility and can be structured either as a corporation-like or a foundation-like entity, often described as the "building block" of Liechtenstein corporate law. The minimum capital is CHF/EUR/USD30,000, which must be fully paid up. The Establishment does not require shareholders.

Control usually rests with the founder, who may reserve extensive rights including the right to amend the founding documents, appoint and remove board members, and designate beneficiaries. Founders' rights may be held by one or several persons, may be divided among them, and are transferable and inheritable, making the Establishment particularly attractive for succession planning. The Establishment is widely used as a vehicle for holding real estate and participations, for asset protection and wealth transfer across generations, and as an enterprise vehicle for SMEs.

### *Foundation (Stiftung)*

The foundation is Liechtenstein's most distinctive legal export and the most numerous legal entity in its register, with approximately 8,936 foundations as of 31 December 2025. The minimum endowment capital is CHF/EUR/USD30,000. The foundation has no shareholders or owners; it is a purpose-dedicated endowment with independent legal personality. The key distinguishing feature of the Liechtenstein foundation is that it may serve purely private purposes (*privatnützige Stiftung/Familienstiftung*). Unlike in most other European jurisdictions, where foundations must generally pursue charitable or public-benefit purposes, Liechtenstein expressly permits foundations established exclusively for the benefit of designated private beneficiaries, typically family members. This makes the foundation a central instrument for intergenerational wealth planning, asset protection and succession structuring.

Private-benefit foundations are not subject to state supervision, unlike charitable foundations, which are overseen by the Foundation Supervisory Authority (STIFA). Foundations may be either registered in the Commercial Register (*Handelsregister*) or merely deposited (*hinterlegt*), provided they do not conduct a commercial business in a commercial manner (e *in nach kaufmännischer Art geführtes Gewerb* e). Deposited foundations do not appear in public records, providing an additional layer of confidentiality.

### *Trust (Treuhänderschaft)*

Liechtenstein is the only country on the European continent with a comprehensive statutory trust law. While the trust is not a legal entity, it is a well-established and widely used legal arrangement, particularly for asset protection, succession planning, and wealth structuring, with approximately 1,568 registered trusts as of 31 December 2025. In practice, trusts are frequently combined with other Liechtenstein vehicles such as the Establishment to achieve optimal structuring results.

The Liechtenstein trust was originally inspired by Anglo-American trust law but has since developed into a distinct civil law instrument, fully integrated into Liechtenstein's civil law framework. A trust is created by a settlor (*Treugeber*) who transfers assets to one or more trustees (*Treuhänder*) for the benefit of designated beneficiaries (*Begünstigte*). Notably, Liechtenstein also permits pure purpose trusts without identifiable beneficiaries, which remain restricted or unavailable in many other jurisdictions.

## 3.2 Incorporation Process

The establishment of a corporate vehicle in Liechtenstein typically takes between two and four weeks, depending on the complexity of the structure and the completeness of the documentation provided. In practice, entities are usually formed through a licensed fiduciary, who acts as a professional intermediary and ensures compliance with all regulatory requirements, including anti-money laundering due diligence (KYC/AML).

### Corporations (AG, GmbH) and Establishment

The incorporation of an AG, GmbH or Establishment requires the drafting of articles of association (*Stat-*

*uten*) and the deposit of the required minimum capital at a Liechtenstein bank. Capital may also be contributed in kind, in which case an expert valuation report is required. The incorporation is typically executed in a notarised public deed (*öffentliche Urkunde*). For the GmbH, a simplified incorporation procedure is available using a standardised model protocol (*Musterprotokoll*) that requires only certification of signatures rather than full notarisation. The entity is then registered with the Commercial Register, which reviews the application for compliance with all legal requirements before approving registration. Legal personality is acquired upon entry in the Commercial Register. If the entity intends to conduct a commercial business, a trade permit (*Gewerbebewilligung*) must also be obtained.

### Foundation (Stiftung)

A foundation is established by a unilateral declaration of the founder (*Stiftungserklärung*). Foundations may be registered in the Commercial Register. In the case of a deposited foundation, a founding declaration (*Gründungsanzeige*) must be filed with the Commercial Register within 30 days.

### Trust (Treuhänderschaft)

A trust is established by execution of a trust deed (*Treuhandurkunde*) between the settlor and the trustee. No minimum capital is required, and no notarisation is necessary. Trusts must be either registered in the Commercial Register or deposited if they are established for a duration exceeding 12 months. The trust does not acquire legal personality through registration or deposit; these serve evidentiary and regulatory purposes.

## 3.3 Ongoing Reporting and Disclosure Obligations

All entities registered in the Commercial Register must notify the Commercial Register of any changes to the board of directors, management, articles of association, registered office or authorised signatories. Deposited foundations and trusts are subject to corresponding notification obligations.

Entities operating a commercial business in a commercial manner are required to keep proper books and records in accordance with commercial accounting principles and must submit their audited annual financial statements to the Commercial Register and the Liechtenstein Tax Administration (for audit requirements, see **3.4 Management Structures**).

Under Liechtenstein's anti-money laundering framework, all entities are required to maintain a register of beneficial owners (*Verzeichnis der wirtschaftlich berechtigten Personen*), which is not publicly accessible but must be available to the Financial Intelligence Unit (FIU) and other competent authorities upon request.

Entities subject to specific regulatory supervision, such as charitable foundations (overseen by the Foundation Supervisory Authority, STIFA) or financial services entities (supervised by the Financial Market Authority, FMA), are subject to additional reporting requirements under the applicable special legislation.

## 3.4 Management Structures

Liechtenstein follows a monistic (one-tier) system of corporate governance. All legal entities have a supreme body (typically the general meeting of shareholders or an equivalent organ) and an executive body (the board of directors, or equivalent), which is responsible for overall management and representation. The articles of association may additionally provide for a supervisory board (*Aufsichtsrat*), which would approximate a two-tier structure, although this is very rare in practice. Entities that do not have a licensed trade or financial market director must appoint at least one board member who is a licensed Liechtenstein fiduciary, attorney, or auditor (or equivalent EEA-qualified person).

For the foundation, the governing body is the foundation council (*Stiftungsrat*), which must consist of at least two members. The foundation council manages the foundation's assets and ensures compliance with the foundation's purpose. It is initially appointed by the founder and thereafter typically reconstituted by co-optation or in accordance with the foundation deed.

For the trust, the trustee is responsible for the administration and management of the trust assets in the interest of the beneficiaries. As of 1 July 2026, every private-benefit trust must designate at least one information-entitled person (*Informationsberechtigter*) with

comprehensive statutory rights to information and access vis-à-vis the trustee. The information-entitled person is also subject to a duty to review the trustee's administration.

The AG and the GmbH are generally required to appoint an auditor (*Revisionsstelle*), with limited exceptions for small entities meeting specific criteria. For the Establishment and the foundation, an auditor is required only if the entity conducts a commercial business in a commercial manner. For trusts, no statutory audit requirement applies. Entities subject to specific regulatory supervision, such as financial services entities supervised by the Financial Market Authority (FMA), are subject to additional governance requirements under the applicable special legislation.

### 3.5 Directors', Officers' and Shareholders' Liability

#### Liability of Directors and Officers

Liechtenstein has a notably strict liability regime for directors and officers. All persons entrusted with the management and control of a legal entity are personally liable for damages caused by negligent or intentional breach of their duties. The liability is characterised as contractual, which triggers a reversal of the burden of proof: the officer must demonstrate that no fault occurred, rather than the claimant proving negligence. Organs are liable primarily to the entity itself; only in exceptional circumstances may shareholders or third parties pursue direct claims against the organs. Multiple liable persons are jointly and severally liable.

Liechtenstein law explicitly codifies a business judgement rule: a board member acts in conformity with legal requirements if, in making an entrepreneurial decision, it was not guided by extraneous interests and could reasonably assume to be acting on the basis of adequate information for the benefit of the entity. The Supreme Court (OGH) has characterised the strict liability regime as a counterbalance to Liechtenstein's liberal and flexible corporate law system.

#### Liability of Shareholders and Founders

The fundamental principle across all Liechtenstein corporate vehicles is that only the entity's own assets are liable for its obligations. Shareholders, founders and beneficiaries are not personally liable for the entity's debts beyond their respective capital contributions.

However, Liechtenstein law recognises the concept of piercing the corporate veil (*Durchgriff*). Where the separation between a person controlling an entity and the entity itself is abused in violation of the principle of good faith, courts may disregard the separate legal personality and hold the controlling person personally liable. Conversely, the entity's assets are generally protected from claims by personal creditors of the founder or shareholder. The courts apply both the piercing and the reverse piercing of the corporate veil restrictively and only in clearly exceptional circumstances.

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

Liechtenstein's employment law is characterised by a distinctive system rooted in the reception of multiple foreign legal orders.

General contract law is based on the historical reception of the Austrian Civil Code (*Allgemeines Bürgerliches Gesetzbuch*, ABGB). The rules of interpretation applicable to contracts are therefore those of the Liechtenstein ABGB (FL-ABGB). Employment law itself, however, was adopted virtually verbatim from the Swiss Code of Obligations (*Obligationenrecht*, OR) (Articcle 319 et seq. CH-OR) and is codified in § 1173a Article 1 to 113 FL-ABGB. In addition, Liechtenstein has developed its own body of law that supplements the received provisions.

This reception history is of considerable practical significance: Swiss legal scholarship and case law are regularly consulted for the interpretation of employment law provisions, while Austrian commentaries and jurisprudence serve as guidance for the underlying contract law rules. The Liechtenstein Constitutional Court (*Staatsgerichtshof*) has clarified that, where the legal position in Liechtenstein and Switzerland is identical, the case law of the Swiss Federal Supreme Court should generally be followed. Received provisions are to be interpreted in the same way as in their country of origin, since the Liechtenstein legislature intended

to align its own law with the legal position actually prevailing there. However, Liechtenstein is not rigidly bound to the interpretation of the country of reception and may adopt its own interpretations where compelling reasons so warrant.

In addition, European law provisions in the field of social security influence substantive Liechtenstein employment law, particularly with regard to continued payment of wages. These provisions have an autonomous character that takes precedence over the Act on Private International Law (IPRG).

The sources of Liechtenstein employment law thus comprise statutory law (§ 1173a FL-ABGB as the central provision), case law (both domestic and Swiss and Austrian jurisprudence as interpretive aids), European law requirements, and, additionally, individual employment agreements and, where applicable, collective bargaining agreements.

### 4.2 Characteristics of Employment Contracts

The employment contract is directed at the performance of personal work in return for remuneration. The law also makes clear that regular part-time work is covered.

An employment contract does not, in principle, require any particular form and may therefore also be concluded orally or by implied conduct. In practical terms, this means that an employment relationship can come into existence even without a written contract where a person actually works in the service of an employer and remuneration is to be expected. The ABGB provides in this regard that the contract is also deemed concluded "where the employer accepts work in his service for a period of time, the performance of which, in the circumstances, is only to be expected in return for remuneration".

Nevertheless, the employer is subject to written information obligations. Employees who are employed for at least one month or who work part-time for at least eight hours per week must be informed within two months of commencement of the employment relationship of the conditions applicable to it.

### 4.3 Working Time

Working time in Liechtenstein must be considered on two levels: the employment contract determines the contractually owed scope of work, while public-law occupational health and safety regulations safeguard maximum limits, breaks and rest periods. Working time may be defined contractually "by unit of time", "by output" or "by area of work". In addition, statutory employment law rules protect against overexertion (for example through provisions on maximum duration and mandatory breaks) as well as social contacts, such as the prohibition of Sunday work and the prohibition of night work. For the purposes of Liechtenstein law, a distinction should therefore be drawn between contractual normal working hours, overtime (*Überstunden*) and public-law excess hours (*Überzeit*).

The ABGB regulates overtime as work performed beyond the agreed, customary or collectively agreed scope. Under the ABGB, an employee is only obliged to work overtime insofar as they are able to do so, and it can reasonably be expected of them in good faith. This rule is of considerable practical importance: employers cannot order additional work without limit; reasonableness, capacity and good faith constitute the boundary. Responsibility for compliance with working time law remains with the employer.

Overtime may be compensated either by time off in lieu or by monetary payment. The ABGB permits, with the employee's consent, compensation "by time off of at least equal duration". Where no time off in lieu is granted and nothing to the contrary has been agreed in writing or regulated by a standard or collective employment agreement, the employer must pay "wages" calculated on the basis of the normal wage plus a supplement of at least one quarter.

### 4.4 Termination of Employment Contracts

Liechtenstein does not operate an "employment at will" system. Although an indefinite employment relationship is subject to relatively free ordinary termination, it is bound by statutory notice periods, protection against abusive dismissal and blocking periods. An indefinite employment relationship may be terminated by either party. A statement of reasons is not automatically required but must be provided upon request.

The terminating party must state the reasons for the termination in writing if the other party so demands. Statutory notice periods depend on the length of service. After expiry of the probationary period, the employment relationship may be terminated with one month's notice in the first year of service, two months' notice from the second to the ninth year of service, and three months' notice thereafter, in each case effective at the end of a calendar month.

Abusive terminations remain valid in principle but give rise to compensation claims. The ABGB considers as abusive, among others, terminations on grounds of personal characteristics, the exercise of constitutional rights, the frustration of claims, or because the other party asserts claims arising from the employment relationship in good faith.

Termination without notice is only permissible for cause (*wichtiger Grund*). A cause is deemed to exist in any circumstance in which the terminating party cannot, in good faith, reasonably be expected to continue the employment relationship. Where an employee is dismissed without notice and without cause, the employee is entitled to compensation for "what he or she would have earned had the employment relationship been terminated in compliance with the notice period or upon expiry of the agreed contract term".

Collective redundancies trigger special information, consultation and notification procedures. A collective redundancy is defined as planned dismissals that are unrelated to the person of the employees and that affect at least 20 employees within a period of 90 days, regardless of the size of the undertaking. The employer must inform and consult the employee representatives in good time so that they may put forward counter-proposals, in particular regarding "the possibility of avoiding or reducing planned collective redundancies" and mitigating their consequences, for example through "retraining". In addition, notification must be filed with the Office of Economic Affairs (*Amt für Volkswirtschaft*); planned collective redundancies generally take effect no earlier than 30 days after receipt of the notification, although the Office may extend this period to "60 days" where there is a legitimate interest.

### 4.5 Employee Representations

An employee representation body is not mandatory in every undertaking, but employees have a statutory right to representation once certain thresholds are met.

The workforce is entitled to a representative from among its members in undertakings (enterprises) with at least 50 employees and in establishments that are attributable to an enterprise and are at the same time independent tax subjects (parts of an enterprise) with at least 20 employees.

The employee representative body serves primarily as an information and consultation body, rather than as a corporate management body. The labour law obligations to inform and consult employee representatives are particularly significant in cases of transfers of undertakings and collective redundancies.

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/ Employers

For employees in Liechtenstein, the wealth and income tax (*Vermögens- und Erwerbssteuer*) is of primary relevance.

Individuals are subject to income and wealth tax. Income tax is calculated based on taxable income. Wealth tax applies to all kinds of assets, including movable and immovable assets. Many proceeds are not subject to profit and income tax but are subject to wealth tax (no double taxation).

Natural persons are subject to unlimited tax liability if they are resident or habitually present in Liechtenstein. Without a domicile or habitual residence, only limited tax liability arises in respect of domestic connecting factors. In practical terms, this means that employees with a Liechtenstein nexus are subject to tax either on their worldwide income by virtue of their domicile or on their Liechtenstein income by virtue of domestic employment.

A withholding tax (*Quellensteuer*) is levied on employment income, which is credited against the assess-

ment for persons subject to unlimited tax liability. This is of practical importance for employers, as they must ensure the organisational handling of payroll, withholding tax deductions and remittance.

In addition, social security contributions are payable. The Liechtenstein social security system comprises the state pension scheme with age and survivors' insurance (AHV), disability insurance (IV), the family compensation fund (FAK) and unemployment insurance (ALV).

For employed persons, contributions are shared: the contributions payable are divided between the employee and the employer; the employee's share amounts to "4.700% of the relevant gross wage" and the employer's share to "7.191%". In practice, contributions are processed by the employer: the employer withholds the employee's contributions and remits them.

### 5.2 Taxes Applicable to Businesses

The principal taxes applicable to companies doing business in Liechtenstein are corporate income tax (*Ertragssteuer*) and, if applicable, real estate capital gains tax (*Grundstücksgewinnsteuer*).

A legal entity is subject to unlimited tax liability on its entire income if its registered seat or place of effective management is located in Liechtenstein. Legal entities without a domestic seat or place of effective management are subject to limited tax liability only in respect of domestic connecting factors.

Corporate income tax is levied at a flat rate of 12.5% on taxable net income. Liechtenstein does not levy a general withholding tax on dividends or interest. There is no value added tax (VAT) in the traditional sense; instead, Liechtenstein applies Swiss VAT law by virtue of the Customs Treaty with Switzerland, currently at a standard rate of 8.1%. Transfer taxes are not levied as a separate category, though real estate transactions are subject to the real estate capital gains tax.

As of 1 January 2024, Liechtenstein introduced global minimum taxation for large enterprise groups in accordance with the GloBE Model Rules of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (IF on BEPS). Liechtenstein has implemented a qualified domestic minimum top-up tax (QDMTT), and the existing safe harbour mechanisms for jurisdictions applying a QDMTT remain unchanged.

The current rules contain various safe harbour mechanisms that offer the enterprise groups concerned administrative simplifications. In early 2026, these provisions were comprehensively updated by the IF on BEPS, necessitating a corresponding amendment of the national legal framework, the GloBE Act (*Mindestbesteuerungsgesetz*).

The revision comprises in particular the new Side-by-Side Safe Harbour, which provides a broad exemption for enterprise groups with a US parent entity on the basis of US controlled foreign company rules. In addition, high-tax countries are afforded a simplified means of demonstrating compliance with the effective minimum tax rate (Simplified ETR Safe Harbour).

### 5.3 Available Tax Credits/Incentives

Liechtenstein offers a relatively low-tax, broad-based, and internationally compatible tax system rather than a wide range of traditional tax credit or incentive regimes.

One of the key tax relief mechanisms is the participation exemption (participation deduction), which exempts income derived from qualifying shareholdings from corporate income tax. This provision codifies the participation exemption that had previously been granted in practice. Notably, there are no minimum holding period or minimum ownership requirements. As a result, all dividend distributions received by a corporate taxpayer in its capacity as a shareholder are exempt from corporate income tax.

For private wealth holding structures, Liechtenstein provides the Private Asset Structure (*Privatvermögensstruktur*; PVS) regime. Upon application, a legal entity may qualify as a PVS, provided that it does not carry out any economic or commercial activity in pursuit of its purpose. A qualifying PVS is subject only to the minimum annual corporate income tax, currently CHF1,800, and is not subject to ordinary tax assessment.

### 5.4 Tax Consolidation

Liechtenstein also provides for a tax group regime (group taxation). Under this regime, affiliated legal entities may form a tax group, allowing losses incurred by one group member during a tax year to be offset against the profits of other group members in the same year. In practice, the primary purpose of the group taxation regime is to facilitate the intra-group utilisation of tax losses.

A tax group consists of a group parent and one or more group members. The group parent must be subject to unlimited corporate income tax liability in Liechtenstein and must hold a qualifying participation in the group member(s).

### 5.5 Thin Capitalisation Rules and Other Limitations

In Liechtenstein there is no traditional thin capitalisation regime based on a fixed debt-to-equity ratio. Instead, the main limitation is based on the arm's length principle and the tax treatment of excessive or non-arm 's length remuneration on debt financing.

### 5.6 Transfer Pricing

Transfer pricing rules expressly apply in Liechtenstein. Article 49 of the Tax Act (SteG) codifies the arm's length principle. Where income or expenses arising from transactions with related parties or permanent establishments are affected by conditions that are not at arm's length, taxable net income must be determined as if the transactions had been carried out between independent parties. This constitutes the principal statutory basis for transfer pricing adjustments in Liechtenstein.

### 5.7 Anti-Evasion Rules

Liechtenstein has a general anti-evasion rule in its Tax Act. Article 3 of the Tax Act (*Steuergesetz*) covers arrangements that are inappropriate in light of the underlying economic circumstances and whose sole economic purpose is to obtain tax advantages. An arrangement is considered abusive where granting the tax benefit would be contrary to the purpose and intent of the Tax Act, and the taxpayer cannot demonstrate any commercial or other significant non-tax reasons for the arrangement. The consequence is the application of the substance-over-form principle: where an abuse is found, taxes are assessed as they would have been under a legal structure that appropriately reflects the underlying economic transactions, facts and circumstances.

### 5.8 Tariffs

Liechtenstein is closely integrated with Switzerland for customs purposes. Under the Treaty on the Accession of the Principality of Liechtenstein to the Swiss Customs Territory (Customs Treaty), Swiss customs and indirect tax legislation applies in Liechtenstein. For businesses, this means that import and export matters are generally governed by the Swiss customs system and should be assessed in accordance with Swiss customs law.

Accordingly, when assessing the highest or most commonly applied customs duties, the relevant framework is not an independent Liechtenstein customs policy but rather the Swiss customs tariff and trade regime, insofar as it applies to Liechtenstein under the Customs Treaty.

## 6. Competition Law

### 6.1 Merger Control Notification

Liechtenstein has no separate national merger control statute and no domestic turnover or market-share notification thresholds. From a competition law perspective, mergers and acquisitions in Liechtenstein are governed by the EEA Agreement, implemented domestically by the Liechtenstein EEA Competition Implementation Act.

The main legal basis for EEA merger control is Article 57 of the EEA Agreement, applied together with Annex XIV to the EEA Agreement, Protocol 21 to the EEA Agreement on the implementation of competition rules applicable to undertakings, and Protocol 24 to the EEA Agreement on cooperation in the field of control of concentrations.

The transaction types covered are those qualifying as a "concentration" under Article 3 of Council Regulation (EC) No 139/2004, namely mergers, acquisitions of direct or indirect control, and full-function joint ventures. The concept is based on a lasting change of

control and the possibility of exercising decisive influence over an undertaking.

The notification thresholds are turnover-based and are set out in Article 1 (2) and Article 1 (3) of Council Regulation (EC) No 139/2004, as incorporated into the EEA Agreement and subject to the EEA adaptations. In broad terms, a concentration is notifiable at EEA level if it meets either the main threshold under Article 1 (2) (combined aggregate worldwide turnover above EUR5 billion and Community-wide turnover of each of at least two undertakings above EUR250 million) or the alternative lower threshold under Article 1 (3). The applicable two-thirds exception (for turnover in one and the same Member State) and the EEA allocation rules must be considered.

Where the relevant thresholds are met, the transaction must be notified before implementation to the competent authority under the EEA system. Depending on the allocation of competence under Article 57 of the EEA Agreement, review is carried out by the European Commission or, in EFTA-dimension cases, by the EFTA Surveillance Authority.

Thus, transactions that fall below the EEA merger thresholds are not subject to a local Liechtenstein merger-control filing merely because the target is incorporated in Liechtenstein. However, sector-specific regulatory approvals may still be required, for example for qualifying holdings in regulated financial institutions, insurance undertakings, investment firms, asset managers or funds, and corporate-law merger filings may be necessary for the legal implementation of the merger.

### 6.2 Merger Control Procedure

In general, a notifiable concentration must be notified prior to implementation and following conclusion of the agreement, announcement of the public bid or acquisition of a controlling interest; see Article 4 (1) Regulation (EC) No 139/2004.

A concentration with an EU or EFTA dimension may not be implemented before notification or before it has been declared compatible according to Article 7 (1) Regulation (EC) No 139/2004, as adapted for the EEA. Exceptions exist for certain public bids and securities transactions. Those exceptions do not remove the notification requirement; they require notification without delay and restrict the exercise of voting rights unless a derogation is granted.

Following formal notification, the competent authority examines the filing. The authority's decision shall generally be adopted within 25 working days, calculated from the working day following receipt of the notification or, if the notification is incomplete, from the working day following receipt of the complete information. This time period is extended to 35 working days where commitments are offered or where a relevant referral request is made.

If the authority finds that the notified concentration raises serious doubts as to its compatibility with the EEA Agreement, it initiates proceedings. The final decision must generally be adopted within 90 working days from the initiation of proceedings. This period may increase to 105 working days where commitments are offered in the circumstances specified. Likewise, the period may be extended by up to 20 working days at the request of, or with the agreement of, the notifying parties, and may be suspended in exceptional cases where information requests or inspections are required due to circumstances attributable to one of the parties.

The authority may clear the concentration, clear it subject to conditions and obligations, prohibit it, or order interim or restorative measures where an incompatible concentration has already been implemented or where the obligations or conditions have been breached.

Failure to notify before implementation or implementation in breach of the standstill obligation may result in fines of up to 10% of the aggregate turnover of the undertakings concerned. Supplying incorrect or misleading information in a notification, submission, certification or supplement may result in fines of up to 1% of the aggregate turnover of the undertaking or association of undertakings concerned.

### 6.3 Cartels

Anti-competitive agreements affecting Liechtenstein are governed by the competition rules of the EEA

Agreement, in particular the prohibition on agreements, decisions by associations of undertakings and concerted practices that have as their object or effect the prevention, restriction or distortion of competition within the EEA pursuant to Article 53 EEA Agreement.

The rules cover classic cartel conduct such as:

- directly or indirectly fixing purchase or selling prices or any other trading conditions;
- limiting or controlling production, markets, technical development, or investment;
- sharing markets or sources of supply;
- applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; and
- making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Agreements or decisions prohibited under Article 53 (1) EEA Agreement shall be automatically void under Article 53 (2) EEA Agreement.

The decisive issue is not where the agreement was signed or implemented, but whether it may affect trade and competition in the EEA. Agreements that satisfy the conditions for exemption may be permissible – ie, if they generate efficiencies, allow consumers a fair share of the benefit, are indispensable to those efficiencies and do not eliminate competition.

The Liechtenstein Office of Economic Affairs assesses requests, market information and complaints concerning national or international competition law. Under Article 2 (1) of the Liechtenstein Act on the Implementation of the Competition Rules in the European Economic Area, the Office of Economic Affairs is the Liechtenstein authority responsible for implementing the EEA competition rules, unless jurisdiction lies with the courts. In that role, it assists the EFTA Surveillance Authority and/or the European Commission in EEA competition matters. Where jurisdiction lies with the courts, competition-law issues may also arise in judicial proceedings, including in civil disputes between private parties.

### 6.4 Abuse of Dominant Position

As mentioned above, Liechtenstein has no separate national antitrust statute. Rather, unilateral conduct is governed by Article 54 EEA, prohibiting the abuse of a dominant position within the EEA or a substantial part of it, insofar as trade between EEA states may be affected. Thus, a dominant position is not unlawful in itself, but a dominant undertaking must not abuse its market power to restrict competition.

Such abuse may, in particular, consist in:

- directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- limiting production, markets or technical development to the prejudice of consumers;
- applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or
- making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

The assessment is effects-based. The decisive issue is not, as such, where the conduct was carried out, but whether the undertaking holds a dominant position within the EEA or a substantial part of it, whether the conduct is abusive, and whether trade between EEA Contracting Parties may be affected. Conduct carried out in Liechtenstein or outside Liechtenstein may therefore be relevant if it has the required effects in the EEA.

Enforcement and decision-making competence for individual Article 54 EEA cases is allocated under Article 56 (2) EEA Agreement to the surveillance authority in whose territory the dominant position is found to exist, with the further allocation rules in Article 56 (1) applying where a dominant position exists in the territories of both surveillance authorities.

Liechtenstein's Act against Unfair Competition (UCA) operates alongside the EEA competition-law regime as an adjacent unfair-competition regime. It does not create a separate national antitrust prohibition of abuse of dominance, relative market power or

economic dependency. However, unilateral conduct may still be relevant under the UCA – ie, if it is unfair, deceptive, contrary to good faith, aggressive, involves undue influence over consumers, or involves abusive general terms or grossly detrimental contractual terms or business practices.

## 7. Intellectual Property

### 7.1 Patents

#### Definition

A patent protects inventions of a technical nature that are new (ie, not obvious from the state of the art) and commercially exploitable. Liechtenstein does not have its own patent law or patent office; instead, patents are governed by Swiss patent law and administered by the Swiss Federal Institute of Intellectual Property (IGE) in Berne, pursuant to a bilateral Patent Protection Treaty of 1978. Granted Swiss patents cover the territories of both Switzerland and Liechtenstein, irrespective of the route of filing (Swiss national, European regional via the EPO or PCT international).

#### Length of Protection

The maximum term of patent protection is 20 years from the filing date, always provided that the annual fees are paid. Otherwise, the patent expires. Supplementary Protection Certificates (SPCs) are available for pharmaceutical products and plant protection products.

#### Registration Process

Swiss/Liechtenstein patent applications are not examined on the merits for novelty and inventive step but are only examined on formal issues. It is therefore up to the applicant to file enforceable claims that patentably distinguish the claimed invention from the prior art. A patent may also be obtained via the European Patent Office (EPO) by designating Switzerland/Liechtenstein, or through the international PCT route. Given that Swiss patents share various characteristics with utility patents and petty patents (except for the 20-year term), the currently applicable law does not provide for the possibility of obtaining utility patents.

#### Enforcement and Remedies

Liechtenstein provides civil law remedies for patent infringement, including injunctive relief to prevent further infringement, claims for damages or disgorgement of profits, and orders for the destruction, seizure or recall of infringing goods. Provisional measures, including preliminary injunctions, are available; further, patent infringements may also be punished under criminal law.

### 7.2 Trade Marks

#### Definition

A trade mark is a distinctive sign or symbol that serves to differentiate the goods or services of one enterprise from those of others. Trade marks can take various forms, including words, personal names, images, letters, numbers, colours, the shape, presentation or packaging of a product, sounds, or a combination of these elements. The primary function of a trade mark is to identify and distinguish the goods or services of a company; it also fulfils a marketing function, a protective/defensive function and a guarantee function.

#### Length of Protection

The duration of protection is ten years from the filing date (*Anmeldedatum*). Registration can be renewed indefinitely for further ten-year periods. The renewal application must be filed within the last 12 months before expiry of the validity period or at latest within six months after expiry, subject to additional fees.

#### Registration Process

The main legislation is the Law Regarding the Protection of Trade Marks and Geographical Indications (the "Trade Mark Protection Act"). An application must be filed with the Liechtenstein Office of Economic Affairs (*Amt für Volkswirtschaft*) in German. The application must contain the name of the applicant, address, reproduction of the trade mark, exact designation of the goods or services (following the Nice Classification) and proof of paid fees. Further, a trade mark owner who has neither residence nor a registered office nor a branch in Liechtenstein must also have appointed a local lawyer or patent agent; trade mark owners from the EEA or Switzerland must have appointed an agent for service of process. The representative/agent will be registered with the trade mark in the trade mark register, and it must be ensured to appoint such rep-

resentative/agent for the entire duration of the registration. The Office examines formal requirements and absolute grounds for refusal (such as lack of distinctiveness or descriptiveness), but does not conduct a search for older trade marks. The procedure from filing to registration typically takes three months if no objection is raised. Since 1 January 2023, Liechtenstein has introduced an administrative opposition procedure, as well as procedures for declaration of nullity and invalidity. International registration is possible via the Madrid Agreement/Protocol. The trade mark must be used within five years from the uncontested expiry of the opposition period or, if opposition has been filed, from the date on which the decision concluding the opposition proceedings became final; use within any of the territories of Liechtenstein, Switzerland or the EU is regarded as proper use.

### Enforcement and Remedies

Civil law remedies include actions for injunctive relief, claims for damages and disgorgement of profits, and orders for the destruction, seizure or recall of infringing goods, actions for declaratory judgment, actions for assigning a trade mark, and publication of respective judgements. Provisional measures, including preliminary injunctions, are available; further, trade mark infringements may also be punished under criminal law.

## 7.3 Industrial Designs

### Definition

A design protects the shapes, lines, contours, colours and other aesthetic characteristics of a product or parts thereof. Protection is governed by the Liechtenstein Design Act (*Designgesetz*; DesG) of 11 September 2002. Designs can be protected when they are new (novel) and possess individual character, and are not offensive or contrary to public order.

### Length of Protection

Protection lasts for five years from the date of filing and may be extended by four additional protection periods of five years each. Accordingly, a maximum protection period of 25 years is provided for.

### Registration Process

Application forms are filed with the Office of Economic Affairs (*Amt für Volkswirtschaft*) in German. The procedure from filing to registration typically takes three months. The design may refer to the entirety of a product or only parts thereof. A design owner who has neither residence nor a registered office nor a branch in Liechtenstein must also have appointed a local lawyer or patent agent. The representative will be registered with the design in the design register, and it must be ensured to appoint such representative for the entire duration of the registration. The design is then registered without prior examination of its novelty and individual character; the Office of Economic Affairs only examines formal requirements and mandatory grounds for exclusion according to the Design Act. Priority may be claimed in line with the Paris Convention for the Protection of Industrial Property of 20 March 1883. International registration is also possible via the Hague System for the International Registration of Industrial Designs.

### Enforcement and Remedies

Civil law remedies include actions for injunctive relief, claims for damages and disgorgement of profits, and orders for the destruction, seizure or recall of infringing goods, actions for declaratory judgment, actions for assigning a design and publication of respective judgements. Provisional measures, including preliminary injunctions, are available; further, design infringements may also be punished under criminal law.

## 7.4 Copyright

### Definition

Copyright protects intellectual creations in the fields of literature and art that possess an individual character. The main source of copyright law is the Copyright Act (*Urheberrechtsgesetz*). Protected works include literary works, artistic works, musical compositions, dramatic works, photographs, software, databases (under certain conditions) and films/audiovisual works. Authors receive both economic rights (reproduction, distribution, public performance, communication to the public, adaptation) and moral rights (right to be named as author, right to object to distortions).

### Length of Protection

The general term of protection is the author's lifetime plus 70 years after death. For anonymous or pseudonymous works, protection expires 70 years after publication. For films, protection lasts 70 years after

the death of the last surviving principal creator (such as director, screenwriter, dialogue writer and composer of film music).

### Registration Process

Copyright protection arises automatically upon the creation of a work and does not require registration or any other formality. Although the Copyright Act allows for the establishment of a voluntary register that would create a rebuttable presumption of authorship, no such register has been implemented in practice. Proof of authorship and date of creation must therefore be established through secondary evidence.

### Enforcement and Remedies

Civil law remedies include actions for injunctive relief, claims for damages and disgorgement of profits, and orders for the destruction, seizure or recall of infringing goods, actions for declaratory judgement and publication of respective judgements. Provisional measures, including preliminary injunctions, are available; further, copyright infringements may also be punished under criminal law.

## 7.5 Others

### Software

In Liechtenstein, software is primarily protected through copyright under the URG, where computer programs may be protected as works of literature and art, provided they are intellectual creations with an individual character. Copyright protection arises automatically upon creation. Additionally, software can be patentable as part of a "computer-implemented invention" if it solves a technical problem and achieves a technical effect beyond the normal physical interactions between the program and the computer. Under the Liechtenstein Design Act, software is generally not eligible for design protection. Under the Copyright Act, if an employee creates software in the course of employment and in fulfilment of contractual duties, the rights are transferred to the employer unless agreed otherwise.

### Databases

Databases may benefit from copyright protection if they constitute a distinct intellectual creation by reason of the selection or arrangement of their contents. Apart from and independently of any creative element, the maker of a database who has made a substantial investment in obtaining, verifying or presenting its contents benefits from a sui generis database right, which prevents the extraction or re-utilisation of the content of the database or a substantial part thereof.

### Trade Secrets

The infringement of trade secrets and professional secrets may give rise to both civil and criminal liability. Civil remedies include injunctive relief, damages or disgorgement of profits, and orders for the destruction or recall of infringing goods. Provisional measures are available where urgent action is required. Liechtenstein, as an EEA member state, is subject to European harmonisation in this area.

# 8. Data Protection

## 8.1 Applicable Regulations

The primary data protection framework in Liechtenstein is the General Data Protection Regulation (GDPR), which applies directly by virtue of Liechtenstein's membership in the EEA. The GDPR was incorporated into the EEA Agreement through EEA Joint Committee Decision No 154/2018 and has been applicable in Liechtenstein since 20 July 2018. At the national level, the GDPR is supplemented by the Liechtenstein Data Protection Act (*Datenschutzgesetz*, DSG), in force since 1 January 2019, and the Data Protection Ordinance (*Datenschutzverordnung*, DSV).

The DSG implements opening clauses left to EEA member states under the GDPR and sets out, inter alia, rules for public bodies, the organisation and powers of the supervisory authority, and procedural aspects.

Overall, Liechtenstein's data protection framework is closely aligned with EU standards, ensuring a high and uniform level of data protection throughout the EEA.

## 8.2 Geographical Scope

As the GDPR applies directly in Liechtenstein through the EEA Agreement, the geographical scope of Liech-

tenstein's data protection rules mirrors that of the GDPR under Article 3.

### 8.3 Role and Authority of the Data Protection Agency

The competent supervisory authority in Liechtenstein is the Data Protection Office (*Datenschutzstelle*, DSS). The DSS is an independent authority established under the DSG and operates in accordance with the requirements of Articles 51 to 59 GDPR.

The DSS performs its tasks independently and is not subject to instructions. The DSS has investigative, corrective and advisory powers. Its responsibilities include monitoring and enforcing compliance with the GDPR and the DSG, handling complaints from data subjects, conducting investigations and audits, issuing warnings, ordering controllers and processors to comply with data protection obligations, and imposing administrative measures and fines within the GDPR framework (including the fine ranges set out in Article 83 GDPR).

The DSS also advises public bodies on legislative and administrative matters relating to data protection and publishes guidance to raise awareness among controllers, processors and the public.

As Liechtenstein is part of the EEA, the DSS participates in the European Data Protection Board (EDPB) cooperation and consistency mechanisms and cooperates with other EEA supervisory authorities in cross-border cases.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

The European financial services industry is undergoing profound transformation. New regulatory frameworks, digitalisation and geopolitical uncertainty are reshaping markets across Europe. Legislative changes in Liechtenstein are driven by European requirements as well as the need to keep pace with market developments. They share a common objective: maintaining Liechtenstein's competitiveness within Europe while preserving stability and legal certainty. For international market participants, market access remains a key consideration when selecting a jurisdiction, and Liechtenstein continues to offer access to the European Single Market alongside a stable, specialised legal environment.

#### Recent Key Legislative Reforms

Recent key legislative reforms include the comprehensive reform of Liechtenstein trust law, which has just come into force, early implementation of AIFMD II and ELTIF II, continued development of the digital asset ecosystem under the Markets in Crypto-Assets Regulation (MiCAR) and the introduction of a new Trading Place and Exchange Act (TPEA).

- The reform of Liechtenstein trust law that entered into force on 1 July 2026, is one of the most significant legal developments in recent years and seeks to strengthen governance and oversight while preserving flexibility that has traditionally made the Liechtenstein trust attractive to international clients.
- The Liechtenstein fund centre looks back on years of impressive growth. The number of management companies is continually growing, as is the number of newly established funds. The cross-border management of Liechtenstein funds has become as popular as relocations to Liechtenstein. Although incorporation of AIFMD II and ELTIF II into the EEA Agreement is still pending, Liechtenstein has aligned its domestic legislation with these standards ahead of formal incorporation. This ensures Liechtenstein-based fund structures remain fully competitive within the European market.
- Liechtenstein's digital asset sector has entered a new phase of development and digital assets and tokenisation will become increasingly integrated into mainstream financial services. In the past, Liechtenstein attracted international attention with the Token and Trusted Technology Service Provider Act (TVTG), establishing one of the world's first comprehensive legal frameworks for the token economy. Today, Liechtenstein's position is shaped by the interaction of two complementary frameworks. MiCAR provides a harmonised European regulatory regime for crypto-assets and crypto-asset service providers, while the TVTG continues to provide the legal foundation for tokenisation and areas outside MiCAR's scope. Multiple crypto-

asset service providers have obtained MiCAR authorisations in Liechtenstein, underlining its relevance for the evolving European digital asset market.
- A comprehensive reform of Liechtenstein's financial market legislation also came into force on 1 February 2025, including the new TPEA. This law creates the regulatory framework for the operation of stock exchanges and other trading venues in Liechtenstein, positioning the country as a modern and competitive financial centre.

### Corporate Law Modernisation and Digitalisation

Liechtenstein has also undertaken significant corporate law reforms. Recent amendments to the Persons and Companies Act (PGR) have created the possibility to incorporate certain companies digitally and to file electronic applications to the commercial register. The commercial register is being further modernised, with a project scheduled for completion in the second half of 2026 that will enable all entries to be submitted electronically, regardless of a company's legal form. Hybrid and virtual meetings have also been legally established on a permanent basis, meaning all corporate meetings can now be held virtually.

### Increasing Harmonisation

The regulatory landscape will continue to evolve alongside European developments. Europe's new Anti-Money Laundering Package, adopted in 2024, will bring harmonised AML rules directly applicable across all EEA member states, with full implementation in Liechtenstein anticipated by mid-2027. The EU AI Act (Regulation (EU) 2024/1689) is also expected to be incorporated into EEA law, bringing requirements for governance and oversight of artificial intelligence in financial services.

The implementation of Directive (EU) 2019/2121 (the "Mobility Directive") is also underway, introducing a harmonised legal framework for cross-border conversions, mergers and divisions of capital companies within the EEA. The amendments are expected to enter into force during 2026. This reform increases legal certainty and transparency for cross-border corporate restructuring, giving companies greater planning reliability for transformation processes.

# Trends and Developments

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**Gasser Partner** is an international law firm recognised for legal excellence, strategic clarity and a strong client-focused approach. The firm brings deep expertise in private client work, banking and financial services, corporate/M&A and litigation. As one of Liechtenstein's leading practices, Gasser Partner advises private clients, family offices, financial institutions and businesses on sophisticated legal matters, including transactions, cross-border structuring and high-stakes disputes. With offices in Schaan, Zurich and Vienna, and a global network, the firm delivers seamless cross-border advice and representation.

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## Introduction

Liechtenstein is located at the heart of Europe, bordered by Switzerland and Austria. The Principality offers a distinctive combination of geographic proximity, political stability and deep financial expertise that few jurisdictions can match. Today, Liechtenstein stands as one of Europe's most established and respected financial centres.

With around 40,000 residents and the highest GDP per capita in the world, the Principality combines the ways of a small jurisdiction with genuine economic depth. Industry accounts for roughly 40% of GDP, which is unusually high by European standards, while a sophisticated financial services sector complements this manufacturing strength. This combination provides the foundation for the country's enduring stability and innovation.

Liechtenstein is a constitutional hereditary monarchy on a democratic and parliamentary basis, where state power is vested jointly in the Reigning Prince, as the Head of State, and the People. The Parliament (*Landtag*) consists of 25 members elected by proportional representation for four-year terms. The *Landtag* proposes laws, and the government, a collegial body of five ministers including the Prime Minister, is responsible for day-to-day administration. Liechtenstein has pronounced direct democratic rights, where citizens may launch a referendum to put parliamentary decisions to a popular vote or initiate constitutional amendments. For a law to enter into force, it must be approved by both Parliament and sanctioned by the Reigning Prince, reflecting the dualistic principle of shared sovereignty.

Liechtenstein is a civil law jurisdiction with strong historic ties to Austria and Switzerland and their respective legal traditions. The cornerstone of civil law is the General Civil Code (*Allgemeines bürgerliches Gesetzbuch*, ABGB), adopted from the Austrian model and in force since 1812. Key procedural laws, including the Code of Civil Procedure (ZPO), the Jurisdiction Act (JN) and the Execution Code (EO), are also derived from Austrian law. By contrast, property law is based on the Swiss model, and company law is governed by the Persons and Companies Act (*Personen- und Gesellschaftsrecht*, PGR), which draws heavily on Swiss corporate law. Employment law and social security law likewise follow the Swiss model.

The Liechtenstein judicial system is organised into three main branches. The first is the ordinary jurisdiction for civil and criminal matters, operating through a three-tier court system. The second branch comprises the administrative courts, with the Administrative Court (*Verwaltungsgerichtshof*) as the highest administrative tribunal. The third branch is the constitutional jurisdiction, exercised exclusively by the Constitutional Court (*Staatsgerichtshof*). This court serves as an extraordinary court of appeal and may be petitioned against final decisions for alleged violations of constitutional rights, rights guaranteed by the European Convention on Human Rights, or rights under the European Economic Area Treaty. All courts are located in Vaduz.

Liechtenstein has long been a premier destination for private banking and wealth management. The principality's banks collectively manage over CHF500 billion in client assets, with net new money inflows of CHF17.6 billion recorded in 2024 alone. The fund sector has experienced remarkable growth, with assets under management reaching CHF117.8 billion in 2024 – an increase of nearly 70% over three years. Asset management companies further contribute to this ecosystem, overseeing CHF54.2 billion in client assets.

Political and economic stability underpin this success. Liechtenstein maintains a AAA rating from Standard & Poor's, while its banks boast an average Tier 1 capital ratio of approximately 20% – well above the European average of 17.5% and placing them among the best-capitalised institutions in Europe. These fundamentals make Liechtenstein highly attractive to fund managers, family offices and wealth management professionals seeking a secure and efficient domicile.

Liechtenstein occupies a unique position at the crossroads of two major economic spheres. It has maintained a customs union with Switzerland since 1923 and shares the Swiss franc as its currency. Since 1995, it has also been a member of the European Economic Area, giving Liechtenstein-based service providers passporting rights across the EU single market. This

dual access, Swiss and European, is unmatched by any other jurisdiction.

Innovation has long been a hallmark of the Liechtenstein legal system. The country's flexible corporate law offers extensive private autonomy in structuring, providing a wide range of legal forms including the stock corporation (AG), limited liability company (GmbH), establishment (Anstalt), foundation (Stiftung) and trust. Notably, Liechtenstein remains the only continental European jurisdiction with a trust law tradition, dating back to 1926. This unique combination of flexible corporate structures, the foundation as a versatile wealth planning vehicle, and the established trust framework makes Liechtenstein a preferred destination for international wealth structuring and succession planning.

Liechtenstein has also embraced regulatory innovation. The jurisdiction was among the first to adopt a comprehensive legal framework for token-based business models (the TVTG), which now operates alongside the Markets in Crypto-Assets Regulation (MiCAR). More broadly, Liechtenstein's approach to financial regulation balances robust supervision with proportionality, ensuring compliance with international standards while avoiding excessive regulatory burden.

Practical advantages complement this regulatory environment. Company registration is straightforward, with the commercial register offering swift turnaround times. Regulation avoids gold-plating wherever possible, and licensing procedures reflect Liechtenstein's pragmatic approach to supervision. The Financial Market Authority (FMA) is accessible and responsive, enabling a time-to-market that few jurisdictions can match.

## Recent Legislative Reforms

The European financial services industry is undergoing profound transformation. New regulatory frameworks, digitalisation and geopolitical uncertainty are reshaping markets across Europe. Against this backdrop, Liechtenstein has strengthened its position as a specialised international financial centre through regulatory modernisation while preserving stability and legal certainty.

Key developments include the comprehensive reform of Liechtenstein trust law, early implementation of AIFMD II and ELTIF II, continued development of the digital asset ecosystem under the MiCAR, corporate law digitalisation initiatives and implementation of cross-border mobility rules. These reforms share a common objective: maintaining Liechtenstein's competitiveness within Europe while offering access to innovative, well-regulated structures.

## Trust Law Reform

One of the most significant legal developments in recent years has been the reform of Liechtenstein trust law that entered into force on 1 July 2026. The Liechtenstein trust, introduced almost a century ago, remains the only common-law style trust available within a civil law jurisdiction in continental Europe. It has long been used for succession planning, asset protection and wealth management.

The reform represents one of the most significant developments in Liechtenstein private wealth legislation in recent years and seeks to strengthen governance and oversight while preserving the flexibility that has traditionally made the Liechtenstein trust attractive to international clients.

A central feature is the "information rights-holder" concept. Privately beneficial trusts must appoint a person with statutory information and oversight rights, including broad inspection rights, an annual review duty and, where serious concerns arise, notification duties toward the court and the Foundation and Trust Supervisory Authority. A designated successor must also be appointed to ensure continuity. Charitable trusts also benefit from enhanced supervisory mechanisms aligned with international standards.

The reform strengthens the broader governance framework applicable to trusts. Trustees will operate within an environment that places greater emphasis on documentation, oversight and accountability. While these requirements will increase administrative responsibilities, they are also expected to strengthen confidence in Liechtenstein trust structures among international clients.

Existing private-benefit trusts generally have until 31 December 2027 to adapt their documents, while existing charitable trusts require separate treatment with important steps due by 31 December 2026.

### Growing Importance of Family Offices and Wealth Governance

The trust reform coincides with another important development: the growing importance of family offices and structured wealth governance. Over the past decade, family wealth has become increasingly international, with assets, businesses and investments held across multiple jurisdictions. Governance, succession planning, family decision-making and long-term asset preservation, has become as important as tax considerations. Liechtenstein is well positioned for this trend, offering trusts, foundations and corporate entities supported by specialised legal, fiduciary and financial professionals. This area is likely to remain an important pillar of its financial centre.

### Investment Funds: Growth and Regulatory Alignment

The Liechtenstein fund centre looks back on years of impressive growth. The number of management companies is continually growing, as is the number of newly established funds. The cross-border management of Liechtenstein funds has become as popular as relocations to Liechtenstein.

Private credit has grown rapidly. Institutional investors continue increasing allocations to alternative lending strategies, while companies increasingly view non-bank financing as valuable. AIFMD II introduces a dedicated framework for loan-originating funds with requirements for credit risk management, diversification, leverage and risk retention. Although incorporation of AIFMD II and ELTIF II into the EEA Agreement is still pending, Liechtenstein has aligned its domestic legislation with these standards ahead of formal incorporation. This ensures Liechtenstein-based fund structures remain fully competitive within the European market.

### From Blockchain Pioneer to MiCAR Jurisdiction

Liechtenstein's digital asset sector has entered a new phase of development. In the past, Liechtenstein attracted international attention with the Token and Trusted Technology Service Provider Act (TVTG), establishing one of the world's first comprehensive legal frameworks for the token economy.

Today, Liechtenstein's position is shaped by the interaction of two complementary frameworks. MiCAR provides a harmonised European regulatory regime for crypto-assets and crypto-asset service providers, while the TVTG continues to provide the legal foundation for tokenisation and areas outside MiCAR's scope. As MiCAR becomes fully operational, Liechtenstein enters this era with practical experience and established legal infrastructure. By 2026, multiple crypto-asset service providers have obtained MiCAR authorisations in Liechtenstein, underlining its relevance for the evolving European digital asset market.

The digital asset market has also matured significantly. Beyond cryptocurrencies, attention has shifted to tokenisation. Financial institutions and asset managers are exploring blockchain-based representation of traditional assets, including fund units, bonds and debt instruments, equity participations, private market investments, real estate-related assets and other transferable rights. All in all, digital assets and tokenisation will become increasingly integrated into mainstream financial services. Liechtenstein's combination of civil-law recognition under the TVTG, practical supervisory experience and access to the European market places the jurisdiction in a favourable position to participate in this development.

### Corporate Law Modernisation and Digitalisation

Liechtenstein has also undertaken significant corporate law reforms. Recent amendments to the Persons and Companies Act (PGR) have created the possibility to incorporate certain companies digitally and to file electronic applications to the commercial register. The commercial register is being further modernised, with a project scheduled for completion in the second half of 2026 that will enable all entries to be submitted electronically, regardless of a company's legal form. Hybrid and virtual meetings have also been legally established on a permanent basis, meaning all corporate meetings can be held virtually.

The implementation of Directive (EU) 2019/2121 (the "Mobility Directive") is also underway, introducing a

harmonised legal framework for cross-border conversions, mergers and divisions of capital companies within the EEA. The amendments are expected to enter into force during 2026. This reform increases legal certainty and transparency for cross-border corporate restructuring, giving companies greater planning reliability for transformation processes.

A comprehensive reform of Liechtenstein's financial market legislation also came into force on 1 February 2025, including the new Trading Place and Exchange Act (TPEA). This law creates the regulatory framework for the operation of stock exchanges and other trading venues in Liechtenstein, positioning the country as a modern and competitive financial centre.

### Increasing Harmonisation

Liechtenstein occupies a unique position within Europe. As an EEA member, it participates fully in the European Single Market with passporting rights across financial services. Simultaneously, it maintains a customs and monetary union with Switzerland, using the Swiss franc. This dual integration provides businesses with European market access alongside Swiss economic integration, a combination difficult to replicate elsewhere. For international market participants, market access remains one of the most important considerations when selecting a jurisdiction. The ability to establish operations in a stable and highly specialised environment while maintaining access to the broader European market continues to be one of Liechtenstein's most significant competitive advantages. Recent regulatory developments demonstrate that policymakers remain committed to aligning Liechtenstein with European standards while maintaining flexibility and legal certainty.

The regulatory landscape will continue to evolve alongside European developments. Europe's new Anti-Money Laundering Package, adopted in 2024, will bring harmonised AML rules directly applicable across all EEA member states, with full implementation in Liechtenstein anticipated by mid-2027. The Digital Operational Resilience Act (DORA), which came into force in 2025, establishes cross-sectoral requirements for ICT risk management, incident reporting and resilience testing across financial entities. The EU AI Act (Regulation (EU) 2024/1689) is also expected to be incorporated into EEA law, bringing requirements for governance and oversight of artificial intelligence in financial services.

As regulatory requirements continue to evolve at the European level, Liechtenstein's approach remains consistent: early adoption of EU standards, combined with the flexibility and legal certainty that a smaller jurisdiction can provide. For market participants seeking access to the European Single Market through a well-regulated and specialised environment, these recent developments underscore Liechtenstein's continued relevance.

# LUXEMBOURG




## Law and Practice

**Contributed by:**
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**ATOZ Tax Advisers** ATOZ Tax Advisers is a leading independent tax advisory firm offering a comprehensive range of direct and indirect tax solutions, as well as transfer pricing, corporate finance, tax litigation and ESG services, to local and international clients, across industries including all alternative investment asset classes and the private wealth domain. Founded in 2004, the firm operates offices in Luxembourg, Morocco, the United Kingdom and the Middle East. In addition, in 2005, ATOZ was amongst the founding members of the Taxand network, the world's largest independent organisation of tax experts with more than 700 tax partners and over 3,000 tax advisers in 51 countries. With over 20 years of long-standing relationships, the firm assembles bespoke, multi-jurisdictional teams, delivering seamless and high-quality tax advice tailored to its clients' needs.

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# 1. Legal System

## 1.1 Legal System and Judicial Order

Luxembourg has a civil law legal system. The judicial system of Luxembourg is organised into two main branches.

### The Judicial Courts

This branch deals with civil and criminal matters. It is composed of three main levels.

- Lower courts –
  (a) Justice of the Peace Courts (*Justices de paix*), which handle minor civil disputes and small claims, as well as certain tenancy and employment cases.
- Intermediate courts –
  (a) District Courts (*Tribunaux d'arrondissement*), which deal with more significant civil and criminal cases and hear appeals from the Justice of the Peace Courts.
- Higher courts –
  (a) Court of Appeal (*Cour d'appel*), which reviews judgments from District Courts.
  (b) Court of Cassation (*Cour de cassation*), which is the highest court in the judicial order, ensuring the correct application of the law (it does not retry cases but reviews legal compliance).

### The Administrative Courts

This branch deals with disputes involving public authorities or administrative decisions. It includes:

- the Administrative Tribunal (*Tribunal administratif*), which is the first instance for administrative disputes; and
- the Administrative Court (*Cour administrative*), which hears appeals against judgments of the Administrative Tribunal.

### Constitutional Court

Luxembourg also has a Constitutional Court (*Cour constitutionnelle*), which is separate from these two branches. It rules on the conformity of laws with the Constitution when a question is referred to it by a court.

# 2. Restrictions on Foreign Investments

## 2.1 Approval of Foreign Investments

Foreign investments in Luxembourg are not generally subject to prior approval. However, a foreign direct investment (FDI) screening mechanism applies to certain sensitive investments. This mechanism was introduced in 2023 and targets investments that may affect public security or public order. The screening mechanism applies to foreign investments made by an investor – whether acting individually, jointly or through intermediaries – that both (i) establish or maintain lasting and direct links with a Luxembourg entity, and (ii) confer the ability to exercise meaningful influence over that entity's management in the context of a critical activity in Luxembourg that could affect public security or public order.

Critical activities include:

- sectors such as energy, transport, water, aerospace, agrifood, health, communications, data processing and storage, defence, media and finance, as well as activities involving dual-use goods;
- production or research connected to these sectors; and
- ancillary activities that provide access to locations where such operations are carried out or where sensitive information is stored.

An investor is deemed to exercise effective control over an entity in particular where it:

- holds, directly or indirectly, a majority of the voting rights;
- is entitled to appoint or remove most members of the management or supervisory body while being a shareholder;
- controls a majority of voting rights through an agreement with other shareholders; or
- directly or indirectly holds more than 25% of the voting rights, or reaches this threshold at any time.

## 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

Before completing a foreign direct investment in Luxembourg, the investor must notify the Ministry of the Economy. If the investor exceeds the threshold of

25% of voting rights in a Luxembourg-law entity as a result of events that modify the distribution of the capital, the foreign investor has a period of 15 calendar days to notify the Ministry of the Economy.

The authorities then have a two-month period to assess whether the transaction falls within the scope of the screening regime. If a formal review is initiated, a decision is generally taken within 60 days (subject to certain exceptions) to determine whether the investment poses a risk to public security or order, and whether it should consequently be blocked or be authorised subject to conditions.

Failure to comply with the notification requirement or with any conditions imposed may lead to sanctions. These may include the suspension of voting rights, the amendment or unwinding of the transaction, revocation of the authorisation, and financial penalties of up to EUR1 million for individuals and EUR5 million for legal entities. Sanctions can be appealed in front of the Administrative Tribunal. The appeal must be filed within one month from the date of the notification of the challenged decision.

### 2.3 Commitments Required From Foreign Investors

Under the Law of 14 July 2023, the Luxembourg authorities may authorise a foreign direct investment subject to conditions where necessary to ensure that the transaction does not undermine public security or public order. Although the law does not provide a detailed list of possible commitments, it gives the Ministry of the Economy broad discretion to impose mitigation measures tailored to the identified risks.

The commitments that may be required typically aim to preserve strategic assets, sensitive information and operational resilience. These may include the following.

- Governance and control safeguards –
  - (a) limiting the investor's decision-making powers in sensitive areas;
  - (b) ensuring that certain key decisions remain subject to approval by Luxembourg-based management or authorities; and
  - (c) appointment of independent or approved board members.
- Protection of sensitive information –
  - (a) restrictions on access to confidential, strategic or security-related data;
  - (b) implementation of data localisation or cybersecurity measures; and
  - (c) segregation of IT systems or information flows.
- Operational and continuity commitments –
  - (a) maintaining critical activities, infrastructure or know-how in Luxembourg;
  - (b) commitments to ensure continuity of supply or services in strategic sectors (eg, energy, telecoms, finance); and
  - (c) restrictions on transferring key assets or technologies abroad.
- Ownership and structural undertakings –
  - (a) caps on shareholding or voting rights beyond certain thresholds;
  - (b) prohibition of subsequent transfers to third parties without approval; and
  - (c) ring-fencing of sensitive business units.
- Reporting and compliance obligations –
  - (a) regular reporting to the authorities on compliance with commitments; and
  - (b) acceptance of monitoring mechanisms or audits.

### 2.4 Right to Appeal

A decision by the Luxembourg authorities prohibiting (or conditioning) a foreign direct investment constitutes an administrative act and can therefore be challenged before the Administrative Courts. An investor may bring an action before the Administrative Tribunal (*Tribunal administratif*), typically seeking annulment of the decision (the standard form of review in administrative law).

The Tribunal will not reassess the transaction from a pure economic or policy standpoint, but will examine:

- the legality of the decision (compliance with the FDI law of 14 July 2023 and general administrative law principles);
- its procedural correctness (respect of due process, rights of defence, reasoning); and
- manifest errors of assessment or misuse of powers, including whether the risk to public security or public order has been properly justified.

Rulings of the Administrative Tribunal can be appealed before the Administrative Court (*Cour administrative*), which has the final say.

The standard deadline to initiate a judicial challenge is three months from:

- the notification of the refusal decision; or
- the date on which the investor became aware of it.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

Luxembourg offers a wide range of corporate forms, but in practice the most commonly used vehicles are as follows.

#### Private Limited Liability Company (Sàrl)

- *Key characteristics* –
  - (a) liability: limited to contributions;
  - (b) minimum share capital: EUR12,000; and
  - (c) minimum shareholders: one.
- *Governance* –
  - (a) managed by one or more managers; and
  - (b) managers may or may not be shareholders.
- *Typical uses* –
  - (a) most widely used corporate form in Luxembourg;
  - (b) suitable for holding companies, operational businesses and group subsidiaries; and
  - (c) preferred where control over shareholders and flexibility are important.

#### Public Limited Liability Company (SA)

- *Key characteristics* –
  - (a) liability: limited;
  - (b) minimum share capital: EUR30,000; and
  - (c) minimum shareholders: one.
- *Governance* (flexible structure) –
  - (a) one-tier system: board of directors; or
  - (b) two-tier system: management board + supervisory board.
- *Typical uses* –
  - (a) suitable for large companies, public or listed companies, or structures seeking flexibility in financing instruments; and
  - (b) can publicly offer shares.

#### Partnership Limited by Shares (SCA)

- *Key characteristics* –
  - (a) hybrid of company and partnership;
  - (b) liability: limited for limited partners but unlimited for at least one general partner; and
  - (c) minimum share capital: EUR30,000.
- *Governance* –
  - (a) controlled by the general partner, who manages the company.
- *Typical uses* –
  - (a) often used for investment structures, and situations where control needs to remain with a specific sponsor; and
  - (b) allows public listing, while limiting takeover risk.

#### Limited Partnerships (SCS and SCSp)

- *Key characteristics of the SCS* (*common limited partnership*) –
  - (a) legal personality: yes;
  - (b) liability: limited partners have a limited liability and the general partner has an unlimited liability; and
  - (c) minimum capital: none.
- *Key characteristics of the SCSp* (*special limited partnership*)(similar to SCS but with the following differences) –
  - (a) no legal personality; and
  - (b) highly flexible structure.
- *Governance* –
  - (a) typically managed by the general partner.
- *Typical uses* –
  - (a) very popular for private equity, investment funds and joint ventures; and
  - (b) favoured due to contractual flexibility, absence of capital requirements, and tailored governance arrangements.

#### Simplified Joint Stock Company (SAS)

- *Key characteristics* –
  - (a) liability: limited;
  - (b) minimum share capital: EUR30,000; and
  - (c) cannot publicly offer shares.
- *Governance* –
  - (a) must have at least a chairman, but governance is otherwise flexible.
- *Typical uses* –
  - (a) suitable for start-ups and joint ventures;

(b) used when flexible governance is required while retaining some corporate features.

### Other Forms

These are less common in practice.

- Simplified Sàrl (Sàrl-S) – low-capital form for entrepreneurs.
- General partnership (SNC/SENC) – unlimited liability.
- Co-operative (SCOP) – flexible ownership structure.
- European company (SE) – cross-border EU operations.

## 3.2 Incorporation Process

### Main Steps

The following are the main incorporation steps.

#### *Preparation phase*

Before incorporation, the founders must:

- choose the legal form (eg, Sàrl, SA, partnership);
- prepare the constitutional documents (articles of association or partnership agreement); and
- arrange capital contributions.

Typically, a bank account is opened and the share capital is deposited and blocked until incorporation.

#### *Incorporation act*

Most companies (eg, SA, Sàrl) are incorporated by notarial deed before a Luxembourg notary. Some partnerships (eg, SCS, SCSp) may be incorporated by private instrument.

The notary will:

- verify compliance with legal requirements (identity, capital, documents); and
- formally execute the incorporation deed.

#### *Registration and publication*

Following incorporation, the deed is filed with the registration authorities and registered with the Luxembourg Trade and Companies Register (RCS). It is then published in the official gazette (RESA).

### Timing of Incorporation

Incorporation is notarial-driven for most company types and results in immediate legal existence upon execution of the deed. The process is completed by registration and publication shortly afterwards, with a key reference point being the one-month filing period.

Additional sector-specific authorisations may extend the timeline depending on the activity.

The overall process can be summarised as:

- preparation phase (drafting, bank account, capital);
- execution before notary – company legally exists;
- filing and publication (within approximately one month); and
- additional licences/registrations (if applicable).

## 3.3 Ongoing Reporting and Disclosure Obligations

Private companies in Luxembourg are subject to extensive reporting and disclosure obligations, which can be summarised as follows.

### Corporate Records and Ongoing Obligations

All companies must maintain key corporate documentation (books and records) at the registered office. These include minutes of shareholders' meetings and board meetings, current articles of association, shareholders' or members' register. This ensures transparency of governance and ownership internally.

### Filing and Disclosure of Annual Accounts

#### *Preparation and approval*

Annual accounts must be prepared by the management of the company, whether this is a board of directors, or one or more managers. These accounts must then be approved by the shareholders. Such approval is typically given at a general meeting, which is mandatory for public limited liability companies (SAs) and for private limited liability companies (Sàrl) with 60 or more shareholders. For smaller Sàrl, approval may instead be granted through written shareholder resolutions.

#### *Filing and publication*

Once approved, the annual accounts must be filed with the Luxembourg Business Registers (RCS),

where they become publicly available. Filing must take place within one month following shareholder approval. Failure to comply with this obligation may result in sanctions, including fines, potential liability of directors or managers, and, in serious cases, the possible dissolution of the company.

### Changes to Constitutional Documents

Any amendment to the articles of association must be adopted by the shareholders, generally at an extraordinary general meeting, and for corporate entities such as SAs and Sàrl such amendments typically require execution before a notary. Once adopted, the changes must be filed with the RCS and published in the official gazette (RESA). This process ensures that key structural changes are publicly disclosed.

### Changes in Management and Corporate Organs

Although the documents do not set out each step of the process in detail, they establish that corporate records must include minutes and decisions relating to the appointment and removal of directors or managers. In addition, the notarial and registration framework implies that changes requiring formal corporate acts are filed and published through the RCS system. As a result, changes in management are subject to formal recording and, where applicable, registration and public disclosure.

### Ultimate Beneficial Owner (UBO) Disclosure

Luxembourg law imposes specific obligations regarding beneficial ownership. Companies are required to register their UBO in the Register of Beneficial Owners (RBE) and to update this information within one month of any change. The information to be disclosed includes the individual's name, nationality, date and place of birth, country of residence, as well as the nature and extent of the ownership or control exercised. A UBO is generally defined as a natural person who directly or indirectly holds more than 25% of the shares or voting rights, or who otherwise exercises control over the entity. This constitutes a key transparency requirement, particularly in the context of anti-money laundering regulations. Companies must ensure that their beneficial ownership information in the RBE remains up to date.

### Shareholder Meetings and Corporate Decisions

Companies are required to organise the annual approval of their financial statements each year. In this context, shareholders typically decide on the following:

- the approval of the annual accounts;
- the allocation of profits (including the declaration of dividends);
- the discharge of the management for the performance of their duties; and
- the appointment or removal of directors and auditors, where applicable.

All such decisions must be properly documented and retained in the company's records.

## 3.4 Management Structures

Luxembourg company law offers flexible governance models, which vary depending on the legal form.

### SA

The SA provides the most flexible governance framework, as it can operate under either a one-tier or a two-tier system. Under the one-tier system, the company is managed by a board of directors. The board is appointed by the general meeting of shareholders and is responsible for the overall management of the company. Under the two-tier system, governance is divided between a management board, which is responsible for the day-to-day management; and a supervisory board, which oversees and monitors the management board. The supervisory board is appointed by the shareholders, while the management board may be appointed by either the supervisory board or the shareholders, depending on the articles of association. The SA is therefore characterised by a choice between monistic and dualistic governance, making it suitable for more complex organisations.

### Sàrl

The Sàrl follows a simpler, purely one-tier structure. It is managed by one or more managers, who may act individually or collectively (often as a board of managers, although this is not mandatory). There is no two-tier system available for this entity. This streamlined governance reflects the Sàrl's typical use for closely held companies, subsidiaries and SMEs.

### SCS and SCSp

Limited partnerships (both SCS and SCSp) follow a contractual and flexible governance model rather than a formal tiered system. They are generally managed by one or more managers, but in practice most often by their general partner. There is no formal one-tier versus two-tier distinction, and governance is largely determined by the partnership agreement, which can be tailored to the needs of the parties. This flexibility makes partnerships particularly suited for investment funds and joint ventures.

### SCA

The SCA combines features of a company and a partnership and is typically managed by its general partner, who exercises control over the company's management. Like partnerships, it does not follow the classic one-tier/two-tier distinction but instead relies on a controlled management structure centred on the general partner.

### SAS

The SAS is characterised by a flexible and largely contractual governance structure.

The law requires at least a chairman (*président*), but otherwise allows significant freedom to organise governance arrangements in the articles of association. This structure does not strictly follow a traditional one-tier or two-tier model and is designed for tailored governance, particularly in joint ventures or start-ups.

### Overview

Overall, Luxembourg company law combines classical corporate governance models (for SAs) with highly flexible, contractual approaches (for partnerships and SAS).

## 3.5 Directors', Officers' and Shareholders' Liability

The liability of directors and officers in Luxembourg is primarily governed by:

- the Law of 10 August 1915 on commercial companies;
- the Civil Code (general tort liability); and
- where relevant, the Criminal Code and Commercial Code.

Directors act as agents of the company and benefit from the principle of separate legal personality (the "corporate shield"), meaning they are not automatically personally liable for corporate obligations. However, this protection is not absolute and liability may arise in several situations.

The liability of directors in Luxembourg primarily arises under civil law, which constitutes the core regime and takes several forms. First, directors may incur liability towards the company itself for faults committed in the performance of their mandate, such as negligence or mismanagement. This is generally characterised as contractual liability (actio mandati) and may only be enforced by the company, or by a liquidator in the context of insolvency. Secondly, directors can be held jointly and severally liable towards both the company and third parties in cases where they breach the Companies Act or the company's articles of association. In addition, directors may also incur liability under general tort law if they commit a fault that causes damage to third parties, provided that fault, damage and a causal link are established. In practice, Luxembourg courts apply an objective standard of care, assessing the director's conduct against that of a reasonably prudent and diligent manager acting in similar circumstances.

Beyond civil liability, directors may also face criminal liability in cases involving serious misconduct. This includes, for example:

- the falsification of accounts or corporate documents;
- misappropriation of company assets;
- the distribution of fictitious dividends; or
- fraudulent behaviour.

Such offences may give rise to penalties ranging from fines to imprisonment.

Directors are further exposed in situations of insolvency or bankruptcy, where their responsibility is more closely scrutinised. They may be held liable if mismanagement contributed to the company's financial distress or if they failed to file for bankruptcy in a timely manner. In more severe cases, courts may impose

personal liability for part or all of the company's debts or order a disqualification from acting as a director.

These liability regimes are closely linked to the fundamental duties incumbent upon directors. In particular, directors must:

- act with due care and diligence;
- behave loyally in the best interests of the company; and
- ensure compliance with applicable laws and the company's constitutional documents.

Courts will consider lifting the corporate veil where the company structure is misused: for example, in cases of fraud, abuse of rights, or where there is a clear confusion between the assets or identity of the company and those of its controllers. Such intervention remains rare and is assessed on a case-by-case basis, with a high evidentiary threshold.

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

Employment relationships in Luxembourg are governed by a combination of statutory law, regulations and negotiated instruments, rather than by a single source.

#### Statutory Law

The primary source is statutory legislation, in particular:

- the Luxembourg Labour Code, which contains the core rules governing employment relationships; and
- additional laws and Grand-Ducal regulations, which complement the Labour Code and regulate specific aspects of employment.

These statutory rules lay down the fundamental framework applicable to employment relationships, including rights and obligations of employers and employees.

#### Collective Bargaining Agreements

Employment relationships are also shaped by collective bargaining agreements, which:

- reflect the practices of specific economic or industrial sectors; and
- may supplement or refine the statutory framework.

This means that, depending on the sector, employees' rights and working conditions may be influenced by collectively negotiated rules.

#### Individual Employment Contracts

At the individual level, the relationship between employer and employee is governed by an employment contract, which must:

- be provided to the employee at the latest on the first day of employment; and
- set out the key terms and conditions of employment (such as remuneration, working time and duties).

Where applicable, the contract may incorporate provisions from collective agreements.

#### Role of Practice and Additional Instruments

Rules and practices may reflect sectoral customs, especially through collective agreements and established practices within industries.

### 4.2 Characteristics of Employment Contracts

Under Luxembourg law, an employment contract must be provided to the employee in writing. Employers are required to provide the contract no later than the first day of employment.

The contract must set out the essential terms and conditions of employment, including:

- identity of the parties;
- starting date;
- job title;
- place of work;
- wages;
- working time;
- holiday entitlement; and
- notice provisions.

Where applicable, the contract may incorporate provisions from collective bargaining agreements.

Luxembourg law distinguishes between different types of employment contracts:

- permanent (open-ended) contracts, which are the standard form; and
- fixed-term contracts, which have a predetermined duration.

The duration is therefore regulated by law, as different rules apply depending on the type of contract (see, for example, **4.4 Termination of Employment Contracts** regarding the applicable rules for contract termination).

### 4.3 Working Time

Luxembourg law sets clear limits on working time. The normal legal working time is:

- 8 hours per day; and
- 40 hours per week.

However, working time may be extended, subject to legal limits, up to:

- 10 hours per day; and
- 48 hours per week (including overtime).

Overtime is also regulated by law. Overtime is defined as any work performed in excess of the working time set out in the employment contract. Overtime is not automatically permitted, and is allowed only in specific circumstances. It is subject to prior notification and authorisation requirements. Overtime does not always require the consent of both parties, except in limited cases.

Additional flexibility in working time can be achieved through specific arrangements, such as a work organisation plan, or a flexitime system. These mechanisms allow companies to adapt working hours within the legal framework.

### 4.4 Termination of Employment Contracts

Luxembourg is not an employment-at-will jurisdiction. Termination of employment contracts is strictly regulated by law and must be based on legally recognised grounds and procedures.

An employer may terminate a permanent (open-ended) employment contract with notice on personal grounds (eg, insufficient performance, behavioural issues) or economic grounds (eg, restructuring, abolition of the position, financial difficulties). An employer may also terminate a contract with immediate effect in cases of serious misconduct, which justifies immediate departure (eg, criminal acts or violence). Fixed-term contracts may generally only be terminated early for serious misconduct.

During the probation period, termination with notice is possible without stating a specific reason.

The dismissal procedure involves the following.

- Dismissal must be notified by written letter.
- For dismissal with immediate effect, the grounds must be stated in the letter.
- For dismissal with notice, the employee may request the reasons, and the employer must respond in writing.

If the employer has 150 or more employees, in addition to the above, a pre-dismissal interview must be held, allowing the employee to respond to the proposed dismissal.

Dismissal with notice is subject to statutory notice periods depending on seniority:

- two months (less than five years);
- four months (five to ten years); and
- six months (more than ten years).

Employees dismissed with notice and having at least five years of service are entitled to severance pay, ranging from one month's to 12 months' salary, depending on length of service. If a dismissal is found to be abusive, the employer may be ordered to pay damages covering material loss and moral prejudice suffered by the employee.

A collective redundancy procedure applies where an employer intends to dismiss for economic reasons:

- at least seven employees within 30 days; or
- at least 15 employees within 90 days.

Employers must follow a specific statutory procedure, which includes the following.

- Information and consultation – the employer must inform and consult staff representatives (staff delegates and trade unions).
- Negotiation of a social plan – the employer is required to negotiate a social plan with staff representatives and trade union representatives.

This social plan sets out measures to address the consequences of redundancies. The social plan typically includes measures to mitigate the impact on employees, and complements the statutory severance and termination protections.

### 4.5 Employee Representations

Employee representation is mandatory once a statutory threshold is met.

- Employers must organise the election of staff delegates if they have employed at least 15 employees during the 12 months prior to the elections.
- Companies employing fewer than 15 employees are exempt from this obligation.

Therefore, employee representation is not universal but becomes compulsory once the workforce reaches a certain size.

Employees are represented by staff delegates, who are elected every five years and entrusted with representing the workforce within the company. Their main role is to safeguard and defend employees' interests, in particular regarding working conditions, job security and employment status, but also to act as an intermediary between employees and the employer.

Employers are subject to mandatory information and consultation obligations vis-à-vis employee representatives. Employers must inform and/or consult staff delegates on a range of matters, particularly those relating to working conditions, employment conditions and employee welfare. This establishes a continuous obligation for management to engage with employee representatives on relevant issues.

For companies employing at least 150 employees, the role of employee representatives is strengthened. The employer and staff delegates must jointly take decisions in certain areas. Examples include decisions relating to the introduction or application of technical systems used to monitor employees' conduct and performance. In these cases, employee participation goes beyond consultation and amounts to co-determination.

In addition to staff delegates, trade unions play a role in representing employees, notably by negotiating collective labour agreements. This adds a second layer of representation, particularly at sectoral or collective bargaining level.

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/ Employers

An employee is subject to Luxembourg taxation if they qualify as a Luxembourg tax resident or have Luxembourg-source employment income. For Luxembourg tax purposes, an individual is considered resident in Luxembourg if they have their domicile or permanent home in Luxembourg. Non-resident employees are taxed in Luxembourg on Luxembourg-source employment income (eg, work physically performed in Luxembourg), subject to applicable double tax treaties.

Employment income is subject to progressive personal income tax, withheld at source via payroll withholding (*retenue d'impôt sur salaires*). The applicable progressive scale varies from 0% up to 42%. However, taking into consideration the solidarity surcharge, the effective maximum marginal rate applicable is of approximately 45% (ie, 42% base rate + 7% solidarity surcharge) for high income brackets.

Taxable income includes salary and bonuses as well as benefits in kind (eg, company car, stock options under conditions), less social security contributions and certain allowances and deductions.

Employees must contribute to Luxembourg social security, which covers pension, health, accident insurance and dependency insurance.

Approximate *employee contributions* (on gross salary up to a cap for some items) are:

- pension insurance: ~8%;
- health insurance: ~3.05%; and
- dependency insurance (*assurance dépendance*): ~1.4% (on adjusted base).

Total employee contributions amount to approximately 12%–13% of the gross salary. These contributions are withheld directly by the employer.

Employers must also pay additional contributions on top of gross salary. Approximate *employer contributions* are:

- pension insurance: ~8%;
- health insurance: ~3.05%;
- accident insurance: ~0.5%–1.5% (rate depends on sector risk); and
- health at work/mutual insurance scheme: ~1%.

Total employer contributions amount to approximately 12%–15% of gross salary. These contributions can vary slightly depending on the employee's status and the employer's risk category.

Social security contributions are capped to a gross remuneration of EUR13,518.68. This cap is revised regularly based on minimal wage indices.

Employers must:

- withhold income tax at source;
- withhold employee social contributions;
- pay both employee and employer social contributions to the *Centre Commun de la Sécurité Sociale* (CCSS); and
- file monthly/annual payroll reports.

## 5.2 Taxes Applicable to Businesses

To be subject to taxation in Luxembourg, a company must be considered as tax resident in Luxembourg or receive certain Luxembourg sourced-income. In the first scenario, the company is taxable on its worldwide income; in the second one, only the Luxembourg sourced-income is taxable.

An entity is considered Luxembourg-resident if:

- it is incorporated in Luxembourg; or
- its place of effective management (central administration) is located in Luxembourg. Effective management includes where strategic decisions are made, board meetings held, and senior management operates.

### Corporate Income Tax (CIT) and Municipal Business Tax (MBT)

The ordinary CIT rate applicable to resident and non-resident collective entities in 2026 is:

- 14% for taxable income not exceeding EUR175,000;
- EUR24,500 plus 30% of the income exceeding EUR175,000 for taxable income between EUR175,000 and EUR200,001; and
- 16% for taxable income exceeding EUR200,000.

CIT applies only to corporate entities listed in Article 159 of the Income Tax Law and does not apply to tax-transparent entities (eg, general or limited partnerships or European economic interest groupings unless they are subject to reverse hybrid rules).

To CIT rate, the following must be added.

- Solidarity surcharge: 7% of CIT for the year 2026 – bringing the aggregate CIT rate to 17.12% (16% rate + (7% x 16%)) for the year 2026 for collective entities whose taxable income is above EUR200,000.
- Municipal Business Tax (MBT): rate varies by municipality, approximately 6.75% in Luxembourg City.

### Net Wealth Tax (NWT)

NWT applies to resident companies (subject to exemptions for certain holding companies). NWT is a state tax levied on the net wealth of companies, charged on their worldwide so-called "unitary value" (generally equal to the net asset value of the company

or branch – subject to certain exemptions and adjustments).

The NWT rate is 0.5% on that part of the net wealth which is lower or equal to EUR500 million and 0.05% on that part of the net wealth exceeding EUR500 million. A reduction of the NWT can be requested by an entity in its CIT tax return, provided that it undertakes to enter, before the end of the following year, an amount equivalent to five times the reduction requested in a reserve account and to maintain this reserve in its balance sheet for a five-year period.

Luxembourg companies are subject to the higher of either the NWT as per the unitary value or a minimum NWT varying between EUR535 and EUR4,815.

Since 2025, the amount of minimum NWT is computed as follows:

- a minimum NWT of EUR535 where the total balance sheet is less than or equal to EUR350,000;
- a minimum NWT of EUR1,605 where the total balance sheet is greater than EUR350,000 and less than or equal to EUR2 million; or
- a minimum NWT of EUR4,815 where the balance sheet total is greater than EUR2 million.

### Withholding Taxes

As a general rule, Luxembourg does not levy withholding tax on the following outbound amounts paid, credited or otherwise made available by Luxembourg corporate taxpayers to non-residents:

- ordinary interest paid at arm's length;
- royalties;
- liquidation proceeds; and
- dividend distributions made by exempt undertakings for collective investment.

Dividends distributed by Luxembourg-resident companies are, in principle, subject to a 15% withholding tax. However, subject to the General Anti-Avoidance Rule (GAAR), a withholding tax exemption may apply where dividends are paid by a fully taxable Luxembourg resident company to:

- a non-resident collective entity falling within the scope of the EU Parent–Subsidiary Directive;
- a Swiss-resident corporation subject to Swiss corporate tax and not benefiting from a Swiss tax exemption;
- a corporation or co-operative resident in an EEA country (other than an EU member state) and fully subject to an income tax comparable to Luxembourg CIT;
- a collective undertaking resident in a tax treaty jurisdiction and fully subject to an income tax comparable to Luxembourg CIT; or
- a Luxembourg permanent establishment of any of the above qualifying foreign entities.

The exemption applies where the parent company has held or commits to hold – directly or indirectly through a tax-transparent entity – at least 10% of the share capital or a participation with an acquisition cost of at least EUR1.2 million, for an uninterrupted period of at least 12 months.

A 20% withholding tax applies to directors' fees (increased to 25% if the tax is borne by the company paying the fees). For non-resident directors whose Luxembourg-source professional income consists solely of directors' fees not exceeding EUR100,000 per fiscal year, the withholding tax constitutes the final tax, unless the director opts for assessment.

A 10% withholding tax applies to income from independent literary or artistic activities and from professional sports activities performed in Luxembourg.

### Value Added Taxes (VAT)

In Luxembourg, VAT applies to supplies of goods and services, to intra-Community acquisitions made by taxable persons in the course of their business, and to imports from outside the EU. The standard VAT rate is 17%. A taxable person is anyone who independently and regularly carries out an economic activity.

Luxembourg also applies several reduced rates. An intermediate rate of 14% applies to items such as fuels, certain advertising publications, and services relating to the administration or custody of securities. A reduced rate of 8% applies to gas, electricity and, under certain conditions, works of art and their supply.

A super-reduced rate of 3% covers a wide range of goods and services, including broadcasting services, copyrights, most food products, books and periodicals, children's clothing, water, pharmaceuticals, passenger transport, accommodation, and access to cultural, educational, sporting, entertainment events and e-books.

Finally, a zero rate applies principally to exports and intra-Community (interstate) supplies of goods.

### Registration Duties

In Luxembourg, registration duties vary depending on the type of transaction or document. Transfers of Luxembourg real estate generally trigger a registration tax of 6% (increasing to 9% for certain properties in Luxembourg City), plus a 1% transcription tax, calculated on the higher of the purchase price or the property's fair market value. These taxes are deductible for corporate income tax purposes.

Certain corporate-law formalities – such as the incorporation of a Luxembourg entity, amendments to its articles of association, or the transfer of its registered seat to Luxembourg – are subject to a fixed registration duty of EUR75.

When real estate is contributed to a company in exchange for shares, the contribution is subject to a proportional registration duty of 0.6% (or 0.9% for some Luxembourg City properties), plus a 0.5% transcription tax. If the consideration consists of something other than shares, the proportional duty increases to 6% (or 9% in Luxembourg City), and the transcription tax to 1%. Certain reorganisations may benefit from exemptions from proportional duties.

Contributions of movable property remunerated by means other than shares are also subject to a proportional registration duty, with the applicable rate depending on the nature of the assets contributed.

### Top-Up Tax Under Pillar Two

Luxembourg transposed the EU Pillar Two Directive on global minimum taxation in December 2023. As a result, Pillar Two is now in force, with the Income Inclusion Rule (IIR) and the Luxembourg Qualified Domestic Minimum Top-Up Tax (QDMTT) applying for fiscal years beginning on or after 31 December 2023, and the Undertaxed Profits Rule (UTPR) applying for fiscal years beginning on or after 31 December 2024.

Luxembourg has been granted safe harbour status on the OECD's central record.

## 5.3 Available Tax Credits/Incentives

Luxembourg's tax framework contains multiple incentives tailored to specific transaction types.

### Participation Exemption

Under the participation exemption, dividends received from a foreign subsidiary can be exempt if the following conditions are met.

- The distributing subsidiary must be:
  - (a) an EU company covered by the Parent–Subsidiary Directive; or
  - (b) a fully taxable Luxembourg company; or
  - (c) a non-resident joint stock company fully liable to a tax comparable to Luxembourg CIT (generally at least 8% as of tax year 2025).
- The Luxembourg parent company must be a fully taxable resident company (or qualifying PE).
- The participation must satisfy a minimum threshold of:
  - (a) at least 10% of the subsidiary's share capital; or
  - (b) acquisition cost of at least EUR1.2 million for dividend exemption.
- Minimum holding period: the parent must hold or commit to hold the participation for at least 12 months.

If these conditions are met, the dividend is fully exempt from Luxembourg corporate income tax.

If dividends received by a Luxembourg company do not meet the conditions for the full participation exemption, 50% of the dividend is nevertheless exempt from CIT under Luxembourg's domestic half-income method, provided the income is paid by:

- a fully taxable Luxembourg resident company;
- a company resident in a state with which Luxembourg has concluded a double tax treaty and which

is fully liable to a tax corresponding to Luxembourg CIT; or
- a company resident in an EU member state covered by Article 2 of the EU Parent–Subsidiary Directive (Directive 2011/96/EU).

### Capital Gains Exemption

Capital gains realised by a Luxembourg company or permanent establishment on the disposal of shares in a subsidiary can also be exempt from tax where, at the time the gain arises, the seller has held – or commits to hold for at least 12 uninterrupted months – a direct and continuous participation of at least 10% in the subsidiary or shares with an acquisition cost of at least EUR6 million. The subsidiary must be either an EU undertaking covered by the Parent–Subsidiary Directive, a fully taxable Luxembourg capital company, or a non-resident company subject to a tax comparable to Luxembourg corporate income tax. In practice, the Luxembourg tax authorities generally require that the foreign company be subject to a minimum tax rate of 8% on a basis comparable to Luxembourg's.

### Waiver Under LITL Article 166

As from tax year 2025, the Luxembourg tax law provides, in Article 166 of the Luxembourg Income Tax Law (LITL), for the possibility for a taxpayer to waive the benefit of the Luxembourg participation exemption referred to in Article 166 of the LITL. However, this option is only available to the taxpayer where the conditions for the participation exemption are met solely by virtue of the threshold of the acquisition price of the shareholding, ie, if is at least equal to an amount of EUR1.2 million. In other words, when the conditions for the exemption are met on the basis of a shareholding of at least 10%, it is not possible to exercise this waiver. The limitation of the waiver to these cases is due to the constraints arising from the Parent–Subsidiary Directive. The waiver must be exercised individually for each tax year and for each shareholding and has an impact on the recapture rule. If the waiver is not exercised, the participation exemption continues to apply normally.

### Innovation-Driven Activities

Luxembourg offers targeted incentives for innovation-driven activities.

- Research and development (R&D) expenses are generally tax deductible. Since 1 January 2018, Luxembourg has implemented an intellectual property (IP) regime that complies with the "modified nexus" approach endorsed by both the OECD and the European Union as part of the Base Erosion and Profit Shifting (BEPS) project. Under this regime, an 80% exemption from CIT and MBT may apply – subject to certain conditions – to the net income derived from qualifying rights in patents (defined broadly) and copyrighted software. The exemption is limited to IP assets that are not marketing-related and that were created, developed or enhanced after 31 December 2007, provided the income originates from eligible R&D activities. In addition, IP assets that qualify for the 80% (corporate) income tax exemption are 100% exempt from net wealth tax.
- In addition to the IP regime, the law on 19 December 2023 introduced a major reform of the investment tax credit (ITC) framework, effective as from the 2024 tax year. This framework aims to accelerate the digital transformation as well as the ecological and energy transition of Luxembourg businesses and to strengthen the competitiveness of Luxembourg companies, by stimulating more innovation, while promoting the development of knowledge and skills in digital transformation and ecological and energy transition. The framework provides for the following:
  (a) a global ITC of 12% based on the acquisition price or cost price of investments made during a financial year, granted on investments in tangible depreciable assets other than buildings, livestock and mineral and fossil deposits, and for the acquisition of software;
  (b) for investments in fixed assets approved to be eligible for the special depreciation referred to in Article 32bis of the LITL, the tax credit is increased to 14%; and
  (c) a specific income tax credit for investments and operating expenses linked to the digital transformation or ecological and energy transition – the rate of the new tax credit is either 18% or 6% depending on whether investments are made in tangible depreciable assets or not.

### Specific Industries

Luxembourg's tax framework also contains multiple incentives tailored to specific industries. For that purpose, Luxembourg offers a wide range of investment vehicles, some of which benefit from a tax regime which differs from that applicable to fully taxable corporate entities. The following regulated investment funds are exempt from any taxation on their income, but are subject to a so-called "subscription tax" on the value of their net assets:

- undertakings for collective investment in transferable securities (UCITS) within the meaning of the UCITS Directive;
- alternative investment funds (AIFs) (ie, undertakings for collective investment which are not UCITS); and
- specialised investment funds (SIFs), which are multi-purpose investment funds dedicated to so-called "sophisticated investors".

While the income exemption applies in the same way to all investment fund types listed above, the rate of subscription tax varies depending on the type of fund, from 0.01% to 0.05%. Some subscription tax exemptions apply in certain cases. Notably, actively managed exchange traded funds are exempted from subscription tax with effect as from 1 January 2025, aligning to the regime already applicable to passively managed exchange traded funds.

Securitisation vehicles (SVs) set up as a securitisation fund (which acquires or assumes, directly or through another undertaking, risks relating to claims, other assets or obligations assumed by third parties or inherent to all or part of the activities of third parties and issues securities whose value or yield depends on such risks) are exempt from taxation on their income and are subject to the tax provisions applicable to UCIs. However, they are not subject to subscription tax.

Some other types of investment vehicles are fully subject to tax on their income as any other fully taxable Luxembourg corporate entity, but either benefit from certain exemptions on certain income categories (*sociétés d'investissement en capital à risque* (SICARs)) or are subject to specific rules when computing their tax base (SVs in corporate form):

- an investment company in risk capital (SICAR), designed for private equity and venture capital investments, must invest its assets in securities representing risk capital; and
- an SV set up as a corporation (same activity as a securitisation fund) is fully subject to tax on its income like any other fully taxable Luxembourg corporate entity, but is subject to specific rules (specific deductions) when determining its taxable income.

Finally, the reserved alternative investment fund (RAIF) combines the characteristics and structuring flexibilities of both the Luxembourg regulated SIF and the SICAR qualifying as an AIF managed by an authorised AIF manager (AIFM), except that RAIFs are not subject to prior authorisation from the Luxembourg financial regulator as they must be managed by a fully authorised AIFM. For tax purposes, depending on the activity they perform, RAIFs are subject to either the same income tax exemption regime as SIFs (and subscription tax) or the same tax regime as SICARs.

## 5.4 Tax Consolidation

Fiscal consolidation is permitted for CIT and MBT purposes, but not for NWT. Luxembourg law allows groups to elect either vertical or horizontal tax consolidation, with the consolidated group being bound by the regime for a minimum period of five years. A company may not simultaneously belong to more than one tax-consolidated group.

Vertical tax consolidation is available where a fully taxable Luxembourg resident company, or the Luxembourg permanent establishment of a foreign company subject to a tax comparable to Luxembourg CIT, directly or indirectly holds at least 95% of the share capital of one or more fully taxable Luxembourg resident companies, or of a Luxembourg permanent establishment of a foreign entity subject to a comparable tax. Both the integrating parent and the integrated subsidiaries must have the same financial year-end.

Horizontal tax consolidation applies where several subsidiaries are held, directly or indirectly, at a mini-

mum of 95% by the same non-integrated parent entity. The integrating and integrated entities may be fully taxable Luxembourg companies or Luxembourg permanent establishments of foreign companies subject to a tax comparable to Luxembourg CIT. The non-integrated parent may be a fully taxable Luxembourg company, a Luxembourg permanent establishment of a foreign company, a foreign company resident in an EEA member state and subject to a comparable tax, or a permanent establishment located in an EEA member state of such a foreign company. Even though the parent is not part of the consolidation, the 95% shareholding requirement must still be met. All integrating and integrated entities must share the same financial year-end.

Where the 95% shareholding is held indirectly, all intermediary companies must themselves be corporate entities fully subject to a tax comparable to Luxembourg CIT.

Tax consolidation takes effect only upon written request to the Luxembourg tax authorities and applies retrospectively from the start of the fiscal year in which the request is filed. Once elected, the regime must be maintained for at least five tax years.

### 5.5 Thin Capitalisation Rules and Other Limitations

In the absence of statutory thin-capitalisation rules under Luxembourg tax law, the principles set out in Chapter X of the OECD Transfer Pricing Guidelines on financial transactions, released on 11 February 2020, serve as the primary reference point. Consequently, a Luxembourg company's debt-to-equity ratio must, in practice, be supported by a debt-capacity analysis carried out as part of a transfer pricing assessment. Where the level of indebtedness is considered excessive, related interest payments may be recharacterised as hidden profit distributions, resulting in the denial of the tax deduction and potentially triggering Luxembourg dividend withholding tax.

Historically, the commonly used 85%/15% debt-to-equity ratio for shareholding activities has not been systematically challenged, although the Luxembourg tax authorities have, in certain cases, requested formal debt-capacity analyses. More recently, however, the Administrative Court has clarified that this 85/15 practice does not have any legally binding force.

### 5.6 Transfer Pricing

Luxembourg's transfer pricing framework is anchored in Article 56 of the Income Tax Law, which empowers the tax authorities to adjust a company's taxable income when transactions between associated enterprises diverge from arm's length conditions. This may lead to an upward adjustment where a Luxembourg entity confers an undue advantage on a related party – for example, by paying interest at a rate above arm's length – or, conversely, to a downward adjustment where the Luxembourg entity is the beneficiary of such an advantage.

Separately, Article 164 (3) of the Income Tax Law provides that hidden dividend distributions – meaning benefits granted to a shareholder that would not have been provided absent the shareholding relationship, such as interest charged at a rate above arm's length – are not deductible for tax purposes. These rules governing hidden distributions operate alongside the transfer pricing framework and may, in certain cases, take precedence over arm's length adjustments.

### 5.7 Anti-Evasion Rules

Luxembourg rarely challenges the application of tax treaties. Nonetheless, domestic legislation includes a general anti-abuse rule (GAAR), as well as the anti-abuse provision of the EU Parent–Subsidiary Directive, under which treaty or directive benefits may be denied when an arrangement is primarily designed to obtain a tax advantage.

Since 1 January 2019, Luxembourg's domestic GAAR has been aligned with the wording of ATAD 1, introducing the concept of a "non-genuine arrangement". Under this rule, a transaction may be disregarded or recharacterised when all of the following conditions are met:

- the arrangement involves the use of one or more legal forms or legal structures;
- the main purpose, or one of the main purposes, of using such legal forms or structures is to obtain a tax benefit that defeats the object or purpose of the applicable tax law; and

- the use of such forms or structures is considered non-genuine.

These principles are further reinforced by Luxembourg's substance-over-form doctrine, under which the tax analysis focuses on the economic reality of a structure or transaction rather than its legal form. This doctrine is embedded in Luxembourg legislation and case law and remains a central interpretative tool for the tax authorities and courts.

In addition, since 1 January 2020, the principal purpose test (PPT) has applied to Luxembourg's tax treaties. Under the PPT, treaty benefits may be denied if it is reasonable to conclude that obtaining the benefit was one of the principal purposes of an arrangement or transaction that directly or indirectly gave rise to that advantage.

In addition, Luxembourg applies the full EU anti-hybrid mismatch rules, which deny tax deductions or other advantages in circumstances involving double deductions or deduction-without-inclusion outcomes, ensuring consistency with the ATAD 2 framework.

The Luxembourg hybrid mismatch rules follow OECD BEPS Action 2 recommendations and target a wide range of hybrid mismatch scenarios, including:

- hybrid financial instruments (equity in one jurisdiction, debt in another);
- hybrid entities (transparent vs opaque treatment);
- hybrid permanent establishments;
- imported hybrid mismatches (mismatches arising outside Luxembourg but imported via deductions);
- hybrid transfers;
- dual-resident entities; and
- reverse hybrids (transparent in Luxembourg, opaque to investors).

Hybrid mismatches arise when entities or instruments are treated differently across jurisdictions, leading to outcomes such as double deductions or deductions without inclusion. ATAD 2 requires EU member states – such as Luxembourg – to neutralise these mismatches either by denying deductions or by including otherwise untaxed income.

Luxembourg's implementation strictly adheres to ATAD 2 minimum standards, without adding extra layers of complexity, but opting into all permitted exemptions or safe harbours to avoid unintended double taxation.

Under Article 38 of the Luxembourg Income Tax Law (LITL), exit taxation is triggered where Luxembourg loses, in whole or in part, its taxing rights over assets or business activities as a result of a cross-border transfer. This may arise, in particular, where:

- assets are transferred from a Luxembourg head office to a foreign permanent establishment;
- assets are transferred from a Luxembourg permanent establishment to its foreign head office or to another foreign permanent establishment;
- a taxpayer transfers its tax residence outside Luxembourg; or
- a business carried on through a Luxembourg permanent establishment is transferred to another jurisdiction,

provided that, as a consequence of the transfer, Luxembourg no longer has the right to tax any future gains realised on the relevant assets.

Upon the occurrence of an exit event, unrealised gains inherent in the transferred assets are deemed to be realised for Luxembourg tax purposes. The taxable gain generally corresponds to the difference between:

- the fair market value (or going concern value) of the assets at the date of the transfer; and
- their tax book value for Luxembourg tax purposes.

Accordingly, gains that accrued while the assets were subject to Luxembourg taxation become taxable at the time of the transfer, notwithstanding the absence of an actual disposal.

Where the transfer is made to another European Union member state or to a qualifying European Economic Area State with which arrangements for the mutual recovery of tax claims are in place, the taxpayer may elect to defer payment of the exit tax by paying it in equal instalments over a period of up to five years.

The benefit of the instalment regime may be withdrawn and the outstanding tax liability become immediately payable in certain circumstances, including where the transferred assets are subsequently disposed of or transferred to a non-qualifying jurisdiction.

By contrast, where the transfer is made to a jurisdiction that does not qualify for the deferral regime, the exit tax is generally due immediately upon the occurrence of the exit event.

### 5.8 Tariffs

Luxembourg does not maintain an independent national tariff regime. As a member of the European Union (EU) and the EU Customs Union, Luxembourg applies the EU Common Customs Tariff (CCT) to goods imported from non-EU countries. Goods moving between EU member states circulate free of customs duties, while imports from outside the EU are subject to the tariff rates and trade measures established at EU level.

## 6. Competition Law

### 6.1 Merger Control Notification

Luxembourg does not currently operate a general ex ante merger control regime. Consequently, mergers, acquisitions and joint ventures are not subject to mandatory notification or prior approval by the Luxembourg competition authorities under national competition law. As a general rule, therefore, M&A transactions are not reportable in Luxembourg on the basis of turnover or market share thresholds.

Notwithstanding the absence of a national merger control system, certain transactions may nevertheless be subject to regulatory review at the European Union level. In particular, concentrations, including mergers, acquisitions of control and certain full-function joint ventures, fall within the scope of the EU Merger Regulation where the applicable jurisdictional thresholds are met. Transactions meeting those thresholds must be notified to and cleared by the European Commission prior to implementation.

Furthermore, although no prior notification is currently required at the national level, the Luxembourg Competition Authority retains the ability to intervene on an ex post basis where a transaction gives rise to competition concerns, including potential abuses of a dominant position or other anti-competitive effects.

It should also be noted that a draft bill proposing the introduction of a Luxembourg merger control regime is currently under consideration. The proposal would establish a system of mandatory pre-closing notification for transactions meeting specified turnover thresholds, including where the parties' combined turnover in Luxembourg exceeds EUR60 million and at least two parties each generate Luxembourg turnover exceeding EUR15 million. However, the proposed legislation has been subject to criticism and has not yet been adopted. Accordingly, the timing of its entry into force and the final form of the regime remain uncertain.

### 6.2 Merger Control Procedure

Luxembourg does not currently have a national ex ante merger control regime. As a consequence, there are no national rules describing the steps or timing of merger notifications.

### 6.3 Cartels

Luxembourg has a framework addressing economic and anti-competitive conduct, as part of its broader system governing economic crimes and market regulation. These are governed by a combination of the Luxembourg Criminal Code, and EU-derived regulations, such as the Market Abuse Regulation. This indicates that Luxembourg's system is strongly influenced by EU law, including in areas relating to competition and market conduct.

Economic offences include:

- fraud;
- market abuse and insider trading; and
- other forms of unlawful conduct affecting markets.

### 6.4 Abuse of Dominant Position

Luxembourg does have rules governing unilateral conduct and, in particular, abuse of economic dependence, though the framework is somewhat limited and closely aligned with EU competition law.

Luxembourg competition law is primarily based on the Luxembourg Competition Act (Law of 23 October 2011, as amended). As Luxembourg is an EU member state, national courts must interpret domestic law in a manner compliant with EU law. This implies that EU competition law principles (including Articles 101 and 102 TFEU) are relevant in Luxembourg, and the legal framework follows an effects-based approach, where conduct may be assessed in light of its impact within the EU, even if carried out elsewhere.

Article 5 of the Luxembourg Competition Act prohibits abuse of a dominant position. This mirrors Article 102 TFEU and covers unilateral conduct such as:

- unfair pricing;
- exclusionary practices;
- refusal to supply; and
- discriminatory conditions.

This requires market dominance (not just strong bargaining power).

Luxembourg authorities (eg, the Competition Authority) may act ex post in competition matters, including intervention in cases of abuse of dominance.

In relation to the concept of abuse of economic dependence, Luxembourg does recognise the concept, but it is not as fully developed or codified as in some neighbouring countries (eg, France or Belgium). Abuse of economic dependence is addressed more indirectly, via:

- general civil law principles;
- unfair competition rules; and
- contract law (good faith, imbalance, abuse of rights).

## 7. Intellectual Property

### 7.1 Patents

#### Definition

A patent is an industrial property right granted by the Luxembourg Ministry of the Economy that provides legal protection for inventions that are new, involve an inventive step and are capable of industrial application. Patent protection is also available for certain biotechnological inventions. A patent confers on its holder an exclusive right to exploit the invention and to prevent third parties from manufacturing, using, marketing, distributing or selling the patented invention without prior authorisation.

To qualify for patent protection, an invention must:

- be novel, meaning that it does not form part of the state of the art;
- involve an inventive step, such that it is not obvious to a person skilled in the relevant field;
- be capable of industrial application; and
- not fall within any category expressly excluded from patentability.

#### Registration Process

To obtain a patent, full disclosure of the invention is mandatory. A patent application must include a sufficiently clear and complete description of the invention, together with any necessary drawings, enabling a person skilled in the relevant field to reproduce the invention. It must also contain one or more claims defining the scope of the protection sought, which may relate to a product, process, device or specific use. In addition, the applicant must pay the applicable filing and procedural fees required for the grant of the patent.

In exchange for this disclosure, a patent grants its holder exclusive rights for a maximum period of 20 years from the filing date of the patent application, subject to compliance with any applicable maintenance requirements.

The right to a patent belongs to the inventor or their successor in title (any person who has acquired the right from the inventor). Any natural or legal person may apply for a patent.

An application for a Luxembourg national patent must be filed with the Intellectual Property Office (*Office de la propriété intellectuelle* – OPI) of the Ministry of the Economy.

In addition to national protection, applicants may seek broader territorial coverage through:

- European patent applications filed with the European Patent Office (EPO), which can provide protection in multiple European countries through a centralised application procedure; and
- international patent applications filed under the Patent Cooperation Treaty (PCT) administered by the World Intellectual Property Organization (WIPO).

The patent is valid in the countries where such protection has been requested. An applicant who first files a patent application in Luxembourg benefits from a 12-month priority period, during which corresponding applications may be filed in other jurisdictions while preserving the original filing date.

The filing of a Luxembourg patent application is subject to prescribed fees, including a filing fee of EUR40, payable within one month of filing, and, where requested, a search fee of EUR450 for the preparation of a search report. Applicants may also request early publication of the patent application to accelerate the grant process, subject to payment of an additional EUR49 fee. Following grant, the patent remains in force only if the applicable annual renewal fees are paid.

### Enforcement and Remedies

The owner of a patent, or, where the owner fails to act, a licensee entitled to use the patent, may bring infringement proceedings before the Luxembourg courts. Where infringement is established, the Luxembourg District Court may grant a range of remedies, including:

- injunctive relief to prevent or cease the infringing activities;
- confiscation or destruction of infringing goods; and
- an award of damages to compensate the patent holder for losses suffered as a result of the infringement.

These remedies are intended both to halt unlawful use of the patented invention and to compensate the rights holder for the harm caused by the infringement.

## 7.2 Trade Marks

### Definition

A trade mark is a distinctive sign used to identify and distinguish the goods or services of one undertaking from those of another. It serves as an indicator of commercial origin and may take various forms, including word marks, figurative marks, combined word and figurative marks, and three-dimensional marks.

### Registration Process

Any sign capable of being represented in a manner that enables the competent authorities and the public to determine clearly and precisely the subject matter of protection may qualify for registration, provided that it is capable of distinguishing the goods or services of one undertaking from those of another. Eligible signs include, among others:

- words;
- slogans;
- letters;
- numbers;
- drawings;
- shapes;
- colours;
- sounds; and
- combinations thereof.

However, a trade mark will be denied registration, or may subsequently be declared invalid, if it lacks distinctive character, is contrary to public policy or accepted principles of morality, is misleading as to the nature, quality or origin of the relevant goods or services, cannot function as a trade mark, or conflicts with an earlier registered trade mark or other prior right.

A trade mark may be registered by any natural or legal person, including individuals, self-employed persons, companies and other entities. Upon registration, the proprietor obtains the exclusive right to use the trade mark in relation to the goods and services for which it is registered.

The owner of a registered trade mark enjoys the exclusive right to use the mark and may prevent third parties from using identical or similar signs that are likely to cause confusion among consumers. Protec-

tion may also extend to the use of identical or similar signs that take unfair advantage of, or are detrimental to, the reputation or distinctive character of a well-known trade mark.

In principle, trade mark rights arise through registration. Unregistered trade marks do not generally benefit from protection, except in limited circumstances relating to well-known marks. A trade mark is generally protected for a period of ten years from the filing date. Registration may be renewed indefinitely for successive ten-year periods, provided that the applicable renewal requirements and fees are satisfied.

Luxembourg does not have a national trade mark protection scheme. Trade mark protection in Luxembourg is governed by the EU Trade Mark Regulation (EU) 2017/1001 and the Benelux Convention on Intellectual Property. Applications may be filed with the Benelux Office for Intellectual Property (BOIP) or through the relevant national authority, which in Luxembourg is the Intellectual Property Division of the Ministry of the Economy. Trade mark protection obtained through a Benelux registration extends automatically to Belgium, the Netherlands and Luxembourg.

Businesses seeking broader protection across the European Union may apply for an EU Trade Mark (EUTM), which provides unitary protection throughout all EU member states.

The trade mark registration process typically takes approximately four months for Benelux registrations, nine to ten months for EU trade marks, and between four and 24 months for international registrations, depending on the jurisdictions concerned. Once registered, trade mark protection takes effect retroactively from the filing date, which therefore constitutes a key element of the registration process.

The official filing fees for trade mark registration vary depending on the territorial scope of protection. The standard fee for a Benelux trade mark covering up to three classes is EUR240, while the registration of an EU trade mark covering three classes generally costs between EUR900 and EUR1,050. For international trade mark registrations, applicants pay a single set of fees to the World Intellectual Property Organization (WIPO).

The applicable registration fees must be paid within one month of the filing date. Failure to do so will result in the date of receipt of payment being deemed the filing date of the application. As the filing date determines the priority of trade mark rights and their precedence over subsequent applications, timely payment is of particular importance.

### Enforcement and Remedies

Trade mark owners may enforce their rights through administrative or judicial proceedings.

At the administrative level, the proprietor of an earlier trade mark may initiate opposition proceedings before the BOIP against a later-filed mark that infringes its rights. The BOIP may also hear applications for the revocation or declaration of invalidity of registered trade marks on specified grounds. Appeals against BOIP decisions fall within the exclusive jurisdiction of the Benelux Court of Justice.

At the judicial level, trade mark owners may bring infringement proceedings before the Luxembourg District Court. In urgent cases, the trade mark owner may also seek interim injunctive relief through summary proceedings before the President of the Luxembourg District Court in order to prevent or stop ongoing infringement.

## 7.3 Industrial Designs

### Definition

An industrial design (or drawing and design) is the visual appearance of a product, including its shape, lines, contours, colours, texture, materials or ornamentation, provided that these features are aesthetic rather than purely functional in nature. Drawings relate to two-dimensional representations, while designs generally concern three-dimensional objects.

### Registration

Ownership and exploitation rights in a drawing or design may be exercised either by its creator or by any person or entity that has lawfully acquired such rights.

To qualify for protection, a design must:

- relate to the appearance of an industrial or handicraft product, or part thereof;
- be new;
- possess individual character, creating a different overall impression on the informed user; and
- derive from the product's visual features rather than its technical function.

Purely functional features, as well as immaterial concepts or ideas, are not eligible for protection.

Design protection may be obtained through either:

- a single design application covering one design; or
- a multiple design application covering several designs falling within the same class under the International Classification for Industrial Designs.

In the Benelux region, design registration provides protection in Belgium, Luxembourg and the Netherlands, as national registrations no longer exist separately. Applicants seeking broader protection may apply for a Registered Community Design, which affords protection throughout the European Union. Where protection is required beyond the EU, applications may be filed through the World Intellectual Property Organization (WIPO) under the international design registration system.

At Luxembourg level, registering a simple drawing or design costs EUR108 plus EUR10 per representation (photo, illustration, etc). At European level, a single application is subject to a fee of EUR350.

A registered design grants its holder an exclusive right to use the design and to prevent unauthorised use of identical or substantially similar designs. Registered designs benefit from an initial protection period of five years from the filing date, which may be renewed in successive five-year periods up to a maximum term of 25 years.

### Enforcement and Remedies

The holder of a registered design may enforce its rights before the Luxembourg District Court. In urgent circumstances, the design holder may also seek interim relief through summary proceedings before the President of the Luxembourg District Court, including injunctions aimed at preventing or immediately stopping infringement.

Under the Community Designs Regulation, an unregistered design that has been made available to the public within the European Union benefits from protection for three years from the date of first disclosure.

EU law also provides limited protection (for three years from the date of first disclosure) for unregistered designs that have been disclosed to the public within the European Union. Unlike registered designs, the holder of an unregistered design may only prevent use that results from the copying of the protected design. Registration therefore offers significantly broader protection, as it enables the holder to prohibit unauthorised use irrespective of whether copying can be demonstrated.

The enforcement mechanisms and remedies available for unregistered designs are substantially the same as those applicable to registered designs.

## 7.4 Copyright

### Definition

Copyright is the legal protection granted to the creator of an original literary, scientific or artistic work. In Luxembourg, copyright is governed by the Act of 18 April 2001 on Copyright, Related Rights and Databases, as amended.

Copyright protection applies to original works that reflect the author's own intellectual creation and have been expressed in a tangible or identifiable form. Protected works include, among others:

- literary works;
- artistic creations;
- computer programs; and
- databases.

Mere ideas, concepts or methods are not protected.

### Protection

Copyright protection arises automatically upon the creation of an original work and is not subject to any registration or other formality. The author acquires exclusive rights in the work from the moment of its

creation, enabling them to control its use and exploitation by third parties.

Although registration is not required, it is advisable to retain evidence establishing the date of creation of the work. Such evidence may be provided by any appropriate means, including an i-DEPOT registration with the Benelux Office for Intellectual Property, the deposit of a copy of the work with a notary or financial institution, or other reliable methods capable of demonstrating the existence of the work at a specified date. The copyright holder enjoys exclusive rights over the work, including the following:

- to authorise or prohibit its reproduction;
- communication to the public;
- distribution; and
- modification.

These rights enable the author to control the use of the work and to prevent unauthorised exploitation by third parties.

Copyright protection subsists for the lifetime of the author and for 70 years following the author's death. Upon the author's death, the rights pass to their heirs or other successors in title. Copyright may also be transferred or licensed, in whole or in part, to third parties.

### Enforcement and Remedies

Copyright holders may bring civil proceedings to enforce their rights against unauthorised use of their works. In addition to civil remedies, Luxembourg law provides for criminal sanctions where copyright infringement is committed in the course of trade with malicious or fraudulent intent. Unauthorised reproduction or distribution of protected works may constitute the criminal offence of counterfeiting and may result in:

- fines of up to EUR250,000;
- confiscation or destruction of counterfeit goods; and
- in cases of repeated infringement, imprisonment for up to two years.

These remedies are intended both to compensate rights-holders and to deter unlawful exploitation of protected works.

## 7.5 Others

### Trade Secrets

Trade secrets benefit from specific legal protection under the Luxembourg Act of 26 June 2019 on the protection of trade secrets, which implements the EU Trade Secrets Directive. This regime is particularly relevant for commercially valuable information that does not qualify for intellectual property protection or that a business prefers to keep confidential rather than register.

Protection arises automatically and does not require registration, provided that the information:

- is not generally known or readily accessible to persons operating in the relevant sector;
- has commercial value because of its confidential nature; and
- is subject to reasonable measures by the lawful holder to preserve its secrecy.

Protected information may include:

- technical know-how;
- business processes;
- customer lists;
- strategies;
- formulas; and
- other confidential business information.

Trade secret protection is not limited in time and may continue indefinitely, provided that the information remains confidential and retains its secret character. However, claims relating to unlawful acquisition, use or disclosure must generally be brought within two years of discovery of the infringement.

No registration, filing or other formality is required to obtain trade secret protection. Protection arises automatically once the statutory conditions for secrecy, commercial value and reasonable protective measures are met.

The holder of a trade secret may bring proceedings before the Luxembourg District Court against any person who unlawfully acquires, uses or discloses the protected information. Certain exceptions apply, notably where the acquisition, use or disclosure of the information is connected with the exercise of freedom of expression, whistle-blowing activities or the disclosure of unlawful conduct.

### Other Related Rights

In addition to trade secret protection, Luxembourg law provides protection for other intangible assets, including software, databases, domain names and related rights granted to performers, phonogram producers and broadcasting organisations.

## 8. Data Protection

### 8.1 Applicable Regulations

The processing of personal data in Luxembourg is principally governed by Regulation (EU) 2016/679 of 27 April 2016 (the General Data Protection Regulation, or GDPR), which has been directly applicable in all member states since 25 May 2018. The GDPR is supplemented by the Luxembourg law of 1 August 2018 on the organisation of the National Commission for Data Protection and the implementation of the GDPR, which specifies and gives effect to certain provisions of the Regulation, notably with respect to the structure, powers and enforcement functions of the National Commission for Data Protection (*Commission nationale pour la protection des données* – CNPD).

The Law of 1 August 2018 further establishes specific provisions applicable to particular categories of processing activities. These include the processing of special categories of personal data, notably health data, as well as processing undertaken for journalistic purposes and for scientific or historical research and statistical purposes. The law also regulates employee monitoring within the context of employment relationships, an area in which Luxembourg law provides for enhanced safeguards and specific compliance requirements.

In addition to the GDPR framework, the processing of personal data in the electronic communications sector is subject to supplementary obligations under the Luxembourg Act of 30 May 2005 on electronic communications, as amended. This legislation addresses, inter alia, the use of cookies and similar technologies, the confidentiality of communications, and direct marketing activities. At the European Union level, the proposed ePrivacy Regulation is expected to replace or further harmonise the existing national framework and, once adopted, would be directly applicable throughout the member states in a manner comparable to the GDPR.

More generally, Luxembourg's data protection regime is founded upon the core principles established by the GDPR, including:

- lawfulness;
- fairness and transparency;
- purpose limitation;
- data minimisation;
- accuracy;
- storage limitation;
- integrity and confidentiality; and
- accountability.

While closely aligned with the European framework, the Luxembourg regime also reflects certain national particularities, especially in relation to employment-related processing and regulatory oversight. In this regard, the CNPD exercises active supervisory authority and is empowered to impose administrative fines, corrective measures and other enforcement actions in accordance with the GDPR and applicable national legislation.

### 8.2 Geographical Scope

Luxembourg data protection law follows the territorial and extraterritorial scope of the GDPR. Accordingly, the GDPR applies not only to processing activities carried out in the context of an establishment located in Luxembourg or elsewhere in the European Union, irrespective of where the processing itself takes place, but also to certain processing activities conducted by organisations established outside the EU.

In particular, entities with no EU establishment may nevertheless be subject to the GDPR where they offer goods or services to individuals located in the EU, including Luxembourg, or monitor the behaviour of such individuals, for example through online tracking, profiling or behavioural advertising. The decisive factor is the individual's presence in the EU at the time of the processing, rather than their nationality or residence.

Where the GDPR applies, non-EU organisations must comply with the full range of applicable obligations, including:

- ensuring a lawful basis for processing;
- complying with transparency requirements;
- respecting data subject rights; and
- implementing appropriate technical and organisational security measures.

In certain circumstances, they may also be required to appoint a representative within the EU.

Furthermore, transfers of personal data outside the European Economic Area are subject to the GDPR's international transfer regime and must be supported by an adequacy decision or other appropriate safeguards, such as standard contractual clauses.

From an enforcement perspective, cross-border processing may fall within the competence of the Luxembourg National Commission for Data Protection, particularly where Luxembourg constitutes the main establishment of a corporate group. The CNPD also co-operates with other European supervisory authorities under the GDPR's one-stop-shop mechanism, enabling co-ordinated investigations and enforcement action across the EU, including against organisations established outside the Union.

### 8.3 Role and Authority of the Data Protection Agency

In Luxembourg, the enforcement of data protection rules is entrusted to an independent supervisory authority: the *Commission nationale pour la protection des données* (CNPD). The CNPD is the national data protection authority established under Luxembourg law and responsible for ensuring the application of the GDPR and related national legislation. It operates as an independent administrative body. Its core mission is to monitor and enforce compliance with data protection rules. This includes:

- supervising how public authorities and private entities process personal data;
- advising the government and Parliament on data protection matters;
- issuing guidance, recommendations, and opinions; and
- handling complaints lodged by individuals and ensuring the exercise of their rights.

The CNPD is vested with extensive powers under the GDPR and Luxembourg law, which can be grouped into three main categories.

- *Investigative powers* – it may conduct inquiries, request information, carry out on-site inspections, and access relevant data and documentation.
- *Corrective powers* – it may order controllers or processors to comply with the law, impose temporary or definitive bans on processing, or require rectification or deletion of data.
- *Sanctioning powers* – it may impose administrative fines, which can reach up to EUR20 million or 4% of the undertaking's worldwide annual turnover, depending on the seriousness of the infringement.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

There is no applicable information in this jurisdiction.

# MALDIVES




## Law and Practice

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**Premier Chambers LLP** is a full-service law firm and was established in the early 1990s. It has a dedicated team of foreign and locally trained lawyers who are qualified to and experienced in tackling complex legal matters. The firm's core expertise lies in banking and finance transactions, corporate and commercial matters, real estate, IP and tax disputes. The firm has been ranked by Chambers and Partners as a top-ranked Band 1 law firm in the Maldives for 15 consecutive years.

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**Aminath Amathulla** joined Premier Chambers LLP in 2012 and is a senior associate at the firm. She is well-versed in corporate, commercial and employment matters. Her areas of practice also include banking and finance, tourism-related acquisitions, litigation and dispute resolution. She assists, advises and represents various foreign and local clients before the tribunals and courts in the Maldives. She also provides legal advice and assistance to clients in general commercial matters. She has also been involved in drafting, vetting and finalising complex commercial contracts.



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# 1. Legal System

## 1.1 Legal System and Judicial Order

The legal system of the Maldives is a combination of civil and common law traditions aligned with the principles of Islamic law. Under Section 10 of the Constitution of the Maldives, Islam is the state religion and all laws are based on it. This means that no law inconsistent with the principles of Islam may be enacted. This hybrid system has enabled the Maldives to preserve its Islamic ethos while modernising its legal framework. While much of the legal framework is now covered by statutes, where there is a gap, it may be supplemented by Islamic law or common law, with precedence given to Islamic law.

The judicial system of the Maldives is organised into three tiers. The Supreme Court of the Maldives is the highest court in the country and has:

- original jurisdiction;
- inherent jurisdiction;
- appellate jurisdiction; and
- advisory jurisdiction.

The Supreme Court's decisions are final and binding on all other courts. Under the Supreme Court Regulation 2020, a Supreme Court decision may be reviewed in limited circumstances. These circumstances are those in which an applicant can show a blatant disregard for the law or there has been a gross injustice.

The High Court of the Maldives is subordinate to the Supreme Court and has both original and appellate jurisdiction. The High Court hears appeals from superior and lower courts and tribunals.

The third tier of the judicial system consists of first instance, superior and lower courts, along with tribunals. These include the Civil Court, the Criminal Court, the Family Court, the Juvenile Court, the Drug Court, the magistrates' courts, the Employment Tribunal and the Tax Appeal Tribunal. All courts, apart from the magistrates' courts, have specific jurisdictions. The magistrate courts have jurisdiction to hear civil, family and criminal matters.

# 2. Restrictions on Foreign Investments

## 2.1 Approval of Foreign Investments

### Approval of Foreign Investments

Foreign investments in the Maldives are currently governed by the Foreign Investment Act (Law 11/2024) (the "FI Act"), which became effective on 3 December 2024. It repealed and replaced the previous Law on Foreign Investments (Law 25/1979), which was enacted in 1979. The FI Act establishes a new legal framework for regulating foreign direct investment in the Maldives, including provisions on eligible investment areas, approval procedures, investor rights and protections and conditions for the revocation of licences.

The FI Act requires that all foreign investments be approved, regardless of their nature or type. A licence has to be obtained before any foreign investment can be established in the country.

### Criteria for Review

All foreign investments are subject to the review criteria and considerations set out in the FI Act. There is no specific review process mandated under the FI Act for specific investments.

The approval of foreign investments under the FI Act is subject to an assessment of several factors, including, but not limited to:

- the financial capacity of the investor;
- the investor's eligibility for residence and entry into the Maldives;
- compliance with any conditions applicable to restricted sectors or investments subject to additional requirements;
- the extent to which the proposed investment may pose a risk to national security;
- the potential effect of the proposed investment on existing businesses within the relevant sector;
- the extent to which the investment is expected to generate employment opportunities and contribute to the development of human resources in the Maldives;
- the potential to increase the export of local products, goods or services as a result of the investment;

- the environmental impact of the proposed investment; and
- the potential to introduce and develop technology in the Maldives through the investment.

### Eligibility

Under the FI Act, the foreign investment in the Maldives is open to:

- citizens of foreign countries;
- companies with 100% foreign shareholders;
- companies with both Maldivian and foreign shareholders;
- companies incorporated outside of the Maldives with 100% direct or indirect shareholding by Maldivians;
- partnerships and companies consisting of shares held by foreigners; and
- companies to be re-registered in the Maldives under the Companies Act.

Joint ventures between Maldivians and foreigners, foreign NGOs and legal entities incorporated outside of the Maldives are also eligible to invest in the country.

## 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

### Stages of Approval

The FI Act has introduced the following stages for obtaining approval for a foreign investment in the Maldives.

- Foreign investment application: A formal application must be submitted to the Ministry of Economic Development, Transport and Trade (the "Ministry") along with the required documentation, investor profile and proposed activity.
- No objection letter: Following a review of the application, the Ministry may issue a letter of no objection to eligible applicants. This letter sets out the specific procedures that the applicant must complete before the investment can proceed.
- Administrative fee: Upon receipt of the letter of no objection, the applicant is required to pay a non-refundable administrative fee for foreign investment to the Maldives Inland Revenue Authority ("MIRA").
- Registration of business: Applicants must register the business with the Ministry after settling the foreign investment administrative fee.
- Foreign investment licence: Upon complying with the procedures and submitting the required documents, the Ministry issues a foreign investment licence to the investor, enabling them to legally engage in the approved business activity in the Maldives.
- Foreign investment agreement: Following the grant of the licence and completion of the formalities, the Ministry enters into a foreign investment agreement with the foreign investor, which formally regulates the terms and conditions of the investment.

### Non-Compliance with the Approval Requirement

While the FI Act does not prescribe specific penalties for investing without prior approval, non-compliance with the approval requirements will result in the foreign investment not being recognised. If an investor with an approved foreign investment engages in business activities outside the scope of the approved investment licence or in contravention of the FI Act or regulations, a penalty not exceeding 30% of the total value of the unapproved investment or business will be imposed on the investor.

## 2.3 Commitments Required From Foreign Investors

### Minimum Investment Requirements

Investors must meet the minimum initial investment thresholds applicable to the specific business activity they intend to undertake. These thresholds vary by sector and range from USD250,000 to USD100,000,000. For business activities that do not have a predefined investment amount, the terms can be negotiated with the authorities. Sectoral investment requirements are currently governed by the New Foreign Investment Entry Requirements (the "FI Entry Requirements"), which were published on 8 October 2025.

### Foreign Shareholding

The maximum allowable percentage of foreign shareholding varies depending on the type of business activity. Under the FI Entry Requirements, foreign shareholdings may range from 40% to 100%, depending on the proposed activity.

### 2.4 Right to Appeal

Under the FI Act, investors have the right to challenge decisions made by the Ministry or any other government authority concerning their foreign investment. The Ministry has to establish a review committee to consider these matters.

If the investor's complaint is not resolved through a decision of the Ministry, the investor has the right to refer the matter to the relevant court or pursue the dispute resolution process outlined in the investment agreement.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

The most common forms of corporate vehicles in the Maldives are companies and partnerships. Another form of vehicle used for conducting business is a co-operative society. Any person who wishes to conduct business in the Maldives must register their business under one of these corporate structures. Unlike other forms of corporate structure, which can be utilised to conduct any type of business, co-operative societies can only be formed to meet common economic and social needs shared by a group of individuals within a society.

Companies registered in the Maldives, including re-registered foreign entities, are regulated by the Companies Act (Law 7/2023). Partnerships are regulated by the Partnership Act of the Maldives (Law 13/2011). There are regulations under the relevant Acts that also govern matters relating to each corporate entity. There is a distinct law relating to co-operative societies as well.

#### Companies

The following types of companies can be incorporated in the Maldives.

##### *Private companies*

These are companies where shares are privately held and the sale of shares to the public is prohibited. The minimum number of shareholders in a private company is one and the maximum number is 50. There is no minimum share capital requirement.

##### *Public companies*

The general public has the right to subscribe to shares, debentures or bonds in publicly traded companies. The number of shareholders in a public company is unlimited. There is also no minimum share capital requirement. However, if the company is going to be listed on the Stock Exchange before listing, they must have an issued and paid-up capital of at least MVR10 million.

##### *State-owned companies*

State-owned companies are incorporated under a Presidential Decree or by legislation and all shares are owned by the government.

##### *Local authority companies*

Local authority companies are incorporated by local councils to conduct business activities that benefit citizens under the secretariat's regulatory remit.

##### *Foreign investment companies*

Any company where one or more shares are held by a foreign individual, a foreign company or a partnership is considered a foreign investment company in the Maldives. A foreign investment company can be either private or public. Foreign investment companies are subject to the FI Act. Specific designated sectors are open to foreign investment companies to conduct business with a 100% foreign shareholding, while restrictions, such as foreign shareholding percentages, apply in other areas.

##### *Re-registered companies*

Foreign-registered companies, including foreign-registered co-operations, charities, foundations and other types of entities, can re-register in the Maldives and conduct business operations. Like foreign investment companies incorporated in the Maldives, re-registered companies are subject to the same restrictions regarding the areas in which they can operate. Every re-registered company must appoint an agent in the Maldives who is accountable to the Registrar of Companies for fulfilling all obligations under the Companies Act. The agent will be personally responsible for all actions taken against the re-registered entity under the Companies Act.

### Liability of Company's Members

The shareholders of the company are only liable towards the company:

- to the extent of the value of any unpaid shares held by them;
- in a manner clearly specified in the constitutional documents of the company; and
- any other manner specified in the Companies Act.

### Directors

Only Maldivians are eligible to serve as directors of companies, with the exception of foreign investment companies, State-owned companies and public companies with government shareholdings.

At least one director must be resident in the Maldives. A person is generally considered to be residing in the Maldives if that person resides in the Maldives for 183 days or more within a 12-month period.

### Partnerships

The following types of partnerships can be incorporated in the Maldives.

- General partnership: the liability of the partners is unlimited and the members are liable for all losses and debts of the partnership. In this form of partnership, only individuals can become partners.
- Limited liability partnership: the liability of the partners is limited to the extent of any unpaid capital of the shares which they have subscribed to. Both individuals and corporate entities can become partners in this type of partnership.

In both general and limited liability partnerships, there are no legislative restrictions on the number of partners. The maximum number of partners will be determined in the partnership agreement.

## 3.2 Incorporation Process

To incorporate a private company or partnership, a name for the business needs to be reserved and the relevant documents specified in the relevant Act and regulations lodged with the Registrar of Companies.

The incorporation process can be completed online. Once all requirements are met, registration is typically completed within one to two business days, after which a certificate of registration is issued. This certificate serves as definitive proof of registration under Maldivian law.

## 3.3 Ongoing Reporting and Disclosure Obligations

### Reporting

All private companies in the Maldives must report the following changes to the Registrar of Companies to register them in the register maintained by the Registrar.

- Amendments to the memorandum or articles of association of the company within 30 days of adoption.
- Changes to the directors and the managing director of the company must be made within 15 days of the change.
- Changes to the authorised share capital of the company must be made within 30 days of the change.
- Transfer of shares of the company, allotment of shares and any changes to the shareholding of the company within 15 days of the change.
- Charge over the shares of the company within 30 days of the creation.
- De-registration of the charge over the shares within 30 days of the release of the charge.

The director's report and financial statements of the company need to be submitted to the Registrar within 15 days of the date of the annual general meeting of the company or within another deadline determined by the Registrar.

### Disclosure Obligations

The shareholders of the company must provide the details of the beneficial owners of the shares to the company. The company must verify the accuracy of this information and maintain a register of the beneficial owners of the company's shares.

Significant beneficial owners are considered members of the company and are considered to hold a minimum 25% shareholding in the company, whether directly or indirectly and possess voting and dividend rights corresponding to that shareholding. Anyone who has the

right, whether directly or indirectly, to exert influence and control over the company's financial and strategic decisions will also be considered a significant beneficial owner.

Companies are required to submit details of the significant beneficial owners to the Registrar of Companies within 30 days of receiving the information.

### 3.4 Management Structures

#### Private Companies

Private companies registered in the Maldives are managed by their boards of directors. All companies have to appoint a managing director from among their directors. The managing director will be a full-time officer of the company and will be responsible for its management under the guidance of the board of directors.

The directors may delegate their powers, duties and responsibilities to a director's committee, an individual director or an employee of the company, as determined by the board of directors, provided the delegation is not prohibited by the company's constitutional documents. Even with the delegation of powers, the directors will remain accountable for the actions of the delegate.

#### Partnerships

In all partnerships registered in the Maldives, a managing partner has to be appointed. The managing partner is responsible for managing and overseeing all matters relating to the partnership according to the partnership agreement.

### 3.5 Directors', Officers' and Shareholders' Liability

Companies registered in the Maldives acquire a legal personality upon registration, distinct from that of their members, directors and officers. However, this is not absolute and the Companies Act states that if the company has committed a fraud and dishonest action and if the shareholders, directors or officers of the company have used the company for personal gain, the corporate veil of the company may be pierced and the shareholders, directors and officers of the company may be held personally liable.

Specific responsibilities are imposed on the directors of a company under the Companies Act. If the directors fail to comply with them, they commit an offence and can be penalised.

There is an obligation on shareholders to disclose details of beneficial owners and if they fail to do so, they are considered to have committed an offence and can be penalised.

The Companies Act recognises situations in which a company will be considered to be committing a criminal offence. These circumstances arise when the company submits false information, submits forged documents to the Registrar of Companies or obstructs an inspection conducted by the Registrar of Companies or someone delegated by the Registrar of Companies.

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

#### Laws

##### *Employment Act*

The Employment Act of the Maldives (Law 2/2008) (the "Employment Act" as amended) is the law that determines the fundamental principles relating to employment in the Maldives, as well as the rights and obligations of employers and employees and all other employment-related matters. The Employment Act applies to both private and public sector employees. The Employment Act states that it will not apply to any other persons exempted from it by any other statute. At the time of writing, the only parties exempted from it are the police and armed forces.

##### *Other related laws*

Other employment-related laws are as follows.

- The Industrial Relations Act of the Maldives (Law 1/2024) (the "Industrial Relations Act"). This Act lays out a detailed framework for the formation of trade unions and employer organisations participating in such unions, as well as for mediation between workers, employees and employers. It applies to both public and private sector employees and employers, except for the parties exempt-

ed from the Act by any other statute and the police, armed forces and Presidential appointees.
- The Occupational Safety and Health Act of the Maldives (Law 2/2024) (the "Occupational Safety and Health Act"). This Act provides for matters relating to safeguarding workplaces and workers and employee health and safety. The Act provides that, except for the parties exempted from the Act by any other statute, it applies to both public- and private-sector employees, employers and independent contractors.
- The Prevention of Sexual Abuse and Harassment Act (Law 16/2014). This Act outlines what constitutes sexual abuse and harassment and the responsibilities of employers in preventing these acts in the workplace.

### Regulations

There are regulations enacted in line with the Employment Act which have legal force. They provide more details regarding specific matters. The regulations currently in force are as follows.

- General Regulation on Employment (Regulation 2021/R-63). This provides details on employees' redundancy, working hours and overtime, as well as salary and wages.
- Expatriate Employment Regulation (Regulation 2025/R-120). This provides details relating to the employment of expatriates.
- Employment Agency Regulation (Regulation 2022/R-63). This provides details relating to employment agencies.
- Service Charge Regulation (Regulation 2021/R-41). This provides details on the collection of a service charge from businesses and its distribution among employees.

### Precedents

The precedents set by higher courts in the Maldives relating to employment cases are considered the authority for deciding subsequent cases with similar facts. They also play a key role in determining the relevant employment relationship rules when the law or regulations are silent on the issue.

### Employment Contract

The Employment Act requires the execution of an employment contract between the employer and employee. The employer may grant the rights to a greater extent than provided for in the Employment Act. Any provision in the employment contract that prevents or impedes any rights or benefits conferred to an employee by the Employment Act will be void.

### Collective Bargaining Agreements

The recently enacted Industrial Relations Act allows for trade unions to initiate collective bargaining with employers by appointing representatives. Collective agreements reached after the collective bargaining must be registered with the Director General of Industrial Relations and the terms of the agreements are binding on the parties to the agreements and are legally enforceable.

## 4.2 Characteristics of Employment Contracts

### Form of Employment Contracts

Maldivian law requires a written employment contract to be executed between employers and employees. The Employment Act stipulates that certain provisions must be included in the employment contract.

### Types of Employment Contracts

Employers in the Maldives may enter into any of these types of employment contracts:

- indefinite term contract;
- definite term contract; and
- work-based or project-based contract.

### Duration of Employment Contracts

The duration of a definite-term employment contract will not exceed a maximum period of two years. If a definite term contract is extended so that the total duration of employment is more than two years or if it can be implied from the actions of both parties that a renewal or extension has occurred, it will be considered as an indefinite term employment contract.

An employment contract of definite term or specific to a certain type of work is also considered an indefinite term employment contract if the objective or result of the employment agreement is such that the employee has to continue carrying out duties and responsibili-

ties which are usually and normally carried out at the place of work on a permanent basis.

## 4.3 Working Time

### Working Hours

An employee's normal working hours must not exceed 48 hours a week. The normal working hours do not include any overtime that an employee works. The Employment Act specifies particular categories of employees exempt from the normal working hour limitations.

Employees in sectors specified in the Employment Act may be required to work two additional hours per day beyond the normal working hours limit (as outlined in the employment agreement), provided they are compensated for the additional hours as overtime.

There is no limitation on the maximum number of hours an employee may work in a day. However, the minister designated to oversee the implementation of the Employment Act has the discretion to formulate a regulation imposing a maximum number of hours per day. As of now, no such regulation has been formulated.

The general rule is that employers are prohibited from requiring an employee to work for more than six consecutive days without granting a break of 24 hours. However, there are exceptions to this rule: employees working in specific sectors may be required to work more than six consecutive days without a break, provided they are granted rest days in lieu of each day worked beyond the six consecutive days, which can be accumulated and utilised thereafter.

### Overtime

Employers are prohibited from requiring employees to work overtime unless it is specified in the employment contract. Any work carried out as overtime must be paid at the following hourly rates.

- Overtime on a normal working day: 1.25 times an employee's regular hourly wage.
- Overtime on a Friday or a public holiday: 1.5 times an employee's regular hourly wage.

## 4.4 Termination of Employment Contracts

### Termination of Employment Contracts

After the Employment Act came into force in 2008, the Maldives abolished employment at will. Currently, for an employment contract to be terminated, there must be a reasonable cause. Three types of dismissals are currently recognised in the Maldives.

- Dismissal with notice: This is allowed after showing appropriate cause for failure to maintain a work ethic or inability to perform employment duties and responsibilities related to the proper functioning of their place of work, even after implementation of measures to discipline the employee or address skill deficiencies.
- Summary dismissal: This is where an employee is dismissed without notice when their work ethic is deemed unacceptable and continuing employment is likely to be detrimental to the employer or the workplace.
- Redundancy: This is considered a reasonable cause for dismissal in the following circumstances:
  (a) closure of the business and services of the employer;
  (b) redundancy due to restructuring of the business; and
  (c) financial distress.

The onus is always on the employer to show cause for dismissal.

### Severance Pay and Notice of Termination

Severance pay need not be paid to employees upon dismissal. In the event of dismissal with notice, the employer must give notice to the employees based on the employee's length of service and the employer can terminate the employment immediately by paying the employee's salary in lieu of any required period of notice, together with any accrued holiday pay up to the date notice is given.

In the case of redundancy, no mandatory compensation or redundancy pay is required to be paid to employees who are made redundant. However, the Employment Act obliges the employer to give notice of dismissal to the employees being made redundant based on the employee's length of service. The

employer is granted discretion to pay the employee's salary in lieu of the required notice.

Based on the employment duration, the minimum notice period or payment in lieu of notice period is as follows.

- Less than one year: two weeks.
- Between one year and five years: one month.
- More than five years: two months.

### Collective Redundancies

In the Maldives, the laws and regulations do not differentiate between collective and individual redundancies. The same procedure laid down in the relevant laws and regulations needs to be followed for both.

The Maldives High Court has set a precedent on the matter, stating that as there are no laws or regulations that provide that redundancy procedures are different for individual and collective redundancies, unless limited by a law or by the employment agreement, the procedures laid out in the laws and regulations need to be fulfilled regardless of the number of persons being affected by the redundancy.

Before terminating any employees for redundancy, the employer must notify the employees that there may be circumstances in which one or more employees may have to be made redundant or that the decision to make the employees redundant has already been made. This notification will include the policy relating to the determination of which employees will be dismissed. Before dismissing any employees for redundancy, the employer must take measures to avoid termination or minimise the number of employees affected, as far as circumstances allow.

The employer must establish a policy outlining the criteria for determining which employees will be made redundant and this policy must be communicated to employees. This policy, at the very least, has to consider:

- the service duration of the employee;
- the employee's skills, education and experience required for the job;
- the employee's attendance and disciplinary records; and
- the criteria for the fulfilment of job duties or staff appraisal.

The employees who will be made redundant must be determined according to the policy and in good faith and in a fair manner.

## 4.5 Employee Representations

There is no law in the Maldives that states it is mandatory for employees to be represented in employment-related matters. However, the Industrial Relations Act provides that employees can register trade unions and that they have the right to participate in or refrain from participating in the activities of the trade unions, including the implementation of collective bargaining or strikes through trade unions.

Trade unions have the right to commence collective bargaining with employers and initiation will not be aimed at securing rights or gaining advantage for a particular individual in the union. Unions are generally restricted from utilising unions in ways that are not in the interests of members or where members have conflicting interests.

Employers must commence collective bargaining negotiations if the union making the request represents a majority of the employer's employees.

The Employment Act only mandates that employees be informed by the employer in the event of redundancy.

The Occupational Safety and Health Act mandates that the employer inform employees in the following circumstances:

- any health and safety policy amendments; and
- regularly updating employees on safety measures related to machinery, equipment, plants and other instruments used in the workplace.

There are no circumstances in which employers are mandated to consult employees.

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/ Employers

#### Employee Withholding Tax

Under the Income Tax Act of the Maldives (Law 25/2019) (the "Income Tax Act"), employee withholding tax is applicable where an employer pays remuneration to an employee, whether in cash, annuities, in-kind benefits or any other form. Employers must deduct employee withholding tax from the gross amount of each payment made monthly at the following rates:

- 5.5% (if remuneration is more than MVR60,000 but less than MVR100,000);
- 8% (if remuneration is more than MVR100,000 but less than MVR150,000);
- 12% (if remuneration is more than MVR150,000 but less than MVR200,000); and
- 15% (if remuneration is more than MVR200,000).

#### Social Charges

Under the Pensions Act (Law 8/2009), both employers and employees have to contribute to the Maldives Retirement Pension Scheme. Both must contribute at least 7% of the pensionable wage (basic salary).

Participation in the Maldives Retirement Pension Scheme is mandatory for all local employees aged between 16 and 65. Foreign employees in the same age bracket may voluntarily register and contribute to the Maldives Retirement Pension Scheme.

### 5.2 Taxes Applicable to Businesses

#### Taxes Applicable to Businesses

##### *Income tax*

Under the Income Tax Act, entities other than banks and individuals who are resident in the Maldives must pay income tax at a rate of 15% if taxable income exceeds MVR500,000. For income tax purposes, a company is considered resident if it is incorporated, has its head office or central management and control in the Maldives. Partnerships are considered resident if they are incorporated and have their head office in the Maldives.

Banks are taxed at a rate of 25% of their taxable income.

##### *Capital gains tax*

Under the Income Tax Act, the Maldives does not impose a separate capital gains tax. Instead, gains arising from the disposal of movable, immovable, intellectual or intangible property are treated as part of taxable income and are subject to income tax at 15%. Capital gains may arise from, among other things, the disposal of immovable property situated in the Maldives, shares or interests in entities whose value derives from Maldivian immovable property and other business or investment assets.

##### *Non-resident withholding tax*

Under the Income Tax Act, income derived from the Maldives by non-residents is subject to a 10% tax on the gross amount of income received. Non-resident withholding tax is payable on rent in relation to immovable property situated in the Maldives, royalties, interest, dividends, fees for technical services, commissions paid in respect of services supplied in the Maldives and insurance premiums paid to insurers.

Payments to non-resident contractors are subject to withholding tax at the rate of 5%.

##### *Capital gains withholding tax*

Under the Income Tax Act, gains derived by non-residents from the disposal of certain assets are subject to capital gains withholding tax at 10% of the gross payment. This applies in particular to disposals of immovable property situated in the Maldives and to offshore indirect transfers, where more than 50% of an entity's value is derived from Maldivian immovable property. The obligation to withhold and remit the tax lies primarily with the payer or acquirer of the asset, with secondary liability rules applying where the payer fails to comply.

##### *Employee withholding tax*

See **5.1 Taxes Applicable to Employees/Employers**.

##### *Goods and services tax*

Under the Goods and Services Tax Act (Law 10/2011), businesses operating in the general sector are cur-

rently required to pay goods and services tax (GST) at the rate of 8% to MIRA and businesses operating in the tourism sector have to pay a tourism goods and services tax (T-GST) at the rate of 17% to MIRA.

### *Green tax*

Under the Tourism Act of the Maldives (Law 2/99) (the "Tourism Act"), the green tax, introduced by the Tourism Act, applies to tourists staying in various types of accommodation such as tourist resorts, integrated tourist resorts, resort hotels, tourist hotels, hotels, tourist guesthouses and tourist vessels. It is the responsibility of the establishment operator to collect the green tax from tourists and remit it to MIRA.

Tourism establishments must pay USD12 daily per guest, while tourist hotels and guesthouses with fewer than 50 rooms must pay USD6.

### *OECD Two Pillar solution*

The Maldives is a member of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS). While both pillars have been endorsed, domestic legislation to implement them has not yet been enacted. A mechanism to implement the Two Pillar solution is scheduled to be formulated in 2026.

The Maldives has not introduced a domestic top-up tax (Qualified Domestic Minimum Top-up Tax or QDMTT). Consequently, there is no domestic top-up tax that has been granted or is expected to be granted, safe harbour status on the OECD central record at this stage.

As a result, any top-up tax applicable to Maldivian entities within the scope of multinational groups would currently be collected in other jurisdictions under the Pillar Two rules, once those rules are effective elsewhere.

## 5.3 Available Tax Credits/Incentives

### Tax Incentives Under the Special Economic Zone Act (SEZ Act)

The SEZ Act classifies various zones, including industrial estates, export processing zones, free trade zones, enterprise zones, free ports, single-factory export processing zones, centres providing offshore financial services and high-technology parks, as special economic zones. Under the SEZ Act, zone developers are guaranteed the following incentives:

- relief from import duty on capital goods;
- relief from GST for the first ten years; and
- relief from withholding tax for the first ten years.

The SEZ Act provides similar concessions to individuals investing in SEZs, with the extent of these benefits depending on the industry and type of investment.

### Special Exemptions Provided Under the Income Tax Act

Under Section 12-1 of the Income Tax Act, the President, in specific circumstances, can exempt income from specific business projects or industries from tax.

The determination of eligible projects or industries is made by the President, with advice from the Cabinet of Ministers and published in the government gazette.

Exemptions are granted for a specific period and take into account factors such as revenue impact, economic and social impact and the attainability of objectives.

A list of exempted persons and the reasons for exemption needs to be published in the government gazette.

### Foreign Tax Credit

Under Section 72 of the Income Tax Act, residents paying taxes abroad can deduct either the foreign tax paid or the tax payable in the Maldives on the net foreign-sourced income, whichever is lower.

Deductions are applied separately with respect to each type of income and each country or territory from which each type of income was derived.

Deductions must be claimed within two years after the end of the accounting period and adjustments can be made within two years of any tax payable adjustments.

### Tax Treaties

Tax credits are also applicable under any double tax avoidance agreements (DTAAs) and are deducted in line with the provisions of the Tax Administration Act

of the Maldives (Law 3/2010) (the "Tax Administration Act").

The Maldives has signed DTAAs with the UAE, India, Bangladesh and Malaysia and all four are currently in effect. The Maldives is also a party to the SAARC Limited Multilateral Agreement on Avoidance of Double Taxation and Mutual Administrative Assistance in Tax Matters, which came into force on 1 January 2012 in the Maldives.

A DTAA with Hong Kong, which was signed on 26 May 2025, has not yet come into force.

## 5.4 Tax Consolidation

Tax consolidation for the purposes of tax calculation and deduction by a group entity is not available under the tax laws in the Maldives.

Under the Income Tax Regulation (Regulation 2020/R-21), each entity in the group has to prepare and submit separate income tax returns. Parent companies must submit consolidated accounts, including their subsidiaries, as they are considered group entities under the Income Tax Regulation. However, under the Income Tax Act, group entities must divide the tax-free threshold of MVR500,000 among themselves to determine the tax bracket for the group's taxable income. Companies within a group cannot therefore benefit from the tax-free threshold as individual companies, as they are grouped together for tax purposes.

## 5.5 Thin Capitalisation Rules and Other Limitations

Thin capitalisation rules are implemented in the Maldives in line with Section 71 of the Income Tax Act.

Where the total amount of interest paid, exceeds the interest capacity of a person (30% of a person's tax EBITDA) for that period, the excess amount cannot be deducted in the computation of taxable profit of that person for that period, except where interest is paid to a bank licensed under the Banking Act of the Maldives (Law 24/2010) (the "Banking Act") or to an insurance business or finance leasing business or housing finance business licensed under the Monetary Authority Act of the Maldives (Law 6/1981) (the "Monetary Authority Act").

The following taxpayers are exempt from the thin capitalisation rules.

- Commercial banks licensed under the Banking Act.
- Insurance businesses, finance leasing businesses, housing finance businesses or non-banking financial institutions licensed to conduct financing business under the Monetary Authority Act.
- Persons categorised as micro, small or medium-sized businesses under the Law on Small and Medium Enterprises (Law 6/2013).
- State-owned enterprises (SOEs), in which the government of the Maldives directly holds a majority of the ordinary share capital.

## 5.6 Transfer Pricing

Under Section 67 (a) of the Income Tax Act, if an arrangement or transaction is between associates and the terms are not arm's length terms, taxable income will be computed based on arm's length terms. This applies where the actual terms result in higher income, lower deductions, lower losses or lower tax credits for any person involved.

## 5.7 Anti-Evasion Rules

### General Anti-Avoidance Rule (GAAR)

Section 66 (a) of the Income Tax Act grants the Commissioner General of Taxation the authority to invalidate any arrangement or transaction, where the Commissioner has reasonable grounds to suspect that an arrangement or transaction was entered into for the purpose of tax avoidance or to reduce tax liability, either by issuing an assessment under Section 39 of the Tax Administration Act or by other means.

Reasonable grounds for action by the Commissioner General, highlighted under Section 128-1 of the Income Tax Regulation, include:

- conducting a transaction which lacks a bona fide commercial purpose;
- conducting a transaction which lacks economic substance;
- abuse of organisational form; and
- recharacterisation of an arrangement or transaction.

## 5.8 Tariffs

Tariffs in the Maldives are governed by the Export Import Act (Law 31/1979) (the "Export Import Act"), which is implemented and enforced by the Maldives Customs Service. Tariff rates are generally applied uniformly based on the type of goods, while preferential rates and exemptions may apply to some countries under free trade agreements (FTAs). The tariff rates in the Maldives generally range from 0% to 400%.

### Goods and Applicable Tariffs

A general list of goods subject to the highest tariff rates is as follows.

- Tobacco and related products:
  - (a) general tobacco and tobacco products: 200%;
  - (b) cigarettes: 50% + MVR8 per cigarette;
  - (c) Bidi (traditional cigarettes): 50% + MVR8 per Bidi;
  - (d) flavoured chemicals for e-cigarettes and tobacco: 50% + MVR8 per ml;
  - (e) heated tobacco products and sticks: 50% + MVR8 per stick;
  - (f) electronic devices (e-cigarettes, vaping devices, tobacco heating products): 200%; and
  - (g) paper used for rolling cigarettes/bidis: 200%.
- Other products:
  - (a) non-biodegradable plastic bags and sacks: 400%;
  - (b) drinking straws: 400%;
  - (c) single-use/disposable plastic items (eg, plates, cutlery): 200%;
  - (d) used passenger vehicles (cars, jeeps, vans): 200%;
  - (e) other passenger transport vehicles (excluding cars, jeeps, vans, motorcycles, auto-cycles): 150%;
  - (f) chemicals with hydrochlorofluorocarbons: 100%;
  - (g) new passenger vehicles (cars, jeeps, vans): 100%;
  - (h) auto-cycles and motorcycles: 100%; and
  - (i) pork and pork products: 50%.

### Value-Based Tariff Rates

Notwithstanding the general rates specified in the Export-Import Act, for goods with a CIF value per unit exceeding MVR6,425,000, the following tiered rates apply:

- CIF value per unit between MVR6,425,000 and MVR12,850,000: 13%;
- CIF value per unit between MVR12,850,000 and MVR25,700,000: 7%;
- CIF value per unit between MVR25,700,000 and MVR38,550,000: 5%; and
- CIF value per unit between MVR38,550,000: 4%.

### General Exemptions

The following items are exempt from tariffs:

- personal items and duty-free allowances determined by the President;
- goods imported for re-export;
- biodegradable and non-biodegradable variants of plastic bags, sacks, films, sheets, tube rolls, polyurethane, prefabricated greenhouse units, water system pipes and hydroponic/drip irrigation pipes;
- renewable energy vehicles, machinery and equipment;
- renewable energy generation equipment;
- items and fish imported for fish processing and value addition;
- items and raw materials for poultry production expansion;
- agricultural items listed by the Ministry of Agriculture and Animal Welfare of the Maldives; and
- diesel exemptions for fishing vessels operating within Maldivian waters and for electricity generation by registered public utilities.

### Partial Exemptions

Under the Export and Import Act, a duty exemption of 50% is granted for items imported via regional sea and air ports outside the Malé area, except for:

- tobacco products and substitutes (including e-cigarettes and components);
- alcoholic beverages; and
- pork and products containing pork.

This partial exemption under the Export and Import Act only applies to goods stored on or cleared through the regional port's associated island.

### Exemptions Granted by the President

Under the authority granted by the Export-Import Act, the President may decide to fully or partially exempt goods from import duties when imported for activities considered economically beneficial to the Maldives. These exemptions apply to:

- activities aimed at reducing imports and increasing exports;
- activities that introduce and promote technologies not currently available in the Maldives;
- activities that expand the country's core economic sectors, generate business and employment opportunities and improve overall living standards;
- activities that enhance foreign currency inflows into the Maldives;
- new or uncommon economic activities that contribute to diversifying the Maldivian economy;
- activities that support the growth of small and medium-sized enterprises; and
- entirely new ventures in the tourism sector or capital expenditure and renovation projects for existing tourism investments, where costs exceed 25% of the original investment value.

### FTAs

The Maldives is a party to the South Asian Free Trade Agreement (SAFTA), which has been effective since 2006. Under SAFTA, the Maldives allows lower tariff rates on specific goods imported from countries in the region.

The free trade agreement between the Chinese government and the government of the Maldives (the "China-Maldives FTA"), ratified in 2017, has been in effect since 1 January 2025. The China-Maldives FTA provides distinct tariff treatments for goods imported from China.

- Category A: goods on which all tariffs will be eliminated starting from 1 January 2025.
- Category B: goods on which tariffs will be eliminated over a five-year period.
- Category C: goods on which tariffs will be eliminated over an eight-year period.
- Category E: goods on which tariffs will remain at "base rates".

## 6. Competition Law

### 6.1 Merger Control Notification

The Maldives introduced the Competition Act (Law 11/2020) (the "Competition Act") in 2020 and it became effective on 28 Feburary 2021. The Competition Act defines a "merger" as:

- the merger of two or more legal entities that were previously independent; and
- the acquisition of direct or indirect control over all or part of the assets and goodwill of an entity through a joint venture agreement.

The Competition Act states that the criteria to determine whether a merger infringes the principles of mergers under the Competition Act are to be formulated and published by the Ministry within six months from the date on which the Competition Act came into force. However, the Ministry has not published any such criteria to date, leaving uncertainty over what it considers an anti-competitive merger, in terms of either revenue or market share.

### 6.2 Merger Control Procedure

Unlike other jurisdictions, the existing legal framework for merger control in the Maldives does not mandate notification of mergers to the Minister of Economic Development, Transport and Trade, nor does it provide an option for voluntary notification. However, this may change once the necessary merger control regulation is published by the Ministry.

Where a merger contravenes the Competition Act's provisions, the Minister of Economic Development, Transport and Trade has the authority to issue an order to amend a merger agreement and levy a fine of between MVR10,000 and MVR100,000. Following the Ministerial Order, the Registrar of Companies reserves the right to deny any service to the parties involved that could aid the execution of the merger agreement.

### 6.3 Cartels

The Competition Act prohibits business agreements or conduct that hinders, limits or distorts competitive practices within a market. The Competition Act considers the following types of agreements or conduct to be anti-competitive practices:

- price-fixing;
- market divisions and customer allocations;
- intentional limitation in the production of goods and the development of technology;
- refusal to sell or deal with certain parties; and
- control of investments.

If the Ministry determines that a business has exploited or abused its dominant market position, it has the authority to impose a fine of between MVR10,000 and MVR100,000.

The Ministry has not taken any enforcement action against businesses for an anti-competitive agreement or practice to date.

### 6.4 Abuse of Dominant Position

The Competition Act assesses whether or not a party holds a dominant position based on:

- the nature of the market it is operating in;
- its share and power in the market; and
- the significant control it has over the market.

Actions such as predatory pricing, imposing unfair prices, refusing to deal with certain parties, limiting production of goods or development of technology to the detriment of consumers, imposing unnecessary obligations which have no commercial use or are not material to the subject of the contract or imposing differing conditions to trading parties to block their entry or operation in the market could all amount to abuses of a dominant position.

If the Ministry determines that a business has abused its dominant position in the market, it may impose a fine of between MVR10,000 and MVR100,000.

However, these enforcement powers have yet to be used by the Ministry.

## 7. Intellectual Property

### 7.1 Patents

There is currently no patent legislation in the Maldives. Therefore, currently, there is no process by which a patent owner can register their patent in the country.

### 7.2 Trade Marks

The Trademark Act (Law 19/2025) ("Trademark Act") was enacted on 11 November 2025 and will come into force on 11 November 2026. Until then, a limited trade mark registration system is operational in the Maldives. Please see **9.1 Upcoming Legal Reforms**.

#### Limited System of Registration

As a matter of practice, a business may register a trade mark with the Ministry on the basis of a business name registered by the business before they register the trade mark. However, only businesses incorporated or re-registered in the Maldives may register these trade marks in the Maldives.

Under Section 12 (a) of the Business Registration Act (Law 18/2014) ("Business Registration Act"), any business activity may only be undertaken in the Maldives by a registered business entity after registering a business name under which the business activity will be undertaken. Under the Business Registration Act, the Registrar of Business can refuse to register any name in the following situations.

- Where the name is already registered by another business or is believed to be similar to a name already registered.
- Where the name is registered as a trade mark by another party.
- Where the name is a famous name outside of the Maldives and the registration of the business name may mislead the public into wrongfully believing that the name is associated with the famous business carried on outside the Maldives.
- Where the name contravenes acceptable community standards.
- Where the name, without using any additional word or phrase, depicts only a matter, place or thing that cannot be owned by a single party.
- Where the name, as determined by judgment of a court of law, is prohibited from use as a business name.
- Where the name is reserved for another party.
- Where the name is a type of name that cannot be registered for reasons prescribed in the regulation.

Given that the registration of a business name must precede the registration of a trade mark, these restrictions will apply when registering a trade mark as well.

### Registration Process

Applications can be made online to reserve a business name, then to register it via the oneGov portal after the prescribed fee has been paid. The current prescribed fee is MVR100 per registered business name. The registration process usually takes one business day. The registration of the business name will be valid for the entirety of the business entity's registration.

Applications can be made online to register or renew a trade mark via the oneGov portal after the prescribed fee has been paid. Trade marks may be registered for the period specified in the application, provided that the minimum period is 12 months. A non-refundable fee of MVR50 a month is currently payable. The registration process usually takes one business day.

### Publication of Cautionary Notices

As a matter of practice, international businesses and trade mark owners and parties that are not incorporated or re-registered in the Maldives in line with the Business Registration Act, from time to time publish a trade mark cautionary notice, announcing to the general public in the Maldives that a particular trade mark is owned by the business or trade mark owner and caution against trade mark infringement. Even though this is a very common practice, it does not, by itself, afford legal protection against infringement or guarantee protection from unauthorised use of the trade mark in the Maldives. Publication of cautionary notices is not the same as registering a trade mark.

However, the publication of trade mark cautionary notices can be used as evidence to support complaints made by trade mark owners/licensees to the Ministry under the Business Registration Act, against a business entity registered in the Maldives that has registered or is using, a business name in contravention of the rights of the trade mark owner or licensee.

### Remedies

If a business entity registered in the Maldives has registered or is using, a business name in contravention of the rights of a trade mark owner/licensee, the Business Registration Act provides an opportunity for the parties concerned to submit a complaint to the Ministry, requesting an order to change the business name if the period of using the business name after registration of the business entity has not exceeded 12 months. If the Registrar of Business gives notice to the party to which a business name is registered or reserved to change the name, the party must do so within a period of one month from the date of notice.

If the party does not comply with the notice, the Registrar of Business may cancel the party's business registration.

## 7.3 Industrial Designs

There is no specific industrial design legislation in place in the Maldives. However, industrial designs are generally considered protected under the Copyrights and Related Rights Act of the Maldives (Law 23/2010) (the "Copyrights Act"). Please see **7.4 Copyright**.

## 7.4 Copyright

The Copyrights Act and the Regulation on the Registration of Copyright and Related Rights of the Maldives (Regulation 2011/R-16) (the "Copyright Registration Regulation") protect copyrights and related rights in the Maldives and prescribe actions and penalties for copyright infringement.

### Application

The Copyrights Act generally protects literary and artistic works, performances, audio recordings and broadcasts produced in the Maldives.

#### *Literary and artistic works*

The Copyrights Act protects the following.

- Works produced by citizens and residents in the Maldives.
- Works produced by authors protected under any international convention ratified by the Maldives or under any international agreement entered into by the Maldives.
- Audio-visual works made by producers who are resident in the Maldives or by regional offices established in the Maldives.
- Architectural and artistic works produced in the Maldives.

### *Artists*

The Copyrights Act protects the following artists.

- Artists who are citizens.
- Non-citizen artists whose:
  (a) performance was made within the territory of the Maldives;
  (b) performance has been included in an audio recording protected under the Copyrights Act; or
  (c) performance was not a fixation in an audio recording, but is still a performance included in a broadcast protected under the Copyrights Act.

### *Audio recordings*

The Copyrights Act protects audio recordings:

- produced by citizens;
- first produced at a fixed location in the Maldives: and
- first published in the Maldives.

### *Broadcasts*

The Copyrights Act protects:

- broadcasts of organisations that have established regional offices in the Maldives; and
- broadcasts from transmitters installed in the Maldives.

In addition, the Copyrights Act will afford the same protection as that afforded to works, artists, producers of audio recordings and broadcasting organisations under international conventions and agreements to which the Maldives is a party.

### *Protection*

The following types of works are protected under the Copyrights Act.

- Original literary works original musical works and original artistic works, particularly:
  (a) books, pamphlets, articles and other writings;
  (b) academic, literary and artistic speeches and addresses;
  (c) drama, musicals, stage performances, choreography, steps and other presentations and other works for stage productions;
  (d) poems, songs, tunes and other musical products;
  (e) feature films, documentary films, drama, video songs and other video-visual presentations and works;
  (f) works of art and architecture;
  (g) photographic works;
  (h) works of applied arts;
  (i) illustrations, charts, plans, sketches and 3D works related to geography, topography, architecture or science; and
  (j) computer programmes (without considering how the programme was written or the format of the programme).
- Audio recordings.
- Broadcasts made via satellite, the internet and cable.
- Derivative works such as translations, adaptations, arrangements and other transformations or modifications of works, as well as collections of works, collections of data (databases) in whatever form and collections of expressions of folklore that are original by selection or arrangement.

Under the Copyrights Act, works are protected by the sole fact of their creation, irrespective of their mode or form of expression or their content, quality and purpose. Protection under the Copyrights Act will only extend to originally created products or works. The following are not protected:

- any idea, procedure, system, method of operation, concept, principle, discovery or mere data, even if expressed, described, explained, illustrated or embodied in a work; and
- any official text of a legislative, administrative or legal nature, as well as any official translation of those documents.

### Copyright Duration

The economic and moral rights over works are generally protected for the life of the author plus 70 years after the death of the author.

In the case of co-authorship or joint authorship, the economic and moral rights are protected for the life of the last surviving author plus 70 years after the death of the last surviving author.

For collective works (other than works of applied art) and audio-visual works, the economic and moral rights are protected for 70 years from the date on which the work was either made, first made available to the public or first published, whichever date is latest.

For works published anonymously or under a pseudonym, the economic and moral rights are protected for 70 years from the date the work was made, first made available to the public or first published, whichever is the latest.

For works of applied art, the economic and moral rights are protected for 35 years from the date of creation.

### Registration of Copyright

Under the Copyright Act, it is not compulsory to register works with the relevant government authority to gain protection. However, parties may apply to the Ministry to register the works. Registration helps a copyright holder in legal proceedings prove that the work in question is their creation.

Copyrights may be registered after an application is submitted via oneGov and the prescribed fee is paid. A non-refundable fee of MVR1,000 is currently payable. The registration process is usually completed within seven business days.

Changes to the registration process are expected with the introduction of new laws. Please see **9.1 Upcoming Legal Reforms**.

### Remedies

#### *Right to file an action in court to protect rights*

A copyright owner has the right to file for legal action in a relevant court of law if the owner's rights protected under the Copyrights Act have been infringed or if it is reasonably believed the rights will be infringed. In an action of this nature, the copyright owner may request the court make orders to stop the infringement, compensate the copyright owner for losses suffered or to be suffered or protect the ownership rights of the copyright owner. In this regard, the court has the power to make:

- orders against the infringing party or any party with the power to do so, to either take or refrain from taking action(s) in order to stop the infringing activity;
- other lawful orders under applicable laws and regulations;
- orders against the infringing party to compensate the copyright owner for costs incurred in seeking compensation, for the benefit gained by the infringing party from the infringement and for direct and indirect loss of income or reputation suffered by the copyright owner;
- fines of between MVR10,000 and MVR100,000 as a penalty against the infringing party, depending on the gravity of the action and wilful action or negligence of the infringing party and to award the amount of the fine to be paid to the copyright owner;
- orders either to return to the copyright owner or destroy or remove from the business market, all infringing works and copies; or
- orders against the alleged party to take or refrain from taking action(s) in order to stop the infringement of a copyright owner's rights in the future.

In the event of infringement of moral rights granted under the Copyrights Act, the author granted with the moral rights or any person lawfully representing the author may claim damages for loss of reputation or income.

In addition, unless an exclusive licence agreement states otherwise, exclusive licensees enjoy the same rights afforded to copyright owners under the Copyrights Act against infringement of rights protected by the Copyrights Act.

#### *Criminal responsibility*

If any action infringing a right granted under the Copyrights Act has been considered a criminal offence under the Copyrights Act or the Maldives Penal Code (Law 9/2014), any party has the right to submit the infringing action to the competent investigating authorities for investigation. Upon receiving such a report or becoming aware of such activity, they must thoroughly investigate the matter and take action in line with the applicable law.

If any action prohibited under the Copyrights Act has been considered a criminal offence under the Copyrights Act or the Maldives Penal Code (Law 9/2014), in addition to civil sanctions permitted under the Copyrights Act, the Copyrights Act does not prevent criminal proceedings from being brought against the infringing party under the Maldives Penal Code (Law 9/2014).

*Criminal sanctions under the Copyrights Act*

A party taking any action that negatively affects any right protected under the Copyrights Act or takes action knowing that it would result in loss to the copyright owner is committing an offence, which is punishable by the imposition of a penalty between MVR50,000 and MVR 300,000, depending on the gravity of the action. When imposing the penalty, the court must take into account the loss incurred or that may be suffered by the owner of the protected right. If a party convicted of an offence repeats the offence, the court has the right to double the penalty for each instance of repetition.

### 7.5 Others

As explained in **7.4 Copyright**, software and databases are already protected under the Copyrights Act. Except for the Trademark Act, there are currently no laws in the Maldives that cover other forms of IP.

## 8. Data Protection

### 8.1 Applicable Regulations

Section 24 of the Constitution of the Maldives states that everyone has the right to have their personal and family life, their home and their private communications respected. It also states that everyone must respect these rights. The Maldives has not enacted general legislation on privacy and personal data protection to date. However, please see **9.1 Upcoming Legal Reforms**.

### 8.2 Geographical Scope

See **8.1 Applicable Regulations**.

### 8.3 Role and Authority of the Data Protection Agency

See **8.1 Applicable Regulations**. No legal entity currently has responsibility for data protection regulation.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

The government of the Maldives has proposed a bill to replace the existing Civil Aviation Act (Law 2/2001). The bill is currently being reviewed at the committee stage and, if approved, it will introduce a comprehensive and modern legal framework to ensure effective regulation and oversight of all aspects of civil aviation in the Maldives.

As part of the government of the Maldives 2.0 initiative to transform the Maldives into a digital Maldives, a Personal Data Protection Bill and a Cyber Security Bill have been submitted to the Parliament.

The Maldives Intellectual Property Office Act (Law 12/2025) (the "MIPO Act") came into force on 1 January 2026, pursuant to which registration of intellectual property rights is to be transferred to the Maldives Intellectual Property Office. Regulations with new procedures are expected to be issued under the new MIPO Act and the Trademark Act.

# MAURITIUS




## Law and Practice

**Contributed by:**
Sameer K. Tegally, Sonia Xavier and Ashvan Luckraz
**Venture Law**

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**Venture Law** is a leading independent firm that has been established in Mauritius for nearly ten years. The firm was amongst the first few law firms to be registered in 2008 under the Law Practitioners Act of Mauritius. Its ability to respond quickly and efficiently has earned it a reputation for innovative and flexible advice on cross-jurisdictional matters. Venture Law has a broad client base, including FTSE 100 and Fortune 500 companies, international financial institutions, development financial institutions and fund managers. The firm's experienced team advises clients on matters including corporate/commercial; corporate structuring; M&A; banking and finance; funds; capital markets; asset finance, including shipping and aircraft finance; litigation and dispute resolution; insolvency and restructuring; private client and trust; and insurance and reinsurance. The team regularly acts for institutional and non-institutional clients based around the globe on a wide range of transactions, including structuring investments involving the emerging markets of Africa and Asia.

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# 1. Legal System

## 1.1 Legal System and Judicial Order

### Type of Legal System

Originally a French and a British colony, Mauritius has developed a unique legal system that is a hybrid of civil and common law traditions.

### The Basic Organisation of the Judicial Order

#### *Sources of Mauritian law*

The primary sources of law in Mauritius emanate from:

- the written Constitution, which is the supreme law of the country;
- the legislature – ie, the Parliament, which enacts laws in accordance with its power to make laws under the Constitution;
- the executive, which administers the laws enacted by Parliament;
- the judiciary, which interprets the laws; and
- judicial precedent, legal customs, equity and doctrine.

#### *The Mauritian court system*

The Mauritian judicial system consists of two tiers: the Supreme Court and the subordinate courts. At the apex of the Mauritian court system is the Supreme Court. Under the Constitution, the Supreme Court has been empowered to declare any other law that is found to be inconsistent with the Constitution as null and void, and has been conferred with the power to determine any civil or criminal proceedings, with complete independence and impartiality.

When sitting in its original jurisdiction as a court of first instance, the Supreme Court is composed of various divisions, such as the Family Division, the Master's Court, the Commercial Division, the Financial Crimes Division, the Criminal Division and the Mediation Division.

When sitting in its jurisdiction as an appellate jurisdiction, the Supreme Court hears appeals from subordinate courts and from decisions of the Supreme Court sitting in its original jurisdiction. Hence, the Appellate Division of the Supreme Court sits as the Court of Civil Appeal or the Court of Criminal Appeal.

Additionally, any appeal against a decision of the Court of Civil Appeal or the Court of Criminal Appeal must be lodged with the Judicial Committee of the Privy Council in England.

The subordinate courts comprise various courts, such as the Intermediate Court, the Industrial Court, the District Courts, the Bail and Remand Court, and the Court of Rodrigues.

The main rules regulating proceedings before the Supreme Court and the subordinate courts are contained in several pieces of legislation, including the Courts Act, the Court of Civil Appeal Act, the Criminal Procedure Act and the Supreme Court Rules 2000.

#### *The Supreme Court*

The Supreme Court is a superior court of record that has original jurisdiction to hear and determine civil and criminal matters, to interpret the Constitution, to act

as a court of equity and to exercise general powers of supervision over all the subordinate courts.

Recently, the Judicial and Legal Provisions (Amendment No 2) Act 2018 (the "2018 Act"), which came into force on 3 January 2019, has amended the jurisdictions of the Supreme Court, the Intermediate Court and the District Courts in civil matters. Hence, when sitting in its original jurisdiction, the Supreme Court has jurisdiction to hear and determine the following civil matters, where the value of the claim exceeds MUR2 million:

- divorce and matrimonial proceedings;
- petitions for insolvency;
- all matters of a commercial nature;
- admiralty matters; and
- claims for Constitutional relief.

#### *The Commercial Division of the Supreme Court*

The Commercial Division of the Supreme Court was set up by the Chief Justice by way of an administrative notice in 2009. It has jurisdiction to hear and determine matters arising under the Insolvency Act 2009 and the Companies Act 2001; disputes relating to banking, bills of exchange, offshore business, patents and trade marks or passing off; and disputes between traders and related matters. In addition, it generally deals with anything that is of a commercial nature.

#### *The Intermediate Court*

Following recent legislative amendments, the Intermediate Court now has jurisdiction in all civil cases where the claim or matter in dispute ranges between MUR250,000 and MUR2 million.

#### *The District Court*

Under the 2018 Act, the District Court now has jurisdiction to hear civil cases where the claim or matter in dispute does not exceed MUR250,000.

#### *The Children's Court*

There is now a specialised court known as the Children's Court, which consists of a protective and criminal division. This court ensures that appropriate arrangements are made in the best interest of children. Proceedings are conducted in simple and comprehensible language, taking into account the age and level of maturity of any child.

## 2. Restrictions on Foreign Investments

### 2.1 Approval of Foreign Investments

Foreign investors may invest in a number of fields, such as:

- agro-industry;
- aqua-culture and ocean economy;
- education;
- financial services;
- healthcare;
- hospitality;
- property development and smart cities;
- ICT-BPO (information and communications technology, and business process outsourcing);
- life sciences;
- logistics;
- manufacturing; and
- media and creative industries.

Depending on the nature of the field, most activities would require prior approval from the Economic Development Board (EDB) and/or other relevant authorities.

Businesses engaged in unregulated activities may start operations immediately after registering with the Corporate and Business Registration Department. Investors should ensure that they hold the appropriate licence before starting a regulated activity.

#### Investing in Certain Regulated Activities

For certain regulated activities, specific licences/permits are required:

- banking – a licence from the Bank of Mauritius;
- freeport activities – a Freeport Certificate, issued by the EDB;
- tourism-related activities – a licence from the Tourism Authority;
- telecommunications operations – a licence from the Information and Communication Technologies Authority;
- education and training – a certificate of registration/licence from the Early Childhood Care and

Education Authority, the Private Secondary Education Authority and/or the Tertiary Education Commission;
- healthcare activities – a licence from the Ministry of Health and Wellness;
- gambling and gaming activities – a licence from the Gambling Regulatory Authority; and
- offshore petroleum activities – a licence/permit from the Department for Continental Shelf, Maritime Zones Administration and Exploration.

### Investing in Financial Services

Entities intending to carry out financial services in Mauritius must, as a rule, obtain the relevant licences from the Financial Services Commission (FSC) or the Central Bank (in the case of banking activities) to be able to carry out such services.

### Investing in Property Development

Under the Non-Citizens (Property Restriction) Act 1975, a non-citizen cannot hold immovable property, including leasehold or freehold property, without an authorising certificate from the Prime Minister's Office (PMO).

However, no authorisation is required in the following cases:

- when holding immovable property for industrial and commercial purposes under a lease agreement not exceeding 20 years;
- where there is a deed of concession under the Fisheries and Marine Resources Act 2007;
- when purchasing luxury villas, apartments, penthouses or other similar properties under the Invest Hotel Scheme, Property Development Scheme (PDS) and Smart City Scheme (SCS);
- where an investor has approval from the EDB to acquire property for use in business; and
- when purchasing or otherwise acquiring an apartment used, or available for use, as a residence, in a building of at least two floors above the ground floor level, provided the purchase price is not less than MUR6 million or its equivalent in any other hard convertible foreign currency with prior authorisation of the EDB after approval from the Minister of Internal Affairs.

The law is more flexible for non-citizens who are residents in Mauritius. Such residents are eligible to acquire a residential property of a minimum value of USD500,000 for personal residence.

The resident non-citizens who are eligible are as follows:

- a main holder of a Permanent Residence Permit;
- a main holder of a residence permit issued by virtue of the purchase of an immovable property under the Integrated Resort Scheme (IRS), Real Estate Scheme (RES), PDS, Invest Hotel Scheme (IHS) or SCS, or through the purchase of an apartment located in a ground +2 building;
- a main holder of an occupation permit as an investor, professional or self-employed person;
- a main holder of a short-term occupation permit;
- a main holder of a family occupation permit; and
- a main holder of a residence permit as a retired non-citizen

### Investing in Securities

Foreign investors may invest in any securities listed on a securities exchange. However, the Securities (Investment by Foreign Investors) Rules 2013 provide that a foreign investor cannot acquire interests in a Mauritian sugar company listed on a securities exchange without prior written consent from the FSC where, as a result of such investment, 15% would be held by foreign investors.

## 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

### Other Regulated Activities

An application for authorisation has to be made to the relevant authority.

### Financial Services

An application for a licence must be made to the FSC prior to setting up and must be accompanied by:

- a business plan;
- fees, as specified in the FSC Rules;
- other information required by the Commission to determine the application; and

- particulars and information relating to promoters, beneficial owners, controllers and proposed directors.

### Property Development

An application on the prescribed form must be filled in and submitted to the EDB.

### Consequences of Investing Without Approval

*Financial services*

Any person who operates without securing an FSC licence shall commit an offence and shall, on conviction, be liable to a fine of up to MUR500,000 and to imprisonment for a term of up to five years.

*Property development*

In the case of a property that is acquired by a foreigner, without an authorising certificate, the curator shall take possession of the property and cause it to be sold.

## 2.3 Commitments Required From Foreign Investors

### Conditions Attached to an FSC Licence for Financial Services

The FSC shall not grant an application unless it is shown to its satisfaction that:

- the application complies with the provisions of the law;
- the criteria for the licence are met;
- the applicant has adequate resources, staff with appropriate competence and experience to carry out the activity for which the licence is sought;
- the applicant and each of its controllers and beneficial owners are fit and proper persons to carry out the business for which the licence is sought; and
- the applicant has adequate arrangements for proper supervision of everything done under the licence to ensure compliance with the law.

### Conditions Attached to an Acquisition of Property

Conditions attached to an acquisition under the Non-Citizens (Property Restriction) Act are as follows:

- the non-citizen shall not use the apartment for any purposes other than those for which the authorisation has been granted;
- the non-citizen shall not transfer or dispose of the apartment without authorisation and under such conditions as may be imposed;
- the non-citizen shall not engage in any property speculation whatsoever, and an authorisation shall be valid for six months;
- any non-citizen acquiring an apartment shall not be eligible to make an application for the status of resident in Mauritius;
- the land duties and taxes shall be paid on the present market value of the immovable property, which may be subject to review by the Registrar General; and
- the shares of the company (where applicable) shall not be disposed of, in any manner, without prior approval under the Non-Citizens (Property Restriction) Act.

Conditions attached applicable to resident non-citizens in Mauritius are as follows:

- the residential property may be used as a personal residence only and not for any other purpose;
- only one residential property may be purchased or acquired;
- the property purchased should not exceed 0.5276 hectare (1.25 arpent);
- where a plot of serviced land/bare land is acquired, the residential property must be built on the land within a period of five years from the date of its acquisition;
- the property cannot be disposed of without the authorisation of the PMO, and in accordance with the applicable legislation and upon such conditions as may be imposed; and
- the non-citizen shall not engage in any property speculation whatsoever.

## 2.4 Right to Appeal

### EDB

There is no review on non-authorisation from the EDB. An authorisation will be granted if the criteria are met.

### FSC

A Review Panel conducted by the FSC has been established; however, it shall not hear an application relating to a decision on not granting a licence,

approval or authorisation for the conduct of a financial services activity.

### Immovable Property

An action can be brought before the Supreme Court on disputes relating to immovable property.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

The corporate vehicles available in Mauritius include:

- companies;
- partnerships (*sociétés*);
- limited partnerships;
- trusts; and
- foundations.

### Companies

Companies may be private or public. A company is deemed to be a public company unless it is stated otherwise in its application form for incorporation or its constitution. A private company cannot have more than 50 shareholders and cannot offer its shares to the public.

A company may be set up as follows:

- limited by shares (most common);
- limited by guarantee;
- limited by shares and guarantee;
- unlimited; or
- limited life (common for private equity funds and suitable for joint ventures or projects).

Except for the fourth point in the foregoing list, the liability of the shareholders is limited to the amount payable on the shares issued to them; for the second point, liability of the members is limited by the constitution to such amount as the members may undertake to contribute to the assets of the company in the event of it being wound up.

A company set up as a limited life company has an initial life not exceeding 50 years, subject to the alteration of its constitution extending the duration of the company to such period or periods not exceeding an aggregate of 150 years. A limited life company may have categories of interests in the company, such as an interest in the profits of the company, an interest in the capital of the company or an interest in the management of the company.

A company limited by shares may be incorporated with one shareholder and with one share (no minimum share capital amount); typically, share capital would start at MUR1.00 or USD1.00 (or any foreign currency in the same amount).

### Partnerships (Sociétés)

Partnerships in Mauritius are referred to as *sociétés* and are governed by the Commercial Code and Civil Code. The life of a partnership is limited to a maximum of 99 years.

The liability of each partner in a general partnership (*sociétés en nom collectif*) is unlimited, whereas in a limited partnership (*sociétés en commandite simple*), there are two categories of partners: limited partners (*les associés commanditaires*) and unlimited, or general, partners (*les associés commandités*). Limited partners enjoy the benefit of liability limited to the extent of their contributions to capital, whereas unlimited partners are liable to contribute, in full, to the debts and liabilities of the limited partnership.

### Limited Partnerships

Whilst limited partnerships may be formed under the Commercial Code and Civil Code, they may also be created under the Limited Partnerships Act 2011 (LPA). A distinguishing feature is that at the time that the limited partnership is registered, the partners of the limited partnership may elect that the partnership have legal personality.

Similar to partnerships organised under the Commercial Code and Civil Code, the partners in a limited partnership under the LPA are of two types: general partners or limited partners. General partners are jointly and severally liable for all the debts of the limited partnership without limitation, whilst limited partners (subject to the partnership agreement) are not liable for any debts of the limited partnership beyond the amounts contributed or agreed to be contributed.

### Trusts

Trusts are governed by the Trusts Act 2001. A trust (other than a purpose trust) is limited to a duration of 99 years from the date of its creation. In the case of a purpose trust, an enforcer and a successor to the enforcer must be appointed when the trust is established, the duty of the enforcer/successor to the enforcer being the enforcement, if necessary, of the terms of the purpose trust. A trust is governed by the terms of its trust deed and the Trusts Act 2001.

### Foundations

Foundations may be set up under the Foundations Act 2012. Contrary to popular belief that foundations are for charitable purposes only, foundations are increasingly used for non-charitable purposes; for example, wealth management, estate planning or purely business purposes. A foundation is run by a council (similar to the board of a company). The foundation is governed by its charter (and articles, if applicable), subject to the Foundations Act 2012.

### Variable Capital Company

A variable capital company (VCC) is set up as a company under the Companies Act 2001 and needs to be authorised by the FSC, the regulator for financial services in Mauritius, to operate. The VCC's primary object is to operate as a fund; it can be set up as a standalone fund or may conduct its business through different sub-funds or special purpose vehicles (SPVs). The sub-funds and SPVs may choose to have a separate legal entity from the main fund.

The VCC has many advantages for the fund industry as different types of fund structures can be regrouped under one entity – both collective investment schemes (CISs) and closed-end funds can be set up under the same VCC. A VCC further allows for cross sub-fund and SPV investment in that a sub-fund of a VCC is also allowed to invest in other sub-funds of the same VCC, provided such sub-fund or SPV has not previously invested in it. In terms of the protection of its investment portfolios, the assets and liabilities of the sub-funds and SPVs are segregated and ring-fenced, and are thus protected in the event of a winding-up, administration or receivership of the sub-funds, SPVs or the VCC.

## 3.2 Incorporation Process

Application for incorporation is made to the Registrar of Companies in a prescribed form, signed by the applicant and accompanied by the following documents:

- consent to act as director or secretary;
- a certificate showing that the director/secretary is not disqualified to act as such;
- in the case of a company having a share capital, consent to being a shareholder and to taking the class and number of shares noted in the application, as well as a statement of the consideration for the issue of those shares;
- in the case of a company limited by guarantee, a guarantee document signed by each member;
- notice of reservation of name, if any;
- the constitution of the company, if one is being specifically adopted; and
- under certain circumstances, a declaration regarding the beneficial ownership.

## 3.3 Ongoing Reporting and Disclosure Obligations

The Companies Act 2001 prescribes several filings to be made with respect to a private company, including filing in relation to changes in directors, secretary and shareholding. Filing is also required with respect to:

- a constitution (ie, equivalent to the memorandum and articles of association) adopted by the company or any amendment made thereto;
- a charge created over any asset of the company;
- change in registered office;
- financial statements (with an auditor's report, if applicable) or financial summary;
- annual report, if applicable; and
- annual return, if applicable.

## 3.4 Management Structures

Companies in Mauritius commonly have a unitary board structure. The business and affairs of a company are managed by, or under the direction or supervision of, the board.

Subject to modifications, adaptations, exceptions or limitations to the extent contained in the Companies Act 2001 or in the constitution of the company, the

board has all the powers necessary for managing, directing and supervising the management of the business and affairs of the company.

The amendments to the Companies Act 2001 introduce the requirement of the board of directors of a public company to include, at all times, at least two independent directors and ensure that a minimum of 25% of the board members are women.

### 3.5 Directors', Officers' and Shareholders' Liability

A director is liable, whether to the company or a shareholder, for breach of any statutory duty set out in the Companies Act 2001. Furthermore, there may be instances where a director may be liable to third parties such as creditors. The Act also imposes personal liability on directors in certain circumstances; for example, continuing to trade whilst the company is insolvent.

The duties of directors have been extended to include the duty to act in a manner that is not oppressive, unfairly discriminatory or unfairly prejudicial to shareholders.

There are limited circumstances where the courts may lift the corporate veil – ie:

- when the court is construing a statute, contract or other document;
- when the court is satisfied that a company is a "mere facade" concealing the true facts; and
- when it can be established that the company is an authorised agent of its controllers or its members, corporate or human.

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

In Mauritius, the employment relationship is governed mainly by legislation, case law, employment agreements and collective agreements within certain industries. The main laws governing the employment relationship in Mauritius are the Workers' Rights Act 2019 (WRA) and the Employment Relations Act 2008 (ERA).

The WRA regulates the employment relationship of workers and employers, where a worker is defined as a person whose basic wage or salary is at a rate not exceeding MUR600,000 per annum. Notwithstanding the foregoing, the WRA applies to all employees, irrespective of their salary threshold in relation to matters such as discrimination, work-from-home, equal pay, payment of remuneration in specific circumstances, deduction of salary, juror's leave, leave to participate in an international sports or cultural event, maternity/paternity leave and benefits, medical facilities, allowance for petrol, complaints by workers, termination of employment including reduction of workforce, the portable retirement gratuity fund, eligibility to the Workfare Programme Fund compensation and violence at work.

### 4.2 Characteristics of Employment Contracts

Under the laws in Mauritius, a contract of employment may be for a determinate or indeterminate duration, subject to the nature of the work. An agreement made verbally will also be considered a duly formed agreement.

However, every employer has to provide to every worker engaged for more than one month a written statement of particulars of employment within 14 days of the completion of the first calendar month, a copy of which has to be submitted to the supervising officer of the ministry responsible for labour and employment relations within 30 days. The WRA lays down the main features of a contract of employment as follows:

- name of the employer;
- national pension registration number of the employer;
- business registration number of the employer;
- address of the employer;
- nature of activity carried out by the employer;
- name of the worker;
- gender of the worker;
- national identity card number/passport number of the worker;
- date of birth of the worker;
- address of the worker;
- date of commencement of agreement;
- place of work;
- grade, class or category of employment;

- rate and particulars of remuneration;
- interval at which remuneration is to be paid; and
- normal hours of work.

Note that these conditions are not exclusive; several other conditions may be agreed upon between the employer and the employee in accordance with the specificities of the business.

### 4.3 Working Time

Employees may be employed on a full-time or part-time basis in Mauritius. The normal working hours for a full-time worker (other than a caregiver (*garde malade*) and a part-time worker) are 45 hours of work, excluding time allowed for meal and tea breaks, allocated as follows.

- Where the worker is required to work five days a week:
  (a) nine hours' work on any five days of the week, other than a public holiday.
- Where the worker is required to work six days a week:
  (a) eight hours' work on any five days of the week other than a public holiday; and
  (b) five hours' work on one other day of the week other than a public holiday.

No worker, other than a caregiver, shall, except in special circumstances and subject to any other enactment, be required to work for more than 12 hours per day.

Under the WRA, where a worker works on a public holiday, the employer shall remunerate him/her in respect of any work done:

- during normal working hours, at not less than twice the rate at which the work is remunerated when performed during the normal hours on a weekday; or
- after normal working hours, at not less than three times the rate at which the work is remunerated when performed during the normal hours on a weekday.

The WRA was amended in 2023 to introduce the concept of a four-day work week. An employer may now, with the consent of a worker, require the worker to work for the stipulated hours, in any week, on a four-day week basis, provided a notice of at least 48 hours is given to the worker ahead of the new compressed hours. On the other hand, a worker may make a request to his/her employer to work for the stipulated hours on a four-day week basis, and the employer must, subject to their operational requirements, grant the request.

The WRA also provides for certain qualifications in the conversion of work from full-time to part-time.

In line with climate change, the law now recognises that, during periods of extreme weather conditions, where an order is issued by the National Crisis Committee (NCC) requiring any person to remain indoors, or a state of disaster is declared, and any direction for the purpose of assisting and protecting the public is issued, an employer must not require a worker to work or continue to work, as such situations could place the worker in danger.

Recently, in May 2026, the Cabinet agreed to the adoption of the National Protocol on Heavy and Torrential Rain for Mauritius. Under the Protocol, which applies to both the public and private sectors irrespective of whether employees work on a full-time, part-time or shift basis, if the Mauritius Meteorological Services (MMS) issues a heavy rain warning, employees must normally continue working unless the NCC issues an Order or communiqué to evacuate workplaces, remain indoors or not report to work. However, if a torrential rain warning is issued, employees, except those in emergency services, are not required to report for duty or continue working, and employers must not wait for an Order or communiqué to release their employees. Work may resume only after the NCC issues an Order or communiqué that it is safe to go outside and report to work.

### 4.4 Termination of Employment Contracts

In the case of a fixed-term contract, the contract comes to an end on the last day of the agreement.

An employment contract may also be terminated by the employer for the employee's poor performance or misconduct (including misconduct subject to criminal

proceedings). In such cases, the employer needs to provide the employee with an opportunity to answer any charge that has been levelled against the employee within the statutory timeline. Moreover, a notice of termination not less than 30 days must be given to the employee. Alternatively, the employee may be paid remuneration in lieu of said notice.

The employee, on the other hand, may treat the employment agreement as terminated if they have been ill-treated by the employer, in cases of non-payment of remuneration under the agreement, where the employer fails to provide work and to pay remuneration under an agreement or if the employee is made to resign by fraud or duress – or is made to sign a letter of resignation or such document in writing.

Collective redundancies are implemented in cases of economic, technological, structural or any other similar reasons. The Redundancy Board (the "Board") is the entity that deals with all cases of reduction of the workforce and closure of enterprises. Where the Board finds that the reasons for the reduction of the workforce or the closing down are unjustified, the Board shall order the employer to pay the worker severance allowance at the rate of three months' remuneration per year of continuous service. The employee may, however, consent to be reinstated in his/her former employment with payment of remuneration from the date of termination of his/her employment to the date of his/her reinstatement.

The Social Contribution and Benefits Act of 2021 has repealed the *Contribution Sociale Généralisée* Regulations, which were introduced in 2020. These contributions, which are now called "social contributions", are calculated on the monthly remuneration of the employee, and self-employed people are now required to contribute in accordance with their income level instead of the flat rate that was originally applicable.

The mandatory end-of-year bonus section in the WRA now applies exclusively to those workers who draw a monthly basic wage or salary of not more than MUR100,000.

## 4.5 Employee Representations

Employee representation occurs at two levels: employee representation by the employee's representative in the event of a disciplinary hearing and employee representation at the level of trade union and collective bargaining with regard to the employer's management.

### Representation in the Event of a Disciplinary Hearing

An employee must, prior to the termination of his/her agreement, be given the opportunity to answer and explain any charge that has been levelled against him/her. This opportunity may take the form of a disciplinary hearing, in which case the employee may be accompanied by a representative of their trade union and/or a legal representative.

The employee may also have recourse to representation by a labour officer. Such labour officer is an officer designated by the permanent secretary of the Ministry of Labour, Industrial Relations, Employment and Training, whose main role is to look into labour complaints and disputes.

### Employee's Representation at the Level of Trade Union in the Employer's Management

An employee's representation at the level of trade union is a constitutional right insofar as, except with his/her own consent, he/she shall not be hindered in the enjoyment of his/her freedom of assembly and association. An employee's representation at this level is governed by the ERA, which focuses on the right of employees to freedom of association with a view to promoting good employment relations, granting negotiating rights to employees through their union representatives and assisting employers and union representatives to bargain effectively.

According to the ERA, an employer cannot interfere with the establishment, functioning or administration of a trade union of workers or promote or give assistance to a trade union of workers in order to place or maintain the trade union under their control. Union representatives are responsible for negotiating the rights of employees as per employment legislation and rights to participate in collective bargaining; that

is, in relation to the terms and conditions of employment or rights pertaining to any procedure agreement.

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/ Employers

Resident individuals are subject to Mauritian income tax on their worldwide income from all sources except that income derived from outside Mauritius is taxable only to the extent that it is remitted in Mauritius. Income from employment duties performed in Mauritius is deemed to have been derived from Mauritius.

A non-resident is taxable on income derived from Mauritius; for instance, income derived from any business carried on wholly or partly in Mauritius.

#### Employees

Currently, individuals' incomes are taxed incrementally; ie, the chargeable incomes are divided into different revenue brackets. Each bracket has a specific tax rate starting at 0% and is capped at a maximum of 20%.

The progressive tax bands are as follows:

- 0% on the first MUR500,000 of chargeable income;
- 10% on the next MUR500,000; and
- 20% on the remaining income.

Moreover, individuals aged 18–28 earning up to MUR1 million/year are exempt from income tax on salary or business income.

An individual (employed or self-employed) has to file income tax returns for the preceding income year, declaring their income and deductions to the Mauritius Revenue Authority (MRA).

Employers are required to operate a cumulative system of pay as you earn (PAYE) whereby tax withheld from emoluments that are made available to an employee has to be remitted to the MRA within 20 days. If tax is underpaid under the PAYE system, the unpaid balance becomes payable on or before 30 September following the end of the income year. If tax is overpaid, a refund of the excess tax is made to the taxpayer.

Every month, every employer shall pay the amount of contribution to the MRA in respect of every employee who was employed during the preceding month. Currently, the CSG and National Solidary Fund (NSF) contributions are payable at the prescribed rate on an employee's basic wage/salary.

An employer is required to contribute 2.5% of remuneration to the NSF and to pay a monthly rate of 1.5% of the basic salary of every employee.

Under the CSG:

- employees earning MUR50,000 or less monthly will be subject to a contribution of 1.5%, and 3% for the employers;
- employees earning more than MUR50,000 monthly will be subject to a contribution of 3%, and 6% for the employers;
- a public sector employee earning MUR50,000 or less monthly will not be subject to the contribution, and 4.5% for the employers;
- a public sector employee earning more than MUR50,000 monthly will not be subject to the contribution, and 9% for the employers; and
- an employee who is in domestic service earning MUR3,000 or less monthly, from one or more employers, shall not be subject to the contribution, and 3% for the employers.

#### Fair Share Contribution (Individuals)

Every individual whose fair share contribution income threshold exceeds MUR12 million in an income year shall, in addition to income tax, be liable to pay a fair share contribution to the Director-General. The contribution is computed at the rate of 15% on leviable income exceeding the threshold of MUR12 million.

The measure applies to income derived for the income year commencing 1 July 2025 and will remain in force for the following two income years, up to 30 June 2028. The fair share contribution income threshold comprises an individual's net income, dividends received from resident companies and co-operatives,

as well as attributable dividend shares from *sociétés* or successions, subject to specified exclusions.

Similarly, leviable income includes the individual's chargeable income together with qualifying dividends and attributable dividend shares, but excludes dividends from global business entities and certain exempt lump sums, including pension commutations, death gratuities and compensation payments.

### Fair Share Contribution (Companies)

Every company whose supplies exceed Rs 24 million in an accounting year or which is required to be registered under the VAT Act, and whose chargeable income exceeds MUR24 million, is liable to pay a fair share contribution in respect of income derived for the period 1 July 2025 to 30 June 2028. The contribution applies in addition to income tax and is calculated on chargeable income.

The rate of contribution is 2% of chargeable income for companies subject to the 3% income tax rate, and 5% of chargeable income for companies subject to the 15% income tax rate, including banks. Banks are also subject to an additional fair share contribution of 2.5% on chargeable income arising from transactions with residents (excluding global business entities).

Companies must submit quarterly statements and make corresponding payments during the year, with a final reconciliation in the fourth quarter based on annual chargeable income. Late payment attracts a penalty of 2.5% of unpaid tax and interest at 0.25% per month or part thereof.

## 5.2 Taxes Applicable to Businesses

A corporation resident in Mauritius is subject to tax on its worldwide income. A non-resident corporation is liable to tax on any Mauritius-source income, subject to any applicable tax treaty provisions. Corporations are liable to income tax on their net income, currently at a flat rate of 15%.

### Partnerships

Limited partnerships are tax transparent and are therefore not taxable under the laws of Mauritius, unless they hold a global business licence (GBL), in which case they can elect to be taxpayers. Where a limited partnership is tax transparent, only the partners who are residents of Mauritius are liable to pay tax in Mauritius at the rate of 15% (subject to any available tax credit or exemption). Limited partners who are non-residents of Mauritius are only liable to 15% tax on income that is derived in Mauritius but have no tax liability on foreign-source income.

### Trusts and Foundations

The income tax laws make a distinction between resident and non-resident trusts and between a resident foundation and a non-resident foundation. A non-resident trust is a trust of which the settlor and the beneficiaries are not resident in Mauritius, or in the case of a purpose trust, where such purpose is carried out wholly outside Mauritius. Such trusts are not subject to taxation in Mauritius.

A foundation will be non-resident when the founder is a non-resident and all the beneficiaries appointed under the terms of a charter or a will are, throughout an income year, non-resident in Mauritius. A non-resident foundation is exempt from taxation in Mauritius. A non-resident trust or foundation has to file a declaration of "nonresidency" on an annual basis with the MRA.

Charitable trusts and foundations are also exempt from income tax in Mauritius. A non-charitable trust, a non-charitable foundation or a non-charitable institution that is tax resident in Mauritius is taxable on its chargeable income at the rate of 15% per annum, although it will be entitled to tax credits on foreign tax paid or a partial exemption of 80% of the Mauritius tax liability on certain specific types of income.

### Export of Goods

Companies engaged in the export of goods are liable to be taxed at the rate of 3% on the chargeable income attributable to that export based on a prescribed formula. The benefit of the reduced income tax rate of 3% has been extended to freeport operators and private freeport developers engaged in the re-treating of used tyres and recycling of waste meant for the local market.

### Société

#### *Resident société*

A resident *société* is not liable to tax. Instead, every associate of the *société* is liable to tax on his/her share of income, whether distributed or not.

#### *Non-resident société*

A non-resident *société* shall be liable to income tax as if the *société* were a company and shall pay income tax on its chargeable income at a rate of 15%.

### Companies Holding a GBL

GBL-holding companies are taxed at the normal rate of 15%, except for an income tax exemption of 80%, which applies to foreign dividends, foreign-source interest income, profit attributable to a permanent establishment of a resident company in a foreign company, foreign-source income derived from a CIS, closed-end funds, CIS managers, CIS administrators, investment advisers or asset managers licensed or approved by the FSC and income derived by companies engaged in ship and aircraft leasing.

### Qualified Domestic Minimum Top-up Tax (QDMTT)

The QDMTT has been introduced in Mauritius effective from the year of assessment commencing on 1 July 2025. The QDMTT is applicable to Mauritius resident entities forming part of a multinational enterprise (MNE group) with a minimum annual consolidated revenue of EUR750 million or more in at least two of the last four fiscal years.

Every member of an in-scope MNE group shall pay QDMTT where the combined effective tax rate for group members in Mauritius is less than 15%. The QDMTT return and payment will be due within 15 months from the end of the fiscal year.

Each relevant resident company must notify the MRA of the designated Mauritius resident person responsible for the filing of the QDMTT return. This notification is due within six months from the end of the MNE group's fiscal year.

Investment funds, pension funds and real estate investment vehicles, amongst others, are excluded from the QDMTT regime.

### Corporate Social Responsibility (CSR)

Every year, a company has to set up a CSR fund equivalent to 2% of its chargeable income of the preceding year. For CSR funds set up on or after 1 January 2026, the proportion required to be remitted to the MRA has been reduced to 50%, with the remaining 50% available for CSR implementation, reflecting a more flexible regime while maintaining a mandatory State contribution.

### VAT

VAT shall be charged at the standard rate of 15% on all taxable goods and services, except certain food items that are zero-rated. A person who makes taxable supplies in the course of their business and whose annual turnover exceeds or is likely to exceed MUR6 million is required to register for VAT on a compulsory basis.

Following the measures announced in the 2025–26 Budget, the government proposes to amend the applicable legislation to reduce the threshold for mandatory VAT registration from MUR6 million to MUR3 million in annual turnover, with effect from 1 October 2025. Additionally, certain service providers (eg, accountants and auditors, attorneys and solicitors, consultants, surveyors, valuers) must be VAT registered irrespective of their turnover.

The Finance Act introduced the arm's-length principle to VAT. The reverse charge provision on supply of services received from abroad has been amended such that it is now applicable only if:

- the taxable supply performed or utilised in Mauritius is made by a person who does not belong in Mauritius and is not VAT registered; and
- the recipient of the supply is a VAT-registered person.

The supply of digital or electronic services by a foreign supplier to a person in Mauritius will be subject to VAT.

Where a VAT-registered person is engaged in a project spanning several years and the MRA is of the opinion that the apportionment of input tax between taxable supplies and exempt supplies on a prorated basis is not appropriate, it may require the registered

person to apply an alternative basis of apportionment for input tax.

### Local Income Taxes

Local income taxes levied by a local administration, such as urban councils, do not exist in Mauritius.

### Corporate Withholding Taxes (WHTs)

There are no withholding taxes (WHTs) in Mauritius for payments made by GBL companies to non-residents not carrying out any business in Mauritius. There is no WHT on dividends received from resident companies or on payments made by a company having an annual turnover of less than MUR6 million.

The following WHT rates are applicable to certain other income streams:

- interest payable by any persons (other than banks or non-bank deposit-taking institutions operating under the Banking Act) to individuals and non-resident companies – 15%;
- royalties payable to (i) residents (10%) and (ii) non-residents (15%);
- rent payable to (i) residents (5%) and non-residents (10%);
- payments to contractors and subcontractors (0.75%); and
- payments to providers of services (accountant/accounting firm, architect, attorney/solicitor, barrister, dentist, doctor, engineer, land surveyor, legal consultant, project manager in the construction industry, quantity surveyor, property valuer, and tax adviser or representative) (3%).

## 5.3 Available Tax Credits/Incentives

Mauritius has a credit system of taxation whereby foreign tax credit is given on any foreign-source income declared in Mauritius on which foreign tax of a similar character to Mauritian tax has been imposed.

No actual foreign tax credit is allowed on foreign-source income derived from a corporation issued with a GBL on or before 16 October 2017, if they have claimed the 80% exemption.

### Tax Credit for Small Businesses

Small enterprises with an annual turnover not exceeding MUR10 million shall be entitled to a tax credit of 5% per annum, for a period of three consecutive years (aggregating to 15%), in respect of capital expenditure incurred on the acquisition of new equipment, up to a maximum of MUR500,000 per year. This incentive shall exclude expenditure on motor vehicles. Any unutilised tax credit may be carried forward for a period not exceeding five years.

A qualifying small business or service provider is one whose annual turnover does not exceed MUR10 million and which carries on specified professional or service activities, including architects, engineers, estate agents, land, marine or motor surveyors, opticians, project managers, property valuers, interior designers/decorators and medical, health, wellness and personal care service providers (including hairdressers and barbers).

### Partial Exemption for Virtual Asset Service Providers (VASPs)

Licensed VASPs shall be eligible to claim an 80% partial exemption on income derived from virtual asset-related activities, subject to compliance with prescribed economic substance requirements.

### Restriction on Exemption for Banks

Banks shall no longer be entitled to the 80% partial exemption in respect of foreign-source dividend income.

## 5.4 Tax Consolidation

There are no group taxation provisions in the Mauritian tax legislation other than the transfer of losses by tax incentive companies, sugar factory operators, subsidiaries in Rodrigues and manufacturing companies upon their takeover.

## 5.5 Thin Capitalisation Rules and Other Limitations

Mauritius does not have specific thin capitalisation legislation; however, it does have other anti-avoidance provisions, as described in the following.

If a company has issued debentures to each of its shareholders, subject to the number, nominal value or

paid-up value of the shares in that company, any interest paid on debentures and claimed as a deductible expense may be disallowed and treated as a dividend.

### 5.6 Transfer Pricing

Mauritius does not have any specific transfer pricing legislation. However, it does contain an arm's-length provision requiring transactions between related parties to reflect a commercially objective value, which would be the amount charged for the services were the parties not connected.

### 5.7 Anti-Evasion Rules

There are no controlled foreign company rules under Mauritian tax legislation. Additionally, the Income Tax Act 1995 provides for certain measures relating to anti-avoidance provisions in relation to interest on debentures issued by reference to shares, excess of remuneration or share of profits, excessive remuneration to shareholders or directors, benefit to shareholders and excessive management expenses.

### 5.8 Tariffs

No response has been provided in this jurisdiction.

## 6. Competition Law

### 6.1 Merger Control Notification

Under the Competition Act 2007 (the "Act"), a merger situation is defined as "the bringing together under common ownership and control of two or more enterprises of which one at least carries its activities, in Mauritius, or through a company incorporated in Mauritius".

Whilst there is no statutory obligation for parties to a merger to inform, notify or seek the approval of the Competition Commission of Mauritius (CCM), they are entitled under the Act to voluntarily inform and notify the CCM of a merger situation and to seek the CCM's guidance as to whether:

- the proposed transaction has created, or is likely to create, a merger situation;
- the enterprises that are party to the merger situation meet the statutory market share threshold in order to be subject to review by the CCM; and
- the existing or proposed merger situation has resulted in, or is likely to result in, a substantial lessening of competition in Mauritius.

Besides voluntary notification, the Act provides that merger situations shall systematically be subject to review by the CCM in any of the following circumstances:

- where all the parties to the merger, following the merger, will together supply or acquire 30% or more of all the goods and services on the market;
- where one of the parties to the merger alone and prior to the merger supplies or acquires 30% or more of the goods or services of any description on the market; or
- where the CCM has reasonable grounds to believe that the creation of a merger situation has resulted in, or is likely to result in, a substantial lessening of competition within any market for goods and services.

Hence, where a merger situation does not fall under the market share thresholds set under the Act and does not lead to a substantial lessening of competition, there is a possibility for enterprises to proceed with the merger without involving the CCM at all. On the other hand, the commissioners of the CCM may take action if they find that the merger results, or is likely to result, in a substantial lessening of competition. This includes the power to require divestments or to block the merger if need be.

Although it is not mandatory for merger parties to notify their anticipated merger, merger parties are strongly encouraged to conduct a self-assessment to ascertain if it is necessary to apply for such guidance. Businesses considering a merger would be well advised to seek the CCM's advice and possibly even undergo an investigation before going ahead with the merger, to avoid the costs of subsequently having to reverse the merger. The Act currently provides the possibility for any one of the enterprises that intends to be in a merger situation to apply to the CCM for guidance as to whether the proposed merger situation is likely to result in a substantial lessening of competition within any market for goods or services. An application for

guidance usually contains the details laid down in the Competition Commission Rules of Procedure 2009.

### 6.2 Merger Control Procedure

Applications for guidance in relation to merger notifications are made by completing and filing the form known as "Form 1" with the CCM. Form 1 requires detailed information on the merger situation to be submitted to the CCM. This includes:

- the full name and address of the joint representative of the merger parties (where appointed) in a joint application or the full name and address of all merger parties where a joint representative is not appointed;
- the nature of the merger, such as whether it is an anticipated merger, an acquisition of sole or joint control, a full-function joint venture, or a contract or other means of conferring direct or indirect control;
- the value of the transaction – ie, the purchase price or the value of all the assets involved, depending on the circumstances; and
- for each of the merger parties, the area of activity and turnover, worldwide and in Mauritius, for the financial year, and the parts of the business subject to the merger.

Prior to the lodging of the merger notification with the CCM, parties are encouraged to carry out pre-notification consultations with the CCM, as the latter may refuse to accept an application if it is incomplete, not accompanied by the relevant supporting documents, not substantially in the prescribed form or not in compliance with the Act. Pre-notification consultations with the CCM are usually carried out promptly, subject to the availability of the parties, and do not affect the timeframe for the assessment of the merger notification once it is submitted to the CCM.

Upon receipt of the complete merger notification, the CCM will conduct a preliminary assessment to determine whether there are reasonable grounds to believe that the merger situation results in, or is likely to result in, a substantial lessening of competition. The preliminary assessment may be completed within 30 working days, depending on the nature and complexity of the merger situation. In the affirmative, parties are informed of these concerns within 30 working days, and an in-depth assessment is triggered. Otherwise, if the preliminary assessment demonstrates no substantial lessening of competition, the parties are informed accordingly, and the matter is closed. On the other hand, in-depth assessments are usually carried out by the CCM over a period of six months.

Where the commissioners of the CCM determine, after review, that the creation of a merger situation has led, or is likely to lead, to a substantial lessening of competition, they may give the enterprise such directions as they consider necessary, reasonable and practicable to (i) remedy, mitigate or prevent the substantial lessening of competition; and (ii) remedy, mitigate or prevent any adverse effects that have resulted from, or are likely to result from, the substantial lessening of competition.

### 6.3 Cartels

Under the Act, "Agreement" means "any form of agreement, whether or not legally enforceable, between enterprises which is implemented or intended to be implemented in Mauritius or in a part of Mauritius, and includes an oral agreement, a decision by an association of enterprises, and any concerted practice". "Concerted practice" is also defined in the Act as a "practice involving contacts or communications between competitors falling short of an actual agreement, but which nonetheless restricts competition between them".

The Act regulates various forms of agreements and practices, and prohibits collusive agreements and practices that have the object or effect of preventing, restricting or distorting competition. This includes restrictive practices such as horizontal agreements, non-collusive horizontal agreements, bid rigging, vertical agreements involving resale price maintenance and other vertical agreements.

It is not open to enterprises engaged in these practices to argue that they have no adverse effects, nor do the "off-setting benefits" provisions of the Act apply to such agreements to allow any argument that they have beneficial effects resulting in specific gains, which may outweigh the adverse effects caused by the said agreement or practice. Unlike the other breaches under the Act, collusive agreements and practices are

the only breaches for which financial penalties can be levied by the CCM.

### 6.4 Abuse of Dominant Position

Section 46 of the Act relating to monopoly situations states that the CCM will have regard to whether a monopolist's actions "have or are likely to have an adverse effect on the efficiency, adaptability and competitiveness of the economy of Mauritius, or are or are likely to be detrimental to the interests of consumers". This clause relates only to adverse effects arising from the monopolist's actions.

Under Sections 60 and 61 of the Act, the CCM may also take action to remedy, prevent or mitigate detrimental effects on consumers and users. Where it is necessary to consider such adverse and detrimental effects, the CCM will generally seek to protect and promote consumer interest by fostering greater competition. The CCM will not, in general, intervene to provide consumers with a better product offering or price than might reasonably be expected to arise in a competitive market. The CCM can intervene only when there is a competition problem – and only to promote the interests of affected consumers and users.

## 7. Intellectual Property

### 7.1 Patents

The Industrial Property Act 2019 (IPA) came into operation on 31 January 2022. Under the IPA, a patent will be registered if it relates to an invention that is new, involves an inventive step and is industrially applicable.

The length of statutory protection granted to registered patents is 20 years, after the filing date of the application, subject to payment of the annual prescribed fee.

The application for a patent has to be filed with the Director of the Industrial Property Office in the form set out in the administrative procedures, and accompanied by the payment of a non-refundable fee. The application has to include:

- the name, address and nationality of the applicant;
- the name and address of the inventor;
- the name and address of the agent of the applicant (if any) and the signature of the applicant or their agent (if any), or a common representative where it is a joint application;
- the title, a description of the invention and the claims, including any drawing and an abstract;
- where the applicant is not the inventor, a statement justifying the applicant's right to the patent; and
- where the applicant's ordinary residence or principal place of business is outside Mauritius, an address within Mauritius for service of any document.

Mauritius acceded to the Patent Cooperation Treaty (PCT) on 15 March 2023. Applicants and inventors in Mauritius can now file patent applications under the PCT to secure patent protection in PCT contracting states. Similarly, foreign innovators and companies can now use the PCT system to obtain patent protection for their inventions in Mauritius.

The Customs Act 1988 was amended to provide that any owner or authorised user of a patent may apply in writing to the Director-General of the MRA to suspend the clearance of any goods imported or being exported and detain any goods on the local market on the grounds that his or her patent, industrial design, collective mark, mark, copyright, utility model, lay-out design, breeder's right, trade name or geographical indication is being or is likely to be infringed.

For enforcement, please see **7.3 Industrial Design**.

### 7.2 Trade Marks

A mark is a distinctive sign that differentiates particular goods and services provided by one entity from those of its competitors. In practice, any sign that helps distinguish one's goods or services from another may amount to a mark. This includes words, letters, numerals, drawings, pictures, audible signs, three-dimensional signs and olfactory marks as well as a combination of colours, the shape of the goods or parts of the goods, or the packaging or other conditioning of the goods.

The length of statutory protection granted to registered marks is ten years, starting from the filing date

of the application and subject to the payment of an annual fee.

Applications for registration of marks must be filed with the director of the Industrial Property Office in the form set out in the administrative procedures, and accompanied by the payment of a non-refundable fee of MUR6,000 for the first class and MUR2,000 for each additional class. The application for registration of a mark must include:

- the name, address, nationality and place of registration of the applicant, and where the applicant is represented by an agent, the name and address of the agent;
- where applicable, a statement indicating the type of mark and any specific requirements applicable to that type of mark;
- a representation of the mark; and
- a list of the goods or services for which registration of the mark is sought, grouped in accordance with the applicable class or classes of the International Classification.

The application shall also specify the goods and/or services in respect of which the registration of the mark is sought and has to be signed by the applicant or their agent (if any), or a common representative where it is a joint application.

Mauritius has joined the World Intellectual Property Organization (WIPO)-administered Madrid system, which has allowed for the worldwide registration and management of trade marks since 2023. Local businesses can now file a single international trade mark application and pay one set of fees to apply for protection in more than 130 countries covered by the Madrid system. Globally, other adherents to the Madrid system can designate Mauritius when filing their international applications.

For enforcement, please see **7.3 Industrial Design**.

## 7.3 Industrial Designs

Industrial design means the appearance of a product resulting from its features, particularly the shape, lines, contours, colours, texture or materials of the product, or its ornamentation. The length of statutory protection granted to registered industrial designs is five years, starting from the filing date of the application, and is renewable for three further consecutive periods of five years, subject to payment of a renewal fee.

An application for the registration of a design has to be filed with the director of the Industrial Property Office in the form set out in the administrative procedures and must contain a graphic representation of the design, and be accompanied by a non-refundable fee of MUR4,000. The application has to be signed by the applicant or their agent (if any), or a common representative where it is a joint application. The application may contain a brief description, not exceeding 100 words, of the characteristic features of the design, including any colours, and the features characterising the design in accordance with its filed representation or specimen, but shall not refer to technical particulars related to the operation of the product incorporating the industrial design, its possible uses or the manufacturing material.

Mauritius also joined the WIPO-administered Hague System in 2023. Mauritian businesses are thus able to register up to 100 designs in approximately 100 countries by filing a single international application for the protection of their designs in the countries covered by the Hague System and can also benefit from its streamlined mechanism for the management and maintenance of their rights.

The performance of any act under the IPA in Mauritius by any person other than the owner of the title of protection or the licensee, and without the agreement of the owner, constitutes an offence, punishable on conviction by a fine not exceeding MUR250,000 and imprisonment for a term not exceeding five years. Acts of unfair practice may also give rise to a claim in damages, and the Mauritius court may, in addition to damages, grant such other remedy or relief as it may consider appropriate. Any claim arising out of an unfair practice shall be prosecuted in accordance with the Protection against Unfair Practices (Industrial Property Rights) Act 2002 (the "Unfair Practices Act").

## 7.4 Copyright

For the purposes of the Mauritius Copyright Act 2014 (the "CA 2014"), a copyright consists of the econom-

ic and moral rights subsisting in a work. "Work" is defined as "an artistic, literary or scientific work or a derivative work".

Hence, copyright law in Mauritius covers work transmitted by way of mass public communication, such as paintings, drawings, films, performances, music, literary works and even computerised systems for storage and retrieval of information.

Copyright protection is obtained automatically, without the need for registration, as soon as the work becomes fixed in some material form, irrespective of its mode or form of expression. There are specific durations for the protection of copyright under the CA 2014. For instance, authors enjoy protection for their whole lifetimes and 40 years after their death.

In the event of breach of copyright, a civil action may be initiated with the Supreme Court for an order granting any such remedies as the Court thinks fit. This covers remedies such as damages, injunction or forfeiture of any infringing copy and/or any apparatus, article or thing used for the making of the infringing copy.

A copyright owner may also apply to a judge in chambers for an injunction or a *mesure conservatoire*, as is appropriate in the circumstances. A copyright fee is now leviable in respect of every user of a work.

### 7.5 Others

Intellectual property such as trade secrets, software and databases may be protected under the Protection against Unfair Practices (Industrial Property Rights) Act 2002.

According to Sections 5 to 9 of the Unfair Practices Act, any act that is contrary to honest commercial practice and that (i) causes confusion with respect to another's enterprise or activities; (ii) damages another's goodwill or reputation; (iii) misleads the public; (iv) discredits another's enterprise or activities; or (v) creates unfair competition with respect to secret information will be considered unlawful and will amount to a criminal offence leading to a fine not exceeding MUR250,000 and a term of imprisonment not exceeding five years.

The term "contrary to honest commercial practice" includes "breach of contract, a breach of confidence, an inducement to breach or the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that any such practice was involved in the acquisition".

Moreover, causing confusion with respect to another's enterprise or activities, or damaging another's goodwill or reputation in relation to a trade mark, whether registered or not; a trade name; a business identifier other than a trade mark or trade name; the appearance of a product; the presentation of products or services; or a celebrity or a well-known fictional character is penalised under the Unfair Practices Act.

## 8. Data Protection

### 8.1 Applicable Regulations

The governing piece of legislation for data protection in Mauritius is the Data Protection Act 2017 (the "Act"), enacted on 8 December 2017 and in force since 15 January 2018, to align with the EU General Data Protection Regulation 2016/679 (GDPR).

Two other pieces of legislation also provide additional safeguards to the right to privacy and data protection in Mauritius:

- Article 22 of the Mauritian Civil Code provides that "*Chacun a droit au respect de sa vie privée*" (ie, every person is entitled to the protection of their private life).
- Article 300 of the Mauritian Criminal Code makes it a criminal offence for certain categories of professionals to disclose confidential information obtained in the course of their duties.

The Act imposes strict duties on data controllers and processors to ensure that all personal data is processed in compliance with the Act.

Every data controller or processor must be able to demonstrate that personal data are:

- processed lawfully, fairly and in a transparent manner in relation to any data subject;

- collected for explicit, specified and legitimate purposes;
- adequate, relevant and limited to what is necessary;
- accurate and, where necessary, kept up to date, with all reasonable steps being taken to ensure that inaccurate personal data are erased or rectified; and
- retained only for as long as necessary.

In addition, data controllers and processors must:

- adopt policies to implement appropriate data security and organisational measures to protect personal data;
- designate an officer responsible for data protection; and
- ensure that processing is carried out in line with the data subject's rights.

A data controller is defined as "any person who or public body which, alone or jointly with others, determines the purposes and means of the processing of personal data and has decision-making power with respect to the processing".

On 20 February 2025, the Mauritius Data Protection Office (DPO) issued a communiqué specifying that, among other things, all public and private organisations, *sociétés*, partnerships, professionals such as doctors, lawyers, engineers, architects, notaries and sole traders such as jewellers, bookmakers and any other entity processing and collecting personal data of living individuals, are required to register themselves as a controller with the DPO.

The Act provides that it is a criminal offence for a data controller to personal data without any lawful excuse or where it is incompatible with the purposes for which the data was collected. Lawful excuses include:

- compliance with a legal obligation;
- performance of a contract with the data subject; and
- protection of the vital interests of the data subject or another person.

Consent constitutes one of the key lawful bases for processing personal data under the Act. On the one hand, data controllers and processors must seek and obtain the consent of persons whose data they wish to process and, on the other hand, data subjects may give or withdraw their consent at any time.

A data subject is defined as a person who may be identified or may become identifiable by reference to features, including their name, identification number, location data and physiological, genetic, mental, economic, cultural or social identity.

Consent must be free, specific, informed and unambiguous and can be in the form of a statement or a clear affirmative action.

Under the Act, any local or foreign individual or organisation handling or processing the personal data of a Mauritian data subject is required to register with the DPO in order to act as a data controller or processor in Mauritius and must comply with the applicable legal requirements for processing, including consent where required.

Transfers of personal data outside Mauritius are permitted, subject to the following:

- proof that appropriate safeguards for an adequate level of protection have been provided to the DPO;
- the data subject has given explicit consent;
- the transfer is necessary (i) for the performance of a contract with the data subject; (ii) for reasons of public interest as provided by law; (iii) for the establishment, exercise or defence of legal claims; or (iv) to protect the vital interest to the data subject; and
- there are compelling legitimate interests of the controllers or processors.

Mauritius also launched its National Data Strategy 2025–29 in January 2026, aimed at strengthening data governance, cybersecurity and the protection of personal data.

### 8.2 Geographical Scope

The Act applies to any data controllers or processors established in Mauritius and any data controller

or processor not established in Mauritius but using equipment in Mauritius for processing personal data of Mauritian residents. In other words, the Act not only applies to organisations located within Mauritius but also to organisations located outside Mauritius if they offer goods or services to, or monitor the behaviour of, Mauritian data subjects.

Within that framework, the Act imposes an obligation on such foreign controllers and processors to explain to Mauritian data subjects how their personal data will be processed, give details on the purposes of the processing and inform them of the right to withdraw their consent at any point in time.

### 8.3 Role and Authority of the Data Protection Agency

The Act has established the DPO in Mauritius, which is empowered to act with complete independence and impartiality.

The main roles and functions of the DPO are to ensure compliance with the Act, issue codes of practice and guidelines, maintain a register of controllers and processors, investigate complaints and co-operate with supervisory authorities of other countries.

The DPO is headed by the commissioner, who is given wide powers under the Act to:

- carry out periodical audits of information systems and security measures used by data controllers or processors;
- exercise control of all data processing operations, either of his/her own motion or at the request of data subjects;
- promote self-regulation among controllers and processors;
- undertake research into, and monitor developments in, data processing, and ensure that there is no significant risk or adverse effect of any developments on the privacy of individuals;
- examine any proposal for automated decision-making or data linkage that may involve interference with, or otherwise have an adverse effect on, the privacy of individuals and ensure that any adverse effect of the proposal on the privacy of individuals is minimised;
- investigate any complaint or information that gives rise to a suspicion that an offence may have been, is being or is about to be committed under the Act;
- order any person to attend a hearing at a specified time and place for the purposes of being orally examined in relation to a complaint;
- apply to the judge in chambers in the Supreme Court for a preservation order where they believe the data is vulnerable to loss or modification;
- enter and search any premises with a warrant issued by a magistrate for the purpose of discharging any functions or exercising any powers under the Act;
- serve an enforcement notice when they believe that a data controller or processor has contravened, is contravening or is about to contravene the provisions of this Act, requiring them to take such steps within such periods as may be specified in the notice; and
- take such measures as may be necessary to bring the provisions of the Act to the knowledge of the general public.

The registration as a controller or processor with the DPO will be for a period not exceeding three years, and on the expiry of such period, the relevant entry will be cancelled unless the registration is renewed within three months of expiry of the licence.

Any controller who knowingly supplies false information while applying for registration will commit an offence and shall, on conviction, be liable to a fine of up to MUR100,000 and to imprisonment for a term of up to five years.

Any person or organisation who fails to attend a hearing or to produce a document when required to do so shall be liable to a fine of up to MUR50,000 and, in the case of a person, to a term of imprisonment of up to two years. Additionally, in order to enforce the rules established under the Act, the commissioner of the DPO has been empowered with enhanced powers with regard to the handling of complaints, such as the power to call the parties and encourage an amicable resolution of the dispute wherever possible.

Any person who considers themselves aggrieved by the decision of the commissioner may, within 21 days

of the date of the decision, appeal to the Information and Communication Technologies Appeal Tribunal (the "Tribunal"), and the appeal will not be heard after the expiry of the period unless the aggrieved person demonstrates sufficient cause for not lodging same within that period.

Once an appeal is lodged, the Tribunal will endeavour to dispose of the appeal within six months of the date upon which the appeal was lodged.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

#### Certificate of Character Reform

A new Certificate of Character Bill is set to replace the Certificate of Character Act 2012, aimed at easing employment and social reintegration for ex-offenders. Certain minor or old convictions will no longer appear on a person's certificate after specified time periods, while serious offences will still be disclosed. The Bill also prohibits employers from discriminating against applicants for unrelated past convictions, unless the offence poses a serious risk to the employer's reputation.

#### The Electronic Transactions (Amendment) Bill

This Bill seeks to amend the Electronic Transactions Act to modernise and broaden the legal framework for electronic transactions in Mauritius. It introduces technology-neutral rules for electronic signatures, recognises contracts concluded through automated systems, and establishes a legal framework for electronic transferable records based on principles of reliability and functional equivalence. The amendments aim to strengthen legal certainty, support paperless trade and cross-border digital transactions, and facilitate business in the digital economy.

# MEXICO




## Law and Practice

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**Basham, Ringe y Correa S.C.** is one of Latin America's leading full-service law firms. Founded in Mexico in 1912, the firm has over a century of experience advising clients on doing business in Mexico and internationally. What sets Basham apart is its unique ability to combine decades of legal tradition with a forward-thinking, international outlook. The firm offers strategic legal solutions that not only ensure compliance but also identify business opportunities. The firm has a multidisciplinary team of over 150 lawyers across four strategic offices in Mexico City, Monterrey, León and Querétaro, providing seamless nationwide coverage. Basham's teams work in full integration, allowing for cross-practice collaboration and industry-specific insight. Basham's integrated legal services go beyond compliance – they identify risks, unlock opportunities and provide tailored solutions that meet the demands of a rapidly evolving business and regulatory landscape. The firm is a trusted partner to multinational corporations, financial institutions, emerging companies and high net worth individuals.

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## 1. Legal System

### 1.1 Legal System and Judicial Order

The Mexican legal environment operates under a civil law system; where the law follows codified rules created and inspired by Roman law, the napoleon code system and finally Anglo-Saxon law.

Compared to other systems, such as common law, where precedents are fundamental, Mexico's legal system is mostly based on codes, laws and regulations that guide the behaviour of individuals and institutions. The Mexican legal system is strongly based on several core principles that support the application and interpretation of codes and laws; and jurisprudence comprised of decisions issued by authorities who determine the application and interpretation of principles through rulings. Even though the Mexican system is based on codes, principles and jurisprudence, it also relies on a system of precedents. Contrary to the precedent system used in common law, legal precedents in Mexico are used by judges to strengthen criteria rather than to reapply decisions used in previous binding case law. Despite the fact that most courts have their own criteria for ruling, precedents are used to guide the courts in a certain direction on the ruling based on how other courts have ruled in similar matters. Unfortunately, this does not mean that judges will or are forced to rule the same way as in previous cases, rather that they can be persuaded to consider previous criteria that should be applied directly, by analogy or by major reasoning.

The Mexican judicial branch consists of a hierarchical structure of state and federal courts, which have their own jurisdiction and responsibilities. The highest court in the Mexican judicial branch is the Supreme Court of Justice of the Nation, which has an important role in interpreting the Mexican Constitution, as well as hearing significant cases including local and federal laws, regardless if they concern constitutional issues or not.

On the one hand, the federal courts include district courts, collegiate circuit courts and specialised courts. These courts are responsible for adjudication cases that are related to federal matters, they manage cases that involve violations of federal laws, administrative disputes and issues between individuals, states or individuals and the federal government.

On the other hand, state courts are responsible for enforcing laws that are reserved to the states by the Constitution, such as civil, criminal and administrative laws that fall under the state's jurisdiction. Although the organisation of state courts can vary depending on the state, they are usually organised by municipal courts, trial courts and appellate courts.

## 2. Restrictions on Foreign Investments

### 2.1 Approval of Foreign Investments

The regulatory framework for foreign investment in Mexico is regulated by the Foreign Investment Law (FIL) and its regulations, which impose some restrictions on foreign investment in Mexico, which, while

considerably relaxed in recent years, still have an impact.

In accordance with the FIL, there are certain activities reserved exclusively for the state and reserved for Mexicans or Mexican companies with foreigner exclusion clauses, and other activities under specific regulations as follows.

- Activities reserved for the state – set forth in Article 5 of the FIL, as exploration and extraction of oil and other hydrocarbons in accordance with the Political Constitution of Mexico; planning and control of the national electricity system, as well as the public transmission and distribution of electrical energy, in terms of the provisions of the Political Constitution of Mexico; generation of nuclear energy, radioactive minerals, telegraphs, radiotelegraphy, postal service, bank note issuing, minting of coins, control, supervision and surveillance of ports, airports and heliports.
- Activities reserved exclusively to Mexicans or to Mexican companies with exclusion of foreigners' clause – set forth in Article 6 of the FIL, as domestic land transportation of passengers; tourism and freight not including messenger or courier services; development banking institutions; and rendering of certain professional and technical services expressly indicated in legal provisions, among others.
- Activities and acquisition subject to specific regulation – set forth in Article 7 of the FIL in which the foreign investment participation limits in activities and companies may not be surpassed directly, neither by trusts, agreements or partnerships, nor by-law agreements, pyramiding schemes or other mechanisms granting any control or a higher participation than the one established.

As provided in Section 8 of the FIL, a favourable resolution by the National Foreign Investment Commission (the "Commission") is required for foreign investment to participate in a percentage higher than 49% in activities with specific regulation including, among others, port services, in order to allow ships to conduct inland navigation operations, such as towing, mooring and barging; shipping companies engaged in the exploitation of ships solely for high-seas traffic; concessionaire or permissionaire companies of air fields for public service; legal services; construction, operation and exploitation of general railways, and public services of railway transportation.

In addition, pursuant to Section 9 of the FIL, a favourable resolution of the Commission is required for the foreign investment to participate in a Mexican company, either directly or indirectly, in more than 49% of the capital stock, solely when the value of the assets of the involved entities exceed the amount determined by the Commission.

It is important to take into consideration that the approvals need to be obtained prior to completing the investment.

### 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

If approval is required, the process can be completed electronically through the Legal Affairs System for Foreign Investment or by submitting the application in person before the Commission, by appointment. For the electronic procedure, applicants must have a valid email address, create an account with the Legal Affairs System for Foreign Investment and a hold a current e-signature.

In this regard, the following documentation must be prepared and submitted with the Commission.

- Official Questionnaire SE-02-007 (in Spanish) including information identifying how the project will be beneficial to Mexico's economy, as well as name and nationality of the investor, description of the project, percentage to be acquired, estimated value of the investment, sector or activity of the company, among other information, executed by the legal representative or person acting on behalf of the applicant.
- Written request comprising the corporate name or name of the person requesting the favourable resolution, name of the legal representative or the person acting on behalf of the applicant, an address and/or email for service of notices and the individuals authorised to receive them on behalf of the applicant, facts or reasons that motivated the request, details of the project's main features,

specifications concerning its plans to have subsidiary offices or branches, company activity in Mexico and the activity that such company carries out abroad, as well as the corporate group to which it belongs, indicating the Mexican companies in which the foreign investment participates directly or indirectly, and the activities in which it participates directly or indirectly, or in which the investment intends to participate, among others, which must be signed by the legal representative.
- Power of attorney granted before a notary public in favour of the individual acting on behalf of the applicant, duly formalised.
- Receipt evidencing payment of governmental fees.
- Corporate and legal documents, including, in case the investor is a:
  (a) person – updated resume or summary;
  (b) foreign legal entity – deed, articles of incorporation, certificate or any other document of incorporation, current by-laws, and annual report or description of the activities of the last fiscal year; and/or
  (c) Mexican legal entity – articles of incorporation, as well as those of its shareholders, and the financial statements of the last year or fiscal year.

If the investor has undergone changes in its corporate name, mergers or any other amendments to its by-laws, the documents evidencing such modifications will be needed.

The documents must be submitted in original and copy. After verification, the originals – except for the written application and proof of payment of fees – will be returned to the applicant at the time of submission.

The Commission has 45 business days from the day the application is filed to issue its ruling, counted from the date the documentation is filed. It should be noted that the Commission may request additional information prior to issuing its resolution.

If the request is approved, the applicant can proceed with the investment as authorised.

### 2.3 Commitments Required From Foreign Investors

If the authorisation is granted, the terms and conditions to be fulfilled will be set out in the authorisation.

In certain cases, the Commission may require investors to comply with certain obligations or commitments to guarantee national interest, security and development of the country.

Mexican companies with foreign investment, directly or indirectly, in their corporate capital, are obliged to be registered in the Section 2 of the National Registry of Foreign Investments (the "Registry") and comply with periodic reporting obligations (annual and quarterly reports).

Foreign investment is understood to include the participation of legal entities with a nationality other than Mexican, as well as foreign individuals or individuals who, although Mexican, hold or acquire another nationality and have their domicile outside the national territory.

The registration must be submitted within 40 business days following the date on which the foreign investment enters the Mexican company.

### 2.4 Right to Appeal

A new request may be made, or a means of appeal may be filed, either through an administrative review appeal or a nullity trial, before the Federal Court of Fiscal and Administrative Justice.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

The *Sociedad Anónima* (SA) and *Sociedad de Responsabilidad Limitada* (S de RL) are the most common vehicles used for business and investment purposes in Mexico.

#### SA

- Liability of shareholders is limited to the amount of their contributions.
- Requires a minimum of two shareholders, with no maximum limit.

- No minimum capital required by law; however, shareholders must subscribe the authorised capital in full within one year.
- May be incorporated as a variable capital entity (SA de CV) for added flexibility in capital increases or reductions without amending the by-laws.
- Governance is managed by a sole administrator or a board of directors.
- Shareholders' meetings are the supreme authority.

Furthermore, if the company is seeking capital contributions while maintaining operational control, SA can adopt the modality of a *Sociedad Anónima Promotora de Inversión* (SAPI) which is more flexible for joint ventures and may allow the shares to be offered to the public if registered with the National Securities Registry.

*Suitability*
- Greenfield projects requiring growth and potential capital raising.
- Holding companies for corporate group structuring.
- Public companies, including those listed on the Mexican Stock Exchange.
- Businesses with diverse shareholder bases or plans to attract investors.

### S de RL or S de RL de CV
- Liability is also limited to capital contributions.
- Requires at least two and no more than 50 members (partners).
- No minimum capital required by law.
- Capital is divided into equity quotas (not shares), which are not freely transferable.
- May be also incorporated as a variable capital company (S de RL de CV).
- Governance is conducted by one or more managers.
- Certain decisions require unanimous consent of the partners.

*Suitability*
- Joint ventures, where control over partner admission is crucial.
- Closely held companies or family-owned businesses.
- Entities with a limited number of partners seeking simplified governance.

Finally, the SAS (*Sociedad por Acciones Simplificada*) is a company structure designed to simplify the incorporation process for micro and small businesses. It allows one or more individual shareholders, with liability limited to their contributions. The regime establishes an administrative process with full legal effects, and the total annual income cannot exceed MXN7,398,448.74 (approximately USD407,000), which is updated annually.

## 3.2 Incorporation Process
The main steps for incorporation are the following.

### Choice of Corporate Vehicle
Both the SA and the S de RL offer limited liability and a flexible governance structure.

### Corporate Name
Before incorporating a company, it is necessary to obtain a name authorisation permit from the Ministry of Economy, which typically takes between seven and 14 business days.

### Incorporation Procedure
The process involves the following key steps:

- drafting and approval of the by-laws;
- issuance of a notarised and apostilled or legalised power of attorney by shareholders/partners for incorporation;
- appointment of directors, managers, officers and statutory auditor (commissary); and
- granting of powers of attorney for daily operations.

### Execution and Issuance of Articles of Incorporation and Post-Incorporation Obligations for Operation of Company
Once all previous steps are completed, the notary will execute the articles of incorporation and proceed to register the company before (i) the Public Registry of Commerce, (ii) the Federal Taxpayers' Registry (including obtaining a tax ID and tax e-signature), and (iii) the National Foreign Investment Registry.

This stage may take between ten and 60 business days to complete.

### 3.3 Ongoing Reporting and Disclosure Obligations

Private companies in Mexico are subject to various reporting and disclosure obligations, including:

- modifications to articles of incorporation – any amendments must be formalised through a notarial public deed and registered with the Public Registry of Commerce;
- to the National RNIE:
  - (a) quarterly updates – companies must file updates with the RNIE for significant changes; and
  - (b) annual report – companies must submit a detailed report to the RNIE if their assets, liabilities or revenues exceed MXN110 million. This report is mandatory and failure to comply results in penalties;
- to the Secretariat of Economy:
  - (a) reports on capital and shareholder changes;
  - (b) notice of transfers and constitution of rights over shares;
- beneficial owner (UBO) registration – Tax Authority:
  - (a) notice of changes in shareholders; and
- SHCP (Secretariat of Finance and Public Credit):
  - (a) ultimate beneficiary registration.

### 3.4 Management Structures

Management structures available in the most common legal entities are the following.

#### One Individual

In an SA, this person is called the sole administrator and in an S de RL, they are called the single manager. A single individual is appointed to manage and represent the company. The sole administrator or manager has the authority granted by the incorporation deed and the law. This structure allows the individual to act independently, unless limitations are specified in the company's by-laws. This structure is ideal for companies that require quick decision-making, greater control and a simplified structure.

#### Board of Directors (SA) or Board of Managers (S de RL)

In an SA or S de RL, the company is typically managed by two or more individuals who make decisions collectively as a board. If there are three or more administrators, the by-laws will determine the rights of the minority in the appointment process. The minority holding at least 25% of the share capital has the right to appoint one board member. This threshold is reduced to 10% for companies with shares listed on the Stock Exchange. This structure is better suited for larger companies where diverse perspectives, shared responsibility, and supervision are necessary. Typically, a minimum of three directors/managers are assigned.

### 3.5 Directors', Officers' and Shareholders' Liability

The General Law of Commercial Companies requires administrators to act in the best interests of the company, ensuring proper management of financial and legal obligations, and protecting shareholder rights. Administrators are jointly responsible with the company for maintaining accurate financial records, ensuring compliance with legal requirements, and executing shareholder resolutions. If administrators are aware of any irregularities committed by previous administrators and fail to report them, they can be held liable for any resulting damages.

The corporate veil protects the company's assets and operations from external claims, separating the company's responsibilities from those of its shareholders. Administrators can also be held liable for favouring certain shareholders, gaining personal financial benefits or spreading false information. Shareholders cannot waive this responsibility through the company's by-laws, but the company can take out insurance or bonds to cover potential indemnifications, excluding cases of fraud or bad-faith actions.

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

Employment relationships in Mexico are governed by a comprehensive framework rooted in constitutional principles and developed through statutory law, regulations, case law (jurisprudence) and other binding sources. This framework reflects Mexico's strong tradition of labour protection and the public policy nature of labour law.

The foundation of Mexican labour law lies in Article 123 of the Mexican Constitution, which enshrines fundamental labour rights such as fair wages, maximum working hours, rest periods and the right to unionise.

Additionally, international treaties signed by Mexico serve as another source of law and play a significant role in shaping domestic labour standards, particularly the conventions of the International Labour Organization (ILO) and the labour provisions of the United States–Mexico–Canada Agreement (USMCA).

The Federal Labour Law (FLL) is the principal statute that regulates employment in Mexico. It governs both individual and collective employment relationships, establishing minimum benefits, termination standards, and mechanisms for dispute resolution. As a matter of public order, most of its provisions are mandatory and protective of employees.

Specific regulations, known as Mexican Official Standards, are issued by the federal government to complement the FLL, covering areas such as occupational health and safety, telework, psychosocial risk prevention and workplace inclusion of people with disabilities, among others.

All terms and conditions of employment must be set out in writing, as the burden of proof for demonstrating them rests with the employer.

## 4.2 Characteristics of Employment Contracts

Individual employment contracts are governed by the FLL, which establishes the minimum requirements for these documents.

The terms and conditions of employment must be set in writing and must include the following.

- Name, nationality, age, gender, marital status, Unique Population Registry Code (CURP), Federal Taxpayer Registry (RFC) and address, of both the employee and the employer.
- The type of employment relationship and whether it is subject to a probationary period or initial training.
- The service(s) to be provided.
- The place or places where the work will be performed.
- The duration of the workday.
- The method and amount of salary payment.
- The day and place of salary payment.
- An employee training clause.
- Other working conditions, such as rest days, vacation entitlements and any other terms agreed upon by the employer and the employee.
- The designation of beneficiaries for payment of accrued benefits upon the employee's death or disappearance resulting from a criminal act.

Since offer letters are not expressly regulated under the FLL, if a written employment contract is not executed, the offer letter will be considered as such.

The FLL regulates the permissible duration of employment contracts and recognises the following types:

- indefinite period;
- fixed term; and
- specific work or seasonal.

As a general rule, indefinite period contracts prevail in Mexico. Fixed-term, specific work and seasonal agreements are exceptions and must be duly justified to avoid reclassification as indefinite period contracts.

Employment contracts may include probationary period or initial training clauses under certain conditions.

## 4.3 Working Time

There is no distinction between types of employees regarding working hours and overtime eligibility. All employees are subject to the same maximum weekly working hours and are entitled to overtime pay when these limits are exceeded.

The FLL sets out three types of shifts.

- Day shift – 6:00 am to 8:00 pm – maximum 8 hours per day.
- Night shift – 8:00 pm to 6:00 am – maximum 7 hours per day.
- Mixed shift – combination of day and night periods; if the night portion exceeds 3.5 hours, it is deemed a night shift – maximum 7.5 hours per day.

Employees must have at least one paid day of rest for every six consecutive days worked.

Currently, the standard workweek is 48 hours. However, on 3 March 2026, a constitutional reform was enacted to gradually reduce the workweek under the following terms:

- 2026 – 48 hours (transition year);
- 2027 – 46 hours;
- 2028 – 44 hours;
- 2029 – 42 hours; and
- 2030 – 40 hours

Employees are entitled to a daily rest break of at least 30 minutes per shift. If taken on the employer's premises, the break is counted as part of working time.

Any hours exceeding the statutory weekly maximum are considered overtime and must be paid accordingly. Overtime cannot be substituted with other benefits. All employees, regardless of position, rank or classification, are entitled to overtime pay for hours actually worked beyond the legal maximum. Overtime must be performed voluntarily, under extraordinary circumstances, and compensated according to the law.

## 4.4 Termination of Employment Contracts

Mexico's labour law framework provides strong protections for employees, and the concept of "employment at will" does not exist.

Although employers may end the employment relationship at any time, it is important to distinguish between termination with cause and termination without cause.

### Termination With Cause

Article 47 of the FLL specifies the causes that justify termination without liability for the employer, such as gross misconduct, material damages and unjustified absences, among others.

The employer must have solid evidence to support the cause of termination. In the event of a dispute before labour authorities, employers have full burden of proof and lack of evidence may result in the dismissal being considered without cause, entitling the employee to full severance, including lost wages (capped at one year) plus legal interest.

If termination with cause is properly substantiated, the employee is entitled only to accrued benefits up to the termination date. The employer must initiate a specific termination process within 30 days from when it became aware of the grounds for dismissal.

### Termination Without Cause

If the employer terminates the employment relationship without just cause as defined by law, the employee is entitled to receive:

- a constitutional severance payment equal to 90 days of daily integrated salary;
- 20 days of daily integrated salary for each year of service;
- a seniority premium equivalent to 12 days' salary per year worked, capped at twice the minimum wage; and
- accrued salaries and benefits.

The integrated salary is comprised of the employee's base salary plus any benefits received for their work during the past 12 months prior termination.

No prior notice is required for termination.

All terminations must be documented in writing either through a mutual employment termination agreement or, depending on the type of termination, with the corresponding notices or supporting documentation.

### Collective Redundancies

The FLL defines collective redundancies as the termination of employment relationships resulting from the closure of companies or establishments, or from the permanent reduction of their operations.

The law recognises the following as valid grounds for termination in such cases: force majeure or fortuitous events, the physical or mental incapacity or death of the employer, evident infeasibility of continuing operations, depletion of the natural resource in extractive industries, and legally declared insolvency or bankruptcy.

In these situations, a specific legal process must be followed.

### 4.5 Employee Representations

There are specific circumstances and legal frameworks that trigger employee representation and require management to inform or consult with employees through their representatives.

The most common form of employee representation is through labour unions, which are voluntary organisations formed by employees to defend their collective interests. When a union is legally recognised by the labour authorities, it acts as the representative body for its members in collective bargaining agreements (CBAs), dispute resolution and other labour matters.

Employee representation is also required to form the mandatory joint committees established by the FLL, which include:

- Safety and Hygiene Joint Committee;
- Joint Committee for the Preparation of the General Seniority Chart;
- Joint Committee for Annual Profit Sharing;
- Training, Teaching, and Productivity Joint Committee (for employers with more than 50 employees); and
- Joint Committee for the Drafting of the Internal Work Regulations (if the company opts to have Internal Work Regulations).

All the committees mentioned above must have an equal number of employee and employer representatives.

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/ Employers

#### Employee Contributions

An employee is subject to two types of contributions – income tax and social charges, which, in turn, are integrated into social security fees and a retirement fund (AFORE).

##### *Income tax*

Income tax is calculated according to the gross income of the employee based on a progressive tax rate, which goes from 1.92% up to 35%. For this purpose, the employee must be a Mexican tax resident.

##### *Social charges*

*Social security fees*

While the employer is responsible for paying most of the social security fees, the employee is responsible for contributing part of this fee.

The social security fee is calculated based on a progressive rate but limited to 25 UMA's (UMA is the acronym for *Unidad de Medida y Actualización*, which is a daily quota used in Mexico for economic calculations adjusted by inflation on a yearly basis. Currently a UMA equivalent is about USD6.80).

*AFORE*

Part of the AFORE supported by the employee.

#### Employer Contributions

##### *Income tax*

While the employer is not the taxpayer for the employee's income tax, it is responsible for the calculation, withholding and payment of the portion of the employee's salary which constitutes income tax.

##### *Social charges*

*Social security fees*

The employer is the taxpayer of most of the social security fee, and it is also responsible for calculating and withholding the employee's social security fee.

*AFORE*

The employee discounts and contributes the retirement fee from the employee salary, but they are not considered a taxpayer to the retirement fund.

*Housing fund (INFONAVIT)*

The employer is responsible for the housing fund, which is approximately 5% of the salary paid.

*Payroll tax*

This is a local tax levied upon the payroll. Ordinarily it ranges from 2% to 3% of the salary paid to the employee and it is paid on a monthly basis.

It is important to mention that there might be other fees that the employer could pay such as union fees, profit sharing, etc, but they do not qualify as tax contributions; rather as labour obligations of the employer.

## 5.2 Taxes Applicable to Businesses

Mexican tax resident entities are subject to pay the following taxes.

### Income Tax

Mexican tax resident entities are subject to income tax on their profits at a 30% tax rate. Profit in general terms in calculated by deducting from gross income the allowed deductions such as investments, costs of goods sold, etc. Taxpayers should file an estimated tax return on a monthly basis based on the monthly income received and applying a profit coefficient to this monthly income. In addition, taxpayers should file annual tax returns no later than the third month to the end of the fiscal calendar year (ordinarily running from January 1st until December 31st).

#### *Dividends*

When distributing dividends, there are two taxes to consider.

- Corporate dividend tax – in Mexico, dividends paid out of profits on which the company has already paid the relevant tax are tax free from the corporate dividend tax. For this purpose, companies have to keep a record of the after profits account or *Cuenta de Utilidad Fiscal Neta* (CUFIN).
- Individual or foreign resident dividend tax – 10% withholding applies to dividends paid to individuals or foreign residents. However, in the case of foreign residents, this tax could be reduced depending on the double tax treaties executed by Mexico.

#### *Interest*

Interest is a deductible item in Mexico, but there are several limitations and requirements to observe.

- General requirements – interest would be deductible as long as it is used for strictly indispensable activities of the company.
- Net interest limit deduction – interest is deductible up to 30% of the adjusted taxable income.
- Preferential tax regime limit – interest paid to a related party that is a taxpayer in a preferential tax regime (tax haven) will not be deductible unless the taxpayer provides evidence that the transaction is at fair market value and it has a business purpose.
- Hybrid transaction – if a transaction is considered as an interest in Mexico, but it is not taxed abroad, it will not be deductible in Mexico.
- Back-to-back – if certain conditions are not met, interest paid to the creditor of a debt will not be deductible as it will be recharacterised as a dividend.
- Transfer pricing – interest paid should be at fair market value, otherwise the excess will not be deductible.

### Value Added Tax

Taxpayers are required to pay 16% VAT when, in national territory, they (i) transfer goods, (ii) render independent services, (iii) grant temporary use or exploitation of goods, or (iv) import goods or services. However, 0% VAT would apply if any of these activities are deemed to be exported. The taxpayer should pay the VAT on the difference between the VAT charged to its clients and the VAT charged by its suppliers. If the VAT paid to suppliers exceeds the VAT paid by the taxpayer to third party, then the difference shall be paid to the authorised offices.

## 5.3 Available Tax Credits/Incentives

Mexican Income Tax Law allows the following incentives.

- Individual taxpayers can deduct certain deposits in personal savings accounts, retirement insurance premiums, and qualifying mutual fund investments from taxable income, subject to an annual cap of MXN213,973.20 and 15% of the total income of the taxpayer, whichever is the lowest.
- Income tax deduction equal to 25% of salary paid to employees with qualifying disabilities or to elderly employees (65+).
- Special tax treatment for real estate investment trusts in Mexico that acquire, build or finance leased properties, or acquire rights to lease income.

- Income, gains, early disposals and capital returns are taxed or deferred for qualifying real estate trusts.
- A tax credit will be available to income taxpayers for contributions to domestic film production or distribution projects. The credit equals the contributed amount, up to 10% of the prior year's income tax. This can be used to offset annual and estimated tax; unused amounts may be carried forward for up to ten years.
- A tax incentive for cultural investment projects (theatrical productions, visual arts, dance, music, and literary works). The tax credit can be used to offset annual and estimated income tax capped at 10% of the prior year's tax. Unused credit can be carried forward for up to ten years.
- Real estate developers can deduct land acquisition costs in the purchase year if 85% of income is from developments. Upon sale, the full value is taxable, plus an additional 3% per elapsed year (inflation-adjusted). If not sold within three years, the updated cost becomes taxable. The rule applies to all current land assets for at least five years.
- Venture capital investments in unlisted Mexican companies can receive special tax treatment if made through qualifying Mexican trusts. These trusts must invest at least 80% of assets in the equity or loans of such companies, hold shares for a minimum of two years, distribute at least 80% of annual income within two months after year-end, and meet SAT regulatory requirements. Remaining assets must be in low-risk government or debt instruments.
- Production co-operatives composed solely of individuals may opt to calculate income tax under individual rules, with tax payment deferred until profits are distributed. If profits remain undistributed for over two years, tax must be paid. Co-operatives must maintain an updated taxable profit account, invest undistributed profits in employment- or membership-generating assets, and treat yields/advances to members as employment income. No estimated income tax payments are required.
- Taxpayers conducting R&D projects in Mexico may claim a 30% tax credit on incremental annual R&D expenses and investments versus the prior three-year average against income tax.
- Taxpayers may claim a tax credit for contributions to high-performance sports infrastructure and athlete programs in Mexico, capped at 10% of the prior year's income tax.
- Taxpayers can claim a tax credit equal to 30% of investments in publicly accessible, fixed electric vehicle charging equipment, applied against income tax for the year of investment. Unused credits can be carried forward for up to ten years but are lost if not applied in the eligible year. The credit is not to be included as taxable income.
- Foreign fiscally transparent entities managing private equity investments in Mexican companies may maintain tax transparency if specific requirements are met. These include: registering and documenting all members' tax residency with the SAT, being created in jurisdictions with broad information exchange agreements with Mexico, ensuring members are effective income beneficiaries, and requiring members to report related income. Non-compliance by any member results in loss of transparency proportional to their participation. This applies only to income from interest, dividends, capital gains or real estate leases.

Fiscal Incentives for Development Poles (PODEBIS) provides for an income tax exemption as follows: 0% ISR for the first three years; 50–90% reduction for the next three years if job creation goals are met. No VAT payable for four years. In addition, 100% immediate deduction of new fixed assets available until 2030; and 25% deduction for training and innovation on the increase in expenses in these areas, also valid until 2030.

### 5.4 Tax Consolidation

As of 2014, the Traditional Tax Consolidation regime disappeared and it was substituted with what it is known as the Optional Regime for Group Companies. Under this regime, losses are not consolidated but rather taxpayers may defer income tax for three years at the most.

### 5.5 Thin Capitalisation Rules and Other Limitations

Interest deductions are limited to net interest exceeding three times its adjusted tax profit when annual

accrued interest surpasses MXN20 million for the taxpayer and related group entities.

### 5.6 Transfer Pricing

Mexico's transfer pricing rules require that related-party transactions (domestic or cross-border) be carried out at arm's length under conditions that would have been agreed between independent parties in comparable transactions. Mexico must apply OECD-recognised methods (CUP, resale price, cost plus, profit split, residual profit split and TNMM), selecting the most appropriate.

### 5.7 Anti-Evasion Rules

There are anti-evasion rules in Mexico, such as back-to-back, thin capitalisation rules, principal purposes test, disclosure of reportable schemes, beneficial ownership rules, anti-hybrid mismatch rules, the EBDITA rule, CFC rules and transfer pricing rules.

### 5.8 Tariffs

In Mexico, the tariff system primarily consists of the general import tax, which must comply with the maximum levels set by the World Trade Organization (WTO). Additionally, there are preferential tariffs for goods coming from countries with which Mexico has free trade agreements (FTAs). Mexico has a network of trade agreements with approximately 50 countries.

Mexico imposes low tariffs; however, as noted in its most recent Trade Policy Review at the WTO, the tariffs on agricultural products are higher than those on non-agricultural products.

The recent policies and actions of the US government have had significant effects on global trade, including in Mexico. In the coming months, Mexico, Canada and the United States will conduct the USMCA review. The outcome of this review will be crucial for Mexico's international trade, as it may lead to regulatory adjustments and provide greater certainty for regional trade.

## 6. Competition Law

### 6.1 Merger Control Notification

Under the Federal Economic Competition Law (LFCE), mergers and acquisitions are deemed as concentrations and must be notified to the competition authority – the National Antitrust Commission (CNA) which succeeded the Federal Economic Competition Commission (COFECE) in October 2015 – when they meet the monetary thresholds set by the LFCE. Pre-merger notification is mandatory once any of the below thresholds are exceeded.

- Transaction value – when the transaction, or series of transactions, irrespective of the place of execution, result in a direct or indirect amount in Mexico of more than 16 million measurement units (UMA), currently equivalent to MXN1,876,960,000 (approximately USD108,196,476 at an exchange rate of MXN17.3477 per US dollar, according to the Bank of Mexico exchange rate on 18 Mat 2026).
- Size of the target – when the transaction or series of transactions result in the accumulation of 30% or more of the assets or shares of an economic agent whose assets or annual sales in Mexico exceed 16 million UMAs, currently equivalent to MXN1,876,960,000 (approximately USD108,196,476).
- Size of the parties – when the transaction or series of transactions imply an aggregation in Mexico of assets or share capital that exceed 7.4 million UMAs, currently equivalent to MXN868,094,000 (approximately USD50,040,870), and the parties involved, either individually or combined, have assets or annual sales in Mexico exceeding 40 million UMAs, equivalent to MXN4,692,400,000 (approximately USD242,529,474).

#### Types of Transactions Covered

The LFCE defines concentration as the merger, acquisition of control, or any act through which companies, associations, shares, partnership interests, trusts or assets in general are joined together, and carried out among competitors, suppliers, clients or any other economic agents. It includes acquisition of shares, equity interests, assets and joint venture agreements, among others.

#### Additional Considerations

- Gun-jumping prohibition – the transaction cannot be closed, and no control or influence can be transferred until clearance is granted. Failure to notify a transaction that exceeds any of the statu-

tory thresholds may result in fines of up to 8% of the economic agent's revenues, and the CNA may order the reversal of the transaction.
- Effects doctrine – under the effects doctrine, a transaction abroad must be notified in Mexico if it meets the monetary thresholds and has effects in Mexico. Although there is no explicit "local effects" test, the thresholds require a Mexican nexus (eg, Mexican assets, equity or sales). Thus, foreign-to-foreign deals trigger filing if they involve Mexican assets or equity, or if the parties' sales in Mexico exceed the thresholds. No filing is required if the target has no

## 6.2 Merger Control Procedure

The following are the main procedural steps and typical timing for merger notifications.

### Pre-Filing Preparation

The notifying parties must first assess whether the transaction falls within the definition of "concentration" under the LFCE and whether any of the statutory thresholds are triggered.

### Filing and Completeness Review

The notification must be submitted electronically, including all documentation required under the LFCE and its Regulations. Upon receipt, the CNA conducts a completeness review, typically within ten business days. If the authority determines that the filing is incomplete, it may issue an initial information request, commonly referred to as the Basic RFI. Once the Basic RFI is responded to, should the CNA's merger department conclude that additional data or clarification is required, a second request, known as the Additional RFI, may follow within 15 business days. These RFIs are common and extend the review process, though they do not signal a negative outcome. The 30-day term to issue a final resolution does not begin until all requested information has been provided in full and the notification is deemed complete by the CNA.

### Substantive Review

Once the notification is deemed complete, the CNA has 30 business days to issue a decision. In complex cases, this period may extend by up to 20 additional business days.

### Decision and Clearance

The CNA may authorise concentration unconditionally, approve it subject to remedies, or prohibit the transaction if it determines that it would substantially lessen competition. The decision issued by the CNA is valid for six months, extendable for an additional six months upon request.

Until clearance is granted and throughout the entire review process, the parties are prohibited from closing or implementing the transaction.

### Timing

Simple transactions are generally cleared within two to three months for straightforward cases. Cases requiring additional data or market analysis typically take three to four months to account for economic evidence, market definition and responses to the authority. More complex transactions involving remedies or in-depth reviews may extend to six to eight months or longer.

## 6.3 Cartels

Cartels are classified as absolute monopolistic practices and are prohibited per se. The LFCE prohibits any contract, agreement, arrangement, combination or exchanges of information between actual or potential competitors that have the object or effect of: fixing or manipulating prices; restricting output or supply; allocating markets, customers or suppliers; or co-ordinating bids or abstaining from bidding in public procurements.

### Sanctions

Sanctions for cartel conduct in Mexico are severe and aim to deter and remedy anti-competitive behaviour. The CNA may impose administrative fines of up to 15% of an economic agent's annual revenues and order the immediate cessation of the conduct. Individuals involved can face five to ten years of imprisonment, while officers and directors may be disqualified from serving as managers, board members or similar roles for up to five years.

Additional penalties include exclusion from public procurement and civil liability. The CNA can directly bar companies involved in cartel practices from par-

ticipating in public procurement processes for up to five years.

### Leniency Programme

Mexico's leniency programme allows any participant to voluntarily disclose its involvement in an absolute monopolistic practice in exchange for significant benefits, including reduced fines, immunity from criminal prosecution, protection against disqualification sanctions, and exemption from collective legal actions brought by the CNA. Applicants must cease participation immediately and fully assist the CNA throughout the case.

The first applicant providing sufficient evidence before the investigation formally begins may receive the minimum fine (as low as USD19), while subsequent applicants filing before the third extension can obtain reductions of 50%, 30% or 20%, depending on their order. All successful applicants are granted full immunity from criminal prosecution, disqualification sanctions and collective civil actions.

### Jurisdiction and Effects Doctrine

Although not frequently invoked, the CNA may apply an effects-based standard, asserting jurisdiction over cartel conduct regardless of where it occurs. Practices carried out within or outside Mexico can fall under its authority when they produce, or can produce, actual or potential effects in Mexican markets.

## 6.4 Abuse of Dominant Position

The LFCE prohibits abuses of dominance, also known as relative monopolistic practices. These provisions apply to unilateral behaviour by one or more economic agents with substantial market power that has the object or effect of unduly displacing competitors, impeding their access to the market, establishing exclusive advantages or unduly restricting the ability of other economic agents to compete.

### Determining Dominance in Mexico

Holding a dominant position is not in itself illegal. It is the abuse of that dominant position that is prohibited. The CNA determines whether a company holds a dominant position – referred to as substantial market power – through a structured, case-specific analysis.

A company is deemed to have substantial market power when it can unilaterally influence market conditions in a relevant market, by setting prices or restricting supply, without facing effective competitive constraints.

### Relevant Market

Defining the relevant market requires considering both product and geographic dimensions. The product market covers goods or services that consumers see as interchangeable based on features, price and use, while the geographic market identifies the area where these substitutes are offered under comparable price and access conditions.

### Types of Conduct Deemed as Abuse of Dominance

Restricted practices include exclusive dealing or distribution arrangements, resale price maintenance, tying, exclusive supply obligations, refusals to deal, collective boycotts, predatory pricing, loyalty rebates, cross-subsidisation, unjustified price discrimination, denial of access to essential inputs, margin squeezes, and raising rivals' costs or foreclosing competition.

### Sanctions

The CNA may impose fines of up to 10% of the economic agent's revenues, as well as any measures necessary to eliminate or remedy the anti-competitive conduct.

### Remedies

When a company with substantial market power engages in unilateral conduct that violates antitrust laws, the CNA can impose behavioural or structural remedies to restore competition and prevent future infringements.

The LFCE also allows companies under investigation for abuse of dominance to offer voluntary remedies, known as Commitments, to address the concerns identified by the Investigative Authority. Commitments are designed to cease or correct the conduct and can significantly reduce fines. They may be submitted during the investigation phase, where viable commitments can lead to a full fine reduction and even closure of the case without liability, or during the trial-like stage, where acknowledging the infringement may result in up to a 50% fine reduction.

## 7. Intellectual Property

### 7.1 Patents

In Mexico, inventions are defined as any human creation that allows the transformation of the matter or energy in nature for their use by humanity and the satisfaction of specific needs. New inventions resulting from an inventive activity and susceptible to industrial exploitation may be subject to a patent.

Patents protect technical solutions to a problem and confer on their holders the exclusive right to exploit the invention and to prevent others, without authorisation, from making, using, selling, offering for sale, or importing the patented product, as well as from using the patented process or importing into Mexico products directly obtained from such process. Certain subject matter is excluded from patentability, such as discoveries, scientific theories, mathematical methods, surgical or therapeutic methods, and inventions contrary to public order or morality.

A patent is an exclusive right granted by the state to an inventor over their invention, granting them the right to prevent third parties from manufacturing, using or selling the invention without their consent.

#### Grant Procedure

A right arises with a granted patent/registration through the filing of a patent application before the Mexican Institute of Industrial Property (*Instituto Mexicano de la Propiedad Industrial*, or IMPI). The application must contain all relevant information regarding the inventor and, if the right has been assigned, the relevant information of the assignee. It must also contain formal documents such as the assignment and the power of attorney document. In addition, it is possible to claim priority from a previous application filed in a different country that is a member of the Paris Convention for the Protection of Industrial Property,

The application may also be filed as a National Phase of a Patent Co-Operation Treaty (PCT) Patent Application, in terms of which Mexico is a 30-month term country. The application is studied by a formal examiner at IMPI, who will determine if there are any formal documents missing and if all documents are in good order. The application must contain the invention's specification, claims and drawings, in Spanish. The application must be published in the Mexican Industrial Property Gazette as soon as possible following the expiry of a period of 18 months from the national filing date for Convention applications, provided that all formalities are deemed complete. After the publication has taken place and a two-month period for third-party observations has passed, the application is studied as soon as possible by a technical examiner at IMPI and, if deemed necessary, an official action is issued, requesting clarification or changes to the application. This may be done up to four times.

#### Timeline for Grant Procedure

The grant procedure currently takes three to five years from the filing date.

A patent grants a right of exclusive use over an invention for 20 years counted from the filing of the patent application. For PCT applications, the effective filing date in Mexico is the date of filing of the international patent application.

#### Term Extensions

When, during the prosecution of a patent application, there was an unreasonable delay attributable to IMPI, a supplementary certificate can be sought for IMPI to adjust the term of the patent.

According to the former North American Free Trade Agreement (NAFTA), now replaced by the United States-Mexico-Canada Agreement (USMCA), the owner of a patent could seek compensation for lost patent term time if IMPI took more than three years to grant the patent. The NAFTA treaty is enforced on all patent applications filed before 1 July 2020. In this regard, the authors' firm has successfully obtained a favourable decision in which, according to NAFTA, the lost enforceable time of a patent filed before 1 July 2020 was compensated with three additional years. This new precedent has already been published in the Official Gazette dated 8 January 2021 as a relevant case entitled: "Patents. When there are delays attributable to the administrative authority in a patent's approval, its validity may not be less than 17 years counted from the date of its granting." The precedent was issued by the Supreme Court of Justice in the

Bayer case handled by the authors' firm, and is in full force and effect for all patents filed before 1 July 2020.

### Rights

The patent holder has the right to an injunction and may claim damages from third parties even if the illegitimate use of their patent was made before granting, provided that the application had already been published.

### Damages

A rights-holder may claim damages through two different procedures: directly before the judiciary (either federal or state), by means of a civil or commercial action and without the need to obtain a definite infringement ruling to make the claim, or through IMPI, through a motion.

If a counterclaim for the annulment of the respective patent, registration or publication is filed, the court shall suspend the procedure until the respective judgment is entered.

To warrant the damages before the judiciary or IMPI, it is necessary to demonstrate wrongful conduct, the harm caused and a direct causal relationship between the two.

## 7.2 Trade Marks

Trade marks are defined in Mexican law as any signs perceptible through the senses, susceptible of being represented so as to determine the object of protection and identify products or services. This includes letters and numbers, designs, three-dimensional shapes, sounds, scents, trade dress and combinations thereof.

### Registration Process

To obtain a right of exclusive use over a trade mark, it is necessary to register it before the IMPI by submitting an application form and making a payment of government fees. The IMPI will take approximately ten days to publish the trade mark application in the Industrial Property Gazette. This will start a period of one month for any third party to oppose the application. With opposition or without it, the examiner of the Mexican Trade Mark Office will take approximately four to six months to conduct an examination.

### Use

Once a trade mark is registered, the owner has a duty to use it in Mexico. Unlike other jurisdictions, use is not necessary to obtain the registration, only to maintain it.

Upon the third year of the registration of the trade mark, a period of three months will run in which the owner of the registration must submit a statement under oath listing the specific products or services in which the trade mark is used. The coverage of products or services covered by the trade mark registration will be limited to only those for which use is timely declared. If no use is declared at all, the registration will be lost.

In addition, use needs to be declared with every renewal.

Use means that the products or services identified by the trade mark must be available to consumers in Mexico.

### Term

A trade mark registration will last ten years from its grant. It can be renewed for identical periods of time, provided that the owner files the renewal forms in time and declares under oath that the trade mark is in use.

### Assignments and Licences

A trade mark registration may be assigned. However, it is necessary to record the assignment with the IMPI in order for the new owner to be able to act against third parties.

### Enforcement

The owner of a registered trade mark has a right of exclusive use over it. The unauthorised use of identical or confusingly similar trade marks for identical or similar goods and services constitutes infringement and allows the owner of the registration to initiate a proceeding before the IMPI to have the infringer punished with a substantial fine. In addition, preliminary injunctions can be sought to halt the alleged infringing conduct. The injunctions can become permanent in the final decision of the case.

To obtain an injunction, a prima facie current or imminent infringement must be shown.

In addition, awards for damages can be sought in two ways. First, upon the successful completion of a trade mark infringement proceeding, the plaintiff can ask the IMPI to initiate an ancillary proceeding to award damages. Alternatively, the plaintiff may resort directly to a civil judge and ask for damages to be awarded.

Lastly, certain forms of trade mark infringement, particularly those performed on a commercial scale, are federal crimes punishable by fines and up to ten years of imprisonment. It is possible for the owner of the infringed trade mark registration to also submit a criminal complaint to initiate an investigative process by the General Attorney's Office that may culminate in a criminal conviction.

It is important to consider that ambush marketing has been codified as a specific form of trade mark infringement in a recent legal reform.

## 7.3 Industrial Designs

An industrial design in Mexico is understood as any combination of shapes, lines, colours, or three-dimensional forms incorporated into a product that give it a special appearance without altering its function. The law recognises two categories: industrial drawings, which are combinations of figures, lines or colours incorporated into a product to give it a distinctive appearance, and industrial models, which are three-dimensional shapes that serve as patterns for manufacturing a product, giving it a special appearance.

The term of protection for an industrial design is five years from the filing date, renewable for successive periods of the same duration up to a maximum of 25 years. Renewal fees must be paid within the established time limits, and a six-month grace period is available subject to a surcharge.

Registration is carried out before the IMPI. The process begins with the filing of an application, either electronically or in person, which must include the applicant's information, drawings or photographs of the design, a description and proof of payment of fees.

The registration of an industrial design grants its holder the exclusive right to use it and to prevent third parties from manufacturing, selling or importing products incorporating the design without authorisation. Enforcement is handled through IMPI, which has authority to conduct inspections, order the seizure of infringing goods, impose administrative sanctions, and issue precautionary measures to stop infringing acts.

Remedies available to the holder of a registered industrial design include injunctions, the seizure and destruction of infringing goods, the imposition of administrative fines, and the possibility of claiming damages before the courts once IMPI's infringement resolution is final, with the law establishing a minimum compensation equivalent to 40% of the retail price of each infringing product.

## 7.4 Copyright

Mexico protects all works of original creation and is party to the Berne Convention. As such, all productions in the literary, scientific and artistic fields can be subject to copyright protection in Mexico.

### Term of Protection

Copyright protection in Mexico will last for the life of the author plus 100 years. The author in Mexico is always an individual and it can never be a legal entity, though a legal entity could own the copyright through an assignment or a work-for-hire agreement.

### Ownership

In principle, the author of the work is the original owner of the copyright. For works made for hire under a written agreement, the owner will be the party that commissions the work.

### Assignments

Copyright assignments in Mexico must be made invariably in writing. Verbal assignments are null. The assignment must foresee a payment in favour of the assignor.

### Registration

Mexico is a party to the Berne Convention and protects works from the moment of fixation. However, it is possible to record works and agreements related

to copyright with the National Copyright Institute. The facts mentioned in certificates issued by this government agency are presumed to be true, which facilitates enforcement by giving the potential plaintiff a document that can attest to the existence and ownership of the copyright. Registration is simple and the analysis is just on the proper filling of the forms and the submission of the appropriate documents. Usually registration takes four to eight weeks at most.

### Moral Rights

Mexico recognises moral rights of the author. These are perpetually bound to the author and their heirs, and they cannot be assigned or waived.

### Related Rights

Mexico recognises related rights of performers and interpreters, producers of sound recordings, producers of video recordings, book editors and broadcasters.

### Enforcement

The owner of a copyright can initiate proceedings before the IMPI to have an infringer punished with a fine. Preliminary injunctions can be sought by showing a prima facie infringement is occurring or is imminent and posting a bond to cover the damages caused to the defendant if the plaintiff does not prevail on the merits. Similarly to the enforcement of a trade mark, the defendant is allowed to contest the injunction by posting a bond. The injunction may become permanent in the final decision of the case.

In addition to the fine, the plaintiff may seek an award for damages from a civil judge.

Certain infringements made for profit can also constitute federal crimes.

### Limitations and Defences

Mexico does not have the “fair use” defence which is available in other jurisdictions. The cases in which a work may be reproduced or communicated without authorisation from the copyright holder are very limited.

### Monuments and Indigenous Communities

Works declared as monuments by the Mexican government, including those of Diego Rivera and Frida Kahlo cannot be reproduced without authorisation from either the National Institute of Anthropology and History or the National Institute of Fine Arts, even if the copyright term has expired.

The legal landscape for works originating from indigenous communities has changed substantially in recent years. Today, works that incorporate elements from the identity or culture of indigenous communities cannot be legally used without authorisation of the respective community, even if they do not have an identifiable author.

## 7.5 Others

### Reservations of Rights

Mexico has a sui generis form of protection that can be granted over the following:

- titles of periodical publications, both printed and electronic;
- titles of periodic broadcasts such as television shows and radio shows;
- names and characteristics of characters;
- artistic names or stage names for individuals or groups; and
- novel mechanisms for promoting products or services.

This form of protection is a reservation of rights which is granted by the National Copyright Institute by filing an application. The protection will last five renewable years for characters and artistic names, five non-renewable years for mechanisms for promoting products or services and one year for titles.

In the particular case of printed publications such as magazines, the reservation of rights is a requirement to obtain the ISSN number.

### Databases and Software

Software is protected just as any other copyrighted work. Non-original databases are protected for five years. Databases that are original due to the selection of the contents or disposition are protected just like any other work.

### Industrial Secrets

Mexico recognises industrial secrets as any information with an industrial or commercial application that is kept confidential, and which provides an economic or competitive advantage in performing economic activities. Appropriate measures to protect its confidentiality and avoid unauthorised accesses must have been taken.

If information meets this definition, it will enjoy enhanced legal protection in several ways. Misappropriation of an industrial secret is punishable by a fine imposed by the IMPI. Misappropriating or disclosing an industrial secret constitutes a federal crime punishable by up to six years in prison and a fine.

When an industrial secret is presented to a judge or other government authority as part of a legal process, they are bound to adopt measures to avoid disclosure.

Several criminal codes in Mexico forbid the disclosure of information that an individual may come to know as part of their professional activities. Therefore, even if unduly disclosed information does not meet the definition of industrial secret, it may still be possible to take legal action against such disclosure.

## 8. Data Protection

### 8.1 Applicable Regulations

Mexico has undergone significant legal and institutional reforms that have reshaped its data protection framework and supervisory structure. These changes reflect a transition from constitutionally autonomous authority to a model integrated within the federal public administration.

The most relevant development is the Constitutional Reform published in December 2024, pursuant to which the National Institute of Transparency, Access to Information and Protection of Personal Data (INAI), formerly an autonomous constitutional body, was dissolved. Its functions were reassigned to the *Secretaría Anticorrupción y Buen Gobierno* (Ministry of Anti-Corruption and Good Governance), which now acts as the competent authority for the enforcement of personal data protection laws in the private sector.

Following this institutional reform, the updated Federal Law on the Protection of Personal Data Held by Private Parties (LFPDPPP), entered into force on 21 March 2025. The law maintains the core principles of the prior regime (including lawfulness, consent, information, purpose limitation, proportionality, and accountability), while introducing adjustments aligned with the new supervisory model and enforcement structure.

The LFPDPPP is complemented by secondary regulation, including the Privacy Notice Guidelines (*Lineamientos del Aviso de Privacidad*), which remain in force and continue to govern transparency and information obligations toward data subjects.

It should be noted, however, that following the entry into force of the 2025 LFPDPPP, no updated implementing regulation has yet been issued. While the 2011 Regulations of the LFPDPPP (*Reglamento de la Ley Federal de Protección de Datos Personales en Posesión de los Particulares*) have not been formally abrogated, their applicability must be assessed on a provision-by-provision basis, as certain provisions may be incompatible with or superseded by the current statutory framework. Accordingly, reliance on the 2011 Regulations as a primary compliance reference warrants caution.

The Executive Branch has been granted authority to issue updated secondary regulation, and the competent authority has publicly indicated that further regulatory developments – including potential legislative and regulatory updates – are expected.

### 8.2 Geographical Scope

Mexican data protection legislation applies to the processing of personal data carried out by private entities established in Mexico, as well as to processing activities subject to Mexican law under applicable jurisdictional criteria. As further developed below, the territorial reach of the LFPDPPP extends beyond Mexico's borders in specific circumstances expressly defined under the law and its implementing provisions.

The LFPDPPP, as amended and currently in force since 21 March 2025, constitutes the primary statutory framework governing the processing of personal

data by private individuals and entities in Mexico. The law is of public order and general observance throughout Mexican territory.

While the LFPDPPP's principal field of application encompasses private entities established and operating in Mexico, its scope is not strictly limited to domestic processing activities. Article 4 of the 2011 Implementing Regulations – to the extent applicable under the current statutory framework, as further discussed below – sets out four specific circumstances under which the law applies regardless of where the data controller is domiciled: (i) where processing is carried out through an establishment of the controller located in Mexico; (ii) where processing is performed by a processor, irrespective of its location, on behalf of a controller established in Mexico; (iii) where a controller not established in Mexico is nonetheless subject to Mexican law by virtue of international law or through the execution of a contract; or (iv) where a controller not established in Mexico uses means located in Mexican territory to process personal data, except where such means are used solely for transit purposes.

It follows that the mere fact that personal data is stored or processed outside Mexico does not, in and of itself, exempt an entity from compliance with the LFPDPPP, provided that one of the above jurisdictional nexuses is present. Entities operating in cross-border contexts are accordingly advised to conduct a careful analysis of their data processing activities considering these criteria.

Entities falling within the scope of the LFPDPPP are subject to a comprehensive set of obligations, including – among others – the duty to provide a privacy notice (*aviso de privacidad*) to data subjects and, where required, to obtain their consent prior to processing. The applicable form of consent varies depending on the nature of the data and the specific processing purpose: tacit consent operates as the general rule for ordinary personal data; express consent is required for financial personal data and certain specific processing activities; express written consent is mandated in particular circumstances and when processing involves sensitive personal data. Consent requirements are not, however, absolute: the LFPDPPP expressly provides for exceptions under which personal data may be processed without the data subject's consent, including – among others – where processing is necessary for the performance of a legal obligation incumbent upon the controller, where the data has been made manifestly public by the data subject, or where processing is required for the maintenance or fulfilment of a legal relationship between the controller and the data subject. In addition, controllers must observe the core principles of lawfulness, loyalty, purpose limitation, data quality, proportionality, accountability, and transparency throughout the entire lifecycle of processing.

### 8.3 Role and Authority of the Data Protection Agency

Following the institutional reform described in **8.1 Applicable Regulations**, the *Secretaría Anticorrupción y Buen Gobierno* (SABG, Ministry of Anti-Corruption and Good Governance) assumed, as of 21 March 2025, the functions previously held by the INAI as the competent authority for the enforcement of personal data protection legislation in the private sector.

Unlike its predecessor, the SABG is not an autonomous constitutional body – it operates within the federal public administration and reports directly to the Executive Branch. This structural change has drawn attention from privacy practitioners and civil society organisations, who have raised concerns regarding the institutional independence of the supervisory authority and its capacity to act impartially in cases involving government-related entities. These concerns are relevant context for any assessment of enforcement risk and regulatory predictability under the current framework.

The SABG's functions in data protection matters include, among others: receiving and resolving complaints filed by data subjects in connection with the exercise of their access, rectification, cancellation and objection rights (*derechos ARCO*); investigating potential violations of the LFPDPPP; imposing administrative sanctions on controllers found to be in breach of applicable obligations; issuing guidelines, recommendations, and best practice frameworks; and promoting awareness of data protection rights among both private entities and the general public.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

The following upcoming legal reforms should be considered by foreign nationals concerning their investments and business in Mexico.

#### Reform to the Judiciary

President Sheinbaum's reform to the judiciary was enacted in September 2024, and the first round of elections for Supreme Court justices, federal and state court judges and magistrates took place in June 2025. The public participation for this first round of elections was very low – between 12–13% of the List of Registered Voters, nationwide, and it is expected that the second round of elections (scheduled for the summer of 2027) will have a similar result. Considering this, there is a legitimacy issue surrounding the results of the elections.

The full impact of the reform remains to be seen; however, parties are already responding by favouring arbitration clauses over choice of court provisions to avoid the uncertainty of litigating before domestic courts.

#### Electoral Reform

On 26 March 2026, President Sheinbaum presented to the Mexican Congress her second attempt of the new electoral reform project, which was approved in its majority by the Mexican Congress and the majority of the Mexican states in April 2026, and is scheduled to be published in the coming days.

The reform amends Articles 115, 116 and 134 of the Mexican Constitution. Key changes include: (i) a 15% reduction of the INE's budget for local electoral campaigns; (ii) reduction of pensions for senior government officials so they do not exceed the President's; (iii) reduction of officials in local municipalities; and (iv) stricter limits to prevent nepotism and indefinite tenure within electoral bodies.

The electoral reform is expected to be published imminently.

#### Reform to the Mexican Antitrust Law

In July 2025, the Mexican Congress approved a comprehensive reform of the antitrust legal framework in Mexico, including, among others: (i) the creation of the National Antitrust Commission (CNA), which formally began acting in October 2025, (ii) the confirmation and appointment of new commissioners, (iii) lowering thresholds for merger notification, (iv) the recognition of compliance programs as mitigating factors, (v) the establishment of a procedure to protect attorney-client communications, and (vi) the increase of certain sanctions, including higher maximum fines for absolute monopolistic practices, relative monopolistic practices, unlawful concentrations, unauthorised concentrations and failure to notify reportable transactions.

Proceedings initiated before the former Federal Economic Competition Commission (COFECE) and the Federal Telecommunications Institute (IFT), limited to matters of economic competition, preponderance and cross-ownership, other than the investigations conducted by the investigative authority, will continue to be heard under the legislation in force at the time of their initiation. This includes, among others, trial-like proceedings, merger notifications and review procedures.

In addition, on 19 December 2025, a new tariff regime for merger filings was enacted. Under this regime, filing fees are determined based on the estimated maximum transaction value in Mexico and range from MXN882,158 to MXN6,015,098, excluding VAT.

#### Reform to the Mexican Intellectual Property Law

In April 2026 a decree was published amending the Federal Law for the Protection of Industrial Property. Key changes include the following.

- Faster deadlines for IMPI decisions – the reform sets maximum timeframes for IMPI to resolve applications and proceedings, including patents, trade marks and geographical indications, reducing delays and improving certainty for applicants.
- New types of trade marks, including:
  (a) position marks
  (b) motion marks; and
  (c) multimedia marks.

- Stronger bad-faith controls – applicants filing or renewing trade marks must declare under oath that the filing is not deceptive and not made in bad faith.
- Protection of indigenous and Afro-Mexican cultural heritage – marks connected to the cultural heritage, traditional knowledge or expressions of indigenous and Afro-Mexican communities may be refused unless proper authorisation exists.
- New patent tools – the reform adds:
  (a) provisional patent applications, allowing an early filing date with minimal requirements;
  (b) restoration of priority rights in some missed-deadline cases;
  (c) reinstatement mechanisms when certain deadlines are missed; and
  (d) supplementary protection certificates for pharmaceutical patents, compensating for unjustified delays in COFEPRIS marketing authorisations.
- Ownership claims instead of nullity – a new administrative procedure allows a rightful owner to claim ownership of a patent or registration granted to the wrong person, rather than only seeking invalidation.
- Technology transfer focus – the law now expressly promotes technology transfer.
- Artificial intelligence liability – industrial property infringements committed through AI tools remain sanctionable.
- Ambush marketing becomes an infringement – creating a false appearance of sponsorship or official association with major events is now expressly classified as an infringement.
- Expanded digital enforcement – IMPI may process and resolve infringement proceedings electronically, which should streamline enforcement actions.

### Proposed Law for the Promotion of Investment in Strategic Infrastructure for Development With Well-Being

In April 2026, President Sheinbaum submitted to the Mexican Chamber of Deputies a bill to enact the Law for the Promotion of Investment in Strategic Infrastructure for Development with Well-Being and amend the Federal Budget and Fiscal Responsibility Law.

The proposed law seeks to facilitate the planning, financing, construction, modernisation and operation of strategic infrastructure projects that contribute to national development, economic growth and social well-being. It is designed as a nationwide framework for co-ordinated participation by the public, private and social sectors.

The bill promotes collaboration between government and private investors through (i) long-term contracts; (ii) joint investment schemes; (iii) risk-sharing models; and (iv) flexible participation structures (majority, minority, or equal public/private stakes). Projects may be structured through special purpose vehicles, such as trusts, corporations, or other investment vehicles dedicated exclusively to financing strategic infrastructure and may access capital markets.

# Trends and Developments

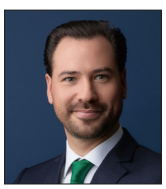
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**Villar & Villar Abogados, S.C.** is a boutique, full-service Mexican law firm founded in 2007, with offices in Querétaro and Mexico City and a team capable of handling matters throughout the Mexican Republic. Born from the union of a select group of experienced specialists, the firm has built a reputation for providing personalised, high-quality legal counsel that combines the depth of a specialist boutique with the comprehensive reach of a full-service practice. The firm advises national and international clients across corporate, M&A, labour and social security, real estate, compliance, arbitration, tax, immigration, privacy and data protection, environmental/ESG and intellectual property.

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## Mexico's Labour Law Reforms: Working Hours, Gender Equality and Workplace Wellbeing

### *Introduction*

Mexico's labour market is in the middle of one of the most far-reaching transformations in its modern history and every company operating in the country needs to be ready.

In just 12 months, three landmark legislative changes have redefined what it means to employ people in Mexico. These reforms are not happening in isolation: they are the result of a deliberate policy shift driven by trade commitments, international labour standards, and a domestic agenda focused on raising the floor for workers' rights.

The United States-Mexico-Canada Agreement (USMCA, known in Mexico as the T-MEC), which entered into force in 2020, was the turning point. For the first time, a major trade agreement binding Mexico required not just declarations about labour rights, but concrete, verifiable reforms – backed by dispute-resolution mechanisms with real commercial consequences. Freedom of association, collective bargaining, the elimination of workplace discrimination, and occupational health standards all became conditions of trade access, not aspirations.

The result has been a cascade of reforms to the Federal Labour Law (*Ley Federal del Trabajo* or LFT) and, in 2026, to the Mexican Constitution itself. For companies operating in Mexico, the message is clear: adapt proactively, or face the cost of reactive, last-minute compliance. These reforms do not just raise costs – they create real opportunities for businesses that invest in modern, efficient and equitable workplaces.

Three reforms, in particular, demand immediate attention.

- The 40-hour workweek reform – a constitutional change reducing maximum working hours – Mexico's biggest labour reform in decades.
- Gender equality and workplace violence reform – new legal duties for employers on discrimination and workplace violence, effective January 2026.
- The Ergonomic Seating Regulation (*Ley Silla*) – new rights for workers who stand during their shifts, in force since July 2025.

### *The 40-hour workweek: Mexico's biggest labour reform in decades*

#### *What changed – and why it matters*

On 3 March 2026, Mexico made constitutional history. A decree published in the Official Gazette of the Federation (DOF) amended Article 123 of the Mexican Constitution to establish a maximum workweek of 40 hours – down from the 48-hour limit that had been in place for nearly a century. This was followed on 1 May 2026 by the corresponding amendment to the Federal Labour Law, giving the reform full operational effect.

To put this in perspective: Mexico had one of the longest statutory maximum workweeks among OECD nations. The reform aligns the country with ILO standards and brings it closer to France (35 hours), Ger-

many (34–37 hours average), and comparable economies such as Chile and Colombia, which have already made similar moves with phased reductions.

*The phased timeline – what your business needs to know now*

The reduction does not happen overnight. The Constitution establishes a clear, year-by-year schedule that gives businesses time to prepare:

- 2026 – 48 hours per week (no change yet – the current limit remains in force);
- 2027 – 46 hours per week (effective 1 January 2027);
- 2028 – 44 hours per week (effective 1 January 2028);
- 2029 – 42 hours per week (effective 1 January 2029); and
- 2030 – 40 hours per week (the final constitutional target).

One rule is absolute: no worker's wages, salaries or benefits may be reduced as a result of the shorter workweek. This protection cannot be waived by any contract or agreement.

*Overtime – the new rules*

The reform also overhauled the rules on overtime, and they are significantly more expensive for employers who rely on extra hours. The new framework is:

- weekly cap – a maximum of 12 hours of overtime per week;
- daily limit – no more than four hours of overtime per day, across no more than four days per week;
- double pay – overtime within the 12-hour weekly limit must be paid at double the regular rate;
- triple pay – overtime exceeding 12 hours per week must be paid at triple the regular rate, though this excess may not exceed four additional hours per week;
- daily maximum – combined regular and overtime hours may never exceed 12 hours in a single working day; and
- workers under 18 – the absolute prohibition on overtime work remains fully in force.

*What this means for your business*

The financial impact is real and, for some sectors, significant. Because wages cannot be reduced, companies in labour-intensive industries will effectively pay the same salary for fewer regular hours, increasing the cost per hour worked. By 2030, this could represent an increase of up to 25% in hourly labour costs for businesses that do not offset the change with productivity improvements.

The sectors most affected include manufacturing, logistics, retail, food and beverage, and hospitality, industries where workweeks of 48 hours are common and where more than 13 million workers will be directly affected. For service and technology companies already operating on shorter weeks, the immediate financial impact is more limited, but compliance obligations apply to all.

The new overtime cost structure, at double or triple the regular rate, simultaneously makes the systematic use of overtime as a low-cost operational tool unviable. Businesses that have relied on overtime as a flexible buffer will need to redesign their workforce models.

Key actions for employers:

- audit your working hours – map actual hours worked by department, contracted hours versus real working time, and overtime patterns;
- model the financial impact – run scenarios for each phased reduction to plan budgets ahead of each January deadline;
- review all contracts – update individual employment contracts, collective bargaining agreements and internal work regulations to align with the new constitutional limits;
- implement electronic time-tracking – the LFT reform makes it mandatory to electronically record the start and end of every working day, subject to government inspection; and
- build a productivity strategy – invest in process improvement, automation and results-based management. The businesses that will navigate this reform best are those that produce the same output in fewer hours, not those who just comply on paper.

The international evidence is encouraging. Microsoft Japan and Unilever New Zealand reported productivity gains of 20-40% in shorter workweek pilots. Less time does not have to mean less output, but only if the transition is managed proactively.

### *Gender equality and workplace violence: new legal duties for employers*

#### *The reform in plain terms*

On 15 January 2026, a further decree published in the DOF amended the LFT to strengthen protections against workplace discrimination and gender-based violence. The reform is part of Mexico's obligations under the USMCA and ILO Convention No 190 on violence and harassment, both of which require concrete, enforceable action, not just policy statements.

The core change is clear: employers are no longer simply encouraged to maintain respectful, inclusive workplaces. They are now legally required to do so and training staff on these topics is a legal obligation, not an optional initiative.

#### *What the law now requires from companies*

Under the amended Article 16 of the LFT, both employers and workers have new legal obligations. For employers, the key duties are:

- update internal policies – explicitly address and prohibit discrimination and gender-based violence across all company procedures;
- incorporate a gender perspective – in all aspects of labour management, hiring, promotion, pay, access to training and dismissal decisions;
- establish confidential reporting mechanisms – workers must be able to safely report incidents without fear of retaliation;
- implement clear action protocols – with defined timelines, investigation procedures and corrective measures for every complaint;
- provide mandatory training – for all staff on preventing discrimination, identifying gender-based violence, and applying equality principles at work; and
- foster an inclusive organisational culture – built on dignity, respect and equal opportunity for all workers.

Workplace discrimination is broadly defined under the law. It covers any act or deliberate omission, that limits a person's labour rights because of gender, age, pregnancy, marital status, sexual orientation, gender identity, ethnic origin, religion, disability or social status. This means pay inequities, unequal promotion, biased hiring decisions and exclusionary workplace behaviour all fall within scope.

#### *The cost of doing nothing*

Employers who fail to act face consequences on multiple fronts. On the legal side:

- economic fines that can be significant depending on the nature and severity of the violation;
- extraordinary labour inspections triggered by complaints or non-compliance patterns;
- court-ordered corrective measures including mandatory policy changes and public reporting; and
- criminal proceedings in the most serious cases involving violence or systematic harassment.

Beyond legal risk, companies with poor records on gender equality are increasingly disadvantaged when competing for top talent, winning contracts with international partners, or attracting foreign investment. ESG performance is no longer a reputational "nice to have", it is a business necessity for any company with cross-border ambitions.

#### *Where Mexico stands – and where it is heading*

Compared to leading international frameworks, Mexico's reform moves in the right direction but remains less prescriptive than the most advanced models. Spain requires mandatory gender equality plans and pay equity audits for medium and large companies. EU Directive 2023/970 on pay transparency requires employers to publicly report gender pay gaps and gives workers the right to know salary criteria. Chile's *Ley Karin* mandates specific investigation timelines and procedures for harassment complaints.

Mexico's reform is broader in scope but lighter on specifics. That is both an opportunity and a risk: companies that go beyond the legal floor and build substantive, measurable equality frameworks now will be well ahead of any future tightening of requirements –

and will benefit from the commercial and reputational advantages that come with it.

### *The right to sit: a simple rule with real consequences*

#### *What the regulation says*

On 17 July 2025, the Ministry of Labour and Social Welfare (STPS) published new regulations in the DOF establishing the right to rest during the working day for employees who perform their duties in a standing position. The rules apply across the service, retail, industrial and comparable workplace sectors, covering millions of workers in stores, factories, restaurants and service centres across the country.

The regulation, known informally as the *Ley Silla* (Chair Law), is both practical and symbolic. It reflects Mexico's broader commitment to dignified working conditions and occupational health standards aligned with international norms and it sends a clear signal that worker wellbeing is a compliance priority, not just a corporate responsibility aspiration.

#### *What employers must provide*

The requirements are straightforward. Employers in affected sectors must:

- provide appropriate seating – each worker who stands during their shift must have access to a chair or seat with a backrest, either at their workstation or in a clearly designated nearby area;
- meet ergonomic standards – seating must support healthy posture, include wheels or a swivel mechanism to allow easy movement, and be stable enough to prevent unintentional movement;
- inform and train workers – employees must be told about the health risks associated with prolonged standing and the measures the company has adopted to address them;
- mark seating areas – if seats are not at the worker's usual workstation, their location must be clearly signposted; and
- refer workers to medical attention – any worker showing signs of discomfort or health issues related to standing work must be directed to appropriate care.

Workers also have duties under the regulation: they must use their seating appropriately, participate in ergonomic training, report any issues with equipment and attend required medical check-ups. The STPS is responsible for monitoring compliance and has the authority to interpret and enforce the provisions.

#### *Practical steps for compliance*

- Conduct a workplace risk assessment to identify which roles and areas require seating provision.
- Procure compliant ergonomic seating for all affected workstations and designated rest areas.
- Update internal training programmes to include ergonomic health information and proper use of seating.
- Establish a medical referral protocol for workers who experience discomfort or symptoms related to standing work.
- Document your compliance steps, as STPS inspections are expected to verify adherence to these provisions.

### *Strategic outlook: three reforms, one direction*

#### *The common thread*

These three reforms did not emerge in isolation. They are part of a coherent and continuing direction in Mexican labour policy: raising standards, reducing exploitation, and aligning with the international norms that Mexico's trade partners, particularly the United States and Canada, increasingly require as a condition of economic partnership.

For businesses, the key insight is this: these are not the last reforms. The USMCA review process, the ongoing ILO ratification agenda and the domestic political momentum behind labour rights all point to further legislative change ahead. Companies that treat each reform as a one-off compliance event will find themselves perpetually reactive. Those that build adaptive, resilient HR and compliance frameworks now will be ready for what comes next.

#### *What to do now across all three reform areas*

For the working hours reform:

- start productivity diagnostics now, before the first reduction takes effect in January 2027;

- invest in electronic time-tracking technology and reliable attendance management systems;
- explore alternative work models: compressed weeks, flexible schedules and hybrid arrangements; and
- engage your workforce in the transition, particularly those who currently supplement their income with overtime.

For gender equality and anti-discrimination:

- conduct an internal audit of pay equity, promotion rates and the effectiveness of existing harassment reporting mechanisms;
- train managers and HR teams now, ahead of any regulatory enforcement action; and
- publish internal commitments on gender equality. Transparency builds trust with employees, partners and investors.

For the ergonomic seating regulation:

- treat compliance as an opportunity, not just a legal requirement, better working conditions improve productivity and reduce absenteeism;
- combine seating compliance with a broader occupational health and wellbeing review; and
- document everything – assessment results, procurement records and training completion.

### *Conclusion*

Mexico's labour law landscape is changing faster than at any point in recent memory. The constitutional reform on working hours is the most significant change in decades. The gender equality reform closes gaps that international partners and investors have long noted. The ergonomic seating regulation is a practical step toward a broader standard of workplace dignity.

Together, these three reforms represent a clear message to the business world: Mexico is serious about aligning its labour market with international standards and it is willing to use binding trade obligations, constitutional amendments and enforcement mechanisms to get there.

For companies doing business in Mexico, the window for strategic preparation is open right now. Those who use it well, investing in productivity, compliance infrastructure and workplace culture will not just survive these reforms. They will use them to build a stronger, more competitive, and more sustainable operation in one of Latin America's most dynamic and promising markets.

# NAMIBIA




## Law and Practice

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**Dr. Weder, Kruger & Haikali Inc.** (WKH Inc.) is a full-service law firm based in the Republic of Namibia, with offices situated in Windhoek (Head Office), Ongwediva, Swakopmund, Walvis Bay, and Grootfontein. It was founded through a merger of leading legal practices with roots dating back to 1949 and rebranded in 2025 to reflect a modern, forward-looking legal identity. The firm has a team of 16 directors, 19 associates, 12 conveyancers and 117 support personnel across its national operations. The firm provides guidance to both local and international clients on a broad range of legal and commercial matters, including litigation, labour law, commercial and corporate law, tax law, conveyancing, banking and finance, mining, energy, emerging oil and gas matters, infrastructure, and dispute resolution. The firm has provided advice on legal representation in major property and business deals in Namibia involving independent power producer projects, financial services regulations, commercial and banking matters, amongst others.

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# 1. Legal System

## 1.1 Legal System and Judicial Order

The Constitution of the Republic of Namibia, which came into force upon independence her on 21 March 1990, is the supreme law of the country. In terms of Article 1 (6) of the Constitution, any law or conduct inconsistent with the Constitution is invalid to the extent of such inconsistency. The judiciary is established as an independent judicial authority under Article 78 of the Constitution and is responsible for the interpretation, protection, and enforcement of the Constitution and the laws of Namibia.

Namibia operates under a mixed legal system reflects its historical development. Prior to independence, the territory, then known as South West Africa, was administered by South Africa, resulting in the application of South African law in Namibia. Consequently, Namibia inherited Roman-Dutch common law principles, together with procedural and evidentiary rules influenced by English common law. Following independence, Article 66 of the Constitution preserved the common law and customary law that existed immediately before independence, subject to their consistency with the Constitution and any applicable legislation.

The Namibian judiciary follows a hierarchical structure. The Supreme Court of Namibia is the highest appellate court, and its decisions are binding on all lower courts. The High Court of Namibia exercises inherent jurisdiction in civil and criminal matters, as well as appellate jurisdiction over lower courts. Lower courts, including Magistrates' Courts, determine the majority of civil and criminal matters at first instance. In addition to the formal judicial structure, community courts, established under the Community Courts Act, 2003 (Act No 10 of 2003), exercise jurisdiction over customary law disputes within their statutory mandate, subject to the Constitution and applicable laws.

# 2. Restrictions on Foreign Investments

## 2.1 Approval of Foreign Investments

The primary and generally applicable legislation governing foreign investment in Namibia is the Foreign Investment Act 27 of 1990 (FIA).

The FIA is slated for repeal upon the coming into operation of the Namibia Investment Promotion Act 16 of 2016.

In terms of the FIA, a foreign national (being (i) an individual who is not a Namibian citizen, (ii) a company incorporated under the laws outside of Namibia, or (iii) a Namibian-incorporated company in which the majority of the issued share capital is beneficially owned by non-citizens) may, subject to any requirements imposed by other applicable laws:

- engage in and invest in any business activity in Namibia that is open to Namibian citizens;
- be treated on an equal footing with Namibian persons, except where the Act provides otherwise; and
- operate without any obligation to include the government or any Namibian party as a shareholder or partner; however, in respect of licences, authorisations, or agreements involving the exploitation of natural resources, it may be stipulated as a condition that the government is entitled to acquire or participate in an ownership interest in the relevant enterprise.

The FIA empowers the minister (appointed to administer the FIA) to specify any business or category of business primarily engaged in the provision of services or the production of goods which can be provided or produced adequately by Namibians in respect of which a foreign national shall not become engaged in nor invest in by way of foreign assets. At present, the only services reserved under this power are (i) public transport services (taxi and shuttle services within Namibia and between towns) and (ii) hair salon, hairdressing and beauty treatment services.

Certain sector-specific legislation limits or prevents investment by foreign nationals. Examples of such legislation are:

- (i) the Minerals (Prospecting and Mining) Act of 1992, which reserves the right to hold mining claims (which relate to small-scale mining) exclusively for Namibian citizens or an incorporated entity beneficially owned by Namibian citizens;

- (ii) the Agricultural (Commercial) Land Reform Act 6 of 1995, which limits the acquisition of a controlling interest (directly or indirectly) in commercial land by a foreign national; and
- (iii) the Communications Act 8 of 2009, which prevents a foreign national from controlling a licensee to whom a licence has been issued, without the prior consent of the relevant minister.

Notwithstanding what has been stated in paragraphs (i) to (iii) above, it is a common phenomenon that licences/authorisations (especially in relation to natural resources) and agreements with public enterprises, may be subject to local content conditions. Examples of such legislation are:

- the Marine Resources Act 27 of 2000, which permits the minister to have regard to whether an applicant for rights to harvest marine resources is a Namibian citizen, or where the applicant is a company, the extent to which beneficial control thereof vests in Namibian citizens; and
- the Minerals (Prospecting and Mining) Act of 1992, which vests the minister with broad discretionary power to impose conditions, which is often used to limit the extent of foreign ownership; the current policy is that a minimum of 15% of the equity in a licence holder (which must be a Namibian registered company) must be beneficially owned by Namibian citizens.

## 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

There are no generally applicable steps and/or requirements to be adhered to by a foreign national to obtain approval for an investment in Namibia or to overcome any investment limitations/restrictions established by legislation.

The common feature is for each relevant piece of legislation (and/or the regulations published in terms thereof) to stipulate the steps and requirements that must be fulfilled.

It is also a common feature of most relevant legislation that, notwithstanding the fulfilment of the stipulated steps and/or requirements, the relevant decision-making authority is still vested with a discretionary power in respect of:

- the granting or refusal of the approval; and
- the imposition of conditions upon any such approval.

Where a foreign national undertakes investment activities that are subject to prior approval without first obtaining the required approval, those activities will generally be regarded as unauthorised and/or void on the grounds of their unlawfulness, unless the relevant legislation expressly provides for a different consequence.

In addition to the foregoing, unlawful activities are usually criminalised and, upon conviction, can attract financial and/or imprisonment sanctions as stipulated by the relevant legislation.

Save for a few exceptions, Namibian legislation does not ordinarily prescribe timelines for the processing of applications for approval. Certain departments within the various ministries do occasionally provide non-binding timeline estimations for the processing of the type of applications they administer.

This position is consistent with Section 2 of the FIA, in terms of which a foreign national may generally invest and engage in business activities in Namibia on substantially the same basis as a Namibian, subject to compliance with any other applicable law. Accordingly, approvals or licences required for foreign investment activities in Namibia are ordinarily regulated by sector-specific legislation rather than the FIA itself.

## 2.3 Commitments Required From Foreign Investors

It is a common feature of legislation to vest the person authorised to consider applications for authorisations/licences/approvals with the discretionary power to impose conditions on the granting of the authorisation/licence/approvals.

In most instances the relevant legislation will stipulate the nature of the conditions that may be imposed. However, it is also common that legislation affords the decision-maker with a general discretion to impose

such conditions as the decision-maker may determine or deem fit.

In practice, foreign investors are commonly expected to commit to measures promoting Namibia's socio-economic development objectives. The following conditions (in addition to those that are directly related to the type of licence/authorisation/approval) are common across many sectors: (i) participation by Namibian citizens in the ownership structure of the applicant; (ii) local content participation in management structures of the applicant; (iii) preferential procurement by the applicant from Namibian suppliers of goods and services; (iv) skills transfer and training obligations; and (v) the preferential employment of previously disadvantaged Namibians.

### 2.4 Right to Appeal

The Namibian Constitution requires the government (and all its administrative agents) to act administratively fair and reasonably in respect of its administration of legislation and the powers arising therefrom. Therefore, any person who is dissatisfied with the outcome of any application may seek legal redress if the action or omission by the decision maker is perceived to be unjust and/or unreasonable.

The ordinary grounds for the review of an administrative decision are:

- procedural unfairness, due to the failure of giving the applicant a fair hearing or following the correct procedure;
- irrationality, due to the decision not being supported by the evidence or facts presented;
- illegality, where the administrative functionary acted outside of its powers granted by the relevant legislation or common law; and
- unreasonableness, if the decision was so grossly unreasonable that no fair-minded person could have made the decision.

It is also common for legislation to establish an internal appeal procedure. In the event of the existence of such a procedure, a dissatisfied applicant must first exhaust that procedure before approaching the High Court of Namibia for legal redress through the process of a judicial review of the decision.

It is a common feature for legislation (or the regulations published in terms thereof) to set forth the internal appeal process and timelines to be adhered to.

A judicial review application to the High Court generally needs to be submitted without unreasonable delay from the date on which the decision was communicated to the applicant. What would constitute an unreasonable delay must be determined on the facts of each case. However, the High Court has indicated in a number of judgments that a delay of more than four to six months is regarded as unreasonable. A longer delay may nevertheless be condoned where good cause is shown.

The High Court rules stipulate certain timelines for the prosecution and finalisation of a review application once submitted. Although there are no fixed timelines within which a court must decide on a review application, an opposed review application can take 8 to 12 months from the submission thereof.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

Namibia's principal corporate vehicles are governed by the Companies Act 28 of 2004 and the Close Corporations Act 26 of 1988, and include the following.

#### Private Company (Pty) Ltd

This is the most commonly used corporate vehicle in Namibia. There may be from one to fifty shareholders in a private company. There is no statutory minimum share capital requirement. Shareholders' liability is limited to any unpaid amount on their shares. It is managed by directors and shares are not allowed to be offered to the public. It is commonly used for greenfield projects, holding structures, joint ventures, and general trading.

In practice, private companies (Pty) Ltd are by far the preferred investment vehicle for foreign investors due to their flexibility, limited liability structure and suitability for joint ventures, holding structures and operational subsidiaries.

### Public Company (Ltd)

A public company requires a minimum of seven shareholders and at least two directors. There is no statutory minimum share capital requirement. Shareholders generally enjoy limited liability, and shares may be offered to the public. It is generally used for larger operations seeking public investment or stock exchange listings.

### Close Corporation (CC)

There may be between one and ten members and there is no issuing of shares. Ownership is held through percentage-based members' interests. Only natural persons may be members. Members enjoy limited liability, subject to specific statutory exceptions. Members manage operations directly without a board of directors. Close corporations are widely used by local small-to-medium enterprises.

### Section 21 Company

This company is incorporated under Section 21 of the Companies Act 28 of 2004 for charitable, educational, or public benefit purposes. It is structured as a public company limited by guarantee without share capital, and requires a minimum of seven members and two directors. Members enjoy limited liability up to their guaranteed amount. Paying dividends to members is statutorily prohibited.

### External Company

Establishing an external company allows a foreign business to register and operate under Chapter 13 of the Companies Act 28 of 2004 as a local branch. The foreign parent company keeps its offshore identity and carries unlimited liability for all debts incurred by its Namibian operations. It requires a local auditor and a resident administrative agent to accept legal service, and it is best suited for short-term, specialised infrastructure or resource exploration subcontracts.

## 3.2 Incorporation Process

Corporate registrations in Namibia are administered by BIPA under the Companies Act 28 of 2004 and the Close Corporations Act 26 of 1988.

All structures require initial name reservation using Form CM5 for companies and Form CC8 for close corporations.

For a private company (Pty) Ltd, applicants must lodge a memorandum and articles of association in triplicate (including two notarised copies), director details, and beneficial ownership disclosures. Fees scale with authorised share capital. Following approval, BIPA issues the certificate of incorporation on Form CM1. BIPA generally takes around 25 working days to process an application, although in practice the full incorporation process, including NAMRA tax registration and local municipal licensing, typically takes between four and eight weeks.

A public company (Ltd) follows the same basic registration process but requires at least seven founders. It is designed for public capital or stock exchange (NSX) listings, and is subject to strict Chapter 6 rules. Importantly, it may not commence trading or borrowing solely upon incorporation. Instead, it must register a prospectus and obtain a separate Section 180 Certificate to Commence Business using Form CM46. The incorporation process typically takes between eight and sixteen weeks.

A close corporation (CC) provides a simpler framework for up to ten members, replacing share capital with members' percentage interests. Registration requires the submission of a Founding Statement (Form CC1), details of the members, beneficial ownership information, and a mandatory consent letter from an accounting officer. BIPA generally processes applications within five working days, with the complete incorporation process typically taking between one and three weeks.

A Section 21 company utilises the public company registration framework and is incorporated without share capital for non-profit purposes. It requires at least seven founders, must use the suffix "non-profit association incorporated under Section 21", and must file Form CM4 containing absolute asset-lock provisions. Registration with BIPA generally takes between four and eight weeks. Any exemption from NAMRA taxation must be applied for separately.

An external company (foreign branch) must register under Section 328 once it establishes a place of business in Namibia. Registration requires the submission of a notarised copy of the foreign constitu-

tional documents in triplicate (together with certified English translations where applicable), the appointment of a local service representative, and the filing of Form CM49. The incorporation process typically takes between four and eight weeks.

### 3.3 Ongoing Reporting and Disclosure Obligations

Private companies in Namibia face strict statutory reporting and disclosure mandates under the Companies Act 28 of 2004. Independent entities retain significantly greater financial confidentiality than public corporations or foreign branches.

- Changes in Management: Alterations to directorates or officers must be recorded internally and filed with BIPA on Form CM 29 within 14 working days. Director removals require a 28 working day special notice prior to the meeting. Changing a registered office requires 21 working days' advance notice on Form CM 22.
- Amendment of Articles of Incorporation: Modifying a company's name or articles of association requires a special resolution passed by a 75% majority, filed using Form CM 26 within one month. Unregistered special resolutions automatically lapse and become void after six months under Section 210.
- Financial Statements and Approvals: Private companies must compile audited financial statements, obtain board approval, and hold an AGM within nine months of the financial year-end. Independent private companies are exempt from publicly filing statements. Annual returns (Form CM 23) must be lodged, and the annual duty must be paid within a month of the year-end.
- Ultimate Beneficiary Transparency: Under anti-money laundering amendments, companies must maintain a beneficial ownership register. Any changes must be lodged with BIPA on Form BO1 within seven working days. Non-compliance may result in fines of up to NAD50,000, daily penalties, and/or up to ten years' imprisonment.
- Fiscal and Operational Mandates: Companies must register a public officer with NAMRA, submit two annual provisional tax estimates and file an annual tax return. Taxable turnover exceeding NAD1,000,000 requires VAT registration and bi-monthly reporting. Under the Financial Intelligence Act 2012, accountable institutions must report cash transactions over NAD99,999.99 and file suspicious activity reports within three days. Employers must register with the Social Security Commission within one month of hiring staff, and file monthly returns.

### 3.4 Management Structures

Namibia does not prescribe a two-tier board structure for corporate entities. The most common entities operate under either a mandatory one-tier board model or a decentralised member-managed structure, depending strictly on the entity type under domestic legislation.

Private companies (Pty) Ltd operate under a one-tier board structure in terms of the Companies Act 28 of 2004. Statutory management authority vests collectively in the single board of directors, subject to shareholder voting rights and the company's constitutional documents. A statutory minimum of one director must form a valid board.

Public companies (Ltd) are subject to a mandatory one-tier board structure and must have at least two directors. Namibian law does not recognise a separate supervisory board. Oversight is handled internally by separating roles between executive and non-executive directors sitting together on the single board.

Non-profit associations incorporated under Section 21 are formed as public companies limited by guarantee. They adopt the mandatory one-tier framework with at least two directors. The management is subject to non-distribution constraints. All assets and income must solely advance their public interest objectives.

Close corporations, governed by the Close Corporations Act 26 of 1988, have a flat member-managed structure. Ownership and operational control are legally fused. Every member has the power to bind the corporation to third parties acting in good faith. Internal management boundaries may be outlined in an association agreement.

External companies operating as registered foreign branches remain governed by their global parent

structures. However, they must register locally under Section 322 of the Companies Act 28 of 2004 and appoint a resident person authorised to accept service of process and ensure domestic filing compliance.

### 3.5 Directors', Officers' and Shareholders' Liability

The liability of directors and officers of a company is primarily governed by the Companies Act 28 of 2004 and common law.

In terms of the common law, the following general duties are imposed upon directors:

- the duty to act with care, skill and diligence; and
- the fiduciary duty to conduct the company's affairs honestly and in the interest of the company.

The duty of care requires a director to exercise appropriate caution and demonstrate due consideration when exercising the company's powers, while also taking reasonable steps to safeguard the company's assets.

The duty of skill requires directors to exercise a reasonable level of skill in the performance of their duties. Where a director is appointed on the basis of a particular skill set or expertise, the required standard of skill will be measured against that reasonably expected of a person possessing such knowledge and experience.

The duty of diligence requires a director to remain attentive, careful, and conscientious, applying consistent effort towards carrying out the business responsibilities entrusted to them.

The fiduciary duties of a director fall into two general categories, namely (i) to exercise the powers vested in the director in good faith and (ii) to avoid a conflict of interest between the personal interest of the director and those of the company.

The particular duties that arise from the general duty to act in good faith are:

- to exercise the vested powers independently and not limit or restrict them;
- to exercise the vested powers for the purposes for which they were conferred;
- to exercise the vested powers within the limits of the authority; and
- to act within the scope of the powers of the company.

The particular duties that arise from the general duty to avoid conflicts of interests are:

- to act bona fide in the interest of the company;
- to account for profits;
- not to misappropriate opportunities proposed or pursued by the company;
- not to compete improperly with the company; and
- to disclose any interest in contracts with the company.

Namibian law recognises the concept of "piercing the corporate veil" and the Namibian courts will do so under specific circumstances as recognised under the common law or stipulated in the Companies Act.

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

Employment relationships in Namibia are primarily regulated by two main sources: statutory law and common law contracts. The Labour Act 11 of 2007 is the principal legislation governing most aspects of the employment relationship, including employment contracts, working conditions, employee rights, and dispute resolution. The Act strongly promotes the protection of employees' rights. In addition, employment contracts concluded between employers and employees regulate the specific terms and obligations of the employment relationship, provided that these terms comply with the Labour Act and other applicable laws, including the common law of contracts. Where disputes cannot be resolved through contractual or statutory mechanisms, case law becomes important during mediation, arbitration, and litigation processes. Courts and labour tribunals interpret legislation and contractual provisions, thereby providing legal clarity and establishing precedents for future cases.

### 4.2 Characteristics of Employment Contracts

In Namibia, employment contracts are governed by both common law and the Labour Act 11 of 2007 (the "Labour Act"). Under common law, a contract concluded verbally is considered legally valid. However, the Labour Act requires employers to give employees written particulars of their employment, which shows a strong preference for written contracts. Written agreements are clearer and help prevent disputes about the terms that were agreed upon between the parties. The Labour Act also regulates the duration of contracts of employment. Contracts may be set for a fixed term, such as for a specific project or time period, or they may be indefinite, continuing until either the employer or employee legally ends the agreement.

### 4.3 Working Time

The Labour Act does not expressly prescribe minimum working hours and only provides for the maximum number of working hours applicable in terms of Section 16 (1) of the Labour Act. Ordinary hours in terms of this Section may not exceed forty-five (45) hours per week. Employees who work five days a week may work a maximum of nine hours per day, while employees who work more than five days a week may work a maximum of eight hours per day.

Different limits apply to essential service employees, such as security guards and emergency healthcare workers, who may work up to sixty (60) hours per week, with twelve (12) hours per day for employees who work for five days a week and ten hours per day for employees who work for more than five days per week. Employees engaged in continuous operations may work twelve (12-) hour shifts, subject to approval by the Minister of Justice and Labour Relations.

Overtime work is regulated by Section 17 of the Labour Act. An employer may only require or permit overtime by agreement with the employee. Overtime may not exceed ten (10) hours per week or three (3) hours per day. Employees must be paid at least one and a half times their hourly basic wage for overtime worked and at least double their hourly basic wage for overtime worked on Sundays and public holidays, should they ordinarily work on Sundays and public holidays.

### 4.4 Termination of Employment Contracts

Namibia is not an "employment at will" jurisdiction, meaning employment contracts may only be terminated lawfully, for a valid reason, and in accordance with fair procedure, failing which termination may amount to unfair dismissal or breach of contract.

Employment may be terminated through the expiry of a fixed-term contract, resignation, dismissal (for misconduct, incapacity, or operational requirements), or constructive dismissal, and in most cases, notice must be given except where a fixed term expires.

Upon termination, employees are entitled to payment of all outstanding remuneration and accrued but unused annual leave, and may also qualify for severance pay under Section 35 of the Labour Act, which provides for one week's remuneration for each completed year of continuous service for employees with more than twelve (12) months' service, subject to statutory requirements.

Collective redundancies are regulated by Section 34 of the Labour Act, which requires employers to give at least four weeks' written notice to trade unions, employee representatives, or affected employees, as well as the Labour Commissioner, and to engage in good-faith consultation on the reasons for retrenchment, alternatives to dismissal, measures to minimise job losses, selection criteria, timing and conditions of dismissal, and ways to address adverse effects. Employers must disclose all relevant information for meaningful consultation, and while consultation is mandatory, agreement with unions is not required, provided that selection criteria are fair and objective, and retrenched employees may also be entitled to severance pay where the statutory requirements are met.

### 4.5 Employee Representations

Employee representation is not automatically mandatory in all workplaces in Namibia. However, the Labour Act grants employees the right to organise, be represented, and be consulted through elected representatives and registered trade unions. Employee representation is generally triggered where employees are members of a registered trade union operating within the workplace.

In such circumstances, employees may elect workplace union representatives. The number of representatives depends on the number of union members employed at the workplace and, in some cases, the size of the workforce. Workplace union representatives are responsible for representing employees in disciplinary and dismissal proceedings, raising concerns relating to working conditions, and engaging with management on labour and employment matters.

Employers are required to allow reasonable access to the workplace and provide representatives with relevant information necessary to perform their functions effectively. In addition, employees may elect health and safety representatives in terms of the Labour Act. Employers are required to consult these representatives on workplace safety matters, employee welfare policies, and operational changes that may affect employees' health or safety.

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/ Employers

The Namibian tax system is source-based. Therefore, employees are liable to pay tax on all income earned in Namibia. PAYE income tax as a fixed amount in addition to a percentage on a sliding scale that ranges from 0% to 37% per tax bracket is payable by employees, while both the employee and the employer must contribute 0.9% each of the employee's basic income to the Social Security Commission, subject to a cap.

Employers, on the other hand, must pay Employees' Compensation Fund contributions depending on the industry risk category, with PAYE being withheld and remitted by the employer to the Namibia Revenue Agency (NAMRA). Employers are also required to pay the Vocational Education and Training (VET) Levy, which is levied at 1% of the total annual payroll of Namibian-registered employers whose annual payroll amounts to NAD 1 million or more. The levy is used to fund national vocational education and training programmes.

### 5.2 Taxes Applicable to Businesses

Namibia has a source-based tax system, taxing all income earned within the country.

Corporate entities, including companies and close corporations, are subject to corporate income tax, VAT, employee tax (PAYE), annual duties, and withholding taxes on dividends, interest, service fees, royalties and transfer tax. As at May 2026, Namibia has not enacted legislation implementing Pillar Two of the OECD's Two-Pillar Solution, however active preparations and assessments are underway. Namibia also does not appear on the OECD's central record of jurisdictions that have implemented a qualified domestic minimum top-up tax (QDMTT) or a recognised safe harbour regime.

### 5.3 Available Tax Credits/Incentives

Namibia provides a range of tax credits and incentives aimed at encouraging manufacturing, exports, youth employment and foreign investment and promoting economic growth.

The main incentives are the foreign tax credit, youth internship allowance, manufacturing incentives, and export processing zones.

The Foreign Tax Credit applies only to countries with a double tax treaty with Namibia and exempts taxpayers from Namibian tax on passive or cross-border income already taxed abroad, capped at Namibia's tax liability, with proof of taxes paid required.

The youth internship allowance allows employers to deduct intern stipends from corporate tax liability, provided they are tax-compliant, pay corporate taxes, and have certified internship agreements. Interns must be Namibian citizens or hold valid study visas, aged 18–35, unemployed school leavers or graduates, and seeking work experience or completing work-integrated learning.

Manufacturing incentives apply to businesses registered with the Ministry of Industrialisation and Trade and approved by the Receiver of Revenue, with a viable business plan showing employment creation for Namibians. Namibia's former export processing zone regime has been succeeded by the special economic

zones framework established under the Special Economic Zones Act 24 of 2018. Qualifying enterprises benefit where they undertake manufacturing, assembly, packaging, or break-bulk operations primarily focused on exports outside the Southern African Customs Union, subject to requirements to generate foreign exchange earnings and create employment opportunities in Namibia.

### 5.4 Tax Consolidation

Under the Income Tax Act 24 of 1981, each registered or incorporated entity must file its own tax return independently. This framework operates strictly on a separate-entity basis, thereby prohibiting tax consolidation in Namibia.

### 5.5 Thin Capitalisation Rules and Other Limitations

Since 1 January 2024, Namibia has applied thin capitalisation and interest limitation rules to certain entities, in terms of Section 95A of the Income Tax Act 24 of 1981. These rules restrict excessive leveraging by foreign, cross-border and related-party financing arrangements to prevent erosion of the domestic tax base. Namibia currently uses a fixed limitation on interest deductions rather than the traditional 3:1 debt-to-equity ratio.

### 5.6 Transfer Pricing

Namibia's transfer pricing framework is contained in the Income Tax Act 24 of 1981. In September 2006, the Directorate of Inland Revenue issued Practice Note 2 of 2006 (PN 2/2006), which provides guidance on the application of the arm's length principle to related-party transactions and the interpretation of the transfer pricing provisions.

Namibian transfer pricing legislation is broadly based on guidance of the Organisation for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

NAMRA may impose penalties where a taxpayer's taxable income is understated as a result of prices that were charged in affected transactions, which were not carried out at arm's length.

Enforcement of transfer pricing laws is a priority for the Ministry of Finance, which works with, amongst others, the Finnish Revenue Authority and the African Tax Administration Forum.

Taxpayers should maintain transfer pricing documentation showing how prices are determined in line with arm's length standards and documentation must be available to NAMRA upon request. A transfer pricing study can reduce the risk of adjustment, shift the burden of proof, and protect against penalties.

NAMRA may reprice transactions to arm's length values and impose severe penalties of underpaid tax interest, together with interest on unpaid amounts. The Commissioner may issue additional assessments at any time.

Investors should take cognisance of the following risks:

- Transfer pricing, thin capitalisation, and anti-avoidance rules carry heavy penalties.
- Complex procedures in mining, agriculture, and manufacturing can delay projects.
- Cross-border exchange payments are closely monitored by the Bank of Namibia and NamRA.
- Mining (diamonds, uranium) contributes more or less 50% of export earnings. Global price swings directly impact profitability.
- Agriculture and tourism are vulnerable to climate shocks and global downturns.
- Namibia's population is around 3.5 million, which limits consumer demand.
- High interest rates and inflation volatility are additional risks: Financing costs can erode margins.
- Namibia's dollar is pegged to the South African rand, exposing businesses to rand volatility.
- 37% of Namibians avoid investment risks, preferring low return savings products, which limits domestic capital formation.
- Reliance on energy imports from South Africa makes Namibia vulnerable to regional power shortages.
- While ports (Walvis Bay) are strategic, inland transport costs remain high.
- Limited broadband penetration affects modern business operations.

- Shifts in mining and land reform policies can affect investor confidence.

### 5.7 Anti-Evasion Rules

Namibia has anti-tax evasion and anti-avoidance rules in the Income Tax Act, 1981 (as amended), and related regulatory frameworks, enforced by the Namibia Revenue Agency (NAMRA). The framework empowers authorities to disregard artificial transactions, impose penalties, and monitor cross-border dealings to protect the tax base.

The following are sources of anti-evasion rules in the Republic of Namibia:

- the Income Tax Act, 1981 (Act 24 of 1981), which provides the legal foundation for tax collection and anti-avoidance measures;
- Section 95A (General Anti Avoidance Rule – GAAR), which introduces interest limitation and anti-avoidance measures applicable to certain financing arrangements; and
- Practice Note 2 of 2006: Guidance on transfer pricing and arm's length principles.

The following are core measures that are taken into consideration:

- General Anti-Avoidance Rule (GAAR): NAMRA can disregard artificial schemes or reprice transactions. The objective is to prevent tax avoidance through contrived structures.
- Transfer Pricing Rules: The arm's length principle for related-party cross-border transactions applies. The purpose is to stop profit shifting and base erosion.
- Thin Capitalisation Rules: Prior to 2024, Namibia applied a 3:1 debt-to-equity thin capitalisation ratio. From 2024 onwards, interest deductions are restricted where net interest exceeds both NAD3 million and 30% of Tax EBITDA. The purpose of the rule is to prevent excessive debt financing being used to shift profits and erode the domestic tax base.
- Penalties and Interest: Significant penalties may be imposed on underpaid tax, together with interest charged at 20% per annum. The high rates are a strong deterrent against evasion.
- Exchange Control Oversight: Bank of Namibia and NAMRA monitor cross-border payments. The purpose is to detect illicit transfers and base erosion.
- Audit Powers: The Inland Revenue can demand documentation and impose adjustments to ensure compliance and transparency.

There are compliance risks to consider as there can be severe sanctions for non-compliance (including penalties and interest).

Namibia's audit focus on cross-border related-party transactions means that taxpayers are generally expected to maintain appropriate transfer pricing documentation demonstrating that transactions are conducted on an arm's length basis.

Boards of directors and audit committees integrate anti-avoidance compliance measures into governance policies, while corporate advisory support and regular transfer pricing health checks remain essential components of effective compliance management.

Namibia's framework combines specific rules, including transfer pricing and thin capitalisation provisions, with general anti-avoidance powers. Compliance therefore requires robust documentation, transparent structures, and proactive governance oversight.

### 5.8 Tariffs

Namibia applies the Southern African Customs Union (SACU) Common External Tariff (CET), meaning its tariff regime is harmonised with Botswana, Eswatini, Lesotho, and South Africa. Imports are classified under the Harmonised System (HS) codes. Namibia also grants tariff preferences under regional and international trade agreements such as Southern African Development Community (SADC), European Union Economic Partnership Agreement (EU EPA), European Free Trade Association (EFTA), Mercosur, African Continental Free Trade Area (AfCFTA), and the UK SACU Mozambique FTA.

Namibia's Tariff Regime is governed by the Customs and Excise Act, 1964 (schedules adopted from SACU), and administered by the Namibia Revenue Agency (NamRA). The tariff book contains scheduled regulating customs duties, excise duties, anti-dump-

ing and safeguard measures, industrial rebates and drawbacks or refunds of duties and fuel levies.

Correctly classifying goods under the proper Harmonised System (HS) code is very important as it determines the amount of duty payable, whether an import permit is required, whether the goods qualify for rebates and whether preferential tariffs apply.

Namibia's highest tariffs generally apply to agricultural products, processed foods, textiles, clothing, motor vehicles, transport equipment, and certain petroleum products. Maize, sugar, dairy products, and processed food products frequently attract tariffs above 10%, while petroleum products such as light oils may face tariffs of approximately 15%. Protective tariffs on textiles and vehicles are intended to support domestic industries.

By contrast, imports from SACU and many SADC partners often enjoy duty-free or preferential access. Tariffs are therefore more commonly imposed on imports from non-preferential trading partners such as China, India, the United States, and the UAE. Chinese imports, in particular, are generally subject to Most Favoured Nation (MFN) tariffs.

Namibia's applied MFN average tariff is approximately 7.9%, while its bound World Trade Organization (WTO) average tariff is about 19%. Around 60% of tariff lines carry zero MFN duty. Industrial inputs such as ores, metals, and diamonds generally face lower tariffs, reflecting Namibia's export-oriented mining sector. Businesses importing into Namibia therefore benefit from accurate tariff classification and preferential sourcing within SACU and SADC markets.

For businesses importing to Namibia, it is important to consider that preferential sourcing from SACU/SADC partners reduces tariff exposure. Imports from Asia and the United States are more likely to attract MFN tariffs.

## 6. Competition Law

### 6.1 Merger Control Notification

The Competition Act 2 of 2003 stipulates that no proposed merger, which does not fall within an excluded class of mergers, may be implemented by any person, either individually or jointly or in concert with another person, unless such merger has been approved by the Competition Commission in accordance with the applicable provisions of the Competition Act and implemented in accordance with the conditions attached to such approval.

For purposes of the Competition Act, a merger occurs when one or more undertakings directly or indirectly acquire or establish direct or indirect control over the whole or part of the business of another undertaking. An "undertaking" includes any business carried on for gain or reward by an individual, a body corporate, an unincorporated body of persons or trust in the production, supply or distribution of goods (excluding agricultural commodities which have not undergone a process of manufacture and excluded goods) or the provision of services (excluding the performance of work under a contract or service and exempted services).

A merger can be achieved by, inter alia, the purchase or lease of shares, interest, or assets, or through amalgamation or other combination (which may include joint venture arrangements).

For purposes of merger control, a person is deemed to control an undertaking if that person:

- (i) beneficially owns more than one half of the issued share capital of the undertaking;
- (ii) is entitled to vote a majority of the votes that may be cast at a general meeting of the undertaking, or has the ability to control the voting of a majority of those votes, either directly or through a controlled entity of that undertaking;
- (iii) is able to appoint, or to veto the appointment, of a majority of the directors of the undertaking;
- (iv) is a holding company, and the undertaking is a subsidiary of that company;
- (v) in the case of the undertaking being a trust, has the ability to control the majority of the votes of the

trustees or to appoint the majority of the trustees or to appoint or change the majority of the beneficiaries of the trust;
- (vi) in the case of a close corporation, owns the majority of the members' interest or control directly or has the right to control the majority of members' votes in the close corporation; or
- (vii) has the ability to materially influence the policy of the undertaking in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control referred to in paragraphs (i) to (vi).

Accordingly, the concept of "control" under the Competition Act is broad and may extend beyond majority shareholding or formal ownership rights.

The notification and prior approval obligation does not apply to a merger if:

- the annual turnover in, into or from Namibia, of the transferred undertaking is equal to or valued below NAD15 million; and
- the asset value of the transferred undertaking in Namibia is equal to or valued below NAD15 million.

If the NAD15 million thresholds described above are exceeded, a proposed merger may still be exempted if:

- the combined annual turnover in, into or from Namibia of the acquiring undertaking and transferred undertaking is equal to or valued below NAD30 million;
- the combined assets in Namibia of the acquiring undertaking and transferred undertaking are equal to or valued below NAD30 million;
- the annual turnover in, into or from Namibia of the acquiring undertaking plus the assets in Namibia of the transferred undertaking are equal to or valued below NAD30 million; and
- the annual turnover in, into or from Namibia of the transferred undertaking plus the assets in Namibia of the acquiring undertaking are equal to or valued below NAD30 million.

Both thresholds must be met for the exemption to apply.

For purposes of the merger exemptions above, the "acquiring undertaking" includes:

- (i) any undertaking that would, as a result of the transaction, acquire or establish direct or indirect control over the whole or part of the business of another undertaking;
- (ii) any other undertaking that has direct or indirect control over the whole or part of the business of an undertaking referred to in paragraph (i); and
- (iii) any other undertaking that is controlled by, or direct or indirect control over the whole or part of its business is held by, an undertaking referred to in paragraph (i) or (ii); and the "transferred undertaking" includes any undertaking, or the business or assets of the undertaking, that as a result of a transaction:
  - (a) would become controlled by another undertaking; and
  - (b) any other undertaking that is controlled by, or the direct or indirect control over the whole or part of its business is held by, an undertaking referred to in paragraph (i).

The methodology for the valuation of assets and calculation of annual turnover for purposes of the merger exemptions has been prescribed by a determination issued by the applicable minister.

Accordingly, parties to mergers and acquisitions involving Namibian businesses should carefully assess whether a transaction constitutes a notifiable merger under the Competition Act prior to implementation.

### 6.2 Merger Control Procedure

The conclusion of the formal transaction documents/agreements is not a prerequisite for the submission of a merger notification. The parties to an intended merger may submit other documentation or information which sufficiently sets forth the intended merger.

The submission for merger approval requires each undertaking participating in the intended transaction to participate in the preparation of the prescribed forms (being Forms 38 and 39), a competitiveness report and relevant supporting documents and information relating to the intended transaction.

The Competition Commission, upon receipt of the notification, must make a determination thereon within 30 days. The Competition Commission may, within the 30-day period, request additional information, which results in the extension of the period for determination with another 30 days from the receipt of the information. In addition to the foregoing, the Competition Commission may extend the period with a further period not exceeding 60 days if the complexity of the matter justifies such an extension.

As part of the review process the Competition Commission may call for a stakeholder conference at which the stakeholders can make submissions.

Where the Competition Commission believes that a proposed merger may have negative competition or public interest implications, it is not uncommon for the Competition Commission to offer the relevant undertaking an opportunity to engage with the Competition Commission to canvas the Competition Commission's concerns and/or propose solutions thereto.

The Competition Commission will issue a notice setting forth its determination and, if applicable, any conditions that it imposes upon an approval of the intended merger.

Undertakings that are dissatisfied with the determination of the Competition Commission may, within 30 days of the decision, apply to the relevant minister for a review of the determination. The minister has the power to confirm, amend or overturn the determination by the Competition Commission. The ministerial review process entails a notice to the public of the receipt of the appeal and invites the public to make submissions thereon. The minister must complete the review and publish a determination within four months of receipt of the appeal.

In the event that the undertakings are not satisfied with the outcome of the ministerial review, they may approach the High Court of Namibia within a reasonable time to review that determination.

### 6.3 Cartels

The main statute governing competition in Namibia is the Competition Act 2 of 2003, which aims to protect and promote competition. It prohibits anti-competitive conduct, including agreements, practices and decisions between businesses that have as their object or effect the prevention or substantial lessening of competition, unless specifically exempted under the Act. The Act applies to anti-competitive conduct that has an effect within Namibia, irrespective of where the conduct or agreement originated.

Anti-competitive conduct generally prohibited by the Act includes:

- fixing prices;
- dividing markets;
- collusive tendering;
- limiting or controlling production, market outlet or access, or investment;
- resale price maintenance;
- placing businesses at a competitive disadvantage; and
- making contracts subject to acceptance by other parties of additional obligations that, by their nature or commercial usage, are unrelated to the subject of the contracts.

The Act targets agreements/practices/conduct that occur between parties in a horizontal relationship, competitors operating on the same level of the supply chain. From a practical outlook, this relationship involves an agreement between competitors to eliminate competition with the objective of capturing sales. These horizontal agreements significantly and directly affect the consumer markets as they result in higher prices, lower choices, and poorer quality of services and goods.

The Act also addresses anti-competitive practices in vertical relationships which are between a business and its suppliers, customers, or both. For example, a supplier may require a retailer to purchase exclusively from it and bar the retailer from dealing with competing suppliers. The Competition Commission may investigate such conduct where it is likely to substantially lessen competition in the relevant market. This type of exclusive dealing can prevent rival suppliers from accessing distribution channels and limit the range of brands available to consumers.

### 6.4 Abuse of Dominant Position

In Namibia, unilateral conduct is mainly regulated through the prohibition against the abuse of a dominant position under the Competition Act 2 of 2003 ("the Act"), which is enforced by the Namibian Competition Commission. Namibia does not currently have separate legislation specifically dealing with "economic dependency". Instead, situations involving economically dependent businesses are generally considered under the broader rules dealing with market dominance and restrictive business practices.

The Competition Act aims to promote fair competition, protect consumers, and create equal opportunities for smaller businesses to participate in the economy. In terms of Section 26 of the Act, a business is prohibited from abusing a dominant position in a market in Namibia, or any part of the Namibian market. The law does not prohibit a business from being dominant or successful, but it does prohibit the unfair use of that power in a way that harms competition.

Examples of conduct that may amount to an abuse of dominance include:

- selling goods or services at unfairly low prices to force competitors out of the market;
- charging excessive or unfair prices;
- refusing to supply goods or services without proper justification;
- unfairly discriminating between customers or competitors; and
- engaging in conduct that excludes competitors from the market.

Whether conduct amounts to an abuse of dominance will depend on the specific facts of each case and its effect on competition within the relevant market.

Namibian law does not currently recognise "economic dependency" as a separate legal basis for liability. Accordingly, where one business is heavily dependent on another, the main legal question will generally be whether the stronger business has sufficient market power or dominance and whether its conduct amounts to an abuse under the Act.

Economic dependency may therefore be relevant when determining whether a business has market power or whether its conduct has anti-competitive effects, but dependency on its own is not a separate cause of action under Namibian law.

Namibia follows an "effects-based" approach in competition law. This means that the important consideration is not necessarily where the conduct occurred, but whether the conduct has anti-competitive effects in Namibia. Therefore, if abusive conduct occurs within Namibia, the Competition Act applies directly, and if conduct occurs outside Namibia, but negatively affects competition within Namibia, the Act may nevertheless apply.

## 7. Intellectual Property

### 7.1 Patents

A patent is the title granted under the Industrial Property Act No 1 of 2012 to protect an invention. An invention is an idea of an inventor in the form of new knowledge of a technical nature.

A patent expires 20 years after its filing date. A prescribed annual fee is, however, payable for each year starting one year after the filing date of the application.

An application for a patent must be filed with the Registrar and must contain a written request; a specification comprising a description, one or more claims, and one or more drawings; and an abstract.

The Registrar must examine the application as to form and substance and determine whether the claimed invention is patentable. If the application does not comply with the requirements of the Industrial Property Act No 1 of 2012, the Registrar must notify the applicant, setting out the reasons for the finding.

The applicant may, within the specified period of receipt of the notification, submit arguments as to why the application should be granted, or submit changes to the description, claims or drawings to address the findings of the Registrar, failing which the application will be refused.

If the Registrar grants or refuses to grant a patent, they must notify the applicant in writing. In the case of a decision to grant a patent, the applicant must pay the registration, publication, and annual fees within 90 days. The Registrar must, on payment of these fees, grant the patent. A patent is considered granted on the date of publication of a reference to the grant in the Industrial Property Bulletin.

The patent owner has the right to exploit the patent and to exclude others from exploiting the patented invention without their authority, so that the owner enjoys the full profit and advantage of the invention. Exploitation of a patented invention without the authority of the owner constitutes an infringement.

Infringement proceedings may be instituted in the Tribunal by the patent owner. Where a patent has been infringed and the owner has instituted proceedings, the Tribunal may grant an interdict, an order for any infringing product or process article or product to be delivered up, damages, or in lieu of damages, a reasonable royalty. Appeals can be made to the High Court of Namibia.

### 7.2 Trade Marks

A trade mark is defined in the Industrial Property Act No 1 of 2012 as a mark used or proposed to be used in relation to goods or services to distinguish those goods or services from the same kind of goods or services connected in the course of trade with any other person. A mark is any sign capable of being represented visually, including a device, name, signature, word, letter, numeral, figurative element, shape, colour or container for goods, or any combination of such signs.

The registration of a trade mark is valid for a period of ten years from the date of the application for registration. The registration may be renewed for consecutive periods of ten years, subject to the registered owner paying the prescribed renewal fees.

An application for the registration of a mark as a trade mark must be filed with the Registrar and must contain a request for registration on the prescribed form, a representation of the mark, a specification of the goods or services for which registration is requested, and an indication of the applicable class or classes of the International Classification of Goods and Services.

The Registrar must examine the application as to form and substance and determine whether the mark is registrable. The Registrar may accept the application with or without conditions or refuse the application.

The Registrar must advise the applicant of their decision in writing within a reasonable period. The applicant will have 30 days to respond to the Registrar's notification, addressing any issues raised, failing which the application will be deemed abandoned.

The applicant must, following receipt of confirmation of acceptance of the application by the Registrar, cause the application to be published in the Industrial Property Bulletin.

Should no person oppose the registration of the mark within 60 days of publication, the mark may be registered as a trade mark, and the applicant may obtain a registration certificate.

The owner of a trade mark has the right to exclude others from unauthorised use thereof in the course of trade.

Trade mark rights may be enforced by means of opposition proceedings where an opposing mark is published in the Industrial Property Bulletin, or Tribunal proceedings in the case of infringement.

Available remedies for infringement include an interdict, an order for the removal of the infringing mark from infringing goods (or that such goods be delivered up), damages, or in lieu of damages, a reasonable royalty. Appeals can be made to the High Court of Namibia.

### 7.3 Industrial Designs

A design is defined in the Industrial Property Act No 1 of 2012 as any features of form or shape or configuration, or any features of pattern or ornamentation, including any composition of lines or colours, applied to an article to give it an appearance discernible by the eye, but does not include any feature serving only to obtain a functional or technical result.

The registration of a design expires 15 years after the filing date. A prescribed annual renewal fee must, however, be paid, starting one year after the filing date, failing which the design registration will lapse.

An application for the registration of a design must be filed with the Registrar and must contain a written request for registration, graphic representations of the article embodying the design, a written statement of the type of products in respect of which the design is to be used, the class or classes of the International Classification in which the design is to be registered, and the prescribed application fee.

The Registrar must examine the application as to form and substance. Where the Registrar finds that the requirements set out in the Industrial Property Act No 1 of 2012 have been satisfied, either initially or after changes have been made, the Registrar must register the design. Where the Registrar finds that the requirements have not been satisfied, the Registrar must notify the applicant, setting out the reasons for the finding and inviting the applicant to make such changes as may be necessary to satisfy the requirements within 60 days, failing which the Registrar will refuse the application.

If the Registrar grants the application, the Registrar must request the applicant to pay the prescribed registration and publication fees within 90 days. The design is then recorded in the register, and the applicant is issued a certificate of registration. After the design has been registered, it must be published in the Industrial Property Bulletin.

The owner of a design registration has, subject to certain limitations, the right to exclude others from making, importing, using or disposing of or offering to dispose of any article in the class or classes in which the design is registered and bearing or embodying the registered design or a design not substantially different from the registered design, when such acts are undertaken for commercial purposes.

The registered owner of a design has the right to institute legal proceedings against any person who infringes the design registration by performing, without written consent, any of the acts referred to above for commercial purposes, or who performs acts which make it likely that infringement will occur. Infringement proceedings may be instituted in the Tribunal by the design owner. Where a design has been infringed and the owner has instituted proceedings, the Tribunal may grant an interdict, an order for any infringing product or process article or product to be delivered up, damages, or in lieu of damages, a reasonable royalty. Appeals can be made to the High Court of Namibia.

### 7.4 Copyright

The Copyright and Neighbouring Rights Protection Act No 6 of 1994 does not set out a definition for copyright, but provides that the original works of the following descriptions are eligible for copyright: literary works, musical works, artistic works, cinematograph films, sound recordings, broadcasts, programme-carrying signals, published editions, and computer programs.

Copyright protection generally endures for the following periods:

- a literary, musical or artistic work, other than a photograph, for the life of the author plus 50 years from the end of the year in which the author dies, but if such work or an adaptation thereof has not been made publicly available during the author's life through publication, public performance, offer for sale to the public, or broadcasting thereof, then for a period of 50 years from the end of the year in which the work is first made publicly available;
- a cinematograph film, photograph or computer program, for a period of 50 years either from the end of the year in which the film, photograph or program is made available to the public with the owner's consent or, if such film, photograph or program was not made publicly available within 50 years of its making, the end of the year in which the film, photograph or program was made;
- a sound recording or published edition, for a period of 50 years from the end of the year in which it is first published;
- a broadcast, for a period of 50 years from the end of the year in which the broadcast is made;

- a programme-carrying signal, for a period of 50 years from the end of the year in which the signal is emitted to a satellite.

Copyright subsists automatically in eligible works which meet the requirements set out in the Copyright and Neighbouring Rights Protection Act No 6 of 1994, and no formal registration process is required. However, in practice, the Business and Intellectual Property Authority (BIPA) may issue registration certificates for copyright.

Copyright is infringed by a person who, without the licence of the owner, does or causes any act which the owner has the exclusive right to do or authorise.

Infringement proceedings are brought before the court, and the copyright owner may seek remedies including damages, an interdict, delivery up of infringing copies, or the delivery of plates used or intended to be used for the production of infringing copies. Such remedies are available to the owner in the same manner as those available to a plaintiff in corresponding proceedings concerning the infringement of other proprietary rights. At the option of the owner, damages may be calculated on the basis of a reasonable royalty that would, in the circumstances, have been payable by a licensee or sub-licensee in respect of the copyright concerned.

### 7.5 Others

When reference is being made to "other" IP rights, a distinction should be drawn between software and databases, and trade secrets.

The distinction arises from the different forms of protection applicable to these rights. Software and databases qualify for protection under copyright and are defined as such in the Copyright and Neighbouring Rights Protection Act 6 of 1994. Under the Copyright and Neighbouring Rights Protection Act 6 of 1994, "software" is classified as a computer program and a "database" as a literary work.

Trade secrets, on the other hand, enjoy no specific legislative protection in Namibia. Protection is however found in the common law. The common law position and protection vest if three requirements are met. These requirements are:

- The information must relate to trade or industry and be capable of practical application.
- It must be secret or confidential, meaning it must not be public knowledge or property.
- The information must have economic or business value to the person claiming rights over it.

Trade secrets, if the above requirements are met, cannot be registered, as with other IP rights, as the registration would defeat the purpose of secrecy. In practice, trade secrets are mostly protected through the use of confidentiality agreements. This may also include clauses in employment agreements that bind employees to the non-disclosure obligations.

Enforcement may take different forms, although disputes are ultimately determined by the courts of Namibia. The forms of enforcement include action proceedings for damages, in cases of unauthorised disclosure, interdictory relief on application in cases of unfair competition, or specific performance on application in the enforcement of contractual obligations, in cases in which the obligation exists.

It must be borne in mind that disclosure of the trade secret would disqualify the trade secret from further common law protection, as the requirement of secrecy would no longer be met.

## 8. Data Protection

### 8.1 Applicable Regulations

Namibia currently does not have comprehensive general data protection legislation in force. Namibia relies on the constitutional privacy rights in terms of Article 13 and sector-specific laws that address individual data protection.

The right to privacy is a fundamental human right that is limited to what is required by law. This right consists of protecting national security, public safety, economy, health, morals and protection against crimes.

Sector-specific laws affecting data privacy through specific regulations include banking sector, telecommunications, and the legal sector.

The Namibian government has published the Draft Data Protection Bill. The aim of this draft Bill is to create and establish a data protection supervisory authority and determine the authorities' powers, duties, and functions. The Bill further establishes obligations of data controllers, processors and obtaining information relating to any individual and how it should be protected as a fundamental right. The Bill further provides for the rights of individuals, provides restrictions and exceptions under provisions of the Bill and lastly provides codes of conduct of processors.

Namibia's Data Protection Bill, 2023, remains in the early stages of the legislative process and must undergo further parliamentary review before it is passed into law. The absence of effective data protection law has created major regulatory gaps in the use and governance of personal data. As a result, individuals are left vulnerable to privacy breaches, unauthorised data collection, and potential exploitation by both public and private entities. This regulatory gap has raised concerns, especially with the increasing collection and use of personal data across both the public and private sectors.

If enacted, the Bill is expected to require transparent, fair, and lawful data processing primarily focused on individual consent. The Bill is not industry-specific, and its wide application will have a profound effect on both public and private entities.

Although the Bill is not yet in force, from the experience of neighbouring countries and other jurisdictions which have active privacy laws, organisations in Namibia must take initiative-taking steps to anticipate such laws. The proposed legislation will introduce significant changes to our data privacy laws and the manner in which organisations process and manage personal data.

## 8.2 Geographical Scope

Namibia currently only has sector-specific regulations for data protection, which are the following:

- Banking and Financial Services: These sectors are governed by the Financial Intelligence Act 13 of 2012, which mandates strict client identification, record-keeping, reporting of suspicious transactions and protection of individuals confidential information.
- Telecommunications: This sector is regulated under the Communications Act of 2009, which includes provisions about the interception of communications and protection of user information.
- Public Sector and Surveillance: Data collection by the government, for example identification card numbers, and biometric voter registration, is governed by the Namibia Central Intelligence Service Act of 1997.
- Health Sector: While there is no specific patient data privacy law, general medical ethics is sensitive to personal data such as health records.
- Legal Sector: This sector is subject to confidentiality rules under the Legal Practitioners Act, 1995.
- General Privacy and Access: The Access to Information Act 2022 establishes the right to access information held by public and private entities while allowing exemptions to protect personal privacy.

All national or international businesses and companies who look to target a market or customers in Namibia's jurisdiction must abide by the sector-specific laws of Namibia and the constitutional right to privacy. This is because of extraterritorial jurisdiction, meaning the laws applicable to the location of the data subject or customer wherever the business is located.

Foreign companies seeking to provide goods or services to Namibian consumers are therefore required to comply with applicable international and regional laws, insofar as these relate to the nature of their business, while simultaneously adhering to both the laws of their own jurisdiction and the laws of Namibia.

Namibia has entered into the African Union Convention on Cyber Security and Personal Data Protection, which requires Namibia to establish legal frameworks for cybersecurity, electronic transactions, and personal data protection in alignment with its national strategy.

What does this mean for Namibians and potential foreign businesses targeting Namibian customers? Namibia now has a binding commitment to implement the provisions of the Convention, align its domestic legislation with international data protection standards, and actively combat cybercrime. In fulfilment of these obligations, Namibia is actively advancing the development of its data protection legislation, which is expected to be promulgated by the end of 2026.

### 8.3 Role and Authority of the Data Protection Agency

Namibia does not currently have an active standalone data protection authority. Instead, sector-specific legislation provides for its own regulatory authorities or bodies, each of which has powers to impose fines, penalties, and accountability measures within their respective areas of jurisdiction.

Under the Financial Intelligence Act, the primary authority responsible for administering and enforcing the Act in Namibia is the Financial Intelligence Centre. The Financial Intelligence Centre operates within the Bank of Namibia. The officer responsible for heading the institution and managing its statutory duties is the Director of the Centre, who may issue directives to investigating officers, the police, or anti-corruption officials.

The Communications Act authorises the Communications Regulatory Authority of Namibia (CRAN), which is responsible for regulating, supervising, and promoting the provision of telecommunications services and networks, broadcasting, and postal services, while also protecting consumer rights.

The Namibia Central Intelligence Service Act of 1997 ultimately vests authority in the President of the Republic of Namibia. However, the Director-General also has powers to uphold and implement the Act, including ensuring the protection of personal data such as identification numbers, names, and surnames.

The Legal Practitioners Act of 1995 is administered and enforced by several bodies, including the Law Society of Namibia, the Ministry of Justice and Labour Relations, and the High Court of Namibia.

The forthcoming Data Protection Bill, once promulgated, will provide for the establishment of a Data Protection Supervisory Authority, which will become Namibia's dedicated supervisory body responsible for data protection across all sectors of the country.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

Namibia has not introduced any sweeping legislative overhaul in the areas of employment, taxation, or judicial structure; however, there are notable ongoing developments and proposed reforms, particularly in the fields of taxation and labour law, which are relevant to employment relationships.

From a taxation perspective, a number of amendments have been proposed in the Income Tax Amendment Bill 2025, which has been tabled before Parliament and is expected to be enacted in the near future. Key proposals in the Bill include improvements to the tax treatment of lump-sum retirement benefits, most notably the increase of the single commutation threshold from NAD50,000 to NAD375,000. In addition, the Bill introduces new caps on housing-related benefits, including a proposed annual limit of NAD400,000, thereby providing greater certainty on the tax-exempt portion of such allowances. The Bill further contemplates adjustments to the taxation of dividend income derived from preference shares, which may have broader implications for remuneration structuring and employee incentive schemes.

Further administrative clarification has been issued by the Namibia Revenue Agency. Practice Note 1 of 2024 (effective 9 December 2024) provides that subsistence allowances paid to employees required to work away from their ordinary place of work will not be subject to income tax, provided they do not exceed United Nations International Civil Service rates. These amounts are also not required to be reflected on PAYE certificates. In addition, travel reimbursements calculated on a per-kilometre basis will be tax-exempt up to a prescribed rate, which has not yet been formally determined, with any excess remaining taxable.

In the labour law sphere, there are ongoing policy discussions concerning potential amendments to the Labour Act 11 of 2007. These include efforts to enhance dispute resolution mechanisms, improve the efficiency of collective bargaining frameworks, and strengthen protections for vulnerable employees. Particular attention has been given to improving the functioning of labour institutions and reducing delays in dispute resolution.

These developments do not yet amount to comprehensive reform; however, they reflect a measured process of legislative refinement and administrative clarification, requiring employers to monitor developments closely to ensure continued compliance.

# Trends and Developments

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**Dr. Weder, Kruger & Haikali Inc.** (WKH Inc.) is a full-service law firm based in the Republic of Namibia, with offices situated in Windhoek (Head Office), Ongwediva, Swakopmund, Walvis Bay, and Grootfontein. It was founded through a merger of leading legal practices with roots dating back to 1949 and rebranded in 2025 to reflect a modern, forward-looking legal identity. The firm has a team of 16 directors, 19 associates, 12 conveyancers and 117 support personnel across its national operations. The firm provides guidance to both local and international clients on a broad range of legal and commercial matters, including litigation, labour law, commercial and corporate law, tax law, conveyancing, banking and finance, mining, energy, emerging oil and gas matters, infrastructure, and dispute resolution. The firm has provided advice on legal representation in major property and business deals in Namibia involving independent power producer projects, financial services regulations, commercial and banking matters, amongst others.

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## Arbitration and Administrative Law at the Wellhead: A Tri-Modal Framework for Resolving Disputes in Namibia's Upstream Petroleum Sector

### *Introduction*

Final investment decisions on the Orange Basin discoveries are expected by 2026. These developments are likely to increase the importance of an effective dispute-resolution framework for Namibia's upstream petroleum sector. When production starts, so will the disputes – and Namibia is not ready for them. The legal architecture for resolving upstream disputes has received limited attention. Most of what passes for debate is about institutional placement, not dispute resolution.

Two arguments dominate. The first, advanced by writers like Kovimariva Mungunda, calls for a dedicated Petroleum Tribunal. The second, embodied in the Petroleum (Exploration and Production) Amendment Bill [B.12 – 2025], now at Committee Stage, proposes amendments to the executive locus of regulatory power. However, both approaches leave broader dispute-resolution questions unresolved.

Upstream disputes in Namibia already run through three parallel forums: contractual arbitration under Section 13 of the Petroleum (Exploration and Production) Act 2 of 1991 (PEPA); the Ancillary Rights Commission under Part IX; and Article 18 judicial review in the High Court. Each was designed for a different purpose, in a different era, and none of them speaks to the others. A single set of facts can yield three proceedings, three standards of review, and three potentially inconsistent outcomes. This creates procedural fragmentation and potential uncertainty for investors, regulators and affected stakeholders. A new tribunal will not fix that. Neither will the Amendment Bill. Accordingly, Namibia may benefit from integrated dispute architecture, imposed by statute, enforceable in practice. The rest of this article makes that case.

### *Statutory architecture: a tri-modal framework*

Take each in turn. First, contractual arbitration. Section 13 (2)(i) of PEPA lets the minister write into any petroleum agreement a clause for "arbitration in the event of any dispute which may arise in the application of any term or condition contained in such agreement, whether in terms of the provisions of the Arbitration Act, 1965 (Act 42 of 1965), or by way of any international arbitration tribunal specified in such agreement". Section 16 (3)(b) goes further: where a licence holder and a landowner cannot agree on the price for land they are forced to sell because of petroleum operations, "the price and mode of payment shall be fixed by arbitration". The Arbitration Act 42 of 1965 governs domestically. The Recognition and Enforcement of Foreign Arbitral Awards Act 40 of 1977 governs enforcement of foreign awards.

Second, the Ancillary Rights Commission. Part IX of PEPA (Sections 54 to 61) sets it up. There are three members appointed by the President. Although its powers are limited in scope, they remain significant in practice. Under Section 56, the Commission can grant a licence holder rights of entry, pipeline laying, water sourcing, and disposal of waste – the operational rights without which an exploration or production licence is so much paper. Under Section 59 it fixes compensation where parties cannot agree. Its orders bind (Section 57 (4)). Appeals lie to the High Court (Section 61). In everything but name this is a specialist statutory tribunal with quasi-judicial powers. The petroleum-tribunal debate has somehow overlooked it.

Third, administrative law. Article 18 of the Namibian Constitution requires every administrative body and every administrative official to act fairly and reasonably and to comply with the requirements imposed by common law and any relevant legislation. Article 25 makes those rights enforceable. Almost every ministerial decision under PEPA, to issue, renew, transfer or cancel a licence (Sections 11, 19, 27 and 34); to direct good oilfield practices (Section 21); and to declare a petroleum field (Section 42), is an administrative action subject to review on Article 18 grounds.

Before turning to the silo problem, one further instrument complicates the picture. Regulations made under Section 4A(2)(b) of the Petroleum Products and Energy Act 13 of 1990 (GN 93 of 2003, Government Gazette 2970, 29 April 2003) set up a detailed arbitration regime for downstream disputes between wholesalers and operators. Regulation 19 allows consolidation where the dispute "is substantially related to the dispute being arbitrated and involves a common

question or questions of fact or law" and the other party consents. It is the only Namibian petroleum-specific instrument with explicit consolidation language. Anyone drafting an upstream reform should read it closely.

Each forum was carefully designed to address specific categories of disputes. None is necessarily defective in isolation. The problem is that nothing connects them. An investor whose exploration licence is cancelled may simultaneously face a land-access dispute before the Ancillary Rights Commission and a royalty dispute under Section 62 PEPA before an arbitral tribunal, all arising from the same operational facts. Three sets of pleadings. Three different standards of review. Three potentially inconsistent outcomes. No statute, no regulation, no rule of court addresses how these proceedings should be sequenced or harmonised. That is the silo problem.

### *The forum cascade problem*

International arbitral practice has thought about fragmentation, but only within a single mode. Haigh and Beke, writing in the Global Arbitration Review Guide to Energy Arbitrations, set out the standard analysis. In *Cambodia Power Company v Kingdom of Cambodia*, *Electricité du Cambodge* (ICSID Case No ARB/09/18) the tribunal identified three independent grounds on which related energy agreements could be consolidated: clause-precedence, collective-agreement, and consolidation-provision grounds. The Karah Bodas award – *Karah Bodas Co LLC v Perusahaan Pertambangan Minyak Dan Gas Bumi Negara* (2004) 364 F 3d (5th Cir), survived enforcement challenge in the United States Court of Appeals for the Fifth Circuit in part because the underlying Indonesian geothermal contracts cross-referenced each other. But all of that addresses co-ordination within arbitration. It does nothing for the harder problem: co-ordination across arbitration, statutory tribunal, and constitutional review. That is the problem Namibia has.

The practical consequences are familiar to any litigator who has run parallel proceedings. Costs may increase significantly. Each forum demands its own counsel, its own evidence, its own preparation. Awards conflict, a compensation order from the Ancillary Rights Commission can sit awkwardly against an arbitral award between the licence holder and the State on the same facts. The asymmetry between parties may widen. International investors can fund parallel tracks; the State and local participants typically cannot.

The Dutco problem makes this worse. In *Siemens AG and BKMI Industrieanlagen GmbH v Dutco Construction Co* (French Court of Cassation, 7 January 1992), the Cour de Cassation set aside a multi-party arbitral appointment because the principle of equal treatment in tribunal constitution had been compromised. In France, that principle cannot be waived before a dispute arises. Namibia currently has no comparable domestic jurisprudence and, for the reasons addressed next, no New York Convention framework to absorb the blow if a Namibian-seated multi-party award is challenged on similar grounds. Cascade risk plus weak enforcement is a real exposure.

### *The enforcement gap*

Namibia has not acceded to the New York Convention. It signed the ICSID Convention on 26 October 1998 and never ratified it. Forty-two of Africa's fifty-four states are now party to the New York Convention. Namibia is in the dwindling minority that is not.

The domestic substitute is the Recognition and Enforcement of Foreign Arbitral Awards Act 40 of 1977, inherited from South Africa at independence. It provides for enforcement in the High Court, but on narrower grounds than Article V of the Convention and without the harmonised refusal-of-enforcement framework that international investors expect. Section 13 (2)(i) of PEPA invites international arbitration. The enforcement architecture does not back the invitation. That is the gap.

### *The Petroleum Tribunal debate and the Amendment Bill*

The argument for a specialist Petroleum Tribunal is the strongest case for reform currently in print, and I should be candid about it: a Petroleum Tribunal was the model I started with myself. The High Court bench cannot, without serious resourcing, develop the technical fluency that production sharing arrangements, cost recovery audits, abandonment liability under Part XA, and fiscal-stability claims demand. The intuition

that Namibia needs specialised forum capacity is right.

What changed my mind is what the Bill actually does. The Petroleum (Exploration and Production) Amendment Bill [B.12 – 2025], introduced by the Minister of Industries, Mines and Energy on 4 February 2026 and now at Committee Stage, is not a dispute resolution reform. It primarily restructures institutional authority. It moves upstream regulatory authority from the Ministry to the Office of the President, sets up an Upstream Petroleum Unit, and replaces "Minister" with "President" across the operative provisions. The Director-General and Deputy Director-General will be appointed and removable by the President. A residual clause in the proposed Section 3A(3)(j) authorises the Unit to perform "any other function as required by law or the President". That clause has rightly attracted commentary from the profession.

Limited attention has been paid to examining what these changes mean for dispute resolution. It deserves closer scrutiny. Relocating regulatory decision-making to the Presidency (which given our history we support) does not remove it from Article 18 review; a presidential decision in execution of a statute remains administrative action. But the political weight of suing the Office of the President is not the same as the political weight of suing a minister. Licence holders will likely think twice before instituting proceedings. This may have practical implications for administrative-law litigation as Mode Three becomes harder to use. The Bill says nothing about consolidation, the qualifications of Ancillary Rights Commissioners, or Namibia's posture toward the New York Convention. Adding a separate Petroleum Tribunal to this picture, without addressing those silences, creates a fourth silo rather than providing a meaningful solution.

### *A proposed integrated architecture*

The reform Namibia needs is not a new tribunal. It is a statutory dispute architecture, compulsory in every petroleum agreement and every licence, that tells the parties in advance how related disputes will be sequenced, where they will be heard, and on what enforcement footing. The individual elements are interdependent and only function effectively when implemented together.

The process begins with a mandatory pre-arbitral evaluation, modelled in regulation 3 of GN 93 of 2003. The evaluation panel should comprise three experts: one nominated by each party and a third appointed by mutual agreement or, failing agreement, by the Law Society. The process could within a 60-day period and culminate in a non-binding recommendation. Structured early evaluation will not resolve every dispute, but it can clarify the issues, distinguish genuine disagreements from tactical posturing, and reduce the parties' appetite for the cascade to follow.

Disputes that survive evaluation should proceed to consolidated arbitration seated in Windhoek, under bespoke rules that borrow the Cambodia Power consolidation grounds, the LCIA-style multi-party joinder provisions, and the Dutco safeguard of party equality in tribunal constitution. The carve-out must be explicit: purely regulatory decisions issue, renewal, cancellation, and field designation remain reviewable under Article 18 and cannot be displaced into private arbitration. Some choices the State makes affect more than the contracting parties. Those choices should remain subject to public-law oversight.

Enforcement comes next and is the hardest piece. Namibia should accede to the New York Convention. That is the cleanest fix and should be a national priority. Until accession, the Recognition and Enforcement of Foreign Arbitral Awards Act 40 of 1977 should be amended to align with Article V of the Convention and to add petroleum-specific provisions. Arbitral awards in petroleum disputes should be enforceable as orders of the High Court on registration, subject only to the narrow grounds for setting aside in Section 33 of the Arbitration Act 42 of 1965.

Finally, the Ancillary Rights Commission should do the work a Petroleum Tribunal would have done. Part IX of PEPA should be amended to expand the Commission's jurisdiction over all operational disputes – land access, compensation, abandonment liability under Part XA, and decommissioning trust fund disputes under Section 68B. Its appointment architecture under Section 55, its procedural footing under the Commissions Act 8 of 1947, and its appeal route to the High Court under Section 61 already provide the institutional bones. Consideration should also be given to

renaming the Commission the Petroleum Disputes Commission, and the legal, technical, and environmental qualifications of its members should be prescribed by statute.

### *Conclusion*

Three forums, no co-ordination, and no enforcement backstop. That is the architecture Namibia is taking into its first production cycle. The Petroleum Tribunal debate has often framed the question as one of forum creation. It is not. Adding a fourth forum to three uncoordinated ones makes the silo problem worse. Real reform runs through the existing forums, not around them: pre-arbitral evaluation, consolidated arbitration with administrative-law carve-outs, enforcement reform tied to accession to the New York Convention, and a renamed and expanded Ancillary Rights Commission.

The Amendment Bill is the legislative vehicle. Whether Parliament uses it to address the dispute architecture or merely to relocate the regulatory office will tell us what kind of upstream sector we are building. The choice is being made now.

# NETHERLANDS




## Law and Practice

**Contributed by:**
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**BUREN**

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**BUREN** is an independent, internationally oriented firm of lawyers, tax advisers and civil-law notaries with offices in Amsterdam, Beijing, The Hague, Luxembourg, and Shanghai. It has more than 80 legal professionals providing a full range of legal services to domestic and international business clients who conduct business nationally and globally. The firm offers sound legal solutions combined with business acumen, which ensures a holistic perspective to every legal and tax challenge faced by clients. BUREN works closely with its clients to tailor solutions in alignment with clients' business goals. It has carefully established a global network with premier and reputable law firms and other service providers. It also has dedicated regional practices (China, Germany, Hong Kong, India, Japan, Kazakhstan, and Spanish-speaking Latin America) staffed by native speakers and professionals that have a profound knowledge of local business and culture.

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# 1. Legal System

## 1.1 Legal System and Judicial Order

Like in many other EU countries, the legal system of the Netherlands is a civil law system. While legislation is the primary source of law, precedents developed in case law play an important role, as do the principles of reasonableness and fairness. In addition to its own domestic legal system, the legal framework of the EU applies in the Netherlands.

### Judicial System for Civil and Criminal Cases

Eleven district courts (*rechtbanken*) deal with civil and criminal cases, and there are four courts of appeal (*gerechtshoven*). For civil and criminal cases, the Supreme Court of the Netherlands (*Hoge Raad der Nederlanden*) is the highest instance, but it can overturn judgments of the courts of appeal on limited and specific legal grounds only, without reviewing the facts of a case.

Ranking high in The World Bank's Rule of Law Index, the Dutch legal system is considered one of the most efficient civil law systems in the world. Urgent matters may be heard in summary proceedings, in which judgments are rendered in a timeframe of a few weeks or even a few days. For certain areas of law, the Netherlands has established courts with specific expertise. The following courts are most relevant in an international business law context:

- the Netherlands Commercial Court, which allows parties to litigate in the English language entirely (from writ of summons to court hearing to judgment) in any international commercial dispute;
- the Enterprise Court (*Ondernemingskamer*) of the Amsterdam court of appeal, which has exclusive jurisdiction over certain matters relating to corporate law;
- the Maritime Court of the Rotterdam district court, which allows parties to litigate partly in English; and
- a chamber of the district court of The Hague, specialised in intellectual property law, which allows parties to litigate partly in English.

### Judicial System for Administrative Cases

As in civil and criminal cases, district courts have jurisdiction in administrative cases, in principle, provided that the applicable complaints procedure with the respective administrative body has been completed first. There are a number of competent courts for appeals – which court has jurisdiction to handle the appeal depends on the type of case. Most appeals are heard by the Administrative Jurisdiction Division of the Council of State (*Afdeling bestuursrechtspraak van de Raad van State*), which in most cases is the highest court for matters of administrative law in the Netherlands. A final appeal to the Supreme Court is only possible in tax cases.

Unlike in other countries, judicial bodies in the Netherlands do not pass judgment on the constitutionality of legislation. Based on a recent decision in the Dutch parliament, the constitutionality of legislation will in the future be dealt with by a separate commission of the parliament.

# 2. Restrictions on Foreign Investments

## 2.1 Approval of Foreign Investments

### Approval

The approval requirements in the Netherlands have always been rather limited. As a consequence of the EU FDI Screening Regulation (Regulation (EU) 2019/452), which entered into force in 2019 this changed. Certain sectors and industries are regulated regardless of the nationality or home state of the investor.

### Electricity, Gas, Drinking Water and Telecommunications Act

The Electricity Act, the Gas Act and, since 1 October 2020, the Telecommunications Act require notification to the Dutch Ministry of Economic Affairs (and Climate Policy) of any change of control with respect to an electricity, gas or telecommunications company. This screening obligation applies to any change of control that leads to a change of "predominant control" in any of the above sector-specific (electricity, gas or telecommunications) companies, regardless of the identity of the investor. A transaction triggering a change of control may be prohibited or be subject to certain conditions for reasons of public safety or

supply security. If parties fail to notify the Ministry, a transaction is voidable.

Drinking water companies are by law required to be directly or indirectly held by Dutch public persons.

#### Financial Supervisions Act

Certain changes of control in companies and institutions that are subject to the Financial Supervisions Act are to be reported to the Authority for Financial Markets (*Autoriteit Financiële Markten*) or the Dutch Central Bank (*De Nederlandsche Bank*).

#### Dutch Implementation of Screening Mechanisms: Security Test Act

On 1 June 2023, the Investments, Mergers and Acquisitions Security Test Act (*Wet Veiligheidstoets investeringen*, *fusies en overnames*) (Security Test Act, also referred to as Vifo-Act) entered into force. The Security Test Act requires a change of control in certain Dutch companies to be notified to and approved by the Bureau for Investment Screening (*Bureau Toetsing Investeringen* – BTI). Companies that are active in the Netherlands in supplying vital infrastructure or undertakings, or that are active in sensitive technology, as well as companies that operate business campuses, fall under the scope of the Security Test Act.

The term "control" refers to the ability to exercise decisive influence on a target company, either through shareholding or on a de facto basis once the investment has taken place. Thresholds apply depending on the type of target company involved. Upon receipt of the notification, the BTI will examine whether the transaction can lead to a risk to national security, particularly the continuity of vital processes, the prevention of undesirable strategic dependencies and the integrity and exclusivity of knowledge and information.

In principle, the approval time is within eight weeks of receipt of the notification. If a formal assessment is required, the BTI has an additional eight weeks for further investigation. Each phase can be extended separately. Pending BTI approval of the transaction, a standstill obligation applies to the parties involved.

Based on Article 6 (1) of the EU FDI Screening Regulation, the European Commission will have to be informed about the transaction and both the European Commission and other EU member states may ask questions about a transaction.

### 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

On the basis of current legislation, a transaction is voidable if parties to a foreign investment in the electricity, gas, or telecommunications sector fail to notify the Ministry.

Failure to comply with the notification obligations under the Security Test Act may lead to a direct suspension of all voting rights of the investor, pursuant to the transaction. The company will be obliged to make all efforts to co-operate.

Furthermore, the BTI may require the parties to make a certain notification within three months of the transaction becoming known. In the meantime, the rights of the investor will be suspended. The BTI may also impose an administrative fine, with the maximum being 10% of the turnover.

If the transaction has taken place without the approval of the BTI, the Security Test Act stipulates that the acquisition shall be declared null and void.

### 2.3 Commitments Required From Foreign Investors

Foreign investors are required to fulfil the notification requirements described in **2.1 Approval of Foreign Investments**.

### 2.4 Right to Appeal

This section is not applicable in the Netherlands.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

The legal entities most commonly used in the Netherlands are the private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid* – BV) or the public limited company (*naamloze vennootschap* – NV), both of which have legal personality, and the (limited or general) partnership (*person-*

*envennootschap*), which is a contractual arrangement without legal personality.

### BVs

The key characteristics of a BV are as follows:

- capital is divided into shares;
- privately owned (ie, with a closed circle of shareholders);
- no minimum capital is required; and
- different types of shares can be created, which makes it possible to vary with regard to (among others) voting rights and profit-sharing rights.

A BV is more flexible than an NV and is the most frequently used corporate entity form in the Netherlands. BVs are popular as holding companies in (international) group structures and as operational and financing companies, and are also considered suitable for structuring joint ventures.

### NVs

The key characteristics of an NV are as follows:

- a minimum share capital of EUR45,000;
- all shareholders have voting rights and profit rights;
- different types of shares are possible; and
- there are specific rules with regard to the proper functioning of the general meeting.

In general, an NV is subject to stricter capital and creditor protection rules than a BV. The NV is designed primarily as a public company, the shares of which can be listed on a stock exchange. Until 2019, an NV's capital could consist of individual bearer shares. Since then, bearer shares can only be issued by way of a global certificate. Any (individual) bearer shares that were not converted into registered shares by 1 January 2020 are considered to have been converted by operation of law. Until 2 January 2026 shareholders of bearer certificates are entitled to acquire a replacement share in the form of a registered share from the respective company.

### Partnerships

The two most common forms of Dutch partnerships are the general partnership (*vennootschap onder firma* – VOF), which is a partnership between two or more general partners, and the limited partnership (*commanditaire vennootschap* – CV), which is a partnership between one or more managing partners and one or more limited partners.

A Dutch partnership does not have legal personality.

## 3.2 Incorporation Process

The incorporation of a BV requires few formalities and can be carried out very quickly and easily.

BVs and NVs are incorporated by the execution of a notarial deed of incorporation (*akte van oprichting*) by a Dutch civil-law notary (*notaris*). This deed of incorporation contains the initial articles of association and must be in the Dutch language. An English translation is commonly provided. Since 1 January 2024, it is possible to digitally incorporate a BV.

The incorporation of an NV requires a bank statement providing evidence of the payment of the minimum paid-up capital (if in cash) or a description of the contribution drawn up and signed by the incorporators, and an auditor's certificate attesting to such payment (if in kind).

The founders of an NV or a BV may be one or more individuals or legal entities, of any nationality and domiciled anywhere.

The Dutch civil-law notary (*notaris*) is required by law to register persons who will have an interest of at least 25% in the newly incorporated company (the Ultimate Beneficial Owner(s) – UBO) with the UBO register.

A partnership under Dutch law is set up by the execution of a partnership agreement between one or more partners. The partnership agreement must provide for a durable co-operation between the partners, and must be governed by Dutch law. The partners may be either individuals or legal entities.

A VOF must have at least two general partners, whereas a CV must have at least one managing partner and one limited (or "silent") partner. Each partner must contribute to the partnership.

### 3.3 Ongoing Reporting and Disclosure Obligations

Private companies must be registered with the trade register of the Dutch Chamber of Commerce within eight days of incorporation. The trade register holds publicly available information on companies, such as the names of the managing directors, supervisory directors and proxy holders (including the scope of their powers), if any, and the articles of association.

Amendments to the articles of association and certain amendments to the limited partnership agreement must be filed and registered with the trade register, as must certain changes in the company/partnership.

If all issued and outstanding shares in the company are held by one individual or legal entity, certain basic data regarding this sole shareholder must also be registered.

All companies and legal entities must register the ultimate beneficial owner(s) with the UBO register.

Companies must maintain accounting records and prepare financial statements. Additional accounting, auditing and publication requirements apply to small, medium, and large companies, based on certain thresholds.

Dutch law contains no special requirements for the contents of the annual accounts of partnerships, unless all managing partners are corporations incorporated under foreign law, in which case that partnership is subject to the Dutch financial reporting requirements.

### 3.4 Management Structures

Dutch corporate law provides that a Dutch company must have at least a management board consisting of managing directors, and a general meeting of shareholders. Dutch companies may also have a supervisory board, although this is not required for most Dutch companies. The management board is the executive body of the company, charged with the company's day-to-day management.

The management board may consist of just one managing director, who can be a natural person or a legal entity. There are no requirements regarding the nationality or the place of residence of managing directors (although this may be a highly relevant issue for tax purposes).

Dutch corporate law offers companies a choice between a one-tier board consisting of executive and non-executive directors, and a two-tier board consisting of a management (executive) board and a supervisory (non-executive) board. Large companies that meet certain statutory criteria must have a one-tier board (with non-executive directors) or a supervisory board with considerable powers (as prescribed by law).

As for partnerships, VOFs are, in principle, managed by and may be represented by all partners. CVs are managed by the managing partner(s) who is/are responsible for the day-to-day affairs of the CV.

### 3.5 Directors', Officers' and Shareholders' Liability

A distinction should be made between the internal and external liability of managing directors: internal liability exists towards the company, while external liability exists towards third parties, such as creditors of the company or the tax authorities.

As a general rule, managing directors are jointly and severally liable for mismanagement only in cases of serious culpability (*ernstig verwijt*).

Mismanagement can consist of acting (or failing to act) in violation of the law or the articles of association, or acting in a clearly unreasonable way.

Managing directors who enter into a contract on behalf of a company while knowing (or having reason to know) that the company will not be able to fulfil its contractual obligations or will not have sufficient assets against which to take recourse may be held liable (externally) for any resulting damages. The burden of proof rests with the prejudiced creditor.

As a general rule, shareholders are not personally liable for acts performed in the name of the company, and are under no obligation to contribute to the losses of the company in excess of the amount to be paid on

their shares. However, Dutch case law has recognised that there may be exceptional circumstances that allow the "corporate veil" to be lifted and shareholders to be held jointly liable for the company's debts and obligations.

Partners in VOFs are jointly and severally liable for all obligations of the partnership. The liability of general partners in a CV is unlimited, while the liability of limited partners is limited to the amount of their capital contributions, provided they have not performed any acts of management or representation of the partnership.

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

The legal framework governing employment contracts is set out in the Dutch Civil Code (DCC). Additional terms and conditions may be agreed in an individual employment contract, provided they do not contradict the mandatory statutory provisions of the DCC. Furthermore, the legal relationship between an employer and employee may be governed by collective labour agreements between the trade unions and employers (or organisations of employers). Multiple other laws and regulations are also of influence – eg, the Equal Treatment Act.

In addition, case law, especially rulings of the High Court, provides an important series of precedents and principles, which often help to clarify ambiguous statutory or contractual provisions. The laws of the European Community and other international treaties and regulations form another important source of law.

### 4.2 Characteristics of Employment Contracts

Dutch employment law does not require employment contracts to be made in writing. Certain provisions, however, need to be in writing to be valid, such as non-competition clauses or probation period clauses. Therefore, in practice employment agreements are concluded in writing.

No legal provision dictates the language in which employment contracts should be concluded; they do not necessarily have to be in Dutch, with international companies commonly offering employees employment contracts in English. Most important is that the employee understands the content of the document.

Employment contracts can be concluded for a definite period of time (fixed-term contracts) or an indefinite period of time (indefinite contracts). Consecutive fixed-term employment contracts, if extended, are automatically converted into indefinite contracts, once certain criteria are met. This applies if the number of consecutive contracts exceeds three, or if the aggregate term of the consecutive contracts exceeds 36 months.

### 4.3 Working Time

Under the Dutch Working Hours Act, employees are generally allowed to work a maximum of 12 hours per day and a maximum of 60 hours per week. Over a period of 16 consecutive weeks, employees may not work more than 48 hours per week on average. Over a period of four consecutive weeks, the weekly average may not be more than 55 hours.

Collective labour agreements or employee handbooks may contain provisions on the standard working hours in a company.

### 4.4 Termination of Employment Contracts

The dismissal of employees is governed by mandatory statutory dismissal provisions. The system differs substantially from most other EU countries.

Fixed-term contracts end by operation of law on the agreed end date.

Employers may terminate indefinite contracts by giving notice of termination. The most striking difference to other jurisdictions is that employers must, in principle, first apply for a dismissal permit from the governmental agency called UWV Werkbedrijf before they can give such notice, or they must request the court to terminate the contract. The manner of termination for employers is prescribed by law, depending on the reason for termination: termination for economic reasons or due to long-term incapacity for work must be effected through the UWV procedure, while dismissal on other grounds has to take place through termination by the court.

Unlike employers, employees do not require a permit from the UWV nor have to go to court to terminate their employment contract. The statutory notice period for employees is one month. The statutory notice period for employers is between one and four months, depending on the duration of the employment relationship. Deviating contractual notice is possible to some extent.

Several dismissal prohibitions apply. For example, sick employees are protected against termination of employment during the first two years of their sickness and also pregnant employees benefit from dismissal protection.

Both fixed-term contracts and indefinite contracts can be terminated by mutual consent between the employer and the employee. Employers usually offer financial compensation, based on (at least) the "transition payment" (see below), and it is common to confirm the termination in a settlement agreement, by which the parties grant each other full and final discharge.

Indefinite contracts and fixed-term contracts longer than six months may include a probationary period during which each party may terminate the employment contract with immediate effect, without the prior permission of the UWV or the court.

Employment contracts may be terminated with immediate effect and without prior permission from the UWV or the court if there is an "urgent cause" to do so. The DCC provides a non-exhaustive list of acts that may qualify as an "urgent cause", such as fraud and theft.

Employers are required to make a "transition payment" to employees if one of the following applies:

- the employment contract is terminated by the employer by giving prior notice of termination;
- the court terminates the employment contract at the employer's request; or
- the employer decides not to renew the employment contract after the expiration of the agreed fixed term.

Transition payments are equal to one third of a monthly gross salary for every full year of employment, regardless of the employee's age or years of service and calculated pro rata, depending on the exact duration of employment. The payment never exceeds EUR98,000 (as of 2025), or one annual salary for employees earning more than EUR98,000. Only employees who are seriously culpable for termination are not entitled to a transition payment. If the court rules that an employer has demonstrated serious culpable behaviour towards an employee the court can grant the employee additional severance.

Employers who intend to dismiss at least 20 employees within a period of three months (in one region) are subject to the Collective Redundancy (Notification) Act. Under that legislation, employers must notify the UWV and the relevant trade unions of the intended dismissals, and must first discuss the proposed decision and its social consequences with these trade unions.

### 4.5 Employee Representations

Under the Dutch Works Council Act (WCA), companies employing at least 50 persons must establish a works council for the purpose of consultation with and representation of the employees. The employees elect the members of the works council directly from amongst themselves. The number of members depends on the number of employees within the company, and varies from a minimum of three to a maximum of 25.

The WCA provides a number of rights for the works council, including the right to advise on certain matters and the right of approval. Companies must request the prior advice of the works council on certain decisions (and their implementation) about significant business matters, such as the transfer of control over the company or any part thereof, the establishment, takeover or disposal of control over another company, or the termination of operations or a substantial part thereof. In addition, companies must request the prior approval of the works council in respect of certain decisions concerning the introduction, modification or repeal of "social" regulations within the enterprise, such as regulations on:

- pension schemes;

- profit-sharing or saving plans;
- working hours or leave; and
- salary or job classification systems.

Furthermore, trade unions often represent their members in discussions about a collective labour agreement and in collective dismissals.

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/Employers

#### Taxes Paid by Employees

*Personal income tax*

Personal income tax is levied on Dutch tax residents (on income from various worldwide sources) and non-Dutch tax residents (on income from Dutch sources).

Personal income tax is levied on three different categories of income, referred to as "boxes":

- box 1 concerns income from work and home, and includes income from past and current employment, sole proprietorship, and an owner occupied home;
- box 2 concerns taxable income from, in short, (share) interests of 5% or more in companies; and
- box 3 concerns income from savings and investments.

Wage tax is withheld by employers, and functions as a pre-tax to personal income tax (and employee social security contributions). Income from past and current employment (realised by Dutch and non-Dutch tax residents) is determined by the Dutch Wage Tax Act 1964. Except in certain specific cases (for instance, if the individual functions as a board member or supervisory board member of a Dutch company), individuals who work (almost) entirely outside the Netherlands are generally not considered "employees" for Dutch wage tax purposes.

Personal income tax for box 1 is levied at progressive rates on income, minus personal deductions and allowances.

In 2026, the applicable rates for non-retired persons are:

- 35.75% for income up to and including EUR38,883 (8.10% excluding social security contributions levied from employees);
- 37.56% for income ranging between EUR38,883 and EUR78,426; and
- 49.50% for income exceeding EUR78,426.

Box 2 is levied at a progressive rate on income. In 2026, the applicable rates are:

- 24.50% for income up to and including EUR68,843; and
- 31.00% for income exceeding EUR68,843.

In 2026 box 3 income tax is levied at a rate of 36% on three categories based on a deemed return on assets minus liabilities. The deemed return for 2026 will be announced at the start of the year 2026, except for the "other assets" which is already known (deemed return: 6.00%).

The effective rates applied in the preliminary 2026 personal income tax assessments are as follows.

- Bank balances (including savings) and cash: 0.4608% (flat rate of return of 1.28 * 36%).
- Other assets: 2.16% (flat rate of return of 6,00 * 36%).
- Debt: -/- 0.972% (flat rate of return of -/- 2.70 * 36%).

In 2026, the first EUR59,357 (EUR118,714 for taxpayers with a tax partner) of net box 3 assets are tax-exempt.

Subject to certain conditions, employees hired outside the Netherlands can apply for a ruling allowing employers to pay 30% of the wage tax-free, including allowances. This scheme may be applied up to the maximum amount under the Standards for Remuneration Act (EUR262,000 in 2026).

Furthermore, the 30% facility will be scaled back to 27% from 1 January 2027 onwards. The limitations

will not apply to applicants who already applied the 30% ruling before 1 January 2024.

*Employee social security contributions*

Individuals are subject to social security contributions levied on income up to and including EUR38,883. The applicable rate is 27.65%.

### Taxes Paid by Employers

*Wage tax*

Employers qualifying as "withholding agents" must withhold wage tax and social security contributions (levied at the level of employees) in respect of wages paid to employees for Dutch wage tax purposes.

*Employer social security contributions*

In summary, the rates of employer social security contributions in 2026 are as follows.

- General unemployment insurance (*Algemeen werkloosheidsfonds* – AWF) – 2.74% for contracted workers with an indefinite term and 7.74% for flex workers and temporary workers.
- Occupational disability insurance (*Wet op de arbeidsongeschiktheidsverzekering* – WAO or *Wet werk en inkomen naar arbeidsvermogen* – WIA) – 7.61% for large employers and 6.26% for small employers.
- Health Insurance Act contribution (*Zorgverzekeringswet* – ZVW) – 6.10%.
- Childcare allowance contribution (*Werkgeversbijdrage Kinderopvang*): 0.5%.
- Government unemployment insurance (*Uitvoeringsfonds voor de overheid* – UFO) – 0.68%.
- The Return to Work Fund (*Werkhervattingskas* – Whk) – 1.52% (approximate amount).

Only income up to and including EUR79,409 is subject to the above contributions.

## 5.2 Taxes Applicable to Businesses

### Corporate Income Tax

Dutch tax-resident companies (or companies deemed to be tax residents) are subject to Dutch corporate income tax based on their worldwide income.

Non-Dutch tax-resident companies are subject to corporate income tax from certain Dutch sources, including:

- Dutch permanent establishments or permanent representatives;
- shareholdings of at least 5% in Dutch companies that cannot pass certain anti-abuse tests; and
- other specific sources, including Dutch real estate, directorship services and the exploration of natural resources.

The Dutch corporate income tax rate in 2026 is 19% for taxable profits up to and including EUR200,000, and 25.8% for taxable profits exceeding this amount.

Under the Dutch participation exemption, income (eg, dividends and capital gains) derived by Dutch resident corporate taxpayers from qualifying subsidiaries is exempt from Dutch corporate income tax.

In 2026, the term of the loss carry forward facility is an unlimited period. The carry back period is one year. Profits of up to EUR1 million can be fully deducted under the application of the loss carry forward and backward facility. For profits exceeding EUR1 million, only 50% of the profit can be reduced under these facilities.

### Minimum Profit Tax

In line with EU regulation, the Netherlands has introduced a Minimum Profit Tax Act: Wet Minimumbelasting 2024. The act requires large multinational enterprises with an annual turnover exceeding EUR750 million to be subject to (at least) 15% minimum tax due to the so-called OECD Pillar 2 project.

### Dividend Withholding Tax

Shareholders of Dutch tax-resident companies are generally subject to 15% Dutch dividend withholding tax in respect of dividends (and other payments treated as dividends) paid by Dutch tax resident companies (or companies deemed to be tax residents). In principle, distributing companies should withhold and pay any Dutch dividend withholding tax due.

An exemption applies to dividends distributed to corporate shareholders owning a share interest of at least

5% in the relevant distributing company if, in short, the corporate shareholder is a tax resident of the EU or a Dutch tax treaty jurisdiction, and is the beneficial owner of the dividend, provided it is not a hybrid transaction and certain other anti-abuse tests are met.

Application of the extensive Dutch tax treaty network may result in a reduction or refund of Dutch dividend withholding tax.

### Conditional Withholding Tax

The Netherlands does not currently levy withholding tax on interest and royalty payments, with the exception of a specific levy in intragroup abusive situations.

In 2026, a conditional withholding tax at a rate of 25.8% is due on intra-group dividend, interest and royalty payments by Dutch resident companies to related entities residing in jurisdictions that are either on the blacklist issued by the Dutch Ministry of Finance (including low tax jurisdictions (less than 9%) and jurisdictions that are on the EU blacklist of non-co-operative jurisdictions) or in abusive situations.

### VAT

The Netherlands levies Value Added Tax (VAT) on the supply of goods and services as part of the domestic implementation of the EU VAT Directive (Directive 2006/112/EC). The current Dutch VAT system, therefore, is comparable to the VAT systems of other EU member states, although the Netherlands uses certain optional measures to facilitate trading.

Under Dutch VAT law, in principle any person or entity can qualify as an "entrepreneur" (taxable person) if they act independently and perform (preparatory acts to) economic activities on a continuing basis, whatever the purpose or result of those activities. Entrepreneurs acting as such are, in principle, required to file VAT returns and are entitled to a refund of (input) VAT charged, provided they are engaged in VAT taxable transactions within the territory of a member state of the European Union.

In the Netherlands, the following VAT rates apply to supplies of goods and services in 2026.

- General rate: 21%.
- Reduced rate: 9%.
- Zero rate (0%).

Furthermore, entrepreneurs must meet certain administrative obligations when rendering VAT taxable or exempt transactions (eg, invoicing, keeping proper accounts, filing VAT returns, and EU Sales Listing reporting).

## 5.3 Available Tax Credits/Incentives

### Innovation Box Regime

Dutch taxpayers can apply an "innovation box regime" to qualifying profits from certain self-developed intangible fixed assets.

Under the innovation box regime, profits are included in the tax base of a taxpayer only for 9/25.8 part, resulting in an effective tax rate of 9%.

Qualifying profits are benefits from qualifying self-developed intangible fixed assets multiplied by a nexus ratio. The nexus ratio consists of 130% of the taxpayers' operating expenses and third-party outsourcing expenses incurred in relation to the creation of the relevant asset, divided by any expenses incurred in relation to the creation of the relevant assets, with a maximum of 100%.

For small taxpayers, qualifying assets are intangible fixed assets developed by research and development (R&D) activities for which a so-called R&D certificate was issued.

Taxpayers are considered small if their net group turnover is less than EUR250 million in the respective financial year and the four preceding years combined, and the benefits derived from the intangible assets are less than EUR37.5 million in the respective financial year and the four preceding financial years combined.

For large taxpayers, qualifying assets are intangible fixed assets developed by R&D activities falling within the scope of certain specific categories.

### R&D Wage Tax Credit Regime

The R&D wage tax credit regime enables companies that engage in R&D activities to pay less wage tax and social security contributions than they withhold

from their employees. The amount of the reduction is limited to the total amount of wage costs and social security contributions. R&D costs may include both wages and other costs related to self-developed R&D.

In order to qualify for the R&D wage tax credit regime, companies have to apply for a permit from the Netherlands Enterprise Agency (RVO).

The granting of this permit is subject to the following conditions:

- the R&D activities (eg, development of a product, production process, software or technical research) will be performed in-house by the applicant;
- the innovation is new to the organisation of the applicant;
- the applicant seeks to solve technical difficulties of the development process;
- the R&D activities are performed within the EU; and
- the R&D permit is requested in advance.

In addition, the granting of the permit is subject to the available funding.

### Business Incentives

The small-scale investment incentive provides for tax deductions for corporate income tax and personal income tax purposes in connection with the acquisition of one or more new qualifying business assets.

The investment incentive for environment improving assets provides for tax deductions in connection with the acquisition of one or more new environment-improving assets. The deduction generally amounts to 40.0% of the amount of the investment, which should be included on a list published by the RVO, and requires the issuance of a notification from the RVO.

Under conditions similar to those of the investment incentive for environment-improving assets, it is possible to apply the random depreciation regime to environment-improving assets or energy-improving assets. Under this regime, taxpayers can randomly depreciate 75% of the investment made in the qualifying asset.

Some investments are excluded from the application of the above-mentioned incentives.

## 5.4 Tax Consolidation

### Fiscal Unity for Dutch Corporate Income Tax Purposes

Companies that are part of a "fiscal unity" for Dutch corporate income tax purposes may file a consolidated tax return, and are taxed on a consolidated basis as if they were just one company. As a result, transactions between companies belonging to the fiscal unity are, in principle, ignored and not subject to taxation on profits or gains.

However, for purposes of certain anti-abuse rules (eg, for the anti-base erosion rules included in article 10a of the Dutch Corporate Income Tax Act 1969), transactions between entities within a fiscal unity are considered.

The Dutch fiscal unity rules include other anti-abuse rules, which can be triggered by the formation or dissolution of a fiscal unity, for example. Companies belonging to the fiscal unity are jointly and severally liable for payments of corporate income tax over the period of the fiscal unity. Parent companies and their subsidiaries can, upon request, form fiscal unities if a number of requirements are met, including the following.

- Ownership requirement – the parent company must hold the economic and legal ownership of at least 95% of the shares in the nominal paid-up capital of its subsidiary, which provides entitlement to at least 95% of the statutory voting rights in that subsidiary and to at least 95% of the profits, and represents at least 95% of the capital of the subsidiary.
- Residency requirement – the applying companies should be residents of the Netherlands for tax treaty purposes.

In addition to the above, a parent company can form a fiscal unity with an indirectly held subsidiary if both companies are tax residents of the Netherlands and the intermediate company (or companies) between the parent company and the indirectly held subsidiary resides in another EU or EEA member state. Further-

more, two Dutch tax-resident subsidiaries can form a fiscal unity if their joint parent resides in another EU or EEA member state. A new tax consolidation system is under discussion already for a long time but does not seem to have much traction.

### Fiscal Unity for Dutch VAT Purposes

A VAT group can be created by two or more persons established within an EU member state, who, while legally independent, are closely bound to each other by financial ties (ie, more than 50% shareholding), organisational ties (ie, central management) and economic ties (ie, same or related activities or suppliers). A VAT group is treated as one VAT entrepreneur.

Transactions between the members of a VAT group are not subject to VAT. The right to deduct input VAT is based on the activities of the VAT group as a whole. The VAT group regime only applies if each member of the VAT group qualifies as a VAT entrepreneur.

## 5.5 Thin Capitalisation Rules and Other Limitations

The Dutch earning stripping rules limit the deduction of excessive interest expenses related to intra-group and third-party payables for Dutch corporate income tax purposes.

Under these rules, the starting point is to determine the Dutch taxpayers' so-called interest expense excess, which is the amount by which the Dutch taxpayers' tax-deductible interest expenses exceed their taxable interest income. The deductibility of the interest expense excess is limited to 24.5% of the taxpayers' EBITDA (carving out tax-exempt income) or a safe harbour threshold of EUR1 million, whichever is higher.

Interest disallowed under the earnings stripping rule can be carried forward to later years without any time limitations. Dutch corporate income tax law includes several other rules based on which deduction of interest may be denied, including the anti-tax base erosion rules – see **5.7 Anti-Evasion Rules**.

## 5.6 Transfer Pricing

For Dutch tax purposes, transactions between affiliated entities must be performed under the same terms and conditions as would be agreed between non-affiliated entities under similar circumstances (the so-called "arm's length principle"). If the terms and conditions of an affiliated party transaction are not at arm's length, the transaction is taxed as if they had been.

For Dutch transfer pricing purposes, companies are considered to be affiliated if one entity participates (directly or indirectly) in the management, control or capital of another entity, or if the same person participates (directly or indirectly) in the management, control or capital of two entities.

Dutch taxpayers must have documentation available showing that the conditions of affiliated party transactions are at arm's length. In addition, multinationals with a consolidated group turnover of at least EUR750 million in the preceding year are required to file country-by-country (CbC) reports containing detailed information on the transfer pricing policy and the allocation of assets and personnel within the group. CbC reports are exchanged automatically with the tax authorities of all countries in which the multinational group operates.

Furthermore, Dutch taxpayers that are part of a multinational group with a consolidated turnover of at least EUR50 million in the preceding year must prepare both so-called "master files" and "local files".

In addition, rules apply based on which hybrid mismatches that arise under the application of the arm's length principle are neutralised. Based on these rules, downwards fiscal profit adjustments, recognition of losses and value increases of assets acquired from affiliated parties (the value increases are also referred to as "informal capital contributions" or "deemed dividend distributions") under the application of the arm's length principle will be denied if, in short, the taxpayer cannot reasonably prove that a corresponding upwards adjustment will be included in the tax base in the jurisdiction of the affiliated party.

## 5.7 Anti-Evasion Rules

Dutch corporate income tax law includes various rules targeting tax evasion, such as limitation of interest deduction rules preventing tax base erosion, con-

trolled foreign companies (CFC) legislation, exit taxation and the non-resident corporate income tax rules (see **5.2 Taxes Applicable to Businesses**).

Furthermore, there are various Dutch dividend withholding tax rules targeting tax evasion, such as anti-dividend stripping rules and certain other anti-abuse rules (see **5.2 Taxes Applicable to Businesses**).

Finally, Dutch tax law includes an unwritten general anti-abuse rule (fraus legis). Some of these anti-evasion rules are listed below.

### Limitation of Interest Deduction Rules – Anti-Tax Base Erosion Rules

Under the Dutch anti-tax base erosion rules, the deduction of interest expenses (including currency results and other costs) is limited to related party loans that have been used to finance:

- profit distributions or repayments of capital to related parties;
- capital contributions to related parties; or
- the acquisition of certain share interests.

There are, however, exceptions under which the interest deduction limitation rule does not apply (eg, if the loan and the transaction are based primarily on business reasons).

### CFC Legislation

Under the CFC rules, undistributed "tainted" (passive) income derived from subsidiaries or permanent establishments that are tax resident in certain blacklisted jurisdictions (ie, the jurisdictions referred to in **5.2 Taxes Applicable to Businesses** under "Conditional Withholding Tax") is, in principle, annually included in the taxable basis of the Dutch taxpayer (subject to certain conditions). Only interests of 50% in direct or indirect subsidiaries or permanent establishments of Dutch taxpayers together with related companies are targeted.

### Exit Taxation

If Dutch resident corporate taxpayers transfer their tax residencies to other jurisdictions or transfer assets to non-Dutch permanent establishments, the assets and liabilities must be stated at fair market value. Any gains (ie, hidden reserves, goodwill and/or currency exchange gains) will, in principle, be subject to corporate income tax. Under certain conditions, it is possible to apply an extended payment deadline.

### General Anti-Abuse Rule (Fraus Legis)

Under the legal concept of fraus legis, transactions can be eliminated for Dutch tax purposes or replaced by other transactions. Fraus legis can be applied if the Dutch tax authorities prove that the sole or predominant motive for a transaction is tax avoidance, and that the envisaged tax consequences of a transaction conflict with the purposes and rationale of the relevant law. As per 1 January 2025, the General Anti-Abuse Rule (GAAR) from the first EU anti-tax avoidance Directive (ATAD1) has been incorporated into Dutch tax law on request from the European Commission. The interpretation of the GAAR is similar to fraus legis and it is not intended to make any substantial changes to the current legal practice.

### Anti-Hybrid Rules

Dutch tax law includes anti-hybrid rules implementing the amended Anti-Tax Avoidance Directive (ATAD2). These rules include limitation of deduction rules under which hybrid mismatches between "associated enterprises", head offices and their permanent establishments or between two or more permanent establishments of an entity and mismatches under a so-called "structured arrangement" are neutralised. A hybrid mismatch is generally present if there is a double deduction of costs or a deduction of costs without inclusion of the corresponding benefit. These rules apply for the following hybrid mismatches.

- Hybrid entity mismatches – an entity is treated as non-transparent in one jurisdiction and transparent in another jurisdiction.
- Hybrid financial instruments – an instrument that includes debt and equity is treated as non-transparent in one jurisdiction and transparent in another jurisdiction.
- Hybrid financial transfers – an arrangement to transfer a financial instrument causes a hybrid mismatch.
- Imported hybrid mismatches – a hybrid mismatch situation between parties in non-EU jurisdictions is

shifted to an EU member state through the use of a non-hybrid instrument.
- Hybrid PEs – a permanent establishment is treated differently between jurisdictions as regards the presence or attribution of profit to business activities in the jurisdictions.
- Dual resident mismatch – a payment made by a dual resident company may be deductible in multiple jurisdictions.

A separate anti-mismatch rule applies to "reversed hybrid situations", which concern entities that are treated as transparent in the jurisdiction of incorporation or registration, and that are treated as non-transparent in the jurisdictions of their participants. Reverse hybrid entities are subject to corporate income tax in the Netherlands. Furthermore, a reverse hybrid entity may also be subject to dividend withholding tax and conditional withholding tax.

Taxpayers are required to have information in their administration substantiating whether or not any hybrid mismatch rules are met. If such information is not present, the tax inspector could request the provision of such documentation and the taxpayer would have the burden of proof that no hybrid situation would be present.

### 5.8 Tariffs

The Netherlands is part of the EU customs union. This implies that the Dutch tariff regime is equal to the tariff regimes of other EU member states and that no tariffs are imposed on intra EU transactions. The applicable rates on import of goods with non-EU origin differ depending on the kind of goods and their origination. The EU has a huge number of trade agreements in place with third countries and regions. A considerable number of trade agreements are under renegotiation.

## 6. Competition Law

### 6.1 Merger Control Notification

Mergers can be subject to either EU or Dutch merger control rules. The rules in the Dutch Competition Act are based on and essentially resemble the EU competition rules.

The European Commission must be notified of any merger with an EU dimension prior to its implementation. If the Dutch notification thresholds are met, then companies must comply with the Dutch notification requirements.

In principle, the Commission only examines larger mergers with an EU dimension if the merging firms reach certain turnover thresholds. There are two alternative ways to reach turnover thresholds.

- The first alternative requires:
  (a) a combined worldwide turnover of all the merging firms of more than EUR5 billion; and
  (b) an EU-wide turnover for each of at least two of the firms of more than EUR250 million.
- The second alternative requires:
  (a) a worldwide turnover of all the merging firms of more than EUR2.5 billion;
  (b) a combined turnover of all the merging firms of more than EUR100 million in each of at least three member states;
  (c) a turnover of more than EUR25 million for each of at least two of the firms in each of those three member states; and
  (d) an EU-wide turnover of each of at least two firms of more than EUR100 million.

In both alternatives, the EU dimension requirement is not met if each of the firms achieves more than two thirds of its EU-wide turnover within one and the same EU member state.

Mergers without an EU dimension are subject to Article 29 of the Dutch Competition Act, under which the Dutch Authority for Consumers and Markets (*Autoriteit Consument en Markt* – ACM) must be notified of a concentration if both the combined turnover of the firms involved is more than EUR150 million in the calendar year before the concentration and at least two of the companies involved earned at least EUR30 million in the Netherlands.

According to Article 27 (1) of the Dutch Competition Act, the following types of transactions (concentrations) are subject to merger control:

- the merger of two or more previously independent companies; and
- the acquisition of direct or indirect control by:
  (a) one or more natural persons or legal entities that already control one company; or
  (b) one or more companies of the whole or parts of one or more other companies, through the acquisition of a participating interest in the capital or assets, under an agreement or by any other means.

Control is defined as the ability to exercise decisive influence on the activities of a company on the basis of factual or legal circumstances.

Long-term joint ventures performing all functions of an autonomous economic entity are seen as concentrations under Section 27 (b)(1) of the Dutch Competition Act.

Sector-specific thresholds apply to pension funds, banks, financial institutions, energy, telecoms, transport and postal services.

The Dutch Competition Act is enforced by the ACM, which is an autonomous administrative authority that operates independently of the Ministry of Economic Affairs. The ACM is also the local competent authority for matters relating to Regulation (EC) 139/2004 on the control of concentrations between undertakings (the "Merger Regulation").

## 6.2 Merger Control Procedure

Transactions meeting the thresholds of the Dutch Competition Act must be notified to the ACM. The intended transaction must be notified before its completion, and the concentration may not be effected before four weeks have passed after the notification (Article 34 (1) of the Dutch Competition Act).

The ACM assesses concentrations in two phases. During Phase I, which starts with the notification, the ACM must decide within four weeks whether the transaction requires a licence. If no licence is required, the parties can execute the transaction.

If the ACM decides that a licence is required, the parties can apply for the licence at their own discretion and timing. However, the transaction cannot be completed without a licence. Phase 2 is initiated with the submission of a licence application, after which the ACM conducts a more in-depth analysis of the effects of the concentration. The ACM must decide on the application within 13 weeks, failing which the concentration is deemed approved. However, the Phase 2 procedure often takes more time, mainly due to stop-the-clock requests for additional information. If the ACM decides not to grant a licence, the applicants are not allowed to execute the transaction.

If the proposed concentration involves a healthcare company employing 50 or more healthcare providers in the Netherlands, the companies involved must first notify the Dutch Healthcare Authority (*Nederlandse Zorgautoriteit* – NZa) of the intended transaction so that it can assess the possible effects of the concentration.

Two or more concentrations taking place between the same persons or undertakings within a period of two years shall be regarded as one concentration effected on the day of the last transaction.

## 6.3 Cartels

The rules in the Dutch Competition Act governing anti-competitive agreements, decisions and concerted practices essentially resemble the EU rules. Agreements between companies, decisions by associations of companies and concerted practices that restrict competition or aim to do so are prohibited; this includes both horizontal and vertical restrictions of competition.

Under certain conditions, anti-competitive agreements are exempted from this prohibition. The respective national provisions again reproduce the conditions required under EU law. Exemptions include agreements that serve to improve the production of goods or promote technical progress while allowing consumers a fair share of the resulting benefit. The European Commission's block exemptions, such as the EU Vertical Agreements Block Exemption Regulation, apply mutatis mutandis. Agreements or concerted practices in violation of rules governing anti-competitive agreements and practices are, in principle, null and void.

A new Vertical Block Exemption Regulation 2022/720 (VBER) entered into effect on 1 June 2022, replacing Regulation 330/2010 which applied until 31 May 2022. The new VBER has narrowed the scope of certain safe harbours, especially for online intermediation services (platforms), with a specific focus on dual distribution and parity obligations, but also introduced new flexibility for both exclusive and selective distribution systems and online sales restrictions.

Also, on 1 July 2023 the horizontal block exemption regulations (BERs) on research and development (R&D) and specialisation agreements, as well as revised guidelines on horizontal co-operation entered into effect.

The cartel prohibition is enforced by the ACM, which can impose fines of up to EUR900,000 or 10% of a company's worldwide group turnover in the past calendar year, whichever is higher. In addition, the amount of the fine can be multiplied by the number of years that the violation lasted, up to a maximum of four years. Therefore, for infringements that have lasted four years or more, the maximum fine can be as high as 40% of the undertaking's worldwide group turnover. In case of recidivism within five years, the maximum fine can be doubled and can therefore be as high as 80% of the undertaking's worldwide group turnover. The maximum fine that the ACM can impose on natural persons who have played a leading role in a cartel is EUR900,000, which can be doubled if that person committed a similar violation in the preceding five years.

Under EU Council Regulation No 1/2003, the ACM is required to apply EU rules (ie, Article 101 of the TFEU) if an agreement or concerted practice can affect trade between member states. Conduct allowed under EU rules cannot be prohibited under Dutch national law under such circumstances.

### 6.4 Abuse of Dominant Position

Under Article 24 of the Dutch Competition Act and Article 102 of the TFEU, companies that have a position of economic strength are prohibited from abusing that dominant position. Article 1 (i) of the Dutch Competition Act defines a dominant position as a position in which one or more companies are able to prevent effective competition from being maintained on the Dutch market or part thereof, by giving them the power to behave to an appreciable extent independently of their competitors, their suppliers, their customers or end users. As a rule of thumb, a market share of less than 40% does not constitute a dominant position, but a rebuttable presumption of dominance exists above 50%.

Market shares are not decisive by themselves; other relevant factors may include the existence of intellectual property rights, the level of concentration of the market and barriers to entry. Abuse is not defined, and may consist of charging unreasonably high prices, refusing to supply, or charging extremely low prices ("predatory pricing") to force competitors out of the market.

## 7. Intellectual Property

### 7.1 Patents

Under Dutch patent law, technical inventions (defined as products or operating procedures in any technological field) are eligible for patent protection if they meet three material criteria.

- Novelty – the product or process may not have been made public anywhere in the world before the date of submitting the patent application, not even through the activities of the inventor themselves.
- Inventive step – the invention must not seem obvious to a professional.
- Industrial application – the invention must relate to a technically demonstrable functioning product or production process.

Patents can be applied for in the following ways:

- by filing a national application with the Netherlands Patent Office (*Octrooicentrum Nederland*);
- by filing a European application with the European Patent Office (EPO) designating the Netherlands as a country for which patent protection is desired (as one of more than 30 possible countries in the EU);
- by filing for a Unitary Patent, ie, a European patent with unitary effect; or

- by filing an application with the WIPO under the Patent Cooperation Treaty.

On 1 June 2023 the EU regulations establishing the Unitary Patent system (No 1257/2012 and No 1260/2012) became applicable.

There are 24 EU member states, which have signed the Agreement on a Unified Patent Court (UPCA). The EU member states Croatia, Poland and Spain have not signed the UPCA but may still accede to it at any time. Currently, the UPCA is in force in the 18 member states which have ratified the UPCA, ie, Austria, Belgium, Bulgaria, Denmark, Estonia, Finland, France, Germany, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Romania, Slovenia and Sweden. Additional EU member states are expected to ratify the UPC Agreement in the coming years, so that eventually Unitary Patents will make it possible to get patent protection in up to 24 EU member states by submitting a single request to the EPO.

Once the EPO grants a European patent application, the applicant can choose between: (i) a European patent with chosen countries; or (ii) a Unitary Patent for the European countries that have ratified the UPC Agreement.

Through the UPC Agreement, a ruling can be obtained from a single authority regarding the validity or infringement of a Unitary Patent for all EU member states that ratified the UPC Agreement. The UPC (Unified Patent Court), has headquarters in Munich and Paris. In The Hague, there will be a local division at The Hague Hearing Centre. Companies can litigate European patent cases there in Dutch and English.

For a transitional period (initially of seven years) for classic European patents the patentee can choose whether or not to use the UPC. If it is chosen not to use the UPC, then litigation will continue to go through the national courts. This is called “opting out” of the UPC.

Dutch patents and Unitary Patents are valid for a maximum of 20 years from the filing date, provided that the annual fees are paid. If certain requirements are met, the term of protection for medicinal and plant protection products can be extended by up to five years through a supplementary protection certificate.

Patent owners can prevent others from unlicensed use of the patented technology. In addition, patent owners can demand information, the disclosure of records, the destruction of infringing products and damages from infringers. Damages can be calculated on the basis of lost profits of the patent owner, a licence analogy or the profits of the infringer. Punitive damages cannot be claimed in the Netherlands.

The District Court of The Hague has a specialised patent division, and has exclusive jurisdiction in patent litigation regarding Dutch patents. It is possible to appeal judgments of The Hague District Court to the Appeal Court in The Hague, which will review the dispute in full and has specialised IP justices. Appeal judgments can be reviewed by the Supreme Court of the Netherlands, albeit only on issues of law, not fact.

### 7.2 Trade Marks

The Netherlands has three different systems for trade mark protection:

- the Benelux Convention on Intellectual Property (trade marks and designs);
- Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the EU trade mark; and
- the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol).

Trade marks can consist of any signs, particularly words, including proprietary names, or designs, letters, numerals, colours, the shape of goods or of the packaging of goods, or sounds, provided that such signs are capable of:

- distinguishing the goods or services of one business from those of other businesses; and
- being represented in the register in a manner that enables the competent authorities and the public to determine the clear and precise subject matter of the protection afforded to its proprietor.

Benelux trade marks offer protection in Belgium, the Netherlands and Luxembourg, and may be applied for at the Benelux Office for Intellectual Property (BOIP). European trade marks that provide protection for all EU member states have to be applied for at the EU Intellectual Property Office (EUIPO).

Dutch trade marks are initially protected for ten years. Protection may be prolonged for an indefinite number of times upon the timely payment of the extension fees.

The unlicensed use of registered trade marks is forbidden, and taking "unfair advantage" of the reputation of trade marks also constitutes an infringement. To enjoy the exclusivity rights of trade marks, trade mark owners must put the trade marks to genuine use for the goods or services for which they have been registered within five years of filing. In the event of trade mark infringements, trade mark owners may claim injunctive relief, rendering of account, damages, product recall, and even destruction of the infringing goods.

Benelux trade marks are enforceable through the civil courts. Both Dutch district courts and courts of appeal have broad experience in IP issues.

The district court of The Hague (the EUTM court in the Netherlands) has a chamber of judges specialising in IP law, and has exclusive jurisdiction for litigation related to EU trade marks.

### 7.3 Industrial Designs

As with trade mark protection, the Netherlands has three different systems for the protection of industrial design:

- the Benelux Convention on Intellectual Property (trade marks and designs);
- Regulation (EC) No 6/2002 of 12 December 2001 on Community Designs, in December 2024 amended by Regulation (EC) No 6/2002 on Community designs ("the Amending Regulation"); and
- The Hague System for the International Registration of Industrial Designs.

The terms "design" or "drawing" relate to the appearance of products or parts of products. To claim a design right, the design must be novel and have an individual character.

Benelux designs offer protection in Belgium, the Netherlands, and Luxembourg, and may be applied for at the BOIP. European designs that provide protection for all EU member states have to be applied for at the EUIPO. The Hague System for the International Registration of Industrial Designs allows for the international registration of industrial designs across 82 members (including the EU) covering 99 countries by filing one single international application with the WIPO.

Design registrations are initially valid for five years from the date of filing and can be renewed in blocks of five years up to a maximum of 25 years.

Unregistered designs are protected against copying for a period of three years from the date on which the design was first made available to the public within the territory of the European Union. After the expiry of these three years, protection cannot be extended. Further to the Amending Regulation, member states are no longer able to provide unregistered design protection on a national level. Unregistered design protection will now only be available across the EU in the form of a Unregistered European Union Design. At a national level, only registered design protection will be available.

In the case of design right infringements, the owners can claim injunctive relief, rendering of account, damages, product recall and even destruction of the infringing goods.

Benelux design protection is enforceable through civil courts. The district court of The Hague has a chamber of judges specialising in IP law, and has exclusive jurisdiction for litigation related to EU designs.

Simultaneously with the Amending Regulation, Directive (EU) 2024/2823 on the legal protection of designs came into force. EU member states have 36 months, until 9 December 2027, to transpose the Directive into their national legislation, ie, in the Benelux in the Benelux Convention on Intellectual Property (trade marks and designs). The Amending Regulation and Directive aim to:

- modernise, clarify and strengthen design protection;
- improve accessibility of design protection in the EU;
- ensure enhanced interoperability of design protection systems in the EU; and
- harmonise the diverging spare parts protection regime across the EU.

The Regulation will make it possible to combine multiple designs within the same European Union Design application (to a maximum of 50), regardless of whether they fall under the same Locarno Class, effectively allowing for a "bulk discount" on registration fees.

## 7.4 Copyright

The Dutch Copyright Act (*Auteurswet*) implements the harmonised standards set forth by EU copyright law. Many of the EU directives reflect EU member states' obligations under the Berne Convention and the Rome Convention, as well as the obligations of the EU and its member states under the World Trade Organisation "TRIPS" Agreement and the two 1996 World Intellectual Property Organisation (WIPO) Internet Treaties (the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty). The Copyright Act automatically protects the copyright of works of literature, science or art from the moment the work is created, on the condition that the work in question is an original work. The term "work" embraces many materials, such as books, brochures, films, photographs, musical works, works of visual art and geographical maps. Software is also protected under the Copyright Act. A work must be "the author's own intellectual creation" in order to qualify for copyright protection.

Upon the death of the author, the copyright automatically devolves to the heirs.

Copyright ends 70 years after the death of the work's creator. Copyright owners have the exclusive right to publish and copy the copyrighted works, including translations.

The Dutch Copyright Act stipulates that employers own the copyrights in works created by employees in the course of their employment.

Copyright owners have the right to take legal action against persons infringing their copyrights. Dutch civil law and Dutch copyright law provides, among other things, for the possibility of injunctions, full damages, the surrender of profits made on the infringement, to be accounted for by the infringing party, the transfer or destruction of infringing products, cost orders and withdrawal from the market, or the destruction of materials predominantly used for the manufacturing of the infringing products.

In addition to copyright, there are "neighbouring rights", which are also known as "related rights" and protect the work of performers, music and film producers, and broadcasting companies.

## 7.5 Others

### Plant Breeders' Rights

Under EU Regulation (EC) No 2100/94 of 27 July 1994 on community plant variety rights and the Dutch 2005 Seeds and Planting Materials Act, plant breeders can invoke plant breeders' rights to protect new plant varieties. The Board for Plant Varieties (*Raad voor Plantenrassen*) is responsible for granting plant breeders' rights in the Netherlands.

### Database Rights

Databases consisting of collections of ordered data can be protected by database rights under the Dutch Database Act.

### Semiconductor Topography Rights

Semiconductor topography rights protect the design of electronic circuits on computer chips (also known as the topography of semiconductor products). These rights protect circuits designed to perform specific functions.

### Trade Name Law

Trade name law protects the names under which enterprises operate. Trade names come into being automatically, as soon as enterprises start operating; owners do not have to register trade names in the commercial register. The protection of trade names is regulated in the Trade Names Act. Trade name law has been of growing importance recently due to the use of trade names in internet domain names.

### Trade Secrets

The Dutch Trade Secrets Act (*Wet bescherming bedrijfsgeheimen*) implements the EU Trade Secrets Directive (Directive 2016/943/EU), which sets out rules for the protection of trade secrets. Trade secrets refer to any information that:

- is not generally known or readily accessible to persons in the circles who normally deal with this type of information and is therefore of economic value;
- is subject to appropriate confidentiality measures by the lawful holder; and
- the holder has a legitimate interest in the confidentiality thereof.

An owner of trade secrets must enforce "appropriate measures" and establish the confidentiality of said trade secrets in order to ensure protection.

The Dutch Trade Secrets Act stipulates the actions allowed for discovering trade secrets: so-called reverse engineering is permissible, provided it does not violate contractual obligations or other mandatory statutory law.

In the case of infringements, trade secrets owners can demand the cessation or prohibition of the use or disclosure of the trade secret, and even product recalls regarding the infringing goods and/or their destruction, as well as damages.

## 8. Data Protection

### 8.1 Applicable Regulations

The main regulations applicable to personal data protection in the Netherlands are:

- Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (GDPR); and
- the Dutch GDPR Implementation Act (*Uitvoeringswet AVG*) of 16 May 2018.

### The GDPR

The GDPR is a uniform and unitary data protection law applicable throughout the EU and EEA, and is directly applicable in the Netherlands. It allows EU member states to enact additional implementing provisions – eg, in relation to special categories of personal data as referred to in Article 9 (1) of the GDPR, and providing for certain exemptions for scientific or historical research or statistical purposes, for authentication and security purposes, etc. The Netherlands has exercised this right by introducing the GDPR Implementation Act. The GDPR defines "personal data" as any data that can be traced back to specific individuals (the data subjects), either directly or indirectly. Health data, genetic data, data about race or ethnicity, and other special categories of personal data, as well as personal data relating to criminal convictions and offences, enjoy additional protection.

The GDPR defines a controller as the party who determines the purpose and means of processing, and a processor as the party who processes personal data on behalf of a controller. Both controllers and processors are subject to the rules in the GDPR.

The GDPR stipulates that, in order to be able to demonstrate compliance, controllers must adopt internal policies and implement measures that satisfy the principles of data protection by design and data protection by default.

The processing of personal data (including disclosure to third parties) must be lawful, transparent and fair. It must be limited to specific purposes and to the data necessary for these purposes (data minimisation). Other principles are that the data must:

- be accurate;
- be kept secure; and
- not be stored for any longer than needed (storage limitation).

The GDPR also requires businesses to inform data subjects of how their data is used and to document their compliance with the GDPR. Data subjects have the right to access their personal data, to request corrections, and to have their data deleted (or restricted) under certain conditions.

Controllers and processors must designate data protection officers (DPO's) in the following circumstances:

- if they are public authorities;
- if their core activities consist of the regular and systematic monitoring of data subjects on a large scale; or
- if their core activities consist of processing sensitive personal data on a large scale (including processing information about criminal offences).

### The ePrivacy Directive and the Dutch Cookie Act

Additional provisions regarding data protection and privacy in the context of telecommunications are set out in Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector in the EU (ePrivacy Directive) and in the Dutch Cookie Act.

The ePrivacy Directive has been implemented in the Dutch Telecommunications Act, which prohibits unsolicited communication by email (as well as faxes and automated communication systems) for commercial, non-commercial or charitable purposes, unless senders can demonstrate the recipient's prior consent.

Under the Cookie Act, informed consent is required for the use of cookies, unless the cookies are:

- needed to facilitate communication;
- strictly necessary for the service requested by users; or
- aimed at obtaining information about the quality and/or effectiveness of the services provided and have little or no impact on the users' personal lives.

These rules apply to both first-party cookies and third-party cookies.

## 8.2 Geographical Scope

Pursuant to Article 3 (1), the GDPR applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the EEA, regardless of whether or not the processing takes place in the EEA. The term "establishment" extends to any real and effective activity – even a minimal one – exercised through stable arrangements in the EEA.

Businesses not established in the EEA will also be subject to the GDPR if they offer goods and services to individuals in the EEA, or if they monitor the behaviour of data subjects who are in the EEA. Non-EEA businesses that do this on a regular basis or in combination with certain high-risk activities will have to designate a representative in the EEA. Under these rules, websites directed at an EEA audience or tracking visitors from the EEA must comply with the GDPR.

No special requirements apply to data transfers from the Netherlands to other EEA countries. Transfers of personal data to countries outside the EEA, however, require – with just a few exceptions – either a decision of the European Commission that the destination country ensures an adequate level of protection (this is the case for the UK, Switzerland, Canada, Israel and Japan, for example), or appropriate safeguards to protect the data subjects' rights (such as the Commission's standard contractual clauses (SCCs) or binding corporate rules approved by a supervisory authority).

On 16 July 2020, the Court of Justice of the European Union (CJEU) issued its decision in *Data Protection Commissioner v Facebook Ireland*, *Maximillian Schrems*, commonly referred to as "*Schrems II*". The decision invalidated the EU–US Privacy Shield Framework, which was designed to provide companies on both sides of the Atlantic with a mechanism to comply with data protection requirements when transferring personal data from the European Union to the United States in support of transatlantic commerce.

Following the Executive Order on "Enhancing Safeguards for United States Signals Intelligence Activities" by US President Biden on 7 October 2022 and a Regulation issued by the US Attorney General on 10 July 2023, the European Commission adopted its adequacy decision for the EU–US Data Privacy Framework. The decision concludes that the United States ensures an adequate level of protection – comparable to that of the European Union – for personal data transferred from the EU to US companies under the framework.

The EU–US Data Privacy Framework introduces new binding safeguards to address all the concerns raised by the European Court of Justice, including limiting

access to EU data by US intelligence services to what is necessary and proportionate, and establishing a Data Protection Review Court (DPRC), to which EU individuals have access. If the DPRC finds that data was collected in violation of the new safeguards, it will be able to order the deletion of the data. The new safeguards in the area of government access to data will complement the obligations that US companies importing data from EU will have to subscribe to.

In order to be able to receive personal data transferred from the EU on the basis of the EU–US Data Privacy Framework, US companies must certify, and then re-certify on an annual basis, with the US Department of Commerce, its adherence to a detailed set of privacy obligations, for instance, the requirement to delete personal data when it is no longer necessary for the purpose for which it was collected, and to ensure continuity of protection when personal data is shared with third parties.

The functioning of the EU–US Data Privacy Framework is subject to periodic reviews, to be carried out by the European Commission, together with representatives of European data protection authorities and competent US authorities. The first review took place in July 2024. Based on the information gathered during this first review, the European Commission concluded that the US authorities have put in place the necessary structures and procedures to ensure that the Data Privacy Framework functions effectively. At the moment of the first review more than 2,800 US Companies were certified under the Data Privacy Framework. The Trump administration, however, has taken an aggressive stance against the EU's GDPR, viewing it as a restriction on digital trade and a burden on US tech companies, with US firms receiving 83% of total GDPR fines. While the US administration supports the EU–US Data Privacy Framework (DPF) as of early 2026, future threats to weaken or roll back the framework could endanger the free flow of data, potentially leading to its invalidation by the EU.

On 4 June 2021, the European Commission modernised the SCCs for data transfers from controllers or processors in the EU/EEA (or otherwise subject to the GDPR) to controllers or processors established outside the EU/EEA (and not subject to the GDPR). These modernised SCCs replace the three sets of SCCs that were adopted under the previous Data Protection Directive 95/46. On 27 December 2022, the grace period for using contracts incorporating these earlier sets of SCCs expired. The European Commission is in the process of developing additional sets of SCCs for data transfers to third countries by EU institutions and bodies, and for data transfers to controllers or processors outside the EU whose processing operations are directly subject to the GDPR.

### 8.3 Role and Authority of the Data Protection Agency

The Dutch Data Protection Authority (*Autoriteit Persoonsgegevens*) was established by the GDPR Implementation Act as an independent supervisory authority, as referred to in Article 51 (1) of the GDPR. The Authority is charged with supervising the processing of personal data in accordance with the provisions of the GDPR and the law.

The functions of the Dutch Data Protection Authority include:

- providing guidance to individuals and organisations in the form of information and advice;
- supporting organisations by offering practical tools;
- reviewing requests for prior consultations and licence applications for processing data relating to criminal convictions and offences; and
- promoting the creation of codes of conduct.

It has the power to investigate violations, to issue orders to stop violations and to impose fines of up to EUR20 million or 4% of the worldwide annual turnover, whichever is higher.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

No information has been provided in this jurisdiction with respect to upcoming legal reforms concerning doing business in the Netherlands.

# Trends and Developments

**Contributed by:**
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**ACG International** is an Amsterdam-based law firm advising companies, entrepreneurs, investors and family-owned businesses on corporate, commercial, employment and dispute-related matters, with a strong focus on international business and cross-border transactions. The firm is particularly recognised for its extensive international reach and business network. Through its leadership roles in international business organisations, including the Netherlands India Chamber of Commerce & Trade (NICCT) and the Swiss Dutch Business Council (SDBC), ACG International maintains close relationships with CEOs, business leaders, investors and policymakers across multiple industries and jurisdictions. This enables the firm to understand not only the legal aspects of a matter, but also the commercial, strategic and cultural considerations that influence business decisions. Many of the firm's mandates involve co-ordinating complex cross-border projects, disputes and investments. Clients value ACG International's ability to combine legal expertise, commercial insight and international connectivity to deliver practical solutions that support business growth and protect long-term interests.

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## How Indian Companies Can Structure Their European Expansion Through the Netherlands

India and the Netherlands have entered a new phase in their bilateral relationship. With the elevation of their relationship to a Strategic Partnership for 2026–2030 and the conclusion of negotiations on the India–EU Free Trade Agreement, the commercial case for Indian companies expanding into Europe has become stronger than ever.

In that context, the Netherlands is increasingly becoming India's gateway to Europe. Its position is not based on geography alone: the Netherlands combines world-class logistics, a highly international business environment, legal certainty, English-language dispute resolution and direct access to the European internal market.

For Indian companies, this makes the Netherlands a practical platform from which to structure, manage and grow their European operations.

For businesses, however, market access is only one part of the equation. Successful expansion into Europe requires a sound legal structure, clear contracts, reliable dispute resolution, compliance with EU regulations and a realistic understanding of employment, tax, customs and governance requirements.

The key question is therefore not only whether the Netherlands can serve as a gateway to Europe, but how that gateway should be structured. Incorporation alone is not enough. Companies should determine at an early stage which entity will enter into contracts with European customers, who will bear liability, which law will apply, how disputes will be resolved and how EU regulatory obligations will be managed within the wider group.

This article discusses why the Netherlands is increasingly used as a European hub for Indian businesses and highlights the main legal, economical and practical considerations for companies seeking to use the Netherlands as their entry point into Europe.

### *A new phase in India–Netherlands relations*

The relationship between India and the Netherlands has developed into a modern economic partnership built on trade, investment, innovation and institutional co-operation.

The commercial relationship is already substantial. In the financial year 2023–2024, the Netherlands was India's 11th-largest merchandise trading partner worldwide and its largest merchandise trading partner in the European Union. Total merchandise trade between India and the Netherlands stood at USD27.341 billion, accounting for 2.46% of India's total merchandise trade.

The Netherlands was also India's largest merchandise export destination in Europe and its third-largest worldwide, after the United States and the United Arab Emirates. In the same financial year, India exported goods worth USD22.367 billion to the Netherlands, representing 5.12% of India's total merchandise exports. The Netherlands is also a major investment partner, ranking as the fourth-largest source of cumulative foreign direct investment into India.

The relationship is reflected not only in trade and investment figures, but also in corporate presence: more than 300 Dutch companies are active in India, while more than 300 Indian companies have established a presence in the Netherlands. These include major Indian IT, pharmaceutical, manufacturing and food businesses, as well as several significant Indian acquisitions of Dutch companies in sectors such as steel, mobility, software, life sciences and hospitality.

In recent years, however, the relationship has become broader and more strategic. It now covers not only trade in goods, but also technology, innovation, sustainability, water management, agriculture, semiconductors, pharmaceuticals, maritime co-operation, cyber security and the energy transition.

The Strategic Partnership Roadmap for 2026–2030 reflects this broader development. It identifies areas of co-operation with direct relevance for businesses, including renewable energy, telecommunications, maritime, infrastructure, urban development, electronics, semiconductors, agriculture, pharmaceuticals, medical technology, textiles, metals and innovation.

For Indian companies, this matters because the Netherlands is no longer merely a convenient European location. It is becoming a legal and commercial platform through which Indian businesses can build a structured European presence. That presence may involve sales, distribution, warehousing, contracting, intellectual property management, employment and strategic partnerships.

The India–EU Free Trade Agreement adds further momentum.

While the practical benefits will differ by sector, the broader message is clear: trade and investment between India and Europe are moving towards deeper integration. Indian companies that prepare their European structure in time may be better placed to benefit from that development.

### *Why the Netherlands is India's gateway to Europe*

The expression "gateway to Europe" is often used in a commercial sense. In the case of the Netherlands, however, it has a concrete practical meaning. The country offers direct access to the EU internal market, a central geographic position, highly developed infrastructure and a business environment that is deeply accustomed to international trade.

The human and cultural connection is also relevant. The Netherlands hosts the largest Indian diaspora community on mainland Europe, including a substantial Indian community and a growing community of Indian professionals and students. This creates a broader social and business environment in which Indian companies may find cultural familiarity, local networks and practical support when entering the European market. The Netherlands also offers language and business-culture advantages. English is widely used in Dutch business, legal and professional services, and the Dutch commercial culture is generally international, direct and pragmatic. For Indian companies negotiating with European customers, suppliers, banks, advisers and regulators, that can make the Netherlands a more accessible starting point than jurisdictions where language and local business customs create higher entry barriers.

For Indian businesses, the attraction is straightforward. A Dutch entity can serve as the European contracting party, import hub, distributor, employer or holding company. From the Netherlands, companies can serve customers and business partners across the EU while maintaining a single and coherent European base.

The Port of Rotterdam and Amsterdam Schiphol Airport are important parts of this proposition. The Port of Rotterdam remains Europe's largest seaport and handled 428.4 million tonnes of cargo in 2025. Schiphol handled 66.8 million passengers in 2024, 473,815 air transport movements and 1.49 million tonnes of cargo, underlining its position as one of Europe's major passenger and cargo hubs.

From the Netherlands, goods can also be moved efficiently by road, rail and inland waterways into key North-Western European markets, including Germany, Belgium and France. Together, this infrastructure allows companies to manage both high-volume goods and time-sensitive products efficiently. This logistics function is visible in trade flows. Statistics Netherlands has reported that the Netherlands is the largest EU importer of goods from India and the second-largest EU importer of goods and services from India after Germany.

However, the Dutch gateway function is not only logistical. It is also legal and regulatory. Indian companies entering the European market must consider where to incorporate, which entity will enter into contracts, how liability will be allocated, which law will govern their agreements and how disputes will be resolved. The Netherlands allows these issues to be organised within one commercially practical and legally predictable framework.

### *Incorporation is not enough*

For many businesses, European expansion starts with a simple question: should we incorporate a Dutch company? That question is important, but it is not sufficient.

Incorporation creates the legal shell. It does not, by itself, create a functioning European operating model. The more important questions are operational and

legal: who contracts, who imports, who employs, who owns the intellectual property, who bears product liability, who manages compliance and who controls the European business?

This is where market-entry structures can become vulnerable. A company may incorporate a Dutch private limited company but continue to contract from India. Or it may use a Dutch entity for sales while customs, logistics, data protection and customer support are managed elsewhere. In other cases, the Dutch company is created without clear governance, tax alignment, employment planning or contract templates.

That can create uncertainty. European customers, banks, insurers and regulators will often want to know which entity is responsible for performance, payment, compliance and liability. If the legal structure does not match the commercial reality, the company may face unnecessary risk, inefficient negotiations and internal confusion.

Indian companies should therefore treat incorporation as the beginning of the structuring process, not the end. The Dutch entity should have a clearly defined role within the wider group. It may function as a sales company, distributor, contracting hub, employer, importer of record, holding company or regional headquarters. Each role has different legal and practical consequences.

### *Structuring a European presence*

One of the first decisions for an Indian company entering Europe is how to structure its presence. Some companies start with a representative office or local sales support. Others immediately establish a Dutch private limited company, a branch or a wider group structure.

The right choice depends on the company's activities, risk appetite, tax position and commercial objectives. A Dutch entity may act as the European sales company, the contracting party for EU customers, the employer of local staff, the importer of record or the distributor for multiple EU markets. In more complex structures, it may also act as a holding company for European subsidiaries or joint ventures.

One common model is to use the Dutch entity as the European contracting hub. In that structure, the Dutch company contracts with European customers, suppliers, distributors, logistics providers and service partners, while the Indian parent company remains responsible for production, technology, financing or group-level strategy. This can create a European counterparty for customers and business partners. It may also simplify invoicing, payment, enforcement and dispute resolution.

At the same time, the model must be implemented carefully. The Dutch company should not be a purely formal entity if it is expected to carry real commercial responsibilities. Its role should be reflected in contracts, governance documents, insurance arrangements, tax planning, intercompany agreements and operational decision-making.

From a legal perspective, this structure should not be an afterthought. It determines which entity assumes contractual obligations, which balance sheet carries risk, where management decisions are made and which courts or authorities may become relevant in case of a dispute or investigation. Poor structuring at the start can create unnecessary liability, tax complexity and governance issues later.

Indian businesses should therefore consider the following questions at an early stage.

- Which entity will contract with European customers, suppliers and distributors?
- Will the Dutch company act as a sales office, distributor, importer or holding company?
- Where will management decisions be taken?
- How will liability be allocated between the Indian parent company and the Dutch or European entity?
- Will the company use agents, distributors, employees or independent contractors?
- Which regulatory obligations apply to the products or services offered in Europe?

A well-designed structure helps avoid uncertainty. It also makes negotiations with European customers, banks, insurers and regulators more efficient.

### *Contracts, legal certainty and dispute resolution*

Contracts are central to any European expansion strategy. Indian companies entering the EU through the Netherlands will usually need a range of agreements, including customer contracts, distribution agreements, agency agreements, supply agreements, warehousing and logistics agreements, employment contracts, confidentiality agreements, general terms and conditions and, in some cases, joint venture or shareholder agreements.

These contracts should be adapted to the European context. Standard terms used in India or other markets may not always work well under Dutch or EU law. Certain provisions may be unenforceable, incomplete or commercially unsuitable when applied to European counterparties.

Key contractual issues include payment terms, delivery obligations, limitation of liability, termination rights, intellectual property, confidentiality, data protection, sanctions compliance, product liability and dispute resolution.

For distribution and agency structures, particular attention should be paid to mandatory rules that may protect commercial agents or affect termination compensation. Choice of law and jurisdiction clauses are equally important. A contract may appear clear, but if it does not properly identify the governing law and forum, enforcement may become more difficult. For businesses operating across several EU member states, a coherent contract framework can prevent fragmented and costly disputes.

The Netherlands offers a strong environment for this. Dutch law is generally considered predictable, commercially oriented and suitable for international transactions. Dutch courts are experienced in dealing with complex commercial disputes, and Dutch judgments can generally be recognised and enforced within the EU more efficiently than judgments from outside the EU.

The Netherlands Commercial Court is particularly relevant for international businesses. It allows certain international commercial disputes to be litigated in English before specialised Dutch courts, with proceedings and judgments in English. This can be attractive where parties already negotiate and contract in English and want to avoid the cost and uncertainty of translating large volumes of documentation. A further practical advantage is that the judgment remains a Dutch court judgment, which can generally be recognised and enforced within the EU more efficiently than a judgment from outside the EU.

### *Supply chain resilience and the Green and Digital Sea Corridor*

Supply chain resilience has become a strategic priority for many companies. Geopolitical tensions, transport disruptions, energy price volatility and changing trade policies have encouraged businesses to rethink their dependence on single markets, single suppliers or single transport routes. In that context, India is increasingly seen as an important partner for diversification, while the Netherlands offers the infrastructure and legal environment to connect Indian production with European demand.

The Netherlands is well placed to support that shift. Its ports, customs infrastructure, logistics providers and digital supply chain systems allow companies to manage European distribution efficiently. For Indian manufacturers and exporters, a Dutch hub can reduce fragmentation and improve control over stock, delivery times, customs processes and customer service.

This development is also reflected in the India–Netherlands agenda. The Strategic Partnership Roadmap for 2026–2030 refers to the further development of a Green and Digital Sea Corridor between India and the Netherlands, aimed at creating an environmentally sustainable, digitally integrated and economically efficient maritime corridor. For businesses, this points to a future in which logistics, sustainability, digital documentation, customs efficiency and maritime cooperation are increasingly connected.

Legal issues will follow from that development. Companies will need to consider customs compliance, transport documentation, insurance, liability for delay or damage, product conformity, sanctions controls, ESG obligations and data exchange across the supply chain. The more complex the supply chain, the more important it becomes to allocate responsibilities

clearly between suppliers, carriers, logistics providers, distributors and customers.

For Indian companies using the Netherlands as a European distribution base, logistics contracts should therefore be reviewed carefully. Warehousing, fulfilment, transport, customs representation and delivery obligations should be aligned with the company's commercial model and regulatory responsibilities. The legal structure should support the supply chain, rather than merely follow it.

### *Compliance, ESG and regulated sectors*

European market access increasingly requires more than product quality and competitive pricing. Companies must also meet regulatory, compliance and sustainability expectations. This is particularly relevant for Indian companies supplying European customers, participating in EU value chains or operating in regulated sectors.

Compliance obligations may arise in several areas. Depending on the sector, companies may need to address sanctions, export controls, anti-money laundering requirements, data protection, cybersecurity, product safety, consumer protection, environmental rules, customs requirements and supply chain due diligence. European customers may also impose contractual compliance standards that go beyond minimum legal requirements.

ESG is becoming particularly important. European companies increasingly require suppliers and business partners to provide information about sustainability, labour standards, environmental impact and supply chain transparency. For Indian companies, this means that ESG is not only a reporting topic. It may directly affect access to customers, financing and public procurement.

This is particularly relevant in the strategic sectors that are driving the India–Netherlands relationship. Semiconductors, technology, maritime co-operation, green hydrogen, agriculture, water management, healthcare and defence all offer significant opportunities, but they also carry legal and regulatory complexity.

Technology collaborations may require careful treatment of intellectual property, licensing, confidentiality, data rights, research results and ownership of improvements. In semiconductors, AI and cybersecurity, companies may need to consider export controls, security standards, data governance and restrictions on the transfer of sensitive technology. In pharmaceuticals and medtech, product approvals, quality systems, distribution authorisations and liability risks may be central.

The objective is not to overcomplicate expansion, but to avoid preventable legal and reputational risks once the business starts operating in Europe. Companies that build compliance into their European structure from the start will usually be better positioned than companies that try to correct gaps later.

### *Employment, mobility and talent*

European expansion often requires people on the ground. Indian companies may need a local managing director, sales team, technical support staff, compliance officer or logistics co-ordinator. They may also wish to transfer Indian employees to the Netherlands or hire international talent locally.

Dutch employment law is protective, but it is also structured and predictable. Employment contracts should be prepared carefully, particularly on role description, remuneration, confidentiality, intellectual property, restrictive covenants, termination and applicable policies.

Employers should also be aware that termination of employment in the Netherlands is more regulated than in some other jurisdictions.

For businesses expecting rapid growth, employment planning should be part of the market entry strategy. The use of independent contractors, payroll arrangements or temporary workers may be useful in some situations, but these structures must be assessed carefully. Misclassification can create legal and tax risks.

The India–Netherlands agenda also recognises the importance of fair mobility for students, academics, researchers, highly skilled professionals and young

professionals. For Indian companies, this is relevant where European operations depend on specialised talent or knowledge transfer from India. Employment and immigration issues should therefore be addressed together.

### *Practical takeaways for Indian companies*

Indian companies considering the Netherlands as a European hub should approach the decision strategically. The choice is not only about where to incorporate or where to store goods. It is about designing a European operating model that is commercially efficient and legally robust.

The most important practical takeaways are the following.

- Treat the Netherlands as both a logistics and legal gateway to Europe.
- Decide early which entity will contract with European customers and suppliers.
- Do not treat incorporation as a substitute for a proper European operating structure.
- Align corporate structure, tax, customs, employment and governance decisions.
- Use clear governing law and dispute resolution clauses in commercial contracts.
- Consider whether Dutch courts, the Netherlands Commercial Court or arbitration are/is most appropriate.
- Review distribution, agency and logistics agreements before entering the market.
- Prepare for EU compliance requirements, including ESG, sanctions, data, cyber and product regulation.
- Address employment and immigration issues before hiring or transferring staff.
- Ensure that IP and technology rights are clearly protected in collaborations.
- Build compliance into the structure from the start rather than correcting it later.

These steps are practical, not merely legal. They help companies avoid disputes, reduce uncertainty and build confidence with European customers, partners and regulators.

### *Conclusion: the gateway must be structured*

The Netherlands is increasingly India's gateway to Europe. That position is supported by strong trade and investment flows, logistics, the largest Indian diaspora community in mainland Europe, an English-language business culture, legal certainty and the broader India–Netherlands Strategic Partnership. The conclusion of negotiations on the India–EU Free Trade Agreement adds further momentum to this development.

For Indian companies, the opportunity is significant. The Netherlands can serve as a platform for European sales, distribution, contracting, innovation, employment and strategic partnerships. It offers access not only to the Dutch market, but to the wider EU internal market.

At the same time, successful expansion requires more than commercial ambition. Companies should structure their European presence carefully, document their arrangements clearly and prepare for the regulatory standards that come with doing business in Europe.

The gateway is open. The companies that benefit most will be those that combine commercial speed with legal discipline.

# NEW ZEALAND




## Law and Practice

**Contributed by:**
Fiona Ashby, Luke Bowers, Daniel Erickson, Jessica Phillips, Natalie Foster, Shelley Slade-Gully, Tina Liu and Theresa Le Bas
**Tompkins Wake**

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**Tompkins Wake** is one of New Zealand's leading full-service commercial law firms, known as "the law firm at the centre of New Zealand's economic and commercial heartland". Located in Hamilton, Auckland, Rotorua and Tauranga with more than 200 staff (including 29 partners and approximately 120 lawyers), the firm is globally connected as the New Zealand member of elite global law network MultiLaw, with alliances in over 100 countries. The firm advises major businesses, iwi organisations, infrastructure providers and public sector bodies across corporate and commercial, banking and finance, property, construction, employment, dispute resolution, environment, and Māori business law, and regularly advises foreign investors entering New Zealand, including on Overseas Investment Office approvals. Recent work includes advising Grant Thornton New Zealand Ltd on a strategically significant and highly complex cross-border transaction, supporting its agreement to join the Grant Thornton Advisors global platform.

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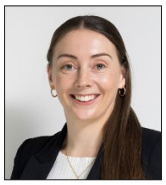


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# 1. Legal System

## 1.1 Legal System and Judicial Order

New Zealand is a common law jurisdiction. Its legal framework developed from English law, with judicial decisions playing an important role in the development and interpretation of the law alongside legislation enacted by Parliament. New Zealand does not have a single written constitutional document. Instead, its framework draws on a combination of statutes, constitutional conventions, judicial decisions and important constitutional documents, including the Constitution Act 1986, the New Zealand Bill of Rights Act 1990, and the Treaty of Waitangi, which together provide a framework for representative democracy. This framework provides flexibility while maintaining legal certainty and stability.

### Organisation of the Judicial Order

The court hierarchy comprises four principal tiers.

- The District Court is the court of first instance for most criminal prosecutions and civil disputes up to NZD350,000. It also exercises jurisdiction over family and youth matters through its Family Court and Youth Court divisions.
- The High Court has unlimited civil jurisdiction and hears cases involving claims that exceed the District Court's jurisdictional threshold. It also has exclusive first instance jurisdiction over certain matters, including judicial review proceedings, serious criminal trials and various statutory matters, and hears appeals from the District Court.
- The Court of Appeal serves as the intermediate appellate court, hearing appeals from the High Court and, in certain circumstances, from specialist courts and tribunals. Most cases conclude at this level, and further appeal requires leave.
- The Supreme Court is the highest court in New Zealand, and serves as the final appellate authority. It focuses on cases of national significance, substantial miscarriages of justice or significant legal interpretations. Leave to appeal is required and is not granted merely to correct error.

### Specialist Courts and Tribunals

In addition to these general courts, New Zealand has several specialised courts and tribunals that deal with specific categories of dispute, to ensure that disputes in particular areas are determined by decision-makers with the relevant expertise. These include:

- the Employment Relations Authority and Employment Court for employment-related disputes;
- the Environment Court for matters related to the Resource Management Act;
- the Māori Land Court, which has jurisdiction over matters relating to Māori land;
- the Waitangi Tribunal, which investigates claims by Māori that Crown actions or omissions are inconsistent with the principles of the Treaty of Waitangi;
- the Taxation Review Authority for tax disputes; and
- the Family Court, which deals with a broad range of family law matters including care of children, adoption, domestic violence, relationship property and care of vulnerable adults.

### Judicial Independence

The judiciary functions as an independent branch of government responsible for interpreting and applying the law. Judges are appointed based on their legal expertise and experience, and the system is designed to insulate judicial decision-making from political influence. The principle of judicial independence is regarded as being fundamental to the rule of law, protecting individual rights and maintaining public confidence in the administration of justice.

# 2. Restrictions on Foreign Investments

## 2.1 Approval of Foreign Investments

### The Overseas Investment Framework

New Zealand's foreign investment framework is governed by the Overseas Investment Act 2005 (OIA) and the associated Overseas Investment Regulations 2005, which aim to ensure that overseas investment benefits the country while protecting sensitive assets, such as land and strategic businesses. The Overseas Investment Office (OIO) administers the regime, overseeing applications for investments that meet the criteria set out in the OIA, with applications decided by the OIO and final approval sometimes made by the relevant Government Ministers.

### Investments Requiring Consent

Consent is generally required for investments involving an "overseas person" in the following categories.

- For significant business assets: where the acquisition involves consideration or assets valued over NZD100 million. Investors from countries covered by the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) or from Australia may benefit from higher thresholds, reflecting New Zealand's commitment to facilitating trade relationships.
- Sensitive land: any acquisition of land classified as "sensitive" requires consent. This covers:
  (a) residential land;
  (b) land adjoining bodies of water (including coastal and marine areas and lakes);
  (c) land held for conservation purposes;
  (d) historical, cultural or heritage sites;
  (e) land associated with strategic infrastructure; and
  (f) rural land above a certain size threshold.
- Fishing quotas: overseas investors must obtain consent to acquire fishing quotas, to ensure sustainable management of New Zealand's marine resources.

Separate to the consent regime, the government can exercise a "call-in" power to review certain transactions involving strategically important businesses, unless those transactions are pre-notified and cleared.

### Criteria for Consent

Since March 2026, the primary consent pathway for most consent applications imposes a national interest risk assessment on the transaction. The OIO conducts an initial analysis to assess whether there may be a national interest risk and, if so, a more detailed assessment process is undertaken. If the OIO concludes that the transaction may be contrary to New Zealand's national interest, the application is escalated to the Minister of Finance to determine. There are different consent pathways for investments in residential land and farm land, as noted below. For the notification and clearance regime involving strategically important businesses, the OIO or Minister will assess if the transaction results in any national security or public order risks.

### Specific Land Types

Farm land must be advertised on the open market before a sale to an overseas person, unless exemptions apply. Overseas investors in farm land must satisfy an Investor Test (assessing character and capability) and the Benefit to New Zealand Test, under which they must show that the investment will deliver significant benefits, such as job creation, export growth or technological innovation. Acquisitions of residential land that is not otherwise sensitive may require meeting one of the following criteria:

- committing to reside in New Zealand;
- contributing to increased housing supply;
- using the land for non-residential purposes; or
- incidental residential use.

## 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

### The Application Process

The OIO application process involves providing detailed information about the investor and the proposed investment. The application process can be complex, but investors who seek expert advice can generally navigate it successfully.

### Processing Timeframes

Under the primary consent pathway, most applications will be determined within five to 15 working days of submission. If a full national interest assessment is required, a further 55 working day timeframe applies. For other types of consent application, the OIO has made significant improvements to its processing timeframes over the past couple of years, with average decision times of between four weeks and four months, depending on the consent pathway. However, for farm land acquisitions, consent applications should account for around five to six months' processing time, and sometimes longer). Investors should factor these timeframes into their transaction planning to avoid being unable to complete within anticipated timelines.

### Sanctions for Non-Compliance

The OIA establishes a mandatory consent regime. The notification regime for transactions involving strategically important businesses is mandatory in some circumstances. Completing a transaction that requires

consent or notification and clearance without first obtaining the consent or clearance can expose investors to significant legal risk, including the potential for the relevant Ministers or the OIO to require unwinding of the transaction and impose fines. Investors who are uncertain whether their transaction requires consent or notification should seek specialist legal advice before completing any transaction.

### 2.3 Commitments Required From Foreign Investors

#### National Interest

If the assessment of a transaction identifies a risk to New Zealand's national interest, the OIO or Minister of Finance has broad discretion to impose conditions to manage that risk.

#### The Investor and Benefit to New Zealand Tests

Where the Investor Test applies, the OIO can grant consent even if certain disqualifying factors are present, provided it is satisfied that the investor remains suitable to own or control sensitive assets.

The OIO has broad discretion to impose conditions to manage disqualifying factors, plus standard conditions it will typically impose to ensure future issues are captured. For transactions where the Benefit Test applies, the investment must demonstrate substantial benefits, such as job creation, export growth, technology introduction or environmental protection. These commitments are assessed as part of the consent process and may be reflected in conditions attached to any approval granted. The nature and extent of required commitments will depend on the type of investment and the consent pathway under which the application is made.

#### Conditions on Consent

Where consent is granted conditionally, investors must satisfy any imposed conditions relating to, for example, ongoing employment levels, environmental stewardship or the purpose for which land is used; failure to comply with such conditions may result in enforcement action. Investors should engage early with the OIA process to understand and plan for any conditions that are likely to be imposed.

### 2.4 Right to Appeal

#### Challenging OIO Decisions

Where the OIO or the relevant Government Ministers decline to grant consent, investors may seek to challenge the decision through judicial review in the High Court. New Zealand's administrative law framework permits affected parties to challenge government decisions on the basis that the decision-maker failed to follow correct procedures, applied the wrong legal test, or acted unlawfully.

#### Scope and Timing

Judicial review focuses on the legality of the decision-making process rather than the substantive merits of the decision, meaning the reviewing court considers whether the correct process was followed and the law correctly applied. Applicants considering a challenge must act promptly, as judicial review proceedings are subject to timing requirements. Specialist legal advice should be sought immediately upon receipt of an adverse OIO decision, to assess the grounds for challenge and the prospects of success.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

#### Limited Liability Company

The most common business structure for foreign investors is the limited liability company, which provides a separate legal entity status and limits shareholders' liability to their investment. At least one director must live in New Zealand or Australia (if they are also a director of an Australian company), and a minimum of one shareholder is required, with no residency requirements. The limited liability company is well suited to a broad range of purposes, from day-to-day trading operations to greenfield investments and holding structures.

#### Subsidiary and Branch

A subsidiary offers local incorporation, enhanced market credibility, and liability protection, though it involves higher compliance costs and more complex regulatory requirements. A branch provides lower operational costs and easier management integration with the parent company, but exposes the parent company to liabilities in New Zealand and requires

consolidated financial reporting. The choice between a subsidiary and a branch will depend on the investor's risk tolerance, tax position and operational preferences.

### Limited Partnership and Joint Venture

A limited partnership offers pass-through taxation and limited liability for passive investors, though it requires clear agreements on partner roles and responsibilities. A joint venture provides resource sharing and flexibility tailored to specific projects, though it carries the risk of conflicts between partners, and robust agreements are necessary. Both structures are commonly used by overseas investors participating in specific projects or co-investing with local partners.

## 3.2 Incorporation Process

### Registration Steps

New Zealand is renowned for its business-friendly environment, making the process of forming and registering a company relatively straightforward, though it involves several important steps and considerations, particularly for overseas investors.

The company registration process is user-friendly, with most steps completed online through the New Zealand Companies Office, as follows:

- reserve a company name through the Companies Office website (valid for 20 working days);
- submit information about directors, shareholders and the registered office; and
- upload the required documents, provide a physical address in New Zealand, and pay the registration fee.

If all details are correct, registration can be completed within a few hours.

### Post-Registration Requirements

For tax purposes, the company will need an IRD number, and GST registration is required if its annual turnover will exceed NZD60,000. The IRD and GST registrations can be submitted as part of the incorporation process, but for overseas owned companies will only be processed once an AML-CFT reporting entity (such as a law firm or accountant) has completed KYC checks or the company has opened a bank account. Opening a bank account for a New Zealand company can be challenging for non-residents, as many banks require an in-person visit or a local director, and stringent anti-money laundering checks are also part of the process. Overseas investors should factor these practical steps into their planning timeline.

## 3.3 Ongoing Reporting and Disclosure Obligations

### Core Compliance Obligations

After registration, companies must meet ongoing requirements, including:

- filing annual returns with the Companies Office;
- maintaining accurate financial records and meeting tax obligations;
- notifying the Companies Office of any changes to company information; and
- preparing audited financial statements for larger companies.

Companies whose turnover exceeds NZD33 million, or NZD11 million if they are a subsidiary of an overseas company, are required to file audited financial statements. These obligations are designed to maintain transparency and public accountability in the operation of New Zealand companies.

### Tax Filing Obligations

GST returns must be filed regularly, either monthly, two-monthly or six-monthly, depending on the company's annual turnover. Most individuals do not need to file tax returns where income is taxed at source through PAYE, but those with additional income must file an Individual Tax Return. Companies must also ensure that any changes to shareholding or control that engage the OIA are approved by the OIO.

## 3.4 Management Structures

### One-Tier Board Structure

New Zealand companies typically operate under a one-tier board structure, in which the board of directors is responsible for governance and strategic oversight of the company. Day-to-day management may be delegated to officers and managers appointed by the board, but ultimate accountability for the company's affairs rests with the directors. There is no man-

datory two-tier supervisory structure as found in some civil law jurisdictions.

### Director Residency Requirements

Overseas investors who do not have a resident director available should consider engaging a professional director or a corporate service provider to fulfil this role.

## 3.5 Directors', Officers' and Shareholders' Liability

### Limited Liability for Shareholders

The limited liability company structure provides a separate legal entity status and limits shareholders' liability to their investment. This means that, in the event of the company's insolvency or other adverse events, shareholders are not personally liable for the company's debts or obligations beyond what they have invested. The limited liability company thus provides an important layer of protection for overseas investors participating in the New Zealand market.

### Director and Officer Liability

Directors owe statutory duties to the company under the Companies Act 1993, including duties to:

- act in good faith and in the best interests of the company;
- exercise reasonable care, diligence and skill; and
- avoid reckless trading.

Where these duties are breached, directors may face personal liability in proceedings brought by the company or its liquidators. Significant fines can also apply for breaches of health and safety legislation, with penalties of up to NZD3 million for companies. Company directors may face personal liability, including fines and imprisonment, for failing to meet their health and safety obligations.

### Piercing the Corporate Veil

New Zealand courts have the power to disregard the separate legal personality of a company, commonly described as "piercing the corporate veil", in circumstances where the corporate structure is being used to perpetrate fraud, evade legal obligations or otherwise achieve an unlawful purpose. This is an exceptional remedy, applied narrowly by the courts. Investors should be aware that relying solely on the corporate form to shield against liability will not be effective where there is clear evidence of improper conduct.

# 4. Employment Law

## 4.1 Nature of Applicable Regulations

### Statutory Framework

New Zealand's employment and health and safety framework is a combination of legislation and established case law, and is intended to protect workers' rights, promote fair treatment and ensure safe workplaces. The key pieces of legislation are:

- the Employment Relations Act 2000;
- the Holidays Act 2003 (note this Act has now been repealed and replaced with the Employment Leave Bill which commences two years after receiving Royal Assent (save for some provisions)); and
- the Health and Safety at Work Act 2015.

The Employment Relations Act 2000 is the cornerstone of New Zealand's employment law, and sets out:

- a statutory duty of good faith – all parties in employment relationships must act honestly, openly and without misleading one another;
- minimum requirements for written employment agreements (individual and collective); and
- a personal grievance procedure – all employees who earn less than NZD200,000 per annum may access this procedure, which provides a mechanism to challenge dismissals or other actions the employee considers unjustifiable.

The Employment Relations Act 2000 applies to all employment relationships, including senior and executive roles. It excludes independent contractors, although courts or Inland Revenue may reclassify certain arrangements as employment if necessary.

### Other Key Legislation

The Holidays Act 2003 provides for:

- four weeks of paid annual leave after 12 months of continuous service;

- 12 public holidays annually, with time-and-a-half pay for those who work on those days;
- ten days of paid sick leave per year after six months; and
- minimum entitlements to bereavement leave and family violence leave.

The Human Rights Act 1993 prohibits discrimination in employment based on personal characteristics such as age, race, sex, religious belief or disability, and promotes equal employment opportunities. There are also statutes dealing with minimum wage rates, wages protection (eg, prohibition on certain deductions from wages) and parental leave entitlements.

### Case Law and Collective Bargaining

Case law plays an important role in interpreting employment rights and obligations, with the Employment Relations Authority and Employment Court developing New Zealand employment law through their decisions. In cases involving questions of law of public importance, cases may also be heard by the Court of Appeal and the Supreme Court.

## 4.2 Characteristics of Employment Contracts

### Written Agreement Requirement

Employment agreements, whether individual or collective (negotiated by unions), must be in writing, and employers must keep signed copies. Employment agreements must comply with minimum statutory entitlements, and any terms that purport to undercut those minimum standards will be of no effect. The statutory duty of good faith applies to bargaining for employment agreements (individual and collective).

### Fixed-Term and Ongoing Employment

Employment agreements can be for a fixed term or on an ongoing (indefinite) basis, but the Employment Relations Act 2000 provides specific safeguards to ensure that fixed-term arrangements are not used inappropriately to avoid protections afforded to permanent employees. Where a fixed-term agreement is used, there must be genuine reasons based on reasonable grounds for the fixed term. Employers cannot use fixed-term agreements simply to circumvent employees' access to personal grievance rights or to assess suitability for employment.

## 4.3 Working Time

### Working Hours

Working time arrangements and overtime are generally agreed between employer and employee in the individual employment agreement, subject to compliance with minimum statutory entitlements. New Zealand does not impose a strict statutory maximum on working hours, though health and safety obligations require employers to ensure workloads do not compromise employees' well-being.

### Minimum Wage

The adult minimum wage remains at NZD23.95 per hour from 1 April 2026, with the starting-out and training minimum wage at NZD19.16 per hour. The Minimum Wage Act 1983 establishes the legal minimum wage, which is reviewed annually to reflect living costs.

## 4.4 Termination of Employment Contracts

### Not an Employment at Will Jurisdiction

New Zealand is not an "employment at will" jurisdiction. Employees have significant legal protections against unjustified dismissal, and employers must follow both a substantively fair and procedurally fair process before terminating an employment relationship. Both parties are required to communicate openly, particularly where significant employment changes are proposed, such as redundancies and restructuring.

### Personal Grievances

Employees may raise personal grievances within 90 days, except in cases of sexual harassment where the timeframe is extended to 12 months. Disputes are often resolved through mediation, with unresolved issues taken to the Employment Relations Authority. Remedies available to employees who succeed in a personal grievance claim include reinstatement, compensation for lost wages, and damages for humiliation and injury to feelings.

From February 2026, an income threshold applies to personal grievances, subject to a 12-month transitional arrangement. Employees paid NZD200,000 or above will not be able to access the personal grievance procedure.

### Collective Redundancies

Where collective redundancies are required, employers must consult in good faith with employees and, where applicable, their union representatives. This includes:

- providing affected employees with details of any proposal that may impact the continuation of their employment;
- proactively sharing relevant information;
- giving employees the opportunity to respond to the proposal; and
- genuinely considering employee feedback before finalising decisions.

There is no fixed statutory redundancy payment in New Zealand; entitlements will depend on what is agreed in the employment agreement or any applicable collective agreement.

## 4.5 Employee Representations

### Union Representation

Union membership is voluntary, but unions are required for negotiating collective agreements, and the right to strike is protected in specific conditions, particularly during collective bargaining. Employers must bargain in good faith with unions that have initiated bargaining on behalf of their members in the workplace. The Employment Relations Act 2000 sets out detailed requirements for collective bargaining. Good faith obligations apply regardless of whether or not there is formal union representation in the workplace.

# 5. Tax Law

## 5.1 Taxes Applicable to Employees/ Employers

The authors are grateful to Murray Brewer, Alejandro Ces and Simon Taylor of Grant Thornton for reviewing and providing expert input on the tax sections of this chapter.

### Income Tax and PAYE

New Zealand's tax system is overseen by the Inland Revenue Department (IRD), which administers tax laws and ensures compliance. The tax regime is generally straightforward, with relatively low rates and a focus on transparency. Individuals are taxed on a progressive scale depending on their annual income, with rates for 2026–2027 set to:

- 10.5% on income up to NZD15,600;
- 17.5% on income from NZD15,601 to NZD53,500;
- 30% on income from NZD53,501 to NZD78,100;
- 33% on income from NZD78,101 to NZD180,000; and
- 39% on income above NZD180,000.

Residents are taxed on their worldwide income, while non-residents are only taxed on New Zealand-sourced income.

### Employer Payroll Obligations

Employers in New Zealand use the Pay as You Earn (PAYE) payroll tax system, with responsibilities including:

- deducting PAYE from employees' pay;
- making KiwiSaver contributions for eligible employees;
- paying Accident Compensation Corporation (ACC) levies for workplace injury coverage; and
- making other deductions such as student loan repayments or child support if required by the IRD.

Fringe Benefit Tax (FBT) is levied on non-cash benefits provided to employees, such as company vehicles or subsidised loans.

## 5.2 Taxes Applicable to Businesses

### Corporate Income Tax

A company is treated as tax-resident in New Zealand if it is incorporated there, or if its head office, centre of management or director control is located in New Zealand. Resident companies are taxed on their worldwide income, while non-resident companies are taxed only on income sourced from New Zealand. The corporate income tax rate is 28% on taxable income. New Zealand operates a full imputation system, which allows companies to attach tax credits to dividends paid to shareholders, reducing or eliminating double taxation of corporate profits.

### Non-Resident Withholding Tax

Non-residents receiving passive income from New Zealand are subject to Non-Resident Withholding Tax (NRWT). The domestic rates are as follows:

- dividends: 30% (unfranked) or in many cases 0% (fully imputed with tax credits attached);
- interest: 15%; and
- royalties: 15%.

These rates are frequently reduced by New Zealand's extensive network of double tax agreements. As an alternative to NRWT on interest, an approved issuer may pay a reduced 2% Approved Issuer Levy on interest paid on registered securities.

### Transfer Taxes

New Zealand does not impose stamp duty or transfer taxes on the transfer of real property, shares or other assets.

### Other Taxes

Employers are liable for Fringe Benefit Tax (FBT) on non-cash benefits provided to employees, with rates of up to 63.93% depending on the calculation method chosen. Customs and excise duties apply to the importation of certain goods, including alcohol, tobacco and fuel.

### OECD Pillar Two

New Zealand has enacted comprehensive Pillar Two legislation through the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Act 2024. The Income Inclusion Rule applies for fiscal years beginning on or after 1 January 2025, while the Undertaxed Profits Rule and a Qualified Domestic Minimum Top-up Tax (QDMTT) apply from 1 January 2026. These rules ensure that large Multinational Enterprises (MNEs) with consolidated revenue of at least EUR750 million pay an effective tax rate of at least 15% in each jurisdiction where they operate.

As at the date of writing, New Zealand's QDMTT has not yet been confirmed as having been granted safe harbour status on the OECD Inclusive Framework's central record, though the assessment process remains ongoing.

Local taxpayers are responsible for registering MNEs subject to the Pillar Two rules, with registration required within six months of the first financial year in scope. For the initial cohort, this means registration should be completed by 30 June 2026 for MNEs with a 31 December 2025 year-end.

## 5.3 Available Tax Credits/Incentives

### Research and Development Tax Credit

The principal tax incentive is the Research and Development Tax Incentive (RDTI), which provides a 15% tax credit on eligible R&D expenditure up to NZD120 million per annum. To qualify, a business must spend at least NZD50,000 on core R&D activities conducted using a systematic approach with a material purpose of resolving scientific or technological uncertainty, and with the intention of creating new knowledge or new or improved processes, services or goods. The claimant must carry on business through a fixed establishment in New Zealand. Unused credits may be carried forward, and refundability may be available for eligible companies meeting wage intensity criteria to the extent that the current year credit exceeds the current year tax liability.

### Research and Development Loss Tax Credit

A separate Research and Development Loss Tax Credit (RDLTC) is available to non-listed entities in a tax loss position, whereby the loss can be "cashed-out" instead of being carried forward. There are various requirements for this, including the need to spend at least 20% of salaries on R&D, a cap of NZD560,000 and the intellectual property (IP) needing to be owned by the claimant. There are also various clawback events available, such as sale of the IP.

### Investment Boost

Introduced in 2025, this incentive allows businesses an additional 20% deduction on the cost of new depreciable assets in the year the asset first becomes available for use. The asset must never previously have been used in New Zealand. Excluded assets include dwellings and fixed-life intangible property.

### Loss Grouping

Companies within a group of companies with at least 66% common ownership may transfer tax losses

between profitable and loss-making group members, reducing the overall tax burden of the corporate group.

### Foreign Tax Credits

Resident companies deriving foreign-sourced income may claim a credit for foreign income tax paid, preventing double taxation and supporting international operations.

## 5.4 Tax Consolidation

### Tax Consolidation

New Zealand does not operate a full tax consolidation regime in the same way as Australia or the United States. However, eligible wholly-owned groups of New Zealand-resident companies may form a consolidated group under the Income Tax Act 2007, under which income, losses and tax credits are determined on a single-assessment basis and one nominated company files a group return.

### Loss Grouping

Where full consolidation is not available or chosen, the loss grouping rules permit the transfer of losses between profitable and loss-making group members. Businesses structuring their New Zealand operations across multiple entities should obtain specialist tax advice to determine which approach best suits their circumstances.

## 5.5 Thin Capitalisation Rules and Other Limitations

### Thin Capitalisation Rules

New Zealand applies thin capitalisation rules under subpart FE of the Income Tax Act 2007, to limit the deductibility of interest expenses where a New Zealand entity is excessively debt-funded relative to its worldwide group. The rules are designed to prevent multinational groups from artificially reducing their New Zealand taxable income by loading disproportionate levels of debt into their New Zealand operations and claiming large interest deductions.

### Scope

The thin capitalisation rules apply to New Zealand entities that are controlled by a non-resident, are members of a wholly-owned group that includes a non-resident, or are New Zealand branches of non-resident companies. A de minimis exemption applies where the entity's net interest deductions do not exceed NZD250,000.

### How the Rules Work

Where the rules apply, interest deductions may be limited if the entity's New Zealand debt exceeds permitted safe harbour thresholds calculated by reference to the entity's worldwide group debt ratio. Excess interest is effectively treated as income, denying the deduction. Businesses with significant related-party debt should carefully consider these rules when structuring their New Zealand operations, and should seek specialist tax advice.

### Restricted Transfer Pricing Rules

These rules apply where inbound related-party borrowings reach NZD10 million or more during the year. In addition to standard transfer pricing, interest deductions may be limited based on borrower credit ratings or denied for features such as subordination or contingent interest.

## 5.6 Transfer Pricing

New Zealand's transfer pricing rules require cross-border transactions between associated persons to be conducted on an arm's length basis, and are generally applied consistently with the OECD transfer pricing guidelines. Under certain circumstances, Inland Revenue has the ability to recharacterise or disregard a transaction where the OECD guidelines regarding non-recognition are met. Under local legislation, the onus of proof in connection with transfer pricing matters remains with taxpayers; therefore, businesses engaged in cross-border intra-group transactions should maintain contemporaneous documentation commensurate with the materiality and complexity of the covered arrangements, addressing the reasonableness of the arrangements under consideration from a local perspective to support their transfer pricing positions, as shortfall penalties may be imposed where adequate documentation has not been kept.

## 5.7 Anti-Evasion Rules

### General Anti-Avoidance Rule

New Zealand has a broad general anti-avoidance rule that applies to any arrangement entered into for the purpose or effect of avoiding tax, regardless of its legal form. Where the rule applies, Inland Revenue has

wide discretion to reconstruct the taxpayer's income to counteract the tax advantage obtained. This is one of the most frequently litigated areas of New Zealand tax law.

### Controlled Foreign Company Rules

The CFC rules in subpart EX of the Income Tax Act 2007 attribute certain types of income earned by foreign subsidiaries to their New Zealand-resident controllers. These rules prevent New Zealand residents from sheltering passive or highly mobile income in overseas entities located in low-tax jurisdictions. Where a New Zealand resident holds an income interest of 10% or more in a CFC, attributable income is taxed in New Zealand in the year it is earned, regardless of whether it has been distributed.

Together with the thin capitalisation and transfer pricing rules, the general anti-avoidance rule and the CFC regime form New Zealand's broader framework for ensuring that international tax obligations are met and profits are not diverted from the New Zealand tax base.

## 5.8 Tariffs

### Tariff Regime

New Zealand maintains a comparatively liberal tariff regime. Tariff duties are imposed under the Tariff Act 1988 and collected by the New Zealand Customs Service under the Customs and Excise Act 2018. The majority of goods enter New Zealand at a zero or very low rate of duty.

Residual tariffs of up to 10% apply to a limited range of goods, primarily in the textiles, clothing, footwear and carpet sectors. These are the only sectors where tariffs are specifically designed to provide ongoing protection to domestic manufacturers.

### Preferential Trade Agreements

New Zealand has an extensive network of free trade agreements, including the CPTPP, RCEP, AANZFTA, PACER Plus, and bilateral agreements with countries including China, Australia, the Republic of Korea and the United Kingdom. Goods originating in preferential countries attract reduced or zero rates under the Preferential Tariff. An agreement with the European Union entered into force in May 2024.

### Trade Remedies

Anti-dumping and countervailing duties may be imposed under the Trade (Anti-dumping and Countervailing Duties) Act 1988 where dumped or subsidised imports cause material injury to a domestic industry. Safeguard measures are available under the Trade (Safeguard Measures) Act 2014 where increased imports cause serious injury. The current global environment of escalating trade tensions, including retaliatory tariff measures between major trading blocs, has heightened awareness of these tools, though New Zealand has historically used trade remedies sparingly.

# 6. Competition Law

## 6.1 Merger Control Notification

The Commerce Commission has regulatory oversight of mergers and acquisitions in New Zealand, and has the ability to issue clearances for proposed mergers and take regulatory enforcement action in respect of proposed or concluded mergers.

New Zealand does not have a mandatory notification regime, neither in respect of all transactions nor for transactions meeting specific criteria; rather, parties may voluntarily choose to seek clearance from the Commerce Commission. Clearance will be granted if the Commerce Commission is satisfied that the merger or acquisition is unlikely to have the effect of substantially lessening competition in the market. The Commission may also grant an authorisation in respect of a merger if it will be likely to substantially lessen competition but the public benefit is such that the Commission considers it should be permitted.

Clearance and authorisations remain effective for 12 months from the date issued.

If the parties to a transaction choose not to seek voluntary clearance or authorisation, they may be subject to court proceedings by the Commerce Commission or a third party. The court has the power to grant prohibitory injunctions or order damages, divestiture or pecuniary penalties where an acquisition would have the effect or likely effect of substantially lessening competition. Businesses should be aware that sig-

nificant amendments to the merger control regime are expected following the anticipated passage of the Commerce (Promoting Competition and Other Matters) Amendment Bill in mid-to-late 2026, as discussed in the New Zealand Trends and Development chapter in this guide.

## 6.2 Merger Control Procedure

The Commerce Commission operates a voluntary clearance process with the following stages and indicative timeframes, where available:

- pre-notification engagement with the Commerce Commission by the applicant;
- registration of clearance application;
- day five: Commerce Commission publishes "Statement of Preliminary Issues" and draft investigation timeline;
- day 30: Commerce Commission completes initial interviews and information gathering;
- day 40: Commerce Commission either issues Notice of Clearance or sends a "Statement of Issues";
- applicant responds to Statement of Issues;
- Commerce Commission issues a "Statement of Unresolved Issues"; and
- final decision to issue either a Notice of Clearance or a Decline of Clearance.

The timeframes are indicative only and subject to extension by the Commerce Commission. This procedural framework is also expected to be subject to amendment following the passage of the Commerce (Promoting Competition and Other Matters) Amendment Bill, anticipated in mid-2026.

## 6.3 Cartels

The Commerce Act 1986 contains prohibitions against "cartel provisions" – ie, provisions in a contract, arrangement, understanding or covenant that have the purpose, effect or likely effect of price fixing, restricting output and/or market allocation.

Conduct can be caught if any act or omission that forms part of that conduct takes place in New Zealand, including agreements formed outside New Zealand where that conduct affects a market in New Zealand.

A breach of the prohibition against agreeing to, requiring or giving effect to a cartel provision gives rise to a pecuniary penalty and criminal liability. In addition, cartel provisions are unenforceable.

The prohibition against cartel provisions has the following exceptions:

- where the parties to the provision are engaged in "collaborative activity" and the cartel provision is reasonably necessary for the purpose of that collaborative activity – a "collaborative activity" is an activity in trade that is not carried out for the dominant purpose of lessening competition between the parties;
- vertical supply contracts where the provision relates to the maximum price of resupply and does not have the dominant purpose of lessening competition; and
- price fixing provisions relating to:
  (a) the collective acquisition of goods or services;
  (b) advertising of the price of the resupply of goods or services collectively acquired;
  (c) collective price negotiation; or
  (d) the purchase and resupply of goods or services by an intermediary who is a party to the contract.

Businesses should note that the cartel regulation regime is also expected to be amended following the passage of the Commerce (Promoting Competition and Other Matters) Amendment Bill, anticipated in mid-2026.

## 6.4 Abuse of Dominant Position

Section 36 of the Commerce Act 1986 prohibits a person with a "substantial degree of power" in a market from engaging in conduct that has the purpose, or is likely to have the effect of, substantially lessening competition either in that market or in another market where that person, or an interconnected person, supplies or acquires goods.

The Act does not define when a person has a substantial degree of power in the market, but the requirement for a "substantial degree of power" is a lower threshold than "dominance" and was introduced to align the New Zealand regime with that in Australia.

Conduct can be caught if any act or omission that forms part of that conduct takes place in New Zealand, including conduct outside New Zealand where that conduct affects a market in New Zealand.

Pecuniary penalties may be ordered not only for breaching Section 36, but also for attempts to breach, and for aiding, abetting, counselling, procuring, being knowingly concerned in or being a party to a contravention.

The maximum penalty that may be ordered in respect of each contravention is NZD500,000 in the case of an individual, or the higher of the following for a body corporate:

- NZD10 million;
- three times the value of any commercial gain resulting from the contravention; or
- if the commercial gain cannot readily be ascertained, 10% of the turnover of the person and all its interconnected bodies corporate (if any) in each accounting period in which the contravention occurred.

## 7. Intellectual Property

### 7.1 Patents

#### Definition and Duration

New Zealand's intellectual property laws protect the rights of creators, brand owners and innovators, aligning with international standards through agreements such as the TRIPS Agreement and obligations under the World Trade Organization. The Patents Act 2013 grants inventors the right to control the use of their inventions, with protection lasting for 20 years from the filing date.

#### Registration Requirements

To be patentable, an invention must be novel (it must be new) and must involve an inventive step (it must not be obvious to a skilled person in the field). Certain categories are excluded from patent protection, including methods of medical treatment for humans, diagnostic methods on humans, and inventions contrary to public order or morality. Embedded software that is integral to a technological innovation can be patented, and Swiss-type claims (the use of known substances for new medical treatments) are recognised for pharmaceuticals. Patents are registered through the Intellectual Property Office of New Zealand (IPONZ).

#### Enforcement and Remedies

Re-examination and opposition procedures allow third parties to challenge the validity of a granted patent. Enforcement of patent rights is pursued through the courts, with available remedies including injunctions to prevent ongoing infringement, damages, and an account of profits made from the infringing activity.

### 7.2 Trade Marks

#### Definition and Duration

Under the Trade Marks Act 2002, a trade mark gives its owner exclusive rights to use a mark in connection with the goods or services for which it is registered. Registrable marks include distinctive words, logos, shapes, symbols, colours, sounds and smells, or combinations of these elements. Owners can prevent others from using confusingly similar marks in relation to the same or similar goods or services. Trade mark protection lasts for ten years and is renewable indefinitely.

#### Registration Process

Registration is through IPONZ. Trade marks incorporating Māori language or symbols are reviewed by a special committee to ensure that use of the mark would not be likely to offend Māori. The Madrid Protocol allows for the international registration of trade marks through a single application, facilitating global protection.

#### Enforcement and Remedies

Comparative advertising using registered trade marks is allowed if it does not unfairly damage the reputation of the mark, and anti-dilution provisions protect well-known trade marks from being used on unrelated goods or services. Enforcement is through the courts, with remedies including injunctions, damages and an account of profits. In New Zealand, registering a company name does not automatically confer the right to use it as a trade mark, and businesses should ensure their company name does not infringe on existing trade marks, to avoid legal conflicts.

## 7.3 Industrial Designs

### Definition and Duration

The Designs Act 1953 protects new and original industrial designs that have visual appeal, such as shapes, patterns or ornamentation. Registered designs are protected for an initial five-year period, with the option to renew twice for additional five-year periods, giving a maximum protection period of 15 years. Registration is through IPONZ.

### Enforcement

While copyright protects artistic works, registered design protection offers distinct legal advantages for enforcement and commercialisation. Enforcement of registered design rights is pursued through the courts, with remedies including injunctions and damages. Rights holders whose designs have been copied should act promptly to protect their position, as delays can complicate enforcement efforts.

## 7.4 Copyright

### Definition and Duration

The Copyright Act 1994 grants creators exclusive rights over their works, allowing them to:

- reproduce and distribute the work;
- publicly perform, show or communicate the work;
- create adaptations; and
- authorise any of these activities.

Copyright covers literary, dramatic, musical and artistic works, as well as sound recordings, films and broadcasts. Works must be original to qualify for protection. As a signatory to the Berne Convention, New Zealand does not require registration for copyright protection, which begins automatically upon creation. Literary, dramatic, musical and artistic works are protected for the life of the author plus 50 years; films, sound recordings and broadcasts for 50 years; typographical arrangements for 50 years; and industrially applied artistic works for 16 years, or 25 years for works of artistic craftsmanship. Moral rights (including the right to be recognised as the author and to prevent derogatory treatment of works) cannot be transferred.

### Registration and Enforcement

No registration is required for copyright in New Zealand. Enforcement is through the courts, with remedies including injunctions, damages and an account of profits. The Copyright (Parody and Satire) Amendment Bill was introduced to Parliament in November 2024, containing a "fair dealing" exception to copyright infringement for parody and satire, which if passed will bring New Zealand's law into line with the United Kingdom, United States and Australia.

## 7.5 Others

### Plant Variety Rights

The Plant Variety Rights Act 2022 grants breeders of new plant varieties exclusive rights over their varieties for a specified period, and is particularly relevant for New Zealand's significant horticulture sector, including the kiwifruit, apple and wine industries.

### Domain Names

Domain names can be registered in New Zealand, particularly regional ones like ".co.nz" or ".govt.nz" (restricted to government use). Courts have acted against cybersquatting in certain cases to protect businesses. The Domain Name Commission offers a dispute resolution service for conflicts over domain name registrations.

### Software, Databases and Trade Secrets

Software constitutes a literary work under the Copyright Act 1994. Copyright will subsist in software on creation, provided the work is original, with no formal registration required. The same applies to databases. The original compilation may qualify for copyright protection as a literary work. Trade secrets are not governed by specific legislation in New Zealand. Protection can instead be achieved through the equitable law of confidence and contractual arrangements (including employment agreements, contractor agreements and other confidentiality obligations binding the relevant parties).

# 8. Data Protection

## 8.1 Applicable Regulations

New Zealand's Privacy Act 2020 governs the collection, disclosure and use of personal information, and applies to public and private sector "agencies".

The Act is principles-based and regulates the full information life cycle through 13 Information Privacy Principles (IPPs), covering:

- the purpose and source of collection;
- transparency at collection;
- the collection of information from third parties;
- storage and security;
- access and correction rights;
- accuracy, retention, use and disclosure;
- overseas transfer; and
- use of unique identifiers.

The Act also contains a mandatory notifiable privacy breach regime. Agencies must notify the Privacy Commissioner and affected individuals where a privacy breach has caused serious harm, or is likely to do so.

The Privacy Commissioner may issue codes of practice, which form part of New Zealand's data protection framework, and may modify the IPPs for particular sectors, activities or types of personal information.

The codes of practice that are currently in force are:

- Health Information Privacy Code 2020;
- Credit Reporting Privacy Code 2020;
- Telecommunications Information Privacy Code 2020;
- Biometric Processing Privacy Code 2025;
- Civil Defence National Emergencies (Information Sharing) Code 2020;
- Justice Sector Unique Identifier Code 2020; and
- Superannuation Schemes Unique Identifier Code 2020.

## 8.2 Geographical Scope

The Privacy Act has express extraterritorial application. It applies not only to New Zealand companies, but also to overseas companies that are "carrying on business" in New Zealand, regardless of where the personal information is or was collected or held by the overseas company.

A foreign company targeting New Zealand customers may therefore be required to comply with the Act if it is "carrying on business" in New Zealand in respect of personal information collected or held by the foreign company. "Carrying on business in New Zealand" is not defined in the Act, but a foreign company may be treated as "carrying on business in New Zealand" without necessarily:

- being a commercial operation;
- having a place of business in New Zealand;
- receiving any monetary payment for the supply of services; or
- intending to make a profit from its business in New Zealand.

When assessing whether the test is satisfied, the Privacy Commissioner would consider a range of factors, including whether the foreign company:

- offers goods or services to New Zealanders;
- has ongoing New Zealand-facing activities involving personal information on a repeated or systematic basis;
- operates through a NZ-facing website or app;
- has activities that are carried out in or have effect in New Zealand; or
- uses New Zealand domain names or trade marks (including where it holds relevant registrations).

Where the Act applies, the foreign company must comply with the IPPs or any code of practice that is applicable to either the relevant sector that the foreign company operates in or the type of personal information being collected. It must also appoint a privacy officer.

The Act also regulates international transfers of personal information. Under Information Privacy Principle 12, the New Zealand or foreign company (that is subject to the Privacy Act) may generally disclose personal information to an overseas recipient only if the recipient is subject to the Privacy Act, comparable privacy laws, a prescribed binding scheme or other comparable safeguards, such as contractual protections. Alternatively, the individual must authorise the overseas transfer after being expressly informed that the overseas recipient may not provide comparable protection to the Privacy Act.

### 8.3 Role and Authority of the Data Protection Agency

#### The Office of the Privacy Commissioner

Data protection in New Zealand falls under the oversight of the Office of the Privacy Commissioner (OPC), which holds broad powers to promote and protect individual privacy rights. The Privacy Commissioner receives and investigates complaints from individuals who believe their personal information has been mishandled, and may also initiate its own investigations where systemic concerns are identified, without waiting for a complaint to be lodged. Where a serious breach is established, the Commissioner may refer the matter to the Director of Human Rights Proceedings (appointed under the Human Rights Act 1993), who has discretion to bring proceedings in the Human Rights Review Tribunal (an independent judicial body with the power to make binding orders and award compensation to affected individuals). Complainants may also apply directly to the Tribunal.

#### Rule-Making and Enforcement

A particularly significant aspect of the Commissioner's authority is the power to issue binding privacy codes of practice under the Privacy Act 2020. These codes allow the OPC to extend and sharpen the Act's baseline obligations in response to emerging risks. The Biometric Processing Privacy Code 2025, issued by the Commissioner and in force from 3 November 2025, demonstrates the OPC's willingness to exercise this power proactively, including in response to emerging technologies. Non-compliance with the Act or an applicable code may result in investigation by the Commissioner, compliance notices, proceedings before the Human Rights Review Tribunal and, in some circumstances, statutory offences and financial penalties (including for company directors).

The Act also imposes mandatory notification obligations where a privacy breach has caused or is likely to cause serious harm, requiring affected organisations to notify both the Commissioner and affected individuals as soon as practicable. These mechanisms support the OPC's ability to monitor compliance and respond to significant privacy incidents.

#### Educational and Advisory Role

Alongside its enforcement functions, the OPC performs an important educational and advisory role, including by issuing detailed guidance to assist organisations in understanding and meeting their obligations. Although the guidance does not have the force of law, it provides important insight into the Commissioner's expectations regarding privacy governance and regulatory compliance. This function is particularly valuable for overseas investors establishing New Zealand operations who are unfamiliar with the local privacy framework.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

#### Resource Management Reform

The government is currently progressing a comprehensive reform of New Zealand's environmental law regime, replacing the Resource Management Act 1991 (RMA) with two new statutes. The Planning Bill regulates land use, development and subdivision, while the Natural Environment Bill regulates the use of natural resources and effects on the environment. The two Bills, once enacted, will replace the RMA in its entirety.

Both Bills were introduced to Parliament on 9 December 2025 and passed their First Reading on 16 December 2025. The Environment Select Committee has concluded hearing submissions on the Bill and is scheduled to release its report and recommendations to Parliament on 20 July 2026. The government is targeting enactment of both Bills in September 2026. A three to five-year transition period is anticipated. Investors in land development, infrastructure and primary industries should closely monitor the progress of these Bills and the transitional regime, as they are likely to materially change the resource consenting landscape in New Zealand.

#### Employment Law Changes

The Holidays Act 2003 is expected to be repealed and replaced by legislation that, if enacted in 2026, will come fully into force approximately two years after Royal Assent. The Employment Leave Bill passed its third reading on 29th July and is awaiting Royal assent.

It provides simpler replacement, changing how annual leave, sick leave, family violence leave, bereavement leave and alternative leave will be earned, taken and paid. Businesses should begin reviewing their leave calculation systems and payroll processes now, as replacement legislation is likely to introduce new calculation methods and entitlements that will require operational changes.

### Competition Law Reform

The Commerce (Promoting Competition and Other Matters) Amendment Bill is expected to be brought into force by mid-2026 and introduces a package of reforms modernising and strengthening New Zealand's competition settings. The Bill addresses:

- complexity, cost and delays in supporting pro-competitive collaboration;
- limitations in enforcement tools; and
- gaps in the merger control framework.

Key changes include the following.

- Merger control: the Bill clarifies the substantial lessening of competition test to cover the creation, strengthening or entrenchment of market power, and allows the Commerce Commission to assess serial acquisitions. It introduces "call-in" and "hold-separate" powers, and sets new statutory time-frames for complex merger decisions.
- Collaborative conduct: a new statutory notification regime is introduced, enabling firms to notify the Commission and proceed with arrangements unless the Commission objects, along with streamlined cartel clearance provisions.
- Enforcement: the Bill strengthens enforcement by introducing corrective action orders for contraventions of Part 2 of the Commerce Act 1986.
- Predatory pricing: a new objective test for predatory pricing is introduced, removing the previous requirement to prove recoupment.
- Confidentiality and whistle-blowers: the Bill enhances protections for confidential information, and introduces whistle-blower protections.

Businesses involved in mergers and acquisitions, or that are party to collaborative arrangements with competitors, should monitor the progress of this Bill closely, as it may alter the thresholds, procedures and substantive rules that currently apply under the Commerce Act 1986.

### Intellectual Property

The Copyright (Parody and Satire) Amendment Bill, introduced to Parliament in November 2024, proposes to introduce a "fair dealing" exception to copyright infringement for parody and satire. If passed, this will bring New Zealand's copyright law into line with the approach taken in other countries, including Australia, the United States, Belgium, France, the Netherlands, Spain and Germany. Businesses and content creators operating in the media, advertising or entertainment sectors should be aware of this development and its potential implications for how their content and brand assets may be used by others.

### Data Protection

The Biometric Processing Privacy Code 2025 came into force on 3 November 2025, introducing specific compliance obligations for organisations processing biometric information. Businesses with existing biometric systems have until 3 August 2026 to achieve full compliance – a deadline that is now imminent. Businesses should treat this deadline as an urgent priority and conduct a thorough compliance review of all biometric systems in use across their operations.

# Trends and Developments

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**Tompkins Wake**

**Tompkins Wake** is one of New Zealand's leading full-service commercial law firms, known as "the law firm at the centre of New Zealand's economic and commercial heartland". Located in Hamilton, Auckland, Rotorua and Tauranga with more than 200 staff (including 29 partners and approximately 120 lawyers), the firm is globally connected as the New Zealand member of elite global law network MultiLaw, with alliances in over 100 countries. The firm advises major businesses, iwi organisations, infrastructure providers and public sector bodies across corporate and commercial, banking and finance, property, construction, employment, dispute resolution, environment, and Māori business law, and regularly advises foreign investors entering New Zealand, including on Overseas Investment Office approvals. Recent work includes advising Grant Thornton New Zealand Ltd on a strategically significant and highly complex cross-border transaction, supporting its agreement to join the Grant Thornton Advisors global platform.

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ated pharmaceutical supply arrangements with Pharmac, New Zealand's government drug purchasing organisation.



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## Introduction

New Zealand enters 2026 in a stage of legal and regulatory transformation. After years of economic turbulence driven by post-pandemic cost pressures, strained global supply chains and rapidly rising interest rates, business conditions are beginning to stabilise. At the same time, a wave of legislative reform is reshaping the environment for both domestic operators and international investors, touching everything from the rules governing foreign capital to the fundamentals of employment relationships, competitive markets and commercial property.

This article identifies five areas of significant change that anyone doing business in New Zealand needs to understand.

## Opening the Door Wider: Reforming the Overseas Investment and Investor Immigration Regimes

New Zealand's government has moved on multiple fronts simultaneously to attract international capital. Two distinct but complementary reform streams are now in place: a change to the overseas investment consenting regime, and a suite of new immigration pathways designed to bring high net worth individuals and experienced business operators into the New Zealand economy.

### *The Overseas Investment Act reform*

Since the 1970s, acquiring a business or significant asset in New Zealand as an overseas person has required navigating a complex and often protracted consent process. The government has recently made further amendments to the Overseas Investment Act 2005, with the reforms in force from 6 March 2026. The reforms mark a significant step in its "Going for Growth" strategy to attract international capital and stimulate economic development.

The changes to the Act aim to streamline New Zealand's overseas investment framework by simplifying the approval process for lower-risk investments, while maintaining strong protections for the more sensitive assets (ie, farmland and residential land). The centrepiece of the reform is the replacement of multiple existing approval tests with a single, consolidated national interest test. Previously, overseas investors had to demonstrate that their investment would provide a net benefit to New Zealand. The question (for most investments) is now more focused: does the investment pose a risk to New Zealand's national interest?

The new national interest test introduces a structured, three-stage process.

- Stage 1: the Overseas Investment Office (OIO) considers whether the transaction may pose a risk to New Zealand's national interest, and therefore whether a full national interest assessment is required. If no concerns are identified, consent can be granted. This stage must be completed within 15 working days.
- Stage 2: if concerns arise, the OIO undertakes a full national interest assessment, considering national security, public order and whether risks can be managed under other regulatory regimes. The OIO cannot decline consent at this stage.
- Stage 3: if the OIO considers that there are significant risks, the assessment is escalated to the Minister for Finance, who ultimately decides whether to decline consent if the investment is deemed contrary to New Zealand's national interest, or to grant consent if the risk can be managed through conditions or other means.

To accompany the changes, the government has issued a new directive to the OIO to keep compliance obligations "no broader than necessary", to concentrate resources on genuinely higher risk transactions and to use existing domestic regulation to control risk rather than imposing conditions, wherever possible. With the reforms now in force, investors approaching the New Zealand market will have a much more streamlined process available to them when engaging with the overseas investment regime. Most applications for consent will be processed under the new national interest assessment pathway, but investments in residential land and farmland will still be subject to the previous tests (ie, proving a benefit to New Zealand).

### *The Active Investor Plus Visa: attracting high net worth investors*

Running alongside the OIA reforms is a revamped immigration pathway for significant investors. On 1

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April 2025, New Zealand launched changes to the Active Investor Plus Visa, including the introduction of two investment categories. This is intended to attract investors who take an active role in helping companies access global knowledge networks, capital and markets, and is designed to generate higher business productivity and job growth.

The two categories offer genuine flexibility:

- the Growth Category focuses on higher-risk investments, including managed funds and direct investments in New Zealand businesses, and requires a minimum investment of NZD5 million for a minimum period of three years; and
- the Balanced Category focuses on mixed investments, with the ability to choose lower-risk options, and requires a minimum investment of NZD10 million over five years.

Other changes include reducing the minimum investment amount from NZD15 million (or weighted equivalent) to NZD5 million for Growth and NZD10 million for Balanced Category investors. The scope of acceptable investments has also been broadened to include bond and property-type investments for Balanced Category investors, removing the English language requirement, and imposing fewer immigration requirements for migrants who choose more active investments.

For the Growth Category, investors must spend at least 21 days in New Zealand over the three-year investment period. For the Balanced Category, investors must spend 105 days in New Zealand over five years, with that requirement reducing for larger investments: 91 days for NZD11 million, 77 days for NZD12 million, and 63 days for NZD13 million.

The results since launch have been striking. As of 11 June 2026, Immigration New Zealand had received 734 applications under the new settings, amounting to a potential total minimum investment of NZD4.29 billion. Of those, 294 applications have been approved, with the total committed investment from these applications amounting to NZD1.72 billion. The average time for an application to be approved in principle under the new settings is 36 working days, which is a significant improvement on the delays that characterised the previous instructions.

### *The Business Investor Work Visa: a pathway for hands-on operators*

New Zealand has also introduced a route for experienced business operators. The Business Investor Work Visa (BIV) opens a fresh pathway to residence for experienced business professionals, with applications opening on 24 November 2025. The visa is designed to attract investors to established businesses across the country.

The BIV offers two investment tiers:

- a NZD1 million investment, which provides a three-year work-to-residence pathway; and
- a NZD2 million investment, which enables a fast-tracked residence pathway after just 12 months.

Both options require investment into a New Zealand business that has been operating for at least five years, and the visa is valid for up to four years, with provisions for the applicant's partner and dependent children.

The eligibility criteria are meaningfully substantive. Applicants must:

- invest in a qualifying New Zealand business with a five-year-plus operating history and meet minimum investment thresholds of NZD1 million or NZD$2 million;
- hold at least NZD500,000 in reserve funds for personal and family support;
- demonstrate credible business experience, such as ownership of a business with at least five full-time employees or annual business turnover of NZD1 million or more; and
- be aged 55 or younger, and satisfy English language, health and character requirements.

The path to residence is earned, not automatic. Those who meet the initial criteria and successfully manage their investment may become eligible for residence under the Business Investor Resident Visa, provided they remain actively involved in managing their business, retain their ownership stake, demonstrate

tangible economic impact by employing at least five full-time equivalent staff, and create at least one new lasting job for a New Zealand citizen or resident. Physical presence is also required, with applicants needing to have spent a minimum of 184 days in the country in each of the previous three years.

The business invested in must have been trading for at least five years, must be lawfully operating in New Zealand, and must have a purchase price of at least NZD1 million (not including property value or GST), resulting in the investor owning at least 25% of the business.

Taken together, these two investor immigration pathways and the OIA reforms send an unmistakable signal: New Zealand is actively competing for international capital and business talent. For offshore investors and business owners weighing their options, the combination of streamlined regulatory approval and clear immigration pathways removes barriers that have historically made New Zealand a difficult market to enter.

### The Gig Economy After Uber: Rewiring Employment Relations

In late 2025, New Zealand's Supreme Court delivered a landmark ruling: the four Uber drivers who are party to the case are employees, not independent contractors. The decision had profound implications for tens of thousands of workers across ride-sharing, food delivery, courier services and other platform-based industries. However, the government moved swiftly in its legislative response.

The Employment Relations Amendment Act 2026 introduced a new framework for "specified contractor" where, if five criteria are met, the person is deemed to be a specified contractor rather than an employee and is thereby excluded from the protections of the Employment Relations Act 2000. The intent is to give platform businesses and their workers contractual certainty, but the reform has attracted criticism from unions and worker advocates, who argue that it allows businesses to opt out of the protections the Uber ruling was designed to provide. The government's position is that flexibility and worker choice should be valued alongside formal protection, which is a debate that will continue to play out politically and in the courts.

For businesses operating in or entering the gig economy, the practical implications are significant.

- Platform businesses should urgently review their contractor arrangements and assess whether the new specified contractor provisions apply to their operating models. If they do not meet the specified contractor test, the common law test to determine the true nature of the relationship applies.
- Traditional employers need to recognise that the legal test for employment status has been clarified for all industries, not just app-based platforms. The distinction between employee and contractor is now more carefully scrutinised across the economy.

Beyond the gig economy, 2026 brings a raft of other potential employment law changes. The Employment Leave Bill is set to reform the Holidays Act 2003 after years of controversy about how leave entitlements are calculated. Now awaiting Royal Assent, it will deliver long-awaited simplification for employers and payroll providers. A new high-income threshold has been introduced, under which employees earning at or above that threshold will be barred from bringing a personal grievance in respect of their dismissal. For existing employees (prior to 21 February 2026), there is a transition period, with the law not taking effect until 21 February 2027. Together, these reforms represent a substantial reshaping of New Zealand employment law, and any business operating in this market should undertake a thorough review of its people practices without delay.

### The 2026 Election: Government Policy and Tax in Focus

New Zealand's general election is confirmed for November 2026, and the political landscape is already shaping investment decisions and business planning. The National-led coalition government has spent its term pursuing a pro-growth agenda centred on regulatory and planning reform, fiscal discipline and tax relief. Budget 2026, released by the current government, reinforces this agenda.

For property investors, the government has reinstated interest deductibility for residential investment properties and adjusted the bright-line test for residential property disposals, decreasing it from ten years to two years. These settings create a more favourable environment for residential property investment than has existed for several years.

More recent changes under the current government include changes to the foreign investment fund (FIF) rules. Budget 2026 has raised the FIF de minimis threshold from NZD50,000 to NZD100,000, and expanded the revenue accounts method for unlisted shares to all New Zealand tax residents rather than just recent migrants.

Budget 2026 also demonstrates the government's commitment to returning the Crown's accounts to surplus in 2028/29 (a year earlier than forecast), while prioritising capital expenditure in infrastructure, particularly in transport, defence and health. For businesses in the construction, engineering and professional services sectors, the public infrastructure pipeline remains a critical source of activity, although the pace and sequencing of major projects will be closely watched as the election approaches.

Key policy areas to monitor include the following.

- Taxation: Budget 2026 includes proposals to simplify the way fringe benefit tax applies to motor vehicles and to improve the Research and Development Tax Incentive to ensure it remains well targeted to increase business investment in R&D. Changes to the Goods and Services Tax Act are also on the horizon, as Inland Revenue is seeking feedback on a range of current GST issues.
- Resource Management Act reform: the RMA reform is underway, and the RMA replacements – the proposed Planning Bill and Natural Environment Bill – are expected to create a faster, more predictable consenting regime, with direct implications for property development and infrastructure delivery. Budget 2026 has provided the first major investment into the foundations that would underpin the new planning systems, including a centrally managed platform for planning, consenting and monitoring.
- Immigration settings: ongoing adjustments to work visa categories and skill shortage lists affect workforce planning across a number of industries. The introduction of the two new investment categories under the Active Investor Plus Visa is intended to attract high net worth investors to the country.
- Foreign investment: the overseas investment reforms and investor immigration pathways are positive signals to the international investment community that New Zealand is still open for business.

For businesses with a medium to long-term horizon for the New Zealand market, it is worth stress-testing strategic plans against policy scenarios once they are available.

## Construction and Commercial Property: Finding the Floor

New Zealand's property and construction markets enter 2026 in a period of careful reset. After several years of cost escalation, rising interest rates and subdued occupier demand, conditions are stabilising, although recovery is measured. For international investors and businesses assessing their exposure to the New Zealand market, two areas are particularly worth understanding:

- the commercial property leasing and investment environment; and
- the significant infrastructure pipeline that continues to underpin construction sector activity.

### *Commercial property: stabilisation and the case for optimism*

Auckland's commercial property market has faced pressure over the past two years. Across office, retail and industrial sectors, the forward development pipeline has thinned markedly compared with the last decade, as development and funding costs have exceeded rents required for feasibility, with many occupiers remaining cautious. Whilst face rents have remained stable, higher incentives have become more common in negotiations, so headline rents have not always reflected the net economics of new leases.

The market is showing signs of improvement. Total investment returns improved materially in 2025 and

are expected to strengthen further in 2026. Vacancy levels in key sectors, including the Auckland office and retail markets, appear close to a cyclical high, and conditions are expected to improve through 2027 if supply remains restrained while occupier demand gradually firms up.

The office sector warrants close attention. For much of the past decade, employment growth has not translated consistently into additional office take-up, but that relationship now appears to be narrowing. Increasing employment, particularly in professional and financial services, is expected to translate more directly into demand for quality space. Investors who have maintained positions through the softer period are well placed to benefit from this re-rating as it takes hold.

Looking further ahead, the government's ongoing reform of the Resource Management Act has direct implications for the commercial development pipeline. A faster, more certain consenting regime will reduce cost and time risks facing developers, and is expected to improve the feasibility of projects that have stalled at the planning stage. For investors with a development horizon beyond 2027, the cumulative effect of the RMA reform on pipeline delivery will be positive.

For businesses considering their real estate strategy in New Zealand, the current environment offers opportunities that were not available 12 months ago. With incentives still elevated and landlords motivated to secure quality tenants on longer terms, the negotiating dynamic favours occupiers. Those entering the market or renewing leases in 2026 should expect to achieve materially better commercial terms than tenants who transacted at the peak.

### *Infrastructure: a durable pipeline*

While the commercial development market has been cautious, the public infrastructure pipeline has provided a consistent and substantial source of construction activity. Budget 2026 committed NZD7 billion of capital investment to infrastructure, reinforcing the government's focus on physical infrastructure as a driver of long-term economic growth. This commitment has kept major contractors active and sustained a significant portion of the construction workforce through the market downturn.

This pipeline is not simply a short-term stimulus measure. Many of the projects currently in delivery or procurement represent multi-year programmes that will provide forward workload well into the next electoral cycle, regardless of the outcome of the 2026 election. For businesses in engineering, professional services and specialist construction, positioning for this pipeline is a strategic priority. Here too, the RMA reform is a relevant factor: a streamlined consenting regime will shorten the lead time from project approval to construction commencement, making the overall pipeline more predictable and reducing the holding costs that have historically eroded project returns.

One structural risk, however, deserves attention. Capability in the construction sector has become increasingly concentrated around large infrastructure and health projects, and there are real questions about how the market adapts as that work eventually shifts geographically or phases down. The risk is that capacity has left the system and when broader demand returns, cost pressure will follow very quickly. International investors and developers with a medium to long-term horizon in New Zealand should factor this dynamic into their project planning and procurement strategies, particularly if they are targeting delivery windows beyond 2027.

## A New Competitive Landscape: Commerce Act Reform

Changes to New Zealand's competition law are aimed at strengthening the merger regime, addressing concentrated markets and predatory pricing, and streamlining Commerce Act processes and reducing uncertainty. The Commerce (Promoting Competition and Other Matters) Amendment Bill was introduced to Parliament in December 2025 and was reported back from Select Committee in June 2026.

The changes likely to be brought into force by mid-to-late 2026 are directed at improving legal certainty for businesses, reducing unnecessary compliance costs, and ensuring that regulatory tools are targeted, proportionate and fit for purpose. The headline reforms include the following.

- Clarifying the merger test: the "substantial lessening of competition" (SLC) test for mergers will be amended to include creating, strengthening or entrenching a substantial degree of market power in a market, bringing the New Zealand test into alignment with the Australian standard. A new principle-based merger clearance test using the same SLC threshold will also be introduced.
- A new predatory pricing test: an objective, economic-based test for predatory pricing will be introduced. Pricing below average variable cost or average avoidable cost over a sustained period will be treated as predatory. Short-term promotional pricing, one-off specials and de minimis discounts are not captured unless they are part of a sustained pattern of below-cost behaviour.
- Corrective action orders: courts will have the power to order corrective action where a person has breached anti-competitive conduct prohibitions. These orders can include making goods, services or information available for supply, or requiring businesses to act in a non-discriminatory manner.
- Behavioural undertakings in mergers: the Commerce Commission will be able to accept behavioural undertakings from merging parties as a condition of merger clearance, such as commitments to supply goods on certain terms or maintain investment in specified areas. Previously, the Commission could only require divestiture, which meant some efficiency-enhancing mergers were blocked unnecessarily.
- Collaborative activities notification: a new statutory notification regime will allow businesses to notify the Commission of proposed collaborative activities that might otherwise breach the cartel prohibition, and to proceed unless the Commission objects.

Another amendment bill, the Commerce (Commerce Commission Reform) Amendment Bill, was introduced to Parliament in March 2026. It follows an independent review of the Commerce Commission and includes changes to the Commission's structure, to separate its governance and decision-making functions, bringing the Commission in line with other Crown entities such as the Reserve Bank.

Beyond structural reform, the Commerce Commission has signalled a sharpened enforcement focus. Unconscionable conduct is one of six Commission priorities for 2025/2026, defined as business activity which is a substantial departure from New Zealand's generally accepted or expected standards of business conduct. There has so far been only one sentencing decision under this provision. However, businesses that have relied on their market position to impose one-sided terms on suppliers, customers or smaller business partners should review their commercial practices carefully.

### Looking Ahead

New Zealand is a jurisdiction in motion. The reforms collectively represent a significant reshaping of the environment for doing business here. Some of these changes are already in force; others will take effect during the course of 2026.

For offshore investors and businesses considering New Zealand, the overall direction of travel is encouraging. The government has a clear intent to attract international capital and business talent, reduce regulatory friction, and position the economy for growth after a difficult few years. For businesses already operating in this market, the immediate priority is to understand how these changes interact with existing structures, contracts, workforce arrangements and compliance programmes.

The common thread running through each of these reforms is a desire to make New Zealand a more dynamic, competitive and internationally connected economy. Whether this strategy succeeds will depend not only on the quality of the legislation, but also on how businesses, advisers and investors respond to the opportunities these changes create. The window to engage and shape how these new regimes will bed in is now open.

# NORWAY




## Law and Practice

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**LexOslo** is a Norwegian boutique business law firm based in Oslo. The firm advises corporates, investors, banks and other financial undertakings on business law matters in Norway, with a particular focus on finance law and international business in Norway. Its work includes transactions, regulatory questions, commercial matters and disputes, often where Norwegian law must be understood in a broader commercial or cross-border context. LexOslo was founded by attorney Harald Sætermo and reflects a practice developed over more than 25 years in private practice and senior in-house legal roles in the banking sector. The firm's boutique format allows for direct senior involvement, continuity and close attention to the client's business and legal position. For international clients, LexOslo provides advice grounded in Norwegian law, market practice and practical commercial judgement. The firm's approach is focused and personal, with an emphasis on clear responsibility, efficient execution and legal advice that supports sustainable business growth.

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# 1. Legal System

## 1.1 Legal System and Judicial Order

Norway is a civil law jurisdiction. Legislation, including Acts of Parliament and secondary regulations, is the primary source of law, but preparatory works, case law and treaty obligations are also important legal sources. Although Norway is not a common law jurisdiction, Supreme Court judgments carry significant precedential weight and are generally followed by lower courts.

The ordinary courts are organised in three tiers. The Supreme Court is Norway's highest court and serves as the final court of appeal in civil and criminal matters. It consists of 20 justices and is headed by the Chief Justice. Together with the Norwegian Parliament (the *Storting*) and the government, the Supreme Court is one of Norway's highest constitutional bodies.

The courts of appeal hear appeals in civil and criminal cases from the district courts and land consolidation courts within their respective geographical jurisdictions. There are six courts of appeal in Norway.

The district courts are the ordinary courts of first instance. Norway has 28 district courts, operating across a total of 59 court locations. They hear both civil and criminal cases. In 2025, the average case processing time for civil disputes before the district courts was 5.3 months.

For many civil disputes, Norway's Conciliation Boards serve as the first step and primarily function as mediation bodies.

Norway also has certain specialised courts and court-like bodies, such as the Labour Court, which handles disputes between parties to collective agreements concerning such agreements, and the land consolidation courts, which deal with matters relating to property boundaries and rights in real property. Norwegian courts are independent, and judges cannot be instructed on how to decide individual cases. The courts may also review the constitutionality of legislation and the legality of administrative decisions in cases brought before them.

In addition, there are administrative appeals boards, such as the Immigration Appeals Board and the Tax Appeals Board, as well as private, industry-based dispute resolution bodies, such as the Norwegian Financial Services Complaints Board.

Although Norway is not a member of the EU, EU law has a substantial practical impact through the Agreement on the European Economic Area (the "EEA Agreement"). The EEA Agreement extends the EU internal market to Norway, Iceland and Liechtenstein and covers areas such as the four freedoms, establishment rights, competition law and a substantial body of EU secondary legislation. EEA-relevant EU acts are incorporated into the EEA Agreement and implemented in Norwegian law, typically through legislation or regulations. Norwegian provisions implementing EEA obligations prevail over conflicting Norwegian provisions regulating the same matter. Norwegian courts place considerable weight on relevant case law from both the Court of Justice of the European Union and the European Free Trade Association (EFTA) Court. A distinctive feature of the EEA system is its two-pillar structure: Norway remains outside the EU institutions but is subject to parallel EEA supervision through the EFTA Surveillance Authority and judicial oversight by the EFTA Court.

# 2. Restrictions on Foreign Investments

## 2.1 Approval of Foreign Investments

Norway does not currently have a general foreign investment approval regime applying to all acquisitions of Norwegian businesses. Foreign investors may generally establish companies, acquire shares and operate in Norway on the same basis as Norwegian investors, subject to ordinary corporate, tax, employment, competition and sector-specific rules.

### The Norwegian Security Act

The main investment screening rules are found in the Norwegian Security Act. These rules are directed at national security risks and apply to acquisitions of qualified ownership interests in undertakings that are subject to ownership control under Chapter 10 of the Act, typically because their activities, information, infrastructure or systems are important to fundamen-

tal national functions or national security interests. The scope is target-specific and may include businesses in areas such as defence, telecommunications, digital infrastructure, energy, transport, finance, space or other critical infrastructure, depending on the target's role.

Under the current ownership control rules, notification is required where an acquirer obtains a qualified ownership interest in an undertaking subject to the Security Act, generally at least one third of the share capital, ownership interests or voting rights, or significant influence by other means. The filing is made to the competent ministry or, where the undertaking does not fall within any ministry's area of responsibility, to the Norwegian National Security Authority. The regime applies to both Norwegian and foreign acquirers, although foreign ownership, state links, connections to high-risk jurisdictions and access to sensitive assets will often be relevant to the assessment.

The authorities may approve the transaction, impose conditions or prohibit it if it presents a not insignificant risk to national security interests. They may also intervene outside the mandatory filing regime where a transaction or activity threatens national security.

Amendments to the Security Act adopted in 2023 have partly entered into force. In particular, the basis for making undertakings subject to the Act, or to the ownership control rules in Chapter 10, has been expanded to include undertakings of decisive or significant importance to national security interests, even without a direct link to a fundamental national function. However, key Chapter 10 changes to the ownership control regime – including a 10% filing threshold, additional filing triggers, notification obligations for sellers and target undertakings in certain cases, a standstill obligation and restrictions on sharing sensitive information before closing – have not yet entered into force at the time of writing (July 2026). Investors should therefore verify the current position before signing and closing sensitive transactions.

### Proposed Investment Control Act

A government-appointed committee has also recommended that Norway consider introducing a separate Investment Control Act, noting that the current Norwegian system is relatively narrow and fragmented. If pursued, such reform may result in a broader and more systematic sector-based screening regime for foreign investments, more closely aligned with European FDI screening developments.

### Regulated Sectors

Separate approval or licensing requirements may apply in regulated sectors, including financial services, petroleum, energy and hydropower, fisheries and aquaculture. Norway is not an EU member state but participates in the EU internal market through the EEA Agreement. This supports a generally open investment regime, subject to proportionate restrictions based on national security or sector-specific regulatory objectives.

## 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

Norway does not have a single foreign investment authority for all foreign acquisitions. The investor must first determine whether the target is subject to the Norwegian Security Act or to sector-specific approval rules. This is normally assessed through due diligence into the target's activities, licences, public-sector contracts, security classifications, customers, ownership structure and assets.

For acquisitions covered by the ownership control rules in the Security Act, the notification is submitted to the ministry responsible for the relevant sector or, if no ministry is responsible, to the Norwegian National Security Authority. The filing should describe the acquirer, the target, the transaction, the ownership chain and the security relevance of the target's activities. The authority may request further information.

The review is based on national security considerations. The authority considers whether the acquisition may create a not insignificant risk that national security interests will be threatened. Under the current rules, the authority must normally inform the acquirer within 60 working days whether the acquisition is approved or referred to the government for further consideration. If further information is requested within the statutory period, the timeline may be suspended until the acquirer's response is received.

The authorities may approve the transaction, impose conditions or prohibit it. Investors should confirm the rules in force at signing and closing and, where applicable, make approval a closing condition.

If a transaction is completed without required approval, or if it gives rise to national security concerns, the authorities may order remedial measures and, in serious cases, require the transaction not to be implemented or impose conditions. Criminal liability may apply for breach of orders or prohibitions issued under the Security Act, including under Sections 2-5 or 10-3. Adopted amendments, not yet fully in force, will introduce administrative fines for intentional or negligent breaches of the notification obligation once the relevant provisions enter into force. Sector-specific regimes, for example in financial services, petroleum, hydropower, fisheries and aquaculture, have their own procedures and sanctions.

### 2.3 Commitments Required From Foreign Investors

The Norwegian authorities may approve a transaction subject to commitments where identified risks can be mitigated. In the foreign investment context, such commitments are most relevant under the Norwegian Security Act and in regulated sectors requiring licences or ownership approvals.

Under the Security Act, commitments are directed at national security concerns. They are not normally used to require foreign investors to give broad economic undertakings, such as maintaining a particular level of employment or investment in Norway merely because the acquirer is foreign.

Possible commitments may include restrictions on access to classified or sensitive information, requirements for Norwegian or security-cleared personnel in certain functions, ring-fencing of sensitive business areas, restrictions on information flows to the acquirer or its affiliates, enhanced cybersecurity and physical security measures, governance arrangements limiting influence over sensitive operations, and reporting obligations to the authorities.

Where the target operates critical infrastructure or provides services important to fundamental national functions, the authorities may also focus on continuity of supply, localisation of key systems or functions, resilience arrangements, emergency preparedness and the ability of Norwegian authorities to exercise supervision.

In sector-specific regimes, commitments depend on the relevant legislation. Financial-sector approvals may include requirements relating to the suitability and financial strength of the owner, governance and group structure. Energy, petroleum, hydropower, fisheries and aquaculture approvals may include licence-specific obligations, ownership limitations or conditions designed to safeguard resource management, security of supply or regulatory oversight.

If the authority considers that the risk cannot be adequately mitigated through commitments, the transaction may be prohibited.

### 2.4 Right to Appeal

The available remedies depend on the legal basis for the decision and the authority making it. Where an administrative appeal is available under general Norwegian administrative law, the ordinary appeal deadline is three weeks from receipt of the decision. The appeal is normally submitted to the authority that made the decision, and the written decision should state the applicable appeal route and deadline.

Under the current ownership control regime in the Norwegian Security Act, decisions are made within the sector-based administrative structure. Decisions may be made by the relevant sector ministry, with any administrative appeal generally handled by the government. Where the final decision is made by the government, administrative appeal will be limited in practical terms.

The validity of administrative decisions may generally be challenged before the ordinary courts. Norway does not have separate administrative courts for this type of case. Judicial review generally concerns the legal and factual basis for the decision, rather than the administration's discretionary assessment. The courts decide whether the decision is valid or invalid, but do not make a new decision on the merits. In cases involving national security, classified information or

sensitive state interests, access to evidence and the intensity of review may be affected by ordinary procedural rules on protected information.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

The most common corporate vehicle in Norway is the private limited liability company, or *aksjeselskap* (AS). An AS is a separate legal entity, and the shareholders' liability is limited to their contribution to the share capital. The minimum share capital is NOK30,000, which makes the AS accessible and flexible for most commercial purposes.

An AS may be established by one or more shareholders. Its main corporate bodies are the general meeting and the board of directors. The general meeting exercises shareholder authority, while the board is responsible for the management and supervision of the company. A general manager may be appointed and is common in operating companies. The AS is the standard form for Norwegian subsidiaries of foreign groups, holding companies, greenfield projects, private M&A transactions and many joint ventures.

A public limited liability company, or *allmennaksjeselskap* (ASA), is also a separate legal entity with limited shareholder liability, but is subject to more extensive governance and capital rules. The minimum share capital is NOK1 million. A Norwegian company whose shares are admitted to listing on a regulated market in Norway must be organised as an ASA. It is therefore normally used for listed companies, companies preparing for an IPO, or businesses requiring access to the public equity capital markets. For ordinary private investments, an ASA is usually unnecessary.

Foreign companies may also operate in Norway through a Norwegian branch of a foreign enterprise, commonly referred to as an NUF. An NUF is not a separate legal entity from the foreign company. The foreign company remains liable for the branch's obligations, and the branch is registered in Norway to obtain a Norwegian organisation number and conduct business. Foreign companies carrying on commercial activity in Norway are generally required to register in the Register of Business Enterprises, and there is no Norwegian equity requirement for establishing an NUF. An NUF may be suitable for temporary activity, early-stage market entry or projects where the investor does not wish to incorporate a Norwegian subsidiary, but it is less commonly used for acquisitions or substantial local operations.

Norwegian law also recognises partnerships. A general partnership, *ansvarlig selskap* (ANS), involves unlimited joint and several liability for the partners. In a partnership with divided liability, *selskap med delt ansvar* (DA), each partner has unlimited pro rata liability for an agreed share of the obligations. A limited partnership, *kommandittselskap* (KS), has at least one general partner with unlimited liability and one or more limited partners whose liability is limited to their committed contribution. KS structures are specialised and may be used in investment, shipping, real estate or project structures where tax, accounting or investor allocation considerations make a partnership vehicle appropriate.

For most foreign investors, the practical choice is between incorporating an AS and registering an NUF. The AS is normally preferred where the investor intends to conduct continuing business in Norway, employ personnel, hold assets, enter into local contracts or acquire a Norwegian target.

### 3.2 Incorporation Process

#### Procedure

The incorporation process in Norway is relatively straightforward and largely digital. For most foreign investors, the relevant vehicle will be a private limited liability company, or AS.

An AS may be founded by one or more individuals or legal entities. The company must have a Norwegian business address. The main steps are to choose a company name, prepare and sign the incorporation document, including the articles of association, appoint the board of directors, and subscribe for the shares. An AS must have share capital of at least NOK30,000. The share capital must be fully paid before the company is registered.

Where the contribution is made in cash, payment will normally be confirmed by a bank, auditor, lawyer or authorised accountant. If all or part of the contribution consists of assets other than cash, additional documentation is required, including a statement on the contribution and auditor confirmation, and the process will usually take longer.

The company is incorporated when the incorporation document has been signed and the shares have been subscribed for. It must, however, be registered in the Norwegian Register of Business Enterprises before it can operate as a fully registered company. Registration is normally submitted electronically through Altinn (an online portal for communication between businesses, private individuals and public agencies) to the Register Centre in Brønnøysund and signed electronically by the relevant signatories. Where foreign founders or role holders lack Norwegian electronic identification or D-numbers (which are temporary Norwegian identification numbers issued to those who do not qualify for a permanent one), additional steps or alternative filing procedures may be required. Once registration has been processed, the company receives a Norwegian organisation number, which is required for most practical purposes, including banking, tax registrations, contracts and employment.

The registration notification must be received by the Register of Business Enterprises within three months after the incorporation document has been signed. Registration is not a validity requirement for incorporation, but before registration the company has only limited capacity to acquire rights or incur obligations, except for obligations arising from the incorporation document or by law.

The process for incorporating a public limited liability company, or ASA, follows the same broad structure, but an ASA must have share capital of at least NOK1 million and its name must include the designation "ASA" or "*allmennaksjeselskap*". ASA incorporations are more formalised and will normally be relevant only where the company is intended for listing, an IPO or public equity capital market access.

Partnerships are established on the basis of a partnership agreement and must have at least two partners. Both individuals and legal entities may be partners, and the partnership must have a Norwegian business address. A general partnership (ANS) or partnership with divided liability (DA) must be registered to obtain a Norwegian organisation number.

A Norwegian branch of a foreign enterprise, or NUF, is not incorporated as a separate Norwegian legal entity. The process consists of registering the Norwegian branch of the foreign company. This normally requires documentation from the foreign company's home jurisdiction, including evidence of registration, together with the Norwegian registration form and any required documentation for persons holding registered roles.

#### Timing

For a simple AS with Norwegian electronic IDs or D-numbers for the relevant signatories and cash share capital, incorporation can often be completed within a few working days after the documents and capital confirmation are ready. For foreign investors, timing often depends less on the corporate registration itself and more on practical steps such as applying for Norwegian D-numbers, where required, and providing supporting identity documentation for foreign individuals who will sign filings or hold registered roles, completing bank KYC procedures, documenting foreign corporate founders and arranging capital payment. Contributions in kind, regulated activities, ASA incorporations or complex governance arrangements may also extend the timeline. As a practical matter, a straightforward AS is often established within one to two weeks, but more complex or cross-border establishments should allow additional time.

### 3.3 Ongoing Reporting and Disclosure Obligations

#### Corporate Registration and Governance

Private Norwegian companies are subject to several ongoing filing and reporting obligations, but they are not subject to the continuous market disclosure rules that apply to listed companies. For ordinary private companies, the key obligations relate to registration matters, annual accounts, annual tax returns, shareholder reporting and beneficial ownership. Additional VAT, payroll, employer, sector-specific and event-based reporting obligations may apply depending on

the company's activities, registrations, employees, industry and specific events.

A private limited liability company, or AS, must keep its registered information up to date in the Norwegian Register of Business Enterprises. Changes to the board of directors, general manager, business address, auditor, signature rights, powers of procuration and other registered matters must be filed. Amendments to the articles of association must also be registered. Certain corporate events, such as share capital increases or reductions, mergers, demergers, dissolutions and liquidations, require registration before they take effect or as part of the implementation process.

### Accounts, Shareholder and Beneficial Ownership Reporting

An AS must prepare annual accounts. The annual accounts, and any directors' report and auditor's report where applicable, must be approved by the general meeting no later than six months after the end of the financial year and submitted to the Register of Company Accounts within one month after approval. For companies with a financial year corresponding to the calendar year, 31 July is normally the final filing date for avoiding late filing penalties. Filed annual accounts are publicly available, and failure to file on time may result in late filing penalties.

The company must also maintain a shareholder register. This is not the same as a public central securities register, unless the company's shares are registered with such a system. In addition, private limited companies must submit an annual shareholder register statement to the Norwegian Tax Administration by 31 January each year, providing information about shareholders and relevant share transactions during the preceding year.

Norwegian companies subject to the beneficial ownership rules must identify and register their beneficial owners in the Norwegian Register of Beneficial Owners. The board is responsible for ensuring that the company obtains, maintains and registers correct information. Registration must generally be made within 14 days after the company is registered in a public register and within 14 days after new beneficial owners are identified or other changes occur. Failure to comply may result in coercive fines.

### Tax, Employment and Other Reporting Obligations

Other ongoing reporting obligations depend on the company's activities. Companies carrying on business in Norway must generally report financial information through annual tax returns. VAT-registered businesses must submit VAT returns, and companies that pay salaries must submit monthly employer reports covering salary, employer's national insurance contributions and tax withholding. Certain events, such as workplace accidents, share transfers or changes to the board or articles of association, may also trigger reporting or filing obligations. Regulated businesses and certain industries may be subject to additional sector-specific reporting, filing or publication requirements, including supplementary reporting to supervisory authorities.

In practice, most routine filings are made electronically through Altinn and the Brønnøysund Register Centre, although alternative procedures may be available. Foreign owners should ensure that the company has appropriate access arrangements, procedures to identify reportable changes, and personnel or advisers familiar with Norwegian accounting, tax and corporate filing requirements.

## 3.4 Management Structures

Norwegian private and public limited liability companies do not fit neatly into either a pure one-tier or a classic two-tier board model. The structure is best described as a board-based model, with a general meeting, a board of directors and, where appointed or required, a general manager.

For both private limited liability companies (AS) and public limited liability companies (ASA), the general meeting is the company's supreme shareholder body. It elects the board of directors, unless this power lies with a corporate assembly or other special arrangement. It also approves the annual accounts, elects the auditor where applicable, adopts amendments to the articles of association and decides other matters reserved to the shareholders. The general meeting does not manage the company's business.

The board of directors is responsible for the overall management and supervision of the company. The board also represents the company externally and may assign signatory powers or powers of procuration to board members, the general manager or named employees. The board is therefore not merely a supervisory body; it has both managerial and oversight functions.

An AS must have a board of directors, which may consist of one or more members. A general manager may be appointed, but is not required. Where a general manager is appointed, he or she is responsible for day-to-day management within the framework set by the board.

An ASA is subject to stricter governance requirements. It must have a board of directors with at least three members, a general manager and an auditor. Where the company has a corporate assembly, the board must have at least five members. The ASA form is therefore more formalised and is generally used for listed companies or companies seeking access to the public capital markets.

A corporate assembly is mainly relevant in companies with more than 200 employees, unless validly waived. Where a corporate assembly exists, it sits between the general meeting and the board for certain purposes, including election of the board in many cases. In practice, however, many private companies do not have a corporate assembly.

Partnerships have more flexible management structures, depending on the partnership agreement and the type of partnership. A Norwegian branch of a foreign company (NUF) is managed by the foreign legal entity, although the foreign company may appoint a local general manager or establish a Norwegian branch board.

For most foreign investors using an AS, the practical governance structure is simple: shareholders act through the general meeting, the board has overall responsibility, and the general manager handles daily operations if appointed.

### 3.5 Directors', Officers' and Shareholders' Liability

A Norwegian private or public limited liability company is a separate legal entity. As a starting point, shareholders are not personally liable for the company's obligations beyond their contribution to the share capital. This limited liability is one of the main reasons why the AS is the standard corporate vehicle for foreign investors in Norway.

Board members and the general manager may, however, incur personal liability. The basic rule is fault-based. A board member, general manager, member of the corporate assembly, investigator or shareholder may be liable for loss that they have intentionally or negligently caused to the company, a shareholder or a third party in that capacity. The same may apply to a person who has intentionally or negligently contributed to such damage. Liability requires the ordinary conditions for damages to be met, including fault, financial loss and causation.

The board is responsible for the overall management and supervision of the company, while the general manager is responsible for day-to-day management within the framework set by the board. The board must also keep itself informed of the company's financial position and ensure that the company has adequate equity and liquidity, assessed in light of the risks and scope of its business. If the equity or liquidity position becomes inadequate, the board must consider the matter and take appropriate action.

In practice, liability risk often arises where the board or management fails to act with sufficient care in financial distress, enters into obligations when the company has no realistic ability to perform, makes unlawful distributions, provides misleading information, fails to maintain proper accounts or internal controls, or disregards statutory requirements or creditors' interests. Passivity may be problematic where the company's financial position has deteriorated and the board fails to investigate, propose or implement corrective measures.

Shareholders are generally protected by limited liability, but they are not immune from personal liability for their own conduct or contribution to wrongful con-

duct. A shareholder may be liable where it has acted intentionally or negligently and caused or contributed to loss, for example by participating in unlawful distributions, giving improper instructions, abusing its influence over the company, misleading creditors or otherwise contributing to conduct that gives rise to liability. Mere ownership, ordinary group-level contact or ordinary exercise of shareholder rights will not normally be sufficient.

### "Piercing the Veil"

Norwegian law does not recognise a broad or clearly defined doctrine of "piercing the corporate veil" in the same sense as some common law jurisdictions. The question has been debated, and the courts are generally reluctant to disregard the separate legal personality of a limited liability company. Any such liability would be exceptional and would typically require circumstances making it unjustifiable to uphold limited liability, such as abuse of the corporate form, serious misconduct, commingling of interests, or a company structure that does not deserve protection. In practice, similar results are more commonly analysed under statutory liability rules, contribution liability or general tort law, particularly where a shareholder or other controlling person has acted culpably and caused or contributed to a specific loss.

Damages liability under the Norwegian Companies Acts may be reduced in exceptional cases under the general statutory rules on mitigation of damages. For foreign investors, however, the practical point is that passive share ownership in an AS or ASA normally gives strong limited liability protection. Personal liability risk increases where an owner, director or officer takes an active role in management, gives instructions, extracts value from a distressed company or allows the company to continue trading when it is no longer responsibly capitalised or liquid.

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

The legal framework governing employment relationships in Norway is based on statutory law, case law, collective agreements and individual employment contracts.

Statutory law is the primary source of regulation, in particular the Working Environment Act, which is the central protective statute in Norwegian employment law. The Act applies broadly to undertakings that employ workers, subject to certain statutory exemptions and sector-specific rules. Its provisions are generally mandatory and may not be derogated from to the detriment of the employee.

Other statutes regulate specific aspects of employment, including holidays, collective labour law, non-discrimination, pensions and data protection. State employees are also subject to specific rules under the State Employees Act, although large parts of the Working Environment Act also apply to employment in the state sector.

Collective labour law plays a central role in the Norwegian model. Collective agreements at different levels supplement statutory legislation and may set binding wage and working conditions for employment relationships falling within their scope. Such agreements are concluded between trade unions and employers or employers' organisations. The Labour Disputes Act governs collective labour disputes and the legal framework for collective agreements.

Individual employment contracts constitute a further layer of regulation, operating within the framework established by mandatory legislation and any applicable collective agreements.

Norwegian employment law is also developed and interpreted through case law. Disputes concerning individual employment relationships are heard by the ordinary courts, while the Labour Court has jurisdiction over disputes of a collective nature.

International and European legal sources are significant. Under the EEA Agreement, Norway is required to implement relevant EU legal acts as adapted within the EEA framework. Many provisions of the Working Environment Act implement EU directives incorporated into the EEA Agreement, which may be relevant when interpreting the Act.

### 4.2 Characteristics of Employment Contracts

Norwegian law requires a written employment contract in all employment relationships, regardless of duration or scope. However, under general contract law principles, verbal agreements are generally binding. The requirement is therefore that the agreed terms of employment must be documented in writing.

As a general rule, employment is permanent. Permanent employment means that the employment is ongoing and time-unlimited, that the statutory rules on termination apply, and that the employee has predictability as to work in the form of a genuine scope of employment. Part-time employment is permitted. Fixed-term employment contracts are subject to stricter conditions and may only be used where statutory requirements are met.

The written employment contract must include information on matters of material importance to the employment relationship, including the identity of the parties, place of work, position or work description, start date, salary, working time, breaks, holiday and holiday pay, notice periods, any probationary period, any applicable collective agreements, and, for fixed-term employment, the expected duration and legal basis for the fixed-term arrangement. Additional information requirements apply where relevant, including in relation to variable working hours, overtime arrangements, training rights, employer-paid social security benefits and agency work.

Several of these requirements may be satisfied by reference to applicable legislation, regulations or collective agreements.

### 4.3 Working Time

As a general rule, normal working hours must not exceed nine hours in a 24-hour period and 40 hours in a seven-day period. Specific rules apply to shift work, on-call duties and work of a passive nature.

Working time may be calculated on an average basis over a period of up to 52 weeks, subject to statutory limits and procedural requirements. In such cases, working hours may be higher in certain periods, provided the statutory average limits are observed.

Overtime requires a specific and time-limited need. Work exceeding the statutory limits on normal working hours qualifies as overtime. Overtime must be compensated by a salary supplement of at least 40% in addition to the employee's ordinary pay. The parties may agree in writing that overtime hours are compensated by time off, but the statutory overtime supplement must generally be paid.

There is currently legal uncertainty regarding overtime compensation for part-time employees. Under Norwegian law, part-time workers are generally not entitled to overtime pay until they exceed the statutory threshold applicable to full-time employees. However, two judgments from the Court of Justice of the European Union indicate that this may constitute unequal treatment. Similar reasoning has been adopted in two non-final district court judgments.

The Norwegian government has therefore appointed a working group to assess potential legislative amendments aimed at preventing differential treatment between full-time and part-time employees. The group is expected to submit its recommendations by September 2026, and legislative clarification or amendments may follow.

Collective agreements and individual agreements may provide for alternative working time arrangements, provided they comply with mandatory statutory requirements and are not to the detriment of the employee.

### 4.4 Termination of Employment Contracts

Norway is not an employment-at-will jurisdiction. Termination of employment is regulated by the Working Environment Act, which sets a high threshold for an employer's right to dismiss an employee. Any dismissal must be objectively justified on the basis of circumstances relating to the undertaking, the employer or the employee. The requirement of objective justification has been developed through case law, and the courts have full jurisdiction to review both the factual and legal basis for dismissal.

Before any decision is made, the employer must normally hold a consultation meeting with the employee. A concrete assessment must be carried out, balanc-

ing the interests of the employer and the employee. Termination must be reasonable and appropriate in light of the circumstances.

In redundancy situations, the employer must consider whether other suitable work is available and apply objective selection criteria. There is no general statutory principle requiring selection by seniority alone; selection must be based on an overall objective assessment.

Formal requirements apply to notices of termination, including requirements as to written form and proper delivery. The notice must include information on the employee's right to request negotiations, initiate legal proceedings and remain in the position in certain circumstances. It must also include information on the applicable time limits and identify the employer and the correct defendant in any dispute. Where termination is based on circumstances relating to the undertaking, the notice must include information on any statutory preferential rights.

Fixed-term employment relationships normally terminate at the expiry of the agreed period or completion of the agreed work, unless otherwise agreed in writing. During the fixed-term period, the ordinary rules on termination and dismissal apply.

For other employment relationships, the length of the notice period is primarily governed by statute. As a general rule, the statutory notice period is mutual and must be at least one month. For employees with longer periods of continuous service, the statutory minimum notice period is extended in accordance with the thresholds set out in the Working Environment Act. Longer notice periods may also follow from the employment contract or an applicable collective agreement.

Certain categories of employees enjoy enhanced dismissal protection, including employees who are pregnant, on parental leave, on sick leave or performing military service.

Disputes concerning unfair dismissal are heard by the ordinary courts and may result in the dismissal being declared invalid or in compensation being awarded. Compensation is assessed on a discretionary basis, taking into account the employee's financial loss, the conduct of the parties and the circumstances of the case.

Collective redundancies are subject to additional information and consultation requirements where at least ten employees are dismissed within 30 days for reasons not related to the individual employees. The employer must consult employee representatives as early as possible and provide relevant information, including the reasons for the redundancies, the number of employees affected, the timeframe and the selection criteria.

### 4.5 Employee Representations

The Working Environment Act contains provisions on the employer's duty to provide information and consult with employee representatives. The general obligation applies to undertakings that regularly employ at least 50 employees, with both full-time and part-time employees included in the calculation.

In matters of significance for employees' working conditions, the employer must inform and consult employee representatives. Norwegian law also requires information and consultation in a number of specific situations, including significant changes affecting employees, collective redundancies and transfers of undertakings.

The obligation covers information concerning the current and anticipated development of the undertaking's activities and financial situation. It also extends to the current and expected staffing situation and to decisions that may lead to significant changes in work organisation or employment conditions. In such cases, information and consultation must take place as early as possible.

Exceptions apply where disclosure or consultation would clearly cause significant harm to the undertaking. Employee representatives may also be subject to a duty of confidentiality where necessary.

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/ Employers

Employees working in Norway are generally taxable on salary earned for work performed in Norway. Individuals who are tax resident in Norway are generally taxable in Norway on worldwide income and wealth, subject to applicable tax treaty relief. An individual becomes tax resident in Norway if he or she stays in Norway, over one or more periods, for more than 183 days during a 12-month period, or more than 270 days during a 36-month period. Non-residents may still be subject to limited tax liability in Norway on Norwegian-source employment income, including salary for work performed in Norway.

Employment income is taxed through ordinary income tax, bracket tax and employee national insurance contributions. For 2026, the employee national insurance contribution on salary is 7.6%, and the maximum effective marginal tax rate on salary income, excluding employer's national insurance contributions, is 47.4%.

Employers must withhold tax from salary payments and report salary, benefits and withholding on a monthly basis through the "A-melding" system. From 2026, withholding tax must generally be paid no later than the first working day after salary payment.

Employers must also pay employer's national insurance contributions. The rate is geographically differentiated by municipality; the ordinary rate in central areas is 14.1%, but lower rates apply in certain regions. Employer's contributions are calculated on gross salary and relevant benefits.

Foreign workers may, in some cases, be taxed under the simplified PAYE scheme. For 2026, the PAYE rate is 25%, or 17.4% where the employee is exempt from Norwegian national insurance contributions. PAYE is mainly relevant for shorter stays or the first year of Norwegian tax residence, subject to an income threshold of NOK725,050 (2026) and other conditions.

### 5.2 Taxes Applicable to Businesses

#### Corporate Income Tax

A company incorporated in Norway or effectively managed from Norway is generally tax resident in Norway and taxable on its worldwide income. A foreign company may be subject to limited tax liability in Norway on Norwegian-source business income, including income from business carried on in or managed from Norway, subject to applicable tax treaty rules, including permanent establishment requirements. The ordinary corporate income tax rate is 22%. Certain financial-sector companies are taxed at 25%, while special tax regimes apply to sectors such as petroleum, hydropower, aquaculture and shipping.

#### Value Added Tax (VAT)

Norway has a value added tax system. The standard VAT rate is 25%, with reduced rates of 15% for foodstuffs and water and wastewater services, and 12% for certain services including passenger transport, accommodation and admission to certain cultural and leisure activities. Businesses must register for VAT when turnover of taxable goods and services exceeds NOK50,000 within a 12-month period. Registered businesses generally charge output VAT on taxable supplies and may deduct input VAT on purchases used in the VAT-liable business. VAT is therefore normally intended to be borne by the final consumer rather than by VAT-registered businesses.

#### Withholding Tax

Dividends distributed from a Norwegian company to a foreign shareholder are generally subject to 25% withholding tax, unless reduced under a tax treaty or exempt under domestic rules, including exemptions for qualifying corporate shareholders within the EEA. Norway does not generally levy withholding tax on ordinary arm's length interest or royalty payments, but a 15% withholding tax applies to interest, royalties and certain lease payments to related parties resident in low-tax jurisdictions, subject to treaty relief and EEA exemptions for genuine establishments.

#### Transfer Taxes and Stamp Duty

Norway does not have a general capital duty or stamp duty on share transfers. Acquisitions of shares in Norwegian companies are therefore not subject to transfer tax.

Registration of a transfer of title to Norwegian real estate is normally subject to stamp duty of 2.5% of the property's sale value at registration. The duty is calculated on the higher of the purchase price and market value at the time of registration and is payable upon registration with the Norwegian Mapping Authority. Certain exemptions apply, including transfers carried out as part of qualifying mergers or demergers under the Companies Act. Share deals involving property-owning companies are commonly used because the transfer of shares does not trigger stamp duty, although other tax and commercial implications should be assessed.

### Pillar Two

Norway has implemented Pillar Two through the Global Minimum Tax Act, effective from 1 January 2024, for groups within the OECD/GloBE scope. Norway has introduced a domestic minimum top-up tax. The OECD central record lists Norway's domestic minimum top-up tax as having QDMTT safe harbour status, effective 1 January 2024.

## 5.3 Available Tax Credits/Incentives

Norway has relatively few broad tax incentives. The main generally available tax incentive is the SkatteFUNN research and development scheme. Norwegian companies and Norwegian branches of foreign companies may apply for a tax deduction of 19% of qualifying R&D project costs approved by the Research Council of Norway. The deduction applies to qualifying project costs, subject to the applicable annual cost cap, currently NOK25 million. If the company has no taxable income, the tax value may be refunded.

The scheme is rights-based and available across sectors, provided the project qualifies as research and development and the applicant is subject to Norwegian tax. Where R&D services are purchased from a third-party provider, the deduction only applies to costs incurred with providers established in the EEA or in countries with which Norway has concluded a tax treaty or tax information exchange agreement.

Norway also has a special tonnage tax regime for qualifying shipping companies. Companies within the regime are not taxed under the ordinary corporate income tax rules. Tax liability is instead calculated based on the net tonnage of relevant vessels and days in operation, irrespective of actual profits or losses. The regime is intended to provide predictable taxation for qualifying shipping activities.

There are also favourable tax rules for employee share options in qualifying start-up and growth companies, intended to support recruitment and retention of key personnel. The scheme generally defers taxation until the shares are sold, at which point any gain is normally taxed under the rules for share income rather than as salary. The scheme is subject to detailed conditions, including requirements relating to the company, the employee, the option terms and the timing of exercise and sale.

## 5.4 Tax Consolidation

Norway does not have a formal tax consolidation or fiscal unity regime under which group companies are taxed as a single taxpayer. Each company is taxed separately.

In practice, tax equalisation within Norwegian groups may be achieved through group contributions. A Norwegian company may generally deduct a group contribution to another Norwegian group company, provided the recipient includes the contribution as taxable income. The rules require, broadly, more than 90% common ownership and voting control, directly or indirectly, at the end of the income year.

Group contributions are commonly used to offset taxable profits and losses within Norwegian groups. The contribution must be lawful under company law, including rules on distributable equity, and must be properly approved and documented.

The rules also contain limited EEA-related exceptions, but the practical scope is significantly narrower than for domestic Norwegian group contributions and depends on detailed conditions. For most foreign investors, the key point is that Norwegian subsidiaries are taxed separately, but Norwegian group companies can often achieve tax equalisation through deductible group contributions.

## 5.5 Thin Capitalisation Rules and Other Limitations

Norway does not have traditional thin capitalisation rules based on a fixed debt-to-equity ratio. Instead, interest deductions may be limited under statutory interest limitation rules and general transfer pricing principles.

The interest limitation rules are complex, but in simplified terms they apply where net interest expenses exceed statutory thresholds. For companies that are not part of a group, the threshold is NOK5 million and only net interest expenses on debt to related parties may be restricted. For group companies, the ordinary threshold is NOK25 million, calculated on a combined basis for the Norwegian part of the group, and the limitation may apply to both related-party and third-party interest.

Deductible net interest expenses are generally capped at 25% of tax EBITDA. Group companies may, in certain circumstances, rely on an equity escape rule, broadly where the equity ratio at company level or for the Norwegian part of the group is sufficiently aligned with the equity ratio in the consolidated group. However, the equity escape rule does not necessarily protect against limitation of interest paid to related parties outside the consolidated group.

Disallowed net interest expenses may be carried forward for up to ten years. Related-party financing must also comply with the arm's length principle under the transfer pricing rules, and withholding tax may apply to certain interest payments to related parties in low-tax jurisdictions.

Foreign investors should assess acquisition financing and intra-group debt carefully, particularly where the Norwegian borrower has material related-party debt or a weaker equity position than the group as a whole.

## 5.6 Transfer Pricing

Norwegian tax law applies the arm's length principle to transactions between parties in a community of interest, including related-party transactions. The rules allow the tax authorities to adjust income, deductions and other tax positions where the prices or conditions agreed between such parties differ from those that would have been agreed between independent parties under comparable circumstances.

The Norwegian rules refer to, and generally follow, the OECD Transfer Pricing Guidelines. They are particularly relevant for cross-border controlled transactions, including sales of goods and services, intra-group financing, guarantees, royalties, management fees, cost-sharing arrangements and business restructurings.

Norwegian companies and permanent establishments may be required to prepare transfer pricing documentation if they meet the relevant size thresholds. The documentation should describe the group, the Norwegian entity, the controlled transactions and the comparability analysis, including functional analysis, method selection and benchmarking or other support for the pricing applied. Large multinational groups may also be subject to country-by-country reporting.

Transfer pricing is an important audit area for the Norwegian Tax Administration, particularly in relation to intra-group services, financing, intangibles and restructurings. Foreign investors with Norwegian subsidiaries or branches should ensure that intra-group arrangements are documented and implemented consistently with the arm's length principle.

## 5.7 Anti-Evasion Rules

Norway has both a statutory general anti-avoidance rule and several specific anti-avoidance or protective rules. The general anti-avoidance rule may apply where, viewed objectively, the main purpose of a transaction or arrangement appears to be to obtain a tax advantage and, after an overall assessment, it would be contrary to the purpose of the tax rules to respect the arrangement for tax purposes.

The rule is aimed at tax avoidance rather than ordinary commercial tax planning. In practice, the assessment will consider the commercial rationale and non-tax effects of the arrangement, the size of the tax advantage, the degree of tax motivation, the legal and economic effects of the transaction, and whether the arrangement produces a tax result inconsistent with the relevant legislation.

Norway also has specific anti-avoidance or protective rules in areas such as interest limitation, transfer pricing, controlled foreign companies, withholding tax, loss utilisation, reorganisations and dividend taxation. Tax treaties may also include limitation-on-benefits provisions or principal purpose tests.

Taxpayers are subject to general disclosure obligations, and the tax authorities may request information and documentation. Incorrect or incomplete reporting may result in additional tax, interest and administrative penalties. Serious cases involving intentional or grossly negligent tax evasion may result in criminal liability.

For foreign investors, the practical point is that Norwegian structures should have commercial substance and be supported by contemporaneous documentation, particularly in cross-border financing, holding, IP and reorganisation structures.

### 5.8 Tariffs

Norway has a relatively liberal tariff regime. Most goods imported into Norway are duty-free, and customs duties are now mainly imposed on agricultural products, clothing and certain other textile products.

Customs duties are payable on importation into the Norwegian customs territory and are calculated by reference to the Norwegian Customs Tariff, which is adopted annually on the basis of Parliament's customs duty resolution. Preferential treatment may apply under the EEA Agreement, Norway's free trade agreements, including agreements concluded together with the other EFTA States, and the Generalized System of Preferences for developing countries, provided that the relevant product coverage and origin requirements are satisfied.

The most significant tariff protection applies to agricultural products that compete with Norwegian production, including meat, dairy products, grain and certain plants, vegetables and fruit. Agricultural tariff protection is an important element of Norwegian agricultural policy. Agricultural imports may, however, benefit from tariff reductions, tariff quotas or preferential arrangements, and processed agricultural products may be subject to special rules.

Importers should verify tariff classification, origin, quota availability and any applicable end-use or administrative reduction requirements before import. Norway's tariff regime is shaped by WTO commitments and free trade agreements. While Norway has not recently adopted broad-based tariff increases, global trade tensions and security-related trade measures may increase the practical importance of origin documentation and supply-chain planning.

## 6. Competition Law

### 6.1 Merger Control Notification

Under the Norwegian Competition Act, mergers and acquisitions may constitute concentrations subject to merger control.

A concentration must be notified to the Norwegian Competition Authority (NCA) if the undertakings concerned have combined annual turnover in Norway of NOK1 billion or more, and at least two of the undertakings concerned each have annual turnover in Norway of NOK100 million or more.

The NCA may require notification of a concentration below the Norwegian thresholds if there are reasonable grounds to assume that competition may be affected, or if particular considerations indicate that the transaction should be examined more closely. Transactions below the thresholds may also be notified voluntarily to clarify whether intervention may be relevant.

Concentrations with an EEA dimension may be subject to the EEA merger control rules.

### 6.2 Merger Control Procedure

A notifiable concentration is subject to a standstill obligation and must not be implemented before the Norwegian Competition Authority has received the notification and completed its review.

The statutory review periods start to run only once the notification requirements have been satisfied, including requirements relating to confidential information. In Phase I, the NCA must, within 25 working days after receiving a complete notification, inform the parties

if intervention may be relevant. If no such notice is issued, the NCA may not intervene.

If the NCA proceeds with further review, it must, as soon as possible and no later than 70 working days after receiving the notification, either adopt a decision accepting remedies proposed by the notifying parties or issue a reasoned preliminary decision to prohibit the transaction. The parties have 15 working days to respond to a preliminary prohibition decision. The NCA must then adopt its final decision within 15 working days after receiving the parties' response. If remedies are proposed after the preliminary prohibition decision, the deadline for the final decision may be extended by 15 working days.

The NCA may intervene where a concentration would significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position. Remedies may extend the statutory deadlines. An intervention decision may be appealed within 15 working days.

### 6.3 Cartels

Section 10 of the Norwegian Competition Act prohibits anti-competitive co-operation between undertakings. The provision corresponds to Article 53 of the EEA Agreement and Article 101 of the TFEU, and covers agreements, decisions by associations of undertakings and concerted practices that have as their object or effect the prevention, restriction or distortion of competition.

The prohibition applies to both horizontal co-operation between competitors and vertical co-operation between undertakings at different levels of the supply chain. It covers, among other things, price-fixing, market-sharing, limitations on production, markets, technical development or investment, discriminatory trading terms and tying obligations.

The Norwegian Competition Act applies to conduct carried out in Norway, as well as conduct that has, or is capable of having, effects in Norway. The Act does not require an effect on trade between EEA states. Where conduct may affect trade within the EEA, Article 53 of the EEA Agreement applies in parallel.

Restrictive co-operation may nevertheless be exempt where the relevant conditions for exemption are met, including where the co-operation produces efficiencies, allows consumers a fair share of the benefits, does not impose unnecessary restrictions and does not eliminate competition for a substantial part of the relevant products.

Intentional or negligent infringements may be sanctioned by administrative fines. Leniency may be available in cartel cases.

### 6.4 Abuse of Dominant Position

Section 11 of the Norwegian Competition Act prohibits the abuse by one or more undertakings of a dominant position. The provision corresponds to Article 54 of the EEA Agreement and Article 102 of the TFEU, and EEA and EU law provide guidance when the rule is applied.

Holding a dominant position is not unlawful in itself. The prohibition concerns abusive conduct by a dominant undertaking. Examples include imposing unfair prices or trading conditions, limiting production, markets or technical development to the prejudice of consumers, applying dissimilar conditions to equivalent transactions, and tying unrelated obligations to contracts.

The Norwegian Competition Act applies where the conduct has, or is capable of having, effects in Norway. Where the conduct may affect trade within the EEA, Article 54 of the EEA Agreement applies in parallel.

Intentional or negligent infringements may be sanctioned by administrative fines. The NCA may also order the infringement to cease or impose necessary measures.

## 7. Intellectual Property

### 7.1 Patents

Norwegian patent law is governed by the Patents Act. Patent protection is available for inventions that provide a practical solution to a technical problem. The invention must have technical character and effect, be

reproducible, be novel and involve an inventive step. Mere discoveries, scientific theories, mathematical methods, aesthetic creations, business methods and computer programs "as such" are not patentable.

Patent rights are obtained by application. National patents are granted by the Norwegian Industrial Property Office, while European patents may be granted by the European Patent Office and made effective in Norway. The application must include a description of the invention and patent claims defining the scope of protection sought. The invention must be disclosed sufficiently clearly and completely for a person skilled in the art to carry it out.

A granted patent may normally be maintained for up to 20 years from the filing date, subject to payment of annual fees.

Patent rights are enforced before the ordinary courts. Remedies for patent infringement may include injunctions, reasonable compensation, damages and measures to prevent further infringement. In serious cases, patent infringement may also give rise to criminal liability.

### 7.2 Trade Marks

A trade mark may consist of any sign capable of distinguishing the goods or services of one undertaking from those of others. Trade mark rights are governed by the Trademarks Act and may be established by registration or through use.

National trade mark rights may be obtained by registration in the Norwegian trade mark register. To be registrable, the mark must be capable of distinguishing the applicant's goods or services and must have distinctive character. Descriptive or generic signs should generally remain available for use by others. The Norwegian Industrial Property Office examines whether the statutory conditions for registration are met, including both absolute and relative grounds for refusal.

Trade mark rights may also be established without registration where the mark has become established through use. A mark is established through use where, and for as long as, it is well known in the relevant Norwegian market as a distinctive sign for particular goods or services. If the mark is established only in part of Norway, protection is limited to that area.

Trade mark protection gives the holder an exclusive right to use the mark as a sign for goods or services in the course of trade. The right covers use of identical signs for identical goods or services and use of identical or similar signs for identical or similar goods or services where there is a likelihood of confusion. Well-known marks may enjoy broader protection against unfair exploitation or impairment of their goodwill.

A registered trade mark is protected for ten years at a time and may be renewed indefinitely, subject to payment of renewal fees. Registered marks may be vulnerable to cancellation if they are not put to genuine use for a continuous five-year period without proper reason.

Trade mark rights are enforced before the ordinary courts. Infringement may give rise to reasonable compensation, damages or an account of profits, depending on the circumstances. In serious cases, trade mark infringement may also give rise to criminal liability.

### 7.3 Industrial Designs

Design rights are governed by the Design Act. Design protection covers the appearance of a product or part of a product, including features such as lines, contours, colours, shape, texture, materials or ornamentation.

A design must be new and have individual character to qualify for protection. A design is new if no identical design has been made available to the public before the filing date or priority date. Individual character depends on whether the overall impression produced on the informed user differs from that produced by earlier designs, taking into account the designer's freedom in developing the design.

Design rights are obtained by registration. Applications must be filed in writing with the Norwegian Industrial Property Office and must identify the applicant, the product or products to which the design relates, and include images clearly showing the design. The application fee must be paid.

The Norwegian Industrial Property Office examines formal filing requirements, whether the application concerns a design within the meaning of the Design Act, and certain public interest grounds for refusal. It does not generally examine whether the design is new or has individual character before registration. A registered design may therefore later be challenged and declared invalid or revoked if the substantive requirements are not met.

A registered design is protected for five years from the filing date and may be renewed in five-year periods for a maximum term of 25 years, subject to payment of renewal fees.

Design rights are enforced before the ordinary courts. Remedies for design infringement may include injunctions, reasonable compensation, damages and measures to prevent further infringement. In serious cases, design infringement may also give rise to criminal liability.

### 7.4 Copyright

Copyright is governed by the Copyright Act and protects original literary and artistic works. Protection arises where the work is the result of an individual creative effort, regardless of its form of expression.

Copyright gives the author an exclusive right to exploit the work by making copies and by making the work available to the public.

As a general rule, copyright lasts for the lifetime of the author and for 70 years after the end of the year of the author's death. Special rules apply to certain categories of works, including films, anonymous and pseudonymous works and works of unknown authorship.

No registration is required to obtain copyright protection. Protection arises automatically when an original work is created.

Copyright is enforced before the ordinary courts. Infringement may give rise to reasonable compensation and damages. In certain circumstances, infringement may also result in criminal liability, including fines or imprisonment.

### 7.5 Others

Computer programs may be protected as copyright works under the Copyright Act, provided that the general requirements for copyright protection are met.

Databases may be protected by copyright where they qualify as original works. Databases that do not qualify for copyright protection may nevertheless benefit from separate database protection where substantial investment has been made in obtaining, verifying or presenting their contents.

Trade secrets are not registered. They may be protected under trade secrets legislation against unlawful acquisition, use and disclosure, including industrial espionage and unauthorised disclosure of confidential business information.

## 8. Data Protection

### 8.1 Applicable Regulations

The main data protection framework in Norway is the EU General Data Protection Regulation (GDPR), as incorporated into Norwegian law through the Norwegian Personal Data Act. Norway is not an EU member state, but participates in the EU internal market through the EEA Agreement. The GDPR was incorporated into the EEA Agreement and has applied in Norway since 20 July 2018. Norway is therefore bound by the GDPR in substantially the same way as EU Member States.

The Norwegian Personal Data Act supplements the GDPR with national provisions where the GDPR allows local regulation, including certain rules on processing in employment relationships, research, freedom of expression, access to documents, children's consent and administrative fines. It does not replace the GDPR; it makes the GDPR applicable in Norway and adds limited national rules.

The Norwegian Data Protection Authority, Datatilsynet, is the national supervisory authority. It supervises compliance, handles complaints, issues guidance and may impose corrective measures and administrative fines. Datatilsynet participates in the European Data Protection Board, although Norway's EEA status

means that it does not have the same voting position as EU supervisory authorities.

Other rules may also be relevant. Electronic marketing is regulated by the Marketing Control Act, and cookies and similar technologies are regulated through electronic communications rules. Sector-specific confidentiality, security and record-keeping rules may also apply, for example in financial services, healthcare, telecoms and employment.

In practice, businesses operating in Norway should treat GDPR compliance as the core data protection requirement, supplemented by Norwegian national rules and Datatilsynet guidance.

### 8.2 Geographical Scope

The geographical scope of Norwegian data protection law follows the GDPR. The rules apply to controllers and processors established in Norway where personal data is processed in the context of that establishment's activities, regardless of whether the processing itself takes place in Norway.

The rules may also apply to a foreign company with no establishment in Norway or the EEA if it offers goods or services to individuals in Norway or monitors their behaviour in Norway. Relevant indicators may include use of Norwegian language, pricing in Norwegian kroner, delivery to Norway, marketing directed at Norwegian customers, or tracking and profiling of users in Norway.

A non-EEA controller or processor subject to the GDPR under these rules may need to appoint an EU/EEA representative, unless an exemption applies. The representative may be contacted by supervisory authorities and data subjects on GDPR matters.

International transfers of personal data from Norway to countries outside the EEA are subject to Chapter V of the GDPR. Transfers may take place on the basis of an adequacy decision, or, in the absence of such a decision, where appropriate safeguards are provided, such as the EU Standard Contractual Clauses or Binding Corporate Rules, unless a specific derogation applies. For transfers to the United States, the EU–US Data Privacy Framework currently permits transfers to US organisations certified under the framework, while transfers to non-certified US recipients require another valid transfer mechanism. Businesses using non-EEA service providers should map relevant data flows, including remote access, cloud services, sub-processors and onward transfers, and assess whether the chosen transfer mechanism is effective in practice. Where necessary, supplementary technical, contractual or organisational safeguards must be implemented.

For practical purposes, a foreign business actively targeting Norwegian customers should assume that GDPR compliance may be required even without a Norwegian subsidiary or branch.

### 8.3 Role and Authority of the Data Protection Agency

The Norwegian Data Protection Authority, Datatilsynet, is the supervisory authority responsible for enforcing data protection rules in Norway. It is an independent administrative authority and supervises compliance with the GDPR and the Norwegian Personal Data Act.

Datatilsynet's role includes providing guidance, handling complaints from individuals, conducting investigations and inspections, assessing data breach notifications, and supervising controllers and processors. It may also issue opinions and guidance on new legislation, technology and processing practices.

Datatilsynet has the enforcement powers provided by the GDPR. It may order a controller or processor to bring processing into compliance, require information, impose temporary or permanent processing bans, order rectification or deletion of personal data, issue reprimands and impose administrative fines. The maximum GDPR fines are the same as in the EU: up to EUR 20 million or 4% of worldwide annual turnover, depending on the nature of the infringement.

Datatilsynet also co-operates with other European supervisory authorities through the GDPR co-operation and consistency mechanisms. As Norway is part of the EEA, Datatilsynet participates in the European Data Protection Board system, although Norway is not an EU member state.

Decisions by Datatilsynet may generally be appealed to the Norwegian Privacy Appeals Board and may ultimately be challenged before the ordinary courts.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

There are several legal developments that foreign investors should monitor, although Norway is not currently undergoing a single comprehensive business law reform.

The most important development is in foreign investment control. Norway already has ownership control rules under the Norwegian Security Act, and amendments adopted in 2023 are expected to enter into force with supplementary regulations in 2026. These changes are expected to broaden the scope of the regime, lower notification thresholds and introduce a clearer standstill obligation for notifiable transactions. In addition, the government has announced work on a possible new Investment Control Act, with a consultation paper expected in 2026. If adopted, this would represent a more general Norwegian FDI screening regime alongside the existing Security Act rules.

In tax, the 2026 budget contains relatively limited structural changes. The government has indicated that the 2026 tax programme is focused on simplification, closing loopholes and adapting the system to other regulatory developments. Norway has already implemented Pillar Two rules, including an income inclusion rule and domestic minimum top-up tax from 2024, so further developments are expected mainly through guidance and technical adjustments rather than a new primary regime.

In data and digital regulation, Norway is expected to continue aligning with EU digital legislation through the EEA Agreement. The EU AI Act is expected to be implemented in Norway, and a Norwegian consultation on draft AI Act implementation was published in 2025. Businesses using or providing AI systems in Norway should monitor the timing of EEA incorporation and Norwegian implementation.

Corporate compliance has also become more transparent. The obligation to register beneficial owners is now in force, and the register is a practical compliance point for Norwegian companies and branches. This is not a future reform in itself, but enforcement and practical implementation remain relevant for foreign-owned Norwegian structures.

Overall, the main near-term reform risk for foreign investors is not ordinary company law, but investment screening, security-related regulation, digital regulation and continued tax compliance developments.

# OMAN




## Law and Practice

**Contributed by:**
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**Said Al Shahry & Partners** (SASLO) is a leading Omani full-service law firm, notable as the only top-tier firm in Oman that is fully owned by Omani nationals. For over 33 years, it has provided expert legal services to domestic and international clients, earning recognition for practical, commercially-focused advice firmly grounded in Omani regulatory and legal requirements. This depth of experience and local insight has cemented SASLO's reputation in Oman's legal market as a go-to firm for both local and foreign businesses. SASLO operates seamlessly across three offices in Oman's major hubs – Muscat, Sohar, and Salalah. These fully integrated offices enable the firm's legal team – the largest in the country – to provide clients with specialist local knowledge and around-the-clock support. The firm has advised on some of the most complex corporate, financing and infrastructure deals in Oman and has been involved in significant litigation and arbitration. Through this extensive experience, SASLO offers its clients practical and commercially sound counsel tailored to the local context.

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# 1. Legal System

## 1.1 Legal System and Judicial Order

Oman is a civil law jurisdiction. Legislation is the primary source of its laws, not judicial precedent.

Royal Decrees form the bedrock of Oman's legislative framework and are often supplemented by secondary/delegated legislation in the form of Ministerial Decisions. Royal Decrees are identified in this chapter of the guide with the initialisation "RD".

Oman's Civil Transactions Law RD 29/2013 (the "Civil Code") regulates all matters not addressed by other specific laws. Under the Civil Code, commercial arrangements between parties are governed by the contract between them unless the law imposes a contrary requirement. The principles of Islamic jurisprudence, the principles of sharia and customary practices may also be relevant when interpreting a contract (in that order of descending authority).

The courts take a purposive approach to the construction of contracts and will seek to identify the parties' intention to a contract. Broadly speaking, a party exercising rights under a contract will be expected to act reasonably and in good faith.

The Basic Law of the State RD 6/21 (the "Basic Law") essentially serves as Oman's constitution. Under the Basic Law, judicial power is independent and vested in the courts, which operate in accordance with the rule of law.

The judiciary consists of the Primary Courts (the Courts of First Instance), the Appeal Courts and the Supreme Court (Oman's highest court). In March 2025 RD 35/2025 was issued establishing the Court of Investment and Commerce (CIC), which came into force in October 2025. The CIC has exclusive jurisdiction to hear all commercial disputes apart from disputes pertaining to administrative, labour and rental issues. The CIC has hierarchy similar to other courts in Oman.

On 12 January 2026, Oman established the International Financial Centre of Oman (IFCO) through RD 8/2026. The IFCO will have its own legal framework. The executive regulations under the RD 8/2026 are yet to be issued.

# 2. Restrictions on Foreign Investments

## 2.1 Approval of Foreign Investments

### General Principles

Non-Omanis may only conduct business in Oman through a locally registered entity. In practice, this means that non-Omanis must either establish a presence in Oman or conduct their business through a local commercial agent in order to invest in Oman.

#### *Establishing a presence in Oman*

Oman's Foreign Capital Investment Law RD 50/2019 (FCIL) came into force and effect in January 2020, and its impact has been to relax Oman's foreign ownership restrictions significantly.

Oman's Ministry of Commerce, Industry and Investment Promotion (MOCIIP) has issued, pursuant to Ministerial Decision 209/2020, as amended, a list of activities subject to foreign ownership restrictions (the restricted activities list). The restricted activities list includes activities such as automotive repair, translation/interpretation services and labour recruitment offices; it may be updated from time to time by a decision of the Minister of the MOCIIP.

Certain industry sectors do not appear on the restricted activities list, despite historically requiring a higher level of local ownership. Oman's engineering law, for instance, requires engineering consultancy offices to have a minimum of 35% local ownership. The MOCIIP is expected to continue to apply any such industry sector restrictions.

Even prior to the introduction of the FCIL, foreigners establishing a presence in Oman's "free zones" or "special economic zones" or under the US–Oman free trade agreement or certain reciprocal arrangements implemented within the GCC (Gulf Cooperation Council), were able to take advantage of less onerous foreign ownership restrictions. However, the restricted activities list also applies to non-Omanis establishing a presence under these routes.

Ministerial Decision 412/2023 prohibits the engagement in concealed trading, that is engaging in an activity which is restricted by laws, and violators can be fined between OMR5,000 to OMR15,000. This restriction applies to both Omanis and non-Omanis.

#### *Conducting business through a local commercial agent*

Any arrangement under which a foreigner conducts business through a local commercial agent must be registered with the MOCIIP. Commercial agents must be duly licensed by the MOCIIP.

### 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

Companies, partnerships, branches and representative offices must be registered with the MOCIIP. Where the entity being established is owned in whole or part by non-Omanis, the application for registration will need to be processed through the investment services centre of the MOCIIP. MOCIIP registration is required before any of these types of entities can commence operations.

Contractual joint ventures (see **3.1 Most Common Forms of Legal Entity**) are the exception to this general rule: although they are treated as legal entities formed under the Commercial Companies Law RD 18/2019 (CCL 2019), they do not require registration with the MOCIIP. However, at least one of the parties to the contractual joint venture will need to have an appropriately licensed presence in Oman.

A foreigner undertaking investment activity in Oman other than in compliance with the FCIL may be fined between OMR20,000 and OMR150,000, as may an Omani who participates with a foreigner in an investment project other than in accordance with the FCIL.

### 2.3 Commitments Required From Foreign Investors

The FCIL's executive regulations were issued in June 2020 and amended further in March 2022. The FCIL's executive regulations set out the types of investment projects that may apply for preferential treatment (eg, projects established in Oman's less developed regions) and the financial and non-financial conditions that must be satisfied for an investment project to qualify. Ministerial Decision 411/2025 amended the FCIL's executive regulations, requiring establishments and companies established by a foreign investor to appoint at least one Omani worker within one year of commencing their commercial activities.

### 2.4 Right to Appeal

There is no formal procedure to challenge a decision by the MOCIIP to reject a foreign investment (eg, where the MOCIIP declines to issue the necessary licence or approval of the necessary registration). If an investor believes an application has been unreasonably rejected, the first response should be to open a dialogue through the appropriate channels at the MOCIIP. It is prudent to appoint local counsel with an understanding of the MOCIIP's structures, practices and ethos to assist with these discussions. If that approach is unsuccessful, an investor may challenge any such decision in court. Oman's legal system operates in accordance with the rule of law.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

The types of legal entities available in Oman are companies established under the CCL 2019, branches and representative offices. For new entrants to Oman, a presence is typically established by incorporating a limited liability company/single-person company or by establishing a branch.

Entities may be established either "onshore" in Oman or in one of Oman's industrial free zones (free zones) or special economic zones (SEZs). A company established in a free zone or an SEZ may not undertake commercial activities onshore in Oman.

#### Companies Established Under the CCL 2019

These may be formed as:

- joint stock companies (JSCs), which may be established as:
  - (a) public joint stock companies (SAOGs); or
  - (b) closed joint stock companies (SAOCs);
- holding companies (Holdcos);
- limited liability companies (LLCs);
- single person companies (SPCs);

- contractual joint ventures (CJVs);
- general partnerships (GPs); or
- limited partnerships (LPs).

### *JSCs*

A JSC must have at least three shareholders. The minimum share capital of an SAOG is OMR2 million, and the minimum share capital of an SAOC is OMR500,000. Higher share capital requirements may be required, depending on the activities undertaken by the JSC. A JSC must allocate 10% of its net profits to a legal reserve until the legal reserve reaches one third of the JSC's share capital.

The liability of a JSC is limited to the amount of its share capital, and a shareholder's liability is limited to its shareholding in the JSC's share capital.

SAOGs and SAOCs are subject to considerably more onerous regulatory requirements under the CCL 2019 than LLCs. SAOGs must also be listed. As a listed company, an SAOG is regulated by the Financial Services Authority (FSA) and subject to its rules and regulations.

A JSC is managed by its board of directors. Subject to the CCL 2019 and the JSC's Articles of Association, a JSC's board of directors has all authority necessary to manage its affairs; its board also has a duty to implement any resolutions passed by the JSC's shareholders in general meetings. An SAOG must have between five and 11 directors, and an SAOC must have between three and 11 directors. In each case, the number of directors (which must be uneven) will be specified in the JSC's Articles of Association. A JSC's directors are listed in its commercial registration (a document maintained by the MOCIIP and available for public inspection), which will also set out the authorised signatories of the JSC and any limits on their powers.

Ministerial Decision 245/2025 provides that an authorised signatory/manager of a company may be appointed from any of the following categories:

- any of its partners;
- any owner of its capital;
- any of its directors;
- any of its managers or any of its financial or administrative workers.

The key advantage of JSCs over LLCs is that shares in JSCs may be mortgaged as security (this may be necessary in order for a company to procure debt financing). Unlike SAOCs and LLCs, SAOGs may also raise equity finance in the capital markets, as they are able to offer their shares to the public. LLCs may now procure funding through crowdfunding platforms, subject to the rules and regulations issued by the FSA. Some regulated activities in Oman may only be undertaken by SAOGs.

### *Holdcos*

A Holdco is a JSC that exercises financial and administrative control over one or more JSCs and/or LLCs by holding at least 51% of the shares of each such company. Holdcos are generally subject to the same regulation as JSCs.

### *LLCs*

An LLC must have at least two shareholders. An LLC must allocate 10% of its net profits to a legal reserve until the legal reserve reaches one third of the LLC's share capital.

The liability of an LLC is limited to the amount of its share capital, and a shareholder's liability is limited to its shareholding in the LLC's share capital.

LLCs are managed by one or more managers. Subject to the CCL 2019 and the LLC's constitutive documents, an LLC's managers have all the authority necessary to manage its affairs. An LLC's managers are listed in its commercial registration (also available for public inspection), which will also set out the authorised signatories of the LLC and any limits on their powers.

LLCs are subject to a considerably less onerous regulatory regime than JSCs and are considerably more prevalent.

### *SPCs*

An SPC must have only one shareholder. SPCs are subject to the same regulation as LLCs under the CCL 2019, to the extent such regulations are not inconsist-

ent with the nature of an SPC. SPCs were introduced for the first time under the CCL 2019, and are likely to be a popular alternative to LLCs going forward.

### *CJVs*

A CJV is formed (typically pursuant to a written joint venture contract) by two or more partners. It is described in the CCL 2019 as a "concealed company," and is the only legal entity in Oman that is not subject to registration with the MOCIIP.

CJVs are not subject to any minimum share capital requirement. A CJV does not have a separate legal personality. Each of its partners therefore contracts only in its own name and has unlimited liability for the obligations and liabilities it assumes under that contract.

If a CJV partner discloses the existence of the CJV to a third party who deals with that partner in the context of the CJV's activities, then the CJV will become a general partnership. This will result in all of the CJV's partners assuming unlimited liability for the liabilities and obligations of the CJV.

Investors tend to favour LLCs over CJVs because of the limited liability that LLCs confer. CJVs can, however, offer a quick route into the market and are subject to considerably less onerous regulation under the CCL 2019 than LLCs. Historically, foreign investors have sometimes adopted the CJV structure where they have a single contract to perform (eg, as a contractor on a project) and do not intend to remain in Oman following its completion. As a consequence of the liberalisation of Oman's foreign ownership restrictions, however, some contractors that would previously have adopted the CJV structure may view an LLC as a more attractive option in the future.

### *GPs and LPs*

A GP is formed of two or more general partners, each of whom must be a natural person. The partners of a GP are jointly and severally liable for the GP's liabilities and obligations.

An LP is formed of at least one general partner and at least one limited partner. The general partners of an LP are jointly and severally liable for the LP's liabilities and obligations, whereas the liability of a limited partner in an LP is limited to the amount of its contribution.

GPs and LPs have constitutive contracts that regulate their management and operation. Subject to its constitutive documents, all partners of a GP and all general partners of an LP are considered managers of the GP/LP. The limited partners of an LP may not be involved in its management.

Neither GPs nor LPs are subject to a minimum capitalisation requirement, and neither structure has a legal reserve requirement. However, the unlimited liability of general partners means that GPs and LPs rarely attract investors when structuring their investments.

## Branches

Previously, branch structures could only be established where a foreign company entered into a "qualifying contract" with the Omani government or a company in which the Omani government has a material interest. The CCL's executive regulations issued by the MOCIIP on 14 October 2021 override this requirement, and a "qualifying contract" with a government entity is no longer one of the prerequisites to establishing a branch in Oman.

## Representative Offices

The permitted activities of a representative office are limited to the following:

- contacting customers to promote the products or services of the foreign company or institution it represents;
- contacting exporters and sellers of raw, manufactured and semi-manufactured materials required by the foreign company or institution it represents and removing any obstacles hindering quick access to them; and
- notifying the foreign company or institution it represents of any complaints it receives in relation to the products or services and overcoming difficulties related to the distribution of such products or the provision of services.

A representative office is prohibited from engaging in any of the following activities:

- import, export or sale, except for the importation of commercial samples of goods produced by the foreign company or institution it represents for the purpose of promotion;
- promotion of products or services other than those produced or offered by the foreign company or institution it represents; or
- contacting consumers directly.

### Features Common to Branches and Representative Offices

There are no foreign ownership restrictions on branches/representative offices and, accordingly, the parent company of a branch/representative office can be a foreign company.

Branches/representative offices do not have a share capital or legal reserve requirement, but their parent companies are required to guarantee their obligations. This guarantee is the letter of undertaking referred to under **3.2 Incorporation Process**.

Both branches and representative offices are regulated by the constitutional documents of their parent companies. They are managed by a general manager, who will have the powers and authorities granted under a power of attorney issued by the parent company.

## 3.2 Incorporation Process

This section focuses on the formation process for LLCs and branches, as these are the usual alternatives for a foreign investor entering Oman for the first time. The process for establishing an SPC is the same as for an LLC.

### LLCs

In some cases, pre-approval must first be sought for the LLC's proposed name. In most circumstances, however, the process to incorporate/register an LLC is initiated by submitting an application to the MOCIIP.

The application will need to be made by the LLC's founding shareholders and must be accompanied by all necessary supporting documents, including:

- the LLC's new constitutive contract;
- certain resolutions of the LLC's founding shareholders;
- a foreign investment form (where applicable); and
- copies of the passports of the LLC's first authorised signatories/managers.

Preparation of these supporting documents can involve considerable lead time because some will need to be notarised (or, in the case of foreign shareholders, apostilled) before submission to the MOCIIP. The constitutive contract must either be in Arabic or be provided with an Arabic translation (dual-language constitutive contracts are permissible). The licensing process will involve seeking approval for the specific activities to be undertaken by the LLC.

The steps following incorporation include registration with the Chamber of Commerce and Industry and application for a municipality licence. To apply for a municipality licence, the LLC will need to submit a copy of its tenancy agreement.

### Branches

An application can be made to the MOCIIP for registration of a branch. The supporting documents that will need to be provided include the following:

- the commercial registration certificate of the foreign company in its principal place of business, which includes the foreign company's commercial activities;
- the incorporation documents of the foreign company (ie, the Articles of Association, Memorandum of Association or the Constitutive Contract, as the case may be);
- the authorisation document issued from the foreign company to the manager(s) of the branch to carry out the management of the branch;
- a letter of undertaking from the foreign company to bear liability in relation to the acts of the branch; and
- copies of the passports/Omani identity cards of the authorised managers.

Preparing these documents can take time for the same reasons given in relation to LLCs above. All documents (except for copies of passports/Omani identity cards) must be translated into Arabic and duly

notarised, legalised, or apostilled, as the case may be. As with an LLC, the branch's activities will need to be specifically licensed.

The MOCIIP usually registers a branch within one week of the application.

As with LLCs, the steps following incorporation include registration with the Chamber of Commerce and Industry and application for a municipality licence. The LLC must submit a copy of its tenancy agreement to apply for a municipality licence.

## 3.3 Ongoing Reporting and Disclosure Obligations

Any change to the constitutional documents or commercial registration certificate of an entity registered with the MOCIIP needs to be approved by the MOCIIP before it takes effect.

As noted in **3.1 Most Common Forms of Legal Entity**, all companies established under the CCL 2019 (other than CJVs), all branches and all representative offices must be registered with the MOCIIP. Accordingly, MOCIIP approval and registration are needed for any change to any such entity's constitutional documents (eg, its constitutive contract or Articles of Association) or commercial registration certificate, including in relation to its managers/authorised signatories or its share capital/shareholders.

Most entities registered with the MOCIIP are required to file approved financial statements with the MOCIIP (although exceptions apply).

JSCs are subject to considerably more stringent reporting requirements than LLCs. Analysis of these requirements falls outside the scope of this chapter of the guide.

## 3.4 Management Structures

LLCs are managed by one or more managers, who are appointed in accordance with Ministerial Decision 245/2025. Subject to the CCL 2019 and the LLC's constitutive documents, an LLC's managers have all the authority necessary to manage its affairs. The CCL 2019 and the LLC's constitutive documents specify the matters that are reserved to be decided by its shareholders.

Branches are regulated by the constitutional documents of their parent companies. They are managed by a general manager, who will have the powers and authorities granted under a power of attorney issued by the parent company.

## 3.5 Directors', Officers' and Shareholders' Liability

The rules governing the liability of management and shareholders will depend on the type of Omani legal entity in question. The comments below are confined to an overview of the main rules applicable to LLCs and branches.

### LLCs

#### *General principles*

The managers of an LLC are jointly or severally liable to the LLC and third parties for, inter alia, their violation of the CCL 2019 and/or the LLC's constitutive documents and their negligence in the management of the LLC.

The CCL 2019 also provides that the managers of an LLC are subject to the same liability as the directors of a JSC, regardless of any provision to the contrary in the LLC's constitutive documents.

#### *Conflicts of interest*

The CCL 2019 contains several provisions that subject a manager to liability where the CCL 2019's provisions requiring a manager to avoid conflicts of interest have been contravened.

#### *Piercing the corporate veil*

The general rule is that the liability of an LLC is limited to the amount of its share capital, and a shareholder's liability is limited to its shareholding in the LLC's share capital.

There is, however, the potential in certain limited circumstances for the corporate veil to be pierced in the event of an LLC's bankruptcy, and managers can also become liable where they act outside their authority. In certain limited circumstances, managers may also become criminally liable under the Penal Code RD

7/2018, as amended (the "Penal Code") in the event of an LLC's bankruptcy.

### Branches

The liability of a branch's directors/managers and officers will, generally speaking, be determined based on the laws applicable in the jurisdiction of incorporation of its parent company and the constitutional documents of its parent company.

The general manager of a branch will also be personally liable if the authority granted in their power of attorney is exceeded (as will any other authorised signatory of the branch who exceeds their authority).

The parent company of a branch is required to guarantee the obligations and liabilities of the branch pursuant to the letter of undertaking referred to under **3.2 Incorporation Process**. Therefore, the liability of a branch is not ring-fenced.

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

The employer/employee relationship in Oman is regulated by the Labour Law RD 53/2023 (the "Labour Law"). Regulations are issued from time to time by the Ministry of Labour to regulate particular aspects of the employment relationship further.

The Labour Law prescribes an employee's minimum benefits and entitlements, such as maximum working hours, annual leave and sick leave entitlements. The employment contract may include benefits and entitlements that exceed these minimum requirements.

Employee unions are recognised in Oman. Collective negotiations may take place between the employer and the employees' trade union to improve the terms and conditions of work, enhance productivity and settle disputes. Employees have a right to strike peacefully, provided certain procedures are followed.

### 4.2 Characteristics of Employment Contracts

The Labour Law requires a contract of employment to be in writing; it must be in Arabic and must be translated into a language that both employer and employee can understand, where applicable. A contract of employment must include certain specified information and may be for a fixed or unlimited term.

### 4.3 Working Time

Employees may not be required to work more than eight hours a day or 40 hours a week, provided that the working hours are interspersed with but do not include an hour's lunch break per day. The continuous period of work must not exceed six hours. An employee is entitled to at least 48 consecutive hours of rest per week after five continuous working days.

If an employee is required to work overtime, then the employer must pay the employee overtime equivalent to the employee's basic salary for the extra work hours, plus at least 25% of such salary (for day-time work) and 50% of such salary (for night-time work); if the employee agrees in writing, the employer may grant the employee leave from work in lieu of the overtime.

Employees who work on an official holiday are entitled to salary for such day plus additional overtime pay equal to 100% of the daily basic wage or to an additional rest day for each day.

### 4.4 Termination of Employment Contracts

An employment contract will terminate under the following circumstances:

- upon the expiry of the term of the contract or completion of the work agreed upon;
- termination of the contract by the employer or employee in accordance with the Labour Law;
- upon the employee's death or permanent disability; and
- illness of the employee that necessitates absence from work for a consecutive or intermittent period of no less three months within one year, provided that the sick leave period set out in the Labour Law and the employee's balance of annual leave is exhausted.

Although an employer may terminate an employment contract by notice, the Supreme Court has held that termination should be based on a legal justification. If the termination of an employee's employment con-

tract is arbitrary or without legal justification in accordance with the Labour Law, then an employee may file a claim for unfair dismissal. In such circumstances, the court may order the employee's reinstatement or the payment of not less than three months' salary as compensation. There are no definitive guidelines for the courts to consider in determining unfair dismissal claims or how compensation for unfair dismissal is calculated.

The employer may, in the event that an economic cause exists and after obtaining the approval of the committee as stipulated in Article 45 of the Labour Law, reduce the number of workers in the company to the extent required to maintain the continuity of the business and to avoid the risks of bankruptcy. The employer must comply with the following requirements if the approval of the committee is obtained:

- follow a fair standard in the selection of employees whose contracts will be terminated, such as employees with the lowest performance scores or any other standard;
- grant the employees whose contracts will be terminated a notice period of no less than three months; and
- give the employees whose contracts will be terminated priority to be reappointed if there is a job opportunity that matches their qualifications.

### 4.5 Employee Representations

The Labour Law does not expressly include provisions relating to employee representations.

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/Employers

#### Personal Income Tax

Although Omani citizens and residents are not currently subject to personal income tax unless they solely own an establishment (as defined in **5.2 Taxes Applicable to Businesses**), Oman has introduced a 5% personal income tax (PIT) on individuals with annual income exceeding OMR42,000 effective from 1 January 2028, under Royal Decree No 56/2025.

#### Social Insurance

The following taxes apply.

- Insurance for old age, disability and death – Omani employees must contribute 7.5% of their gross salary to the Social Protection Insurance (SPI). The employer is also required to contribute an amount equal to 11% of the gross salary of an Omani employee. The gross salary is capped at OMR3,000 per month for the purpose of calculating these contributions.
- Insurance for work injuries and occupational diseases – the employer is required to contribute an amount equal to 1% of the gross salary of an Omani employee. The gross salary is capped at OMR3,000 per month for the purpose of calculating these contributions.
- Insurance for employment security – Omani employees must contribute 0.5% of their gross salary to the SPI. The employer is also required to contribute an amount equal to 0.5% of the gross salary of an Omani employee. There is no cap for calculating these contributions.
- Insurance for maternity/paternity leave – the employer is required to contribute an amount equal to 1% of the gross salary of all employees (Omani and expatriates). The gross salary is capped at OMR3,000 per month for the purpose of calculating these contributions.
- Insurance for sick/extraordinary leave – with effect from July 2025, the employer is required to contribute an amount equal to 1% of the gross salary of an Omani employee. The gross salary is capped at OMR3,000 per month for the purpose of calculating these contributions.

Contributions for the three types of insurance referred to above are deducted from the employee's salary on a monthly basis and remitted by the employer to the SPI.

### 5.2 Taxes Applicable to Businesses

#### Income Tax

The following categories of persons (Omani taxpayers) are liable to income tax in Oman:

- enterprises;
- establishments;

- Omani company; and
- permanent establishments.

The tax rate is generally 15% of taxable income, although a lower rate of 3% applies to certain small taxpayers where prescribed conditions are met.

For these purposes:

- "Person" means a natural or juristic person and includes joint ventures and non-Omani partnership agreements that do not assume the form of a company.
- "Enterprise" includes:
  (a) an individual enterprise owned by a natural Omani person which exercises in Oman any of the specific activities specified in Article 159 (bis) of RD 28/2009 (the "Income Tax Law"). The owner of the enterprise shall be determined from the commercial or industrial registers or other fiscal records or documents.
  (b) Omani company that takes the form of partnership, limited partnership or limited liability company and exercises the activities specified in Article 159 (bis) of the Income Tax Law.
- "Establishment" means an establishment solely owned by a natural person who independently carries on a commercial, industrial or professional activity in Oman. The owner of the establishment shall be determined from the commercial or industrial registers or other fiscal records or documents.
- "Omani company" means any person established in Oman as a company under the legislations of Oman, whether it is commercial, civil or any other company, and whatsoever be the legal form of the company, the nationality of the partners, the purpose of its incorporation or the nature of its activity.
- "Permanent establishment" means a fixed place of business through which a business is wholly or partly carried out in Oman by a foreign individual or entity either directly or through a dependant agent. A permanent establishment also includes consultancy service or any other services where such foreign person provides such service in Oman for a period or periods of not less than 90 days in the aggregate in any 12 months.

Special provisions apply to the taxation of income derived from the sale of petroleum. In addition, excise duties were introduced in Oman in 2019 on certain specific goods.

### Economic Stimulus Plan

The Ministry of Finance has published an Economic Stimulus Plan (ESP) as part of its efforts to mitigate the effects of COVID-19 on the economy. The plan addresses the following key areas:

- taxes and fee incentives;
- stimulating business and investment through, for example, the simplification of procedures and the relaxation of regulations for foreign companies;
- SMEs, including a temporary reduction of income tax rates and the postponement of loan repayments due for Al Raffd Fund until year 2021;
- the labour market/employment, including a reduction in fees for hiring ex-pats; and
- banking – the postponement of loan instalments.

The ESP introduced several tax measures, including the introduction of certain provisions relating to the carrying forward of losses.

The ESP also exempts all companies whose main activity is operating in the economic diversification sectors from income tax for five years. Only activities which commenced between 1 January 2021 and 31 December 2022 are eligible for this exemption (subject to the rules and conditions set out by the Oman Tax Authority).

### Amendment to Income Tax Law

The Income Tax Law was amended in 2020 by RD 118/2020. Key amendments include:

- residency provisions to enable the authorities to determine the residential status of both individuals and corporates; and
- submission of only one tax return (which must be submitted within four months from the end of the financial year of the taxpayer).

### Value Added Tax (VAT)

VAT was introduced in Oman pursuant to RD 121/2020, promulgating the Value Added Tax Law. The standard

VAT rate is 5% and is generally applicable to most goods and services. Other supplies – such as food, medicine and medical equipment – are charged at a 0% rate. In addition, certain other services, such as education and healthcare, are generally exempt from tax.

### Withholding Tax

Omani taxpayers are required to withhold tax on any of the following types of payment to foreign entities that do not have a permanent establishment in Oman but which derive income from Oman:

- royalties;
- consideration for carrying out research and development;
- consideration for the use or right of use of computer programs;
- management fees; and
- the provision of services, whether the services are rendered in Oman or outside (subject to certain exceptions).

Withholding tax applies to foreign entities conducting business in Oman through a permanent establishment and does not consider the amount paid or credited to them as part of their income on which tax is levied in Oman.

Withholding tax is applied at 10% of the gross income from the above sources, as modified by any Double Tax Treaties entered into by Oman.

Pursuant to a Royal Directive announced in January 2023, it is understood that dividends and interest will no longer be subject to withholding tax.

Article 4 (bis) (1) of the Executive Regulations of the Income Tax Law sets out the services which do not fall under the purview of withholding tax.

### Pillar Two of the OECD

On 31 December 2024, RD 70/2024 was issued, promulgating the Law of the Top-Up Tax on Constituent Entities of Multinational Groups (the "Top-Up Tax Law"). This Law implements Pillar 2 of OECD's Base Erosion and Profit Shifting (BEPS) framework. The Top-Up Tax Law introduces a 15% domestic minimum top-up tax (DMTT) on entities, including companies, branches and permanent establishments of multinational enterprises (MNEs) situated in Oman.

The Top-Up Tax Law came into force on 1 January 2025. It applies to MNEs operating in Oman with a consolidated annual revenue amounting to or exceeding EUR750 million in two of the last four financial years. The executive regulations to the Top-Up Tax Law are yet to be issued.

## 5.3 Available Tax Credits/Incentives

### Tax Credits

The worldwide income of an entity formed in Oman is taxed in Oman. Tax credits are available to Omani taxpayers (as defined in **5.2 Taxes Applicable to Businesses**) who are subject to foreign taxes on income that is also taxed in Oman. The credit is limited to the amount of tax incurred in Oman.

### Tax Incentives

The FCIL's executive regulations set out the types of investment projects that may be exempt from tax, customs and other charges.

The income of existing companies established in the Salalah free zone, the Al Mazunah free zone and the Duqm SEZ is exempt from tax for a period of 30 years and 25 years for companies established in the Sohar free zone.

Royal Decree 38/2025 establishing the Law of Special Economic Zones and Free Zones (the "Freezone Law") was issued in April 2025, introducing a ten-year income tax exemption for qualifying enterprises, renewable for two similar periods for activities of a special nature, while streamlining the processes for approvals, permits and licensing. The executive regulations to the Freezone Law are yet to be issued. Decisions will also be issued to facilitate the Freezone Law's implementation.

RD 87/2025 established an SEZ in the Governorate of Dhahirah and RD 88/2025 established an SEZ in Rawdah. An Artificial Intelligence Special Zone is also established in the Governorate of Muscat vide RD 50/2026. All these zones enjoy same incentives,

advantages, exemptions and facilities as those provided under the Freezone Law.

### Tax Exemptions

Exemptions from tax are given in two ways: (i) exempt activities and (ii) exempt income.

#### *Exempt activities*

Tax exemptions are available for industrial (manufacturing) activities; the exemption is for five years and cannot be renewed. Tax exemptions are also available to establishments/Omani companies engaging in shipping and specific investment funds. The ESP has exempted certain commercial activities from income tax – see 5.2 Taxes Applicable to Businesses (Economic Stimulus Plan).

#### *Exempt income*

Examples of income exempt from tax include:

- dividends received from Omani companies;
- profits or gains on the disposal of securities listed on the Muscat Securities Market (currently known as Muscat Stock Exchange);
- the income of foreign marine companies conducting activities in Oman through an authorised agent, but only where the country of the foreign company affords reciprocal treatment;
- the income of foreign airlines carrying on business through permanent establishments in Oman to the extent of the income from operating aeroplanes for international transport, but only where reciprocal treatment is afforded in the airline's home country; and
- the income of a special purpose company established in Oman under the Capital Market Law.

While taxable under law, foreign companies engaged in oil and gas exploration activities normally have their liability to tax discharged by the government under the terms of their oil and gas concession agreements.

Foreign companies working for the government on projects deemed to be of national importance may be able to negotiate a tax protection clause whereby the government reimburses any tax paid by them.

## 5.4 Tax Consolidation

Oman does not have a regime of tax consolidation. Each taxable entity is required to file its own Annual Return of Income.

## 5.5 Thin Capitalisation Rules and Other Limitations

If the debt-to-equity ratio exceeds 2:1 in the case of related party debt, interest on the excess debt is not deductible for tax purposes. This rule applies to all Omani taxpayers other than banks and insurance companies, permanent establishments of foreign companies or proprietary (Omani-owned) establishments. Interest paid to related parties is allowed only to the extent the loan terms are at arm's length.

## 5.6 Transfer Pricing

Transactions between related parties must be valued at arm's length. There is no specific guidance on acceptable methods for determining an arm's-length price. In practice, the Oman tax authorities apply transfer pricing rules in accordance with OECD guidelines.

## 5.7 Anti-Evasion Rules

Oman has stringent anti-evasion rules. Where a taxpayer fails to declare the correct income in their income return, the Chairman of the Tax Authority may impose a fine between 1% and 25% of the difference between the tax value of the taxpayer's actual taxable income and the tax value as per the return submitted.

Subject to any harsher punishment specified in the Penal Code or any other law, the following offences are punishable by imprisonment for a period of between six months and three years and/or by a fine of between OMR5,000 and OMR50,000:

- intentional refusal by the tax manager to submit the actual taxable income;
- intentional abetment or assistance of the person subject to tax to submit incorrect tax declarations, accounts, records, lists of assets or debits or other documents relating to the tax return of the person subject to tax;
- intentional destruction, concealment or disposal of any documents, records, accounts or lists required by the Tax Authority to be submitted if such

destruction, concealment or disposal takes place within two years of the date of receipt of the Tax Authority's notice; or
- intentional violation of the obligations to, among other things, provide data, information or documents regarding taxation-related international treaties or failure to do so as a result of gross negligence.

### 5.8 Tariffs

Oman's tariff regime is primarily governed by the Gulf Cooperation Council (GCC) Common External Tariff, under which most imports are subject to a standard customs duty of 5%. However, higher tariffs - sometimes reaching up to 100% - are applied to selected goods in line with cultural, health and economic objectives. These include products such as tobacco, alcohol, energy drinks and pork, largely due to public health and religious considerations. In contrast, essential goods such as basic foodstuffs, medicines and humanitarian items are typically exempt from customs duties.

While tariff rates are generally not country-specific, Free Trade Agreements (FTAs) play a key role in reducing or eliminating customs duties. Imports from GCC member states benefit from duty-free access, provided they meet the applicable rules of origin. The US-Oman Free Trade Agreement also provides near-complete tariff exemption for qualifying goods from the United States, while the GCC-Singapore FTA offers preferential terms for eligible imports from Singapore.

Oman's tariff policy seeks to balance trade liberalisation with the protection of key domestic industries. In 2025, the country adopted the GCC Unified 12-digit Tariff Code, standardising product classification across the region and enhancing regulatory transparency without altering existing duty rates.

Oman's active engagement in new FTA negotiations is expected to have a significant impact on its future tariff landscape. Through its participation in GCC-level negotiations with partners such as the United Kingdom, Turkey, and Japan, Oman is working to expand preferential access for its exports while further liberalising imports from key trading partners.

## 6. Competition Law

### 6.1 Merger Control Notification

Anti-competitive practices in Oman are regulated by the Competition Law RD 67/2014 (as amended – the "Competition Law") and its executive regulations. Any person intending to take any action resulting in an "economic concentration" must submit a written application to the MOCIIP.

An "economic concentration" is defined in the Competition Law as "any act that results in the transfer of the ownership of all or part of the assets, shares, stocks, use, rights or obligations of one person to another person or establishing consortiums or amalgamations or combining two or more managements under one joint management, which is likely to cause a person or a group of persons directly or indirectly to be in a dominant position." Joint ventures are, therefore, potentially caught by this definition.

Any action that would lead to an economic concentration resulting in the acquisition of more than 50% of the market concerned may not be approved by the MOCIIP, which has the discretion to approve or reject applications falling below this 50% threshold.

The scope of the Competition Law is broad. It applies to all activities of production, commerce, services and any other economic or commercial activities practised in Oman and to any economic or commercial activities performed outside Oman that would have consequential effects inside Oman.

The Competition Law also regulates the abuse of IP rights, where this would have an adverse effect on competition. It does contain limited exemptions, however, including for public utility companies and certain R&D activities.

### 6.2 Merger Control Procedure

The MOCIIP will examine any application for clearance of an economic concentration (see **6.1 Merger Control Notification**) and issue a decision within 90 days (and will be deemed to have approved the application if it does not respond within such timeframe).

## 6.3 Cartels

The Competition Law provides that any agreement, arrangement or practice (whether concluded inside or outside Oman) that has the object of preventing, limiting or weakening competition is prohibited.

Express examples of prohibited practices include collusion in bids or tenders among persons, or drawing up provisions in the conditions of tenders such as the inclusion of the trade mark of the commodity or specification of its type (ie, cartels).

The Competition Law contains a non-exhaustive list of practices that would be treated as having the object of preventing, limiting or weakening competition.

## 6.4 Abuse of Dominant Position

The abuse of a dominant position is prohibited under the Competition Law. Any person who enjoys a dominant position is prohibited from carrying out any practice likely to prejudice, restrict or prevent competition. The Competition Law also contains a non-exhaustive list of practices that would be caught by this prohibition on abusing a dominant position.

The Competition Law defines a dominant position as the ability of a person or a group of persons who directly or indirectly work jointly to control or influence the market concerned, including the acquisition of more than a 35% share of that market. The "market concerned" is also defined in the Competition Law, and has two key elements: relevant product and the geographical scope. Identifying and applying the scope of the "market concerned" to the activity/practice in question is key to determining whether a dominant position has arisen.

Agreements and arrangements (whether concluded inside or outside Oman) that aim to secure the monopoly of the import, production, distribution, sale or purchase of any goods or circulation thereof are also prohibited, as is performing any monopolistic act that would affect the market. For these purposes, a "monopoly" is defined in the Competition Law as the control by a person or a group of persons directly or indirectly of the quantity and prices of a kind of goods or service in a manner that would result in a restriction or cause an adverse effect on the freedom of competition.

### The Executive Regulations

In January 2021, the executive regulations of the Competition Law were issued pursuant to MOCIIP Ministerial Decision No 18/2021 (the "Regulations"). The Regulations aim to remove uncertainty and provide clear guidance in determining whether or not an arrangement would fall within the scope of the Competition Law.

In doing so, the Regulations provide further guidance on the meaning of dominance, relevant products and geographical scope. They should therefore be consulted when assessing whether or not an arrangement would fall within the scope of the Competition Law (ie, whether or not an arrangement would be considered a prohibited practice or whether a transaction would require MOCIIP pre-approval).

The Regulations also set out clear guidance as to when market dominance could be triggered, as follows:

- where a person or persons acquire shares exceeding 35% of the relevant market; and
- where a person is able to influence product prices, or the volume of the supply of products, even if that person's share is less than 35% of the relevant market.

The Regulations set out the process to apply for MOCIIP approval for an economic concentration and provide that the application must be accompanied by several documents, including information determining the nature and structure of the economic concentration. Justification for the economic concentration, copies of reports, studies and questionnaires prepared for the purpose of assessing the economic concentration must also be provided. It is important to note that the Regulations provide that all documents submitted as part of the economic concentration application must be in Arabic; if they are in a foreign language, an attested and certified Arabic translation must be attached.

The MOCIIP has 90 days from the date of receiving all the required information and documents to consider the application and make its decision. The MOCIIP may approve (subject to conditions) or reject the application. A rejected or conditioned application can be appealed to the Minister of the MOCIIP.

## 7. Intellectual Property

### 7.1 Patents

Under the Industrial Property Rights Law RD 67/2008 (as amended – the "IPR Law"), an invention is patentable if it is new, involves an innovative step, and is capable of industrial application.

Broadly speaking, the procedure to register a patent is as follows.

- The procedure is commenced by submitting an application to the Directorate of Intellectual Property at the MOCIIP (the Registrar) in the prescribed form, accompanied by a petition (containing all the data concerning the applicant, the inventor and the title of the invention, and a statement proving the applicant's right to the patent if they are not the inventor) and a description of the invention.
- Eighteen months after the filing date, the Registrar will open the patent application for public examination. Upon payment of the prescribed fee at any time between the filing date and the expiry of such 18-month period, the applicant may request the Registrar to open the application for public examination.
- If the Registrar considers that the requirements set out in the IPR Law are not satisfied, they will notify the applicant to submit their observations and amend or divide the application within three months of the date of the notice.
- If the Registrar grants the patent, the applicant will be required to pay the prescribed fee within 90 days.
- The patent will be considered to be granted on the date of publication of such grant by the Registrar, and a certificate of grant signed by the Registrar will be issued.

A patent generally expires 20 years after the filing date.

### 7.2 Trade Marks

The IPR Law also regulates trade marks. A trade mark is any sign capable of being represented graphically in a manner that distinguishes the goods or services of one supplier from those of another supplier.

Broadly speaking, the procedure to register a trade mark is as follows.

- The procedure is commenced by submitting a trade mark application in the prescribed form along with the relevant documents (such as details of the applicant and a power of attorney) to the Registrar.
- The Registrar will then examine the application to ensure that it complies with the prescribed requirements and is capable of being registered.
- Once the Registrar establishes that the application for registration meets all the legal requirements, the application will be published, and any interested party may submit a written objection to the registration to the Registrar after payment of the prescribed fees within 90 days of the publication date.
- If no objection is raised, the Registrar shall register the trade mark, publish it and issue a registration certificate to the applicant.
- Alternatively, the application for registration of the trade mark may be refused by the Registrar if it does not meet the requirements; the applicant would be notified of the decision and its reasons.
- The applicant may oppose the decision refusing the application for registration of the trade mark within 60 days of the date of notification. The applicant can also appeal to the competent court against the decision to refuse the application.

The protection period for a trade mark registered in Oman is ten years from the filing date (which may be renewed).

### 7.3 Industrial Designs

Industrial design is defined under the IPR Law as "any combination of lines, colours or any three-dimensional form whether connected with lines or colours or not, provided that such combination or form gives a distinctive appearance to an industrial or a handicraft

product forming a sign of an industrial or a handicraft product which is visually perceptible with an unaided eye." For the industrial design to be eligible for registration, it must be:

- new;
- not disclosed to the public; and
- be industrially applicable.

The term of protection for an industrial design registered in Oman is five years, which may be renewed for two consecutive periods of the same duration upon the owner's request and after payment of the prescribed fees.

Broadly speaking, the procedure to register an industrial design is as follows.

- The procedure is commenced by submitting an application for registration to the Registrar in the prescribed form, signed by the applicant or the applicant's lawyer.
- The application must be accompanied by drawings, photographs and a petition that sufficiently describes the goods incorporating the industrial design and indicates the type of products for which the industrial design is used.
- The Registrar will then evaluate the application and notify the applicant of the decision to accept or reject the application. The applicant must pay the prescribed fees within 90 days of the date of such notification.
- The Registrar will publish the industrial design in the Official Gazette.
- Upon successful completion of the no objection period, the Registrar will issue the registration certificate for the industrial design.

An industrial design expires five years from the filing date and is renewable for two consecutive periods of the same duration upon the owner's request.

### 7.4 Copyright

The Law for the Protection of Copyright and Neighbouring Rights RD 65/2008 (as amended – the "Copyright Law") regulates copyright law in Oman. Oman ratified the Berne Convention for Protection of Literary and Artistic Works in July 1999.

Protection under the Copyright Law is provided to original literary, technical and scientific works, regardless of their value, nature, method of expression, or the purpose of their authorship. Computer programs and databases read from a computer or elsewhere are protected by copyright. Mere ideas, procedures, methods of work, mathematical concepts, principles, inventions and data are not protected by copyright.

Before the author's work is published, an author or their representative may deposit an application for protection of their work to the MOCIIP in the prescribed form, together with three copies of the work. The Copyright Law considers such a deposit tantamount to ownership. The applicant will be provided with a deposit number, and the deposit will then be published in the Official Gazette. Thereafter, an application is submitted to the Ministry for the data deposit certificate for the work.

The financial rights of an author of a literary work, including computer programs, are protected during their life and for 70 years starting from the commencement of the calendar year following the year of their death.

Registration of title to the authorship of a work acts as proof of ownership to the work (Registered Owner), and the onus to prove that the work does not belong to the Registered Owner is on the infringer. In addition to the civil and penal remedies available, a title-holder is entitled to remedies at borders and interim/ex parte remedies. Civil remedies include orders to prevent the export/import of the goods involved in the infringement, orders to cease the infringement, and claims for compensation based on losses incurred and profits made by the infringer. If copyright infringement is established, the court must pass a judgment to confiscate any assets resulting from the infringement. Except in exceptional cases, the court must also order the confiscation of all the commodities involved in the infringement and the material and equipment used to commit the act of infringement and order their destruction at the expense of the judgment debtor or their disposal outside the trade channels if the destruction is liable to undermine public health or the environment.

### 7.5 Others

Under the Penal Code, a person who becomes acquainted with a secret by virtue of their profession, occupation or work and (without the consent of the concerned person) discloses it other than in the circumstances permitted by law, or uses it for their personal benefit or the benefit of another person, may be imprisoned for between one month and one year.

## 8. Data Protection

### 8.1 Applicable Regulations

Oman has issued its first comprehensive personal data protection law, enacted by RD 6/2022 (DPL). The DPL came into force on 13 February 2023 and was further supplemented by the Executive Regulations issued by the Ministry of Transport, Communications and Information Technology (the MOTCIT) pursuant to Ministerial Decision 34/2024 (the "Regulations").

The DPL introduces matters such as the rights of the data subject and the obligations of controllers and processors of personal data.

The DPL applies to any processing of personal data, which is defined in the DPL as data that makes a natural person identifiable, directly or indirectly, by reference to one or more identifiers. Identifiers include but are not limited to an individual's name, civil identification number or other data related to an individual's genetic, physical or mental identity.

Article 3 of the DPL sets out certain circumstances in which the provisions of the DPL will not apply to the processing of personal data. These circumstances include but are not limited to the following:

- the protection of national security or public interest;
- the execution by the units of the Administrative Apparatus of the State and other public legal persons of their functions prescribed to them under law;
- compliance with a legal obligation imposed on a controller under any law, judgment or court decision; and
- the protection of the economic and financial interests of the State.

#### Rights of the Data Subject

##### *Consent*

Under the DPL, personal data may only be processed with the data subject's express consent. This is to ensure that any processing of personal data is done within the framework of transparency, honesty and respect for human dignity. Any request to process personal data must be in writing, in a clear and understandable manner.

##### *Sensitive personal data*

The DPL provides for a general restriction on the processing of certain data, including:

- genetic and biometric data;
- health data;
- data relating to an individual's ethnic origin, sexual life, political or religious opinions or beliefs, criminal convictions; and
- data relating to security measures.

The processing of such data will require authorisation from the MOTCIT.

##### *Other rights*

Data subjects enjoy several other rights under the DPL, including the right to:

- obtain a copy of their processed personal data;
- transfer personal data to another controller;
- revoke their consent in respect of the processing of their personal data;
- amend, update and withhold personal data; and
- be notified of any breach or violation of their personal data and measures taken in this regard.

### 8.2 Geographical Scope

The DPL applies to any processing of data in Oman. Similarly, the transfer of data outside Oman may only be done in accordance with the controls specified in the Regulations.

### 8.3 Role and Authority of the Data Protection Agency

The MOTCIT is the authority responsible for implementing the DPL and has the right to do the following:

- prepare the controls related to the protection of personal data, including specifying the necessary safeguards and measures required to protect personal data;
- issue procedures for processing personal data and ensure the compliance of controllers and processors with such procedures;
- receive complaints filed by the data subject and decide on them within the period specified in the Regulations;
- co-operate with competent entities in other countries with respect to the protection of personal data;
- provide advice and support to units of the administrative apparatus of the State and other public legal persons in matters related to personal data protection;
- draft guidelines for implementing the DPL whenever necessary; and
- maintain a register of controllers and processors meeting the conditions in accordance with the regulation.

To protect the rights of data subject, the MOTCIT may:

- issue warnings to controllers and processors who violate the provisions of the DPL;
- order the correction or removal of personal data;
- suspend the processing of personal data, either temporarily or permanently;
- suspend the transfer of data to another country or an international organisation; and
- take any other measures it deems necessary for the protection of personal data.

#### Sectoral Laws

To the extent they do not contradict the DPL and the Regulations, certain sectoral laws containing limited data and privacy protection provisions will continue to apply. These include the Telecommunications Regulatory Law and the Banking Law, for example.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

#### Securities Law Executive Regulations

The Securities Law came into force on 20 June 2022, repealing Royal Decree No 80/1998 promulgating the Capital Market Law, except for Articles 46–58, which shall remain in force. A draft of the executive regulations of the Securities Law has been published by the Financial Services Authority. The final executive regulations are yet to be issued.

The executive regulations are expected to regulate matters such as the conditions and procedure for establishing and licensing entities that are subject to the Securities Law, activities which require a licence to be undertaken and those which do not, and the prohibited activities.

#### Regulation of Virtual Assets

It is understood that the FSA and other regulators in Oman intend to promote and develop fintech products. The FSA is currently preparing the regulatory framework for the regulation of virtual assets, including the licensing, regulation and supervision of Virtual Asset Service Providers.

# PANAMA

## Law and Practice




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**BDO Legal Panama** is a leading professional services firm with over 35 years of experience in the Panamanian market. As a member of the BDO international network, present in over 160 countries, BDO Legal Panama offers a comprehensive suite of services including audit and assurance, tax, legal, advisory, and business outsourcing. The firm is known for combining global standards with extensive local expertise, providing tailored solutions to clients across various industries such as construction, technology and consumer goods. The firm is recognised for its client-centric approach, multidisciplinary teams, and commitment to innovation and efficiency.

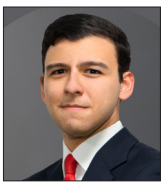
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# 1. Legal System

## 1.1 Legal System and Judicial Order

Panama has a civil law legal system, ie, it is primarily based in written laws and legal codes. The highest norm is the Political Constitution of Panama, enacted in 1972. Panama recognises conventionality control; hence ratified international treaties are recognised at the same level as the Constitution.

After the Constitution, Panamanian law recognised the legal codes, law, decrees, executive decrees, resolutions and ordinances as binding laws.

Judicial order in Panama is structured as follows, from highest to lowest dependency:

- the Supreme Court of Panama;
- superior courts; and
- lower courts.

Each of these hears cases in accordance with its specific faculties and area of law.

# 2. Restrictions on Foreign Investments

## 2.1 Approval of Foreign Investments

Generally, foreign direct investment in Panama does not require prior governmental authorisation. The country maintains a liberal and investor-friendly legal framework that encourages foreign participation across most sectors of the economy. Foreign investors are generally granted the same rights and protections as domestic investors.

Nevertheless, certain sector-specific restrictions and regulatory exceptions may apply, depending on the nature of the activity or industry in which the investment is made. These limitations are typically related to national security, public interest or activities reserved exclusively for Panamanian nationals under applicable laws.

## 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

In Panama, foreign investors are generally not required to obtain prior authorisation to conduct business. However, certain regulated sectors do require specific approvals or licences, including financial services, banking and insurance, public utilities such as telecommunications, electricity and broadcasting.

If a foreign investor engages in a regulated activity without obtaining the necessary authorisation from the competent Panamanian authorities, they may be subject to administrative sanctions, including fines and the potential closure of their business operations. The applicable procedures and timelines for enforcement vary depending on the nature of the activity and the regulatory body overseeing the sector, as not all industries fall under the jurisdiction of the same authority.

## 2.3 Commitments Required From Foreign Investors

Panamanian legislation imposes certain nationality-based restrictions on foreign investment in specific sectors. For example, only Panamanian nationals are permitted to practise liberal professions, such as law and medicine, in accordance with constitutional and regulatory provisions.

Although a foreigner may own a business in Panama, it is important to note that the Political Constitution of the Republic of Panama reserves retail trade to Panamanian nationals or to legal entities whose shareholders are Panamanian nationals. Retail trade is understood as the sale to consumers or the representation or agency of manufacturing or commercial companies, or any other activity that the law classifies as falling within such trade.

Furthermore, foreign investors seeking to operate in regulated sectors - such as financial services, banking and insurance - must obtain the appropriate licence from the relevant supervisory authority, such as the Superintendency of Banks or the Superintendency of Insurance and Reinsurance.

In the case of public utility services, including telecommunications, electricity, and broadcasting, investors are required to obtain a licence from the Public Services Authority (ASEP) prior to commencing operations.

Failure to comply with these licensing and regulatory requirements may result in administrative sanctions, including fines and the potential suspension or closure of business operations.

### 2.4 Right to Appeal

Foreign investors will have the opportunity to challenge the decisions made by the authority. At first instance, the foreign investor can appeal and request that the authority reconsider its decision. The next steps will depend on which authorities are responsible for authorising the investment.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

Panama offers a flexible and investor-friendly legal framework for the incorporation of business entities. The two most commonly used corporate structures are Limited Liability Companies (LLCs or S. de R.L.) and Corporations (S.A.).

#### Limited Liability Companies

Governed by Law No 9 of 2009, LLCs require a minimum of two partners, who may be natural or legal entities. Contributions may be made in cash, in kind, or through services, with in-kind contributions required to be fully paid. While no minimum capital is mandated, a recommended amount of USD10,000 is suggested for registration purposes.

In an LLC, partners' liability is limited to the amount of their contributions. LLCs may engage in any lawful civil or commercial activity. The Partners' Assembly is the supreme governing body and may delegate authority to an Administrator or designated officers.

#### Corporations

Regulated by Law No 32 of 1927, corporations require at least two subscribers, three directors, and the appointment of officers and a legal representative. A minimum of one shareholder is required. While no minimum capital is mandated, USD10,000 is recommended for registration; this amount does not need to be paid to any entity or deposited in a bank.

Corporations are favoured for their shareholder anonymity, which may only be lifted by court order in cases involving unlawful activity. They are widely used for holding structures, real estate investments and cross-border operations, offering advantages in governance, tax planning and liability separation.

The Board of Directors manages the company's affairs, while the Shareholders' Meeting serves as the highest decision-making body.

### 3.2 Incorporation Process

Before proceeding with the incorporation of an entity in Panama, it is necessary to understand the purpose and the operation of the company, for example whether it will be an operative or non-operative entity and whether it will be an onshore or offshore entity. The incorporation of a legal entity in Panama follows the following steps.

#### Due Diligence (KYC)

In accordance with Law No 23 of 2015 and its modifications, it is mandatory to conduct KYC procedures to verify client identity and ensure compliance with anti-money laundering and counter-terrorism financing regulations, prior to the incorporation of the entity.

#### Notarisation and Registration

After completing the KYC with positive results, the articles of incorporation must be formalised before a Notary Public and registered with the Public Registry of Panama, along with payment of the corporate annual tax and registration fees. The process typically takes two to three business days.

#### Tax Registration

Once the company is registered in the Public Registry of Panama, a Tax Identification Number (RUC) must be obtained from the Panamanian Tax Authority (DGI). This obligation must be complied with by all entities governed by Panamanian law, regardless of whether the entity conducts operations in the country.

#### Commercial Licence

To operate commercially, a Notice of Operation or Commercial Licence must be obtained, depending on the business activity, in accordance with the International Standard Industrial Classification (ISIC). Cer-

tain activities are exempt, such as liberal professions. A Commercial Licence is only mandatory for those companies that will operate within or from Panamanian territory.

### Municipal Registration

All operative companies must register with the Municipality where they are domiciled. Companies will pay the municipality annual taxes for the activities rendered, as well as taxes for publicity purposes.

After complying with this process, a company could be registered in Panama in four to seven business days.

## 3.3 Ongoing Reporting and Disclosure Obligations

Panamanian companies are legally required to report any changes to their corporate structure - such as modifications to share capital, corporate purpose, registered address, board of directors, or legal representation - by formalising such changes through a public deed and registering them with the Public Registry of Panama.

Entities operating in regulated sectors (eg, banking, securities) must disclose financial and shareholder information in accordance with sector-specific laws. In contrast, companies in non-regulated sectors (eg, real estate) are only required to disclose such information upon request by a competent authority during formal investigations.

Regarding beneficial ownership, Limited Liability Companies disclose their partners by default. Corporations, while benefiting from shareholder anonymity, must still report their ultimate beneficial owners through their resident agent to the Beneficial Ownership Registry, managed by the Superintendency of Non-Financial Entities, pursuant to Law No 23 of 2015 and Law No 129 of 2020.

This Registry is confidential and accessible only to competent authorities under specific legal circumstances, such as investigations related to money laundering or terrorism financing. Failure to comply with the disclosure of the beneficial owner, whether during the incorporation procedure or after any subsequent modifications, can lead to penalties as well as the resignation of the registered agent.

## 3.4 Management Structures

### Corporate Governance in Panamanian Entities

In Panama, Corporations are governed by two main bodies: the Shareholders' Meeting, which is the supreme authority, and the Board of Directors. Both bodies are required to issue prior notices for meetings, although such notice may be waived before or after issuance. These bodies typically operate independently, with the Shareholders' Meeting issuing directives or delegating authority to the Board.

Each shareholder is entitled to one vote per share, whether the shares are registered with or without par value, or bearer shares - provided the bearer presents the share certificate or complies with the bylaws.

The Board of Directors, composed of at least three individuals, is responsible for the management and administration of the company. It appoints officers (President, Secretary, Treasurer, etc) and may amend the bylaws unless otherwise restricted.

Corporations also designate a Legal Representative, who holds judicial and extrajudicial authority to represent the company before third parties.

In Limited Liability Companies, the supreme body is the Partners' Assembly, which may adopt resolutions in writing, whether the partners are present or not. This body directs the company, appoints or removes managers, and may amend the bylaws.

The Manager, who may be one or more individuals appointed by the partners, is responsible for the company's administration, convening partner meetings, and maintaining the partners' registry and corporate minutes.

## 3.5 Directors', Officers' and Shareholders' Liability

Under Panamanian law, directors are subject to limited liability but remain personally and jointly responsible for the diligent and lawful administration of the company. This duty applies both to the company and to third parties and is recognised in the legal frame-

work governing both corporations and limited liability companies.

The piercing of the corporate veil is an exceptional legal mechanism, applicable only by court order and following due legal process. It allows authorities to disregard the company's separate legal personality in cases of fraud or abuse, potentially extending liability to include criminal sanctions.

For instance, fraudulent insolvency or liquidation intended to defraud creditors may constitute a criminal offence under the Panamanian Criminal Code, punishable by five to ten years of imprisonment and disqualification from commercial activity.

These provisions reinforce the importance of transparency, good faith and legal compliance in corporate governance.

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

Panama's labour law is protective of employees, as established in the Political Constitution, which recognise labour as both a right and a duty.

The legal system acknowledges the employee as the more vulnerable party in the employment relationship, warranting safeguards to ensure fair treatment.

Collective bargaining agreements require prior union recognition and aim to balance employer-employee relations.

While employment contracts are typically formalised in writing, Panamanian law presumes the existence of an employment relationship in favour of the employee even in the absence of a written agreement, where one person provides a service to another providing there is legal subordination and economic dependence.

### 4.2 Characteristics of Employment Contracts

The key characteristics of employment contracts include the following.

- Written form: employment contracts must be in writing, with certain exceptions such as domestic or agricultural work. Nevertheless, it is strongly recommended that all employment relationships be formalised in writing. This is particularly important considering that the Labour Code provides that, in the absence of a written contract, the facts alleged by the employee are presumed to be true. This legal presumption may be used by the employee to distort the facts, potentially placing the employer at a disadvantage - or conversely, allowing the employer to impose excessive service obligations on the employee.
- Content requirements: the employment contract must include general information about both the employee and the employer, as well as details regarding the employee's dependents or family members. It must clearly define the services to be rendered, the place of work, the type of employment term (fixed-term, indefinite, or for a specific project), the work schedule, and the date and place of execution. The contract must be signed by both parties.
- Formality: employment contracts must be submitted for endorsement to the Ministry of Labour and Workforce Development, or to the corresponding Regional Labour Directorate based on the place of execution. This process ensures that the contract complies with all legal requirements and is duly stamped by the relevant authority.

It is important to note that failure to comply with a written contract may trigger legal presumptions in favour of the employee. While an employment contract always governs and formalises a labour relationship, the existence of such a relationship does not depend on a written contract in order to be legally recognised.

### 4.3 Working Time

Panamanian labour legislation does not establish a minimum number of working hours, which allows employers the flexibility to hire employees on a part-time or reduced-hour basis. However, the law does set a maximum working schedule, reflecting the principle that work must be compatible with the rest and well-being every human being requires. Maximum hours depend on the type of work schedule, as follows.

- Daytime work shifts: a maximum of eight hours per day and 48 hours weekly.
- Nighttime work shifts: a maximum of seven hours per day and 42 hours weekly.
- Mixed work shifts: a maximum of seven and a half hours per day and 45 hours weekly.

Nighttime and mixed work shifts are paid for as a daytime work shift.

### Overtime Regulation

Overtime refers to any hours worked beyond the employee's regular schedule. Overtime is regulated as follows.

- Voluntariness: overtime must be voluntary. While the employer may request additional hours, the employee must agree to provide the service beyond their regular schedule. The employee is not obligated to accept unless specific exceptions apply - such as emergencies, imminent risks to human life, or threats to the existence of the company or project. Collective bargaining agreements may also impose mandatory overtime in certain cases.
- Employer authorisation: overtime must be expressly/or tacitly authorised or requested by the employer. If an employee continues working beyond their regular hours without such authorisation, the employer could impose disciplinary measures on the employee.
- Meal breaks must be respected: employees are not required to work during their designated meal or rest breaks. If an employee is on a lunch break, the employer cannot demand that this time be used for overtime work.
- Recordkeeping and compensation: overtime hours must be recorded and compensated according to the time of day they are worked. Examples include:
  (a) day shift overtime: a 25% surcharge on the regular hourly wage up to 6.00pm;
  (b) night or extended mixed shift overtime: a 50% surcharge;
  (c) extension of the night shift or mixed shift that begins during the night period: 75%; and
  (d) holiday or mandatory rest day overtime: a 150% surcharge applies.

### Humanitarian Limits

For humanitarian reasons, there are limits to the number of overtime hours an employee may work: a maximum of three hours per day and nine hours per week. If these limits are exceeded, the employer must pay an additional 75% surcharge

There are also restrictions on overtime for minors under the age of 16, pregnant employees and for jobs that are inherently hazardous or unhealthy.

## 4.4 Termination of Employment Contracts

Termination of individual employment contracts is strictly regulated under the Labour Code and must fall within specific legal grounds, including death of the employee or employer, expiration of a fixed term, completion of a specific project, mutual consent, legal impediment, justified dismissal, or unjustified dismissal.

### Justified Dismissal

Justified dismissal is permitted for disciplinary, non-attributable or economic reasons. Employers must follow due process, which includes a written notice to the employee clearly describing the circumstances of the manner, time, and place of the alleged fault committed by the employee.

### Unjustified Dismissal

Unjustified dismissal is allowed under the Panamanian Labour Law; however, in addition to the acquired labour rights and severance, the following must be paid:

- for permanent employees with less than two years of service, one month of salary in lieu of notice; and
- for permanent employees with more than two years of service, three months of accrued wages, and 25% in compensation if the company is not up to date with contributions to the unemployment fund.

### Mutual Consent

Mutual consent must be in writing and cannot involve the waiver of acquired rights. Coercion is not acceptable, and the employee has the right to refuse the employer's offer.

### Resignation
Resignation can be voluntary or justified. In the case of resignation, the employee must issue a letter of resignation duly stamped by the Ministry of Labour; for voluntary resignation, 15 days' notice must be given to the employer.

### Severance and Seniority Premium
All employees with an indefinite employment contract are entitled to receive a seniority premium of one week's salary per year of service or its proportional amount, regardless of the reason for termination.

Severance compensation for employees with an indefinite employment contract who started employment after 14 August 1995 is calculated as follows:

- 3.4 weeks for every year worked or its proportional amount, during the first ten years; and
- every year thereafter shall be compensated with one week's wages for every year of service.

Severance compensation for employees with an indefinite employment contract who started employment before 14 August 1995 is calculated as follows.

- For less than one year of service, compensation is equivalent to one week's salary for every three months worked. Compensation must not be, in any case, less than one week's salary.
- For a labour relationship of one to two years, compensation is equivalent to one week's salary for every two months worked.
- For a labour relationship of two to ten years, compensation is equivalent to three weeks' salary for each year worked.
- For a labour relationship exceeding ten years, compensation is equivalent to one week's salary for each year worked.

For employees hired under a fixed-term contract, when the employment relationship is terminated without justified cause before the expiry of the employment contract, the employer will be legally obliged to pay the employee severance equivalent to the remaining salaries due until the end of the employment term.

### Collective Dismissal
Collective dismissal is permitted for economic reasons such as bankruptcy, reduced production, or depletion of resources, but requires prior authorisation from the Ministry of Labour. If no decision is issued within 60 days, the dismissal is deemed justified by law. The Ministry may intervene to protect employees and ensure business continuity.

If company assets are insufficient to cover labour obligations, the Ministry is responsible for determining and overseeing the liquidation of assets to satisfy employee claims.

## 4.5 Employee Representations
In Panamanian labour law, employees are not required to be represented by any individual or entity. However, if a labour union exists and the employee is affiliated with it, the union is authorised to represent the employee before the employer and/or the administrative labour authority.

If an employer intends to make decisions that collectively affect the workforce and a union is present, such matters must be submitted to the union for review. Furthermore, if the employer wishes to modify any terms previously established in a collective bargaining agreement, such changes must be negotiated with the union(s) representing the employees.

The union also has the right to negotiate a new collective bargaining agreement with the employer. The union, or a unified group of workers seeking to negotiate employment conditions or a collective agreement, must submit a written request addressed to both the employer and the administrative labour authority. If no agreement is reached, the labour authority may intervene to facilitate conciliation. Should conciliation fail, the workers have the legal right to initiate a strike. If both parties reach an agreement, a collective bargaining agreement will be executed.

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/ Employers

Based on their employment relationship, both the employee and the employer, are subject to income tax, social security's contributions and educational tax.

#### Income Tax

The employer is obligated to withhold income tax on behalf of the employee and remit it to the Panamanian Tax Authorities. The Panamanian legislation establishes that individuals will be subject to income tax at a progressive rate, as follows.

- An employee earning a salary of up to USD11,000 is exempt from paying income tax.
- An employee earning a salary ranging from USD11,000 to USD50,000 is subject to a 15% tax rate on the surplus.
- An employee earning a salary exceeding USD50,000 will be subject to a tax of USD5,850 for the first USD50,000 and a 25% rate on the surplus.

#### Social Security

The employer and employee are subject to the paying social security. Employers must contribute 13.25% of the salary of each employee, and employees must contribute 9.75%. With the recent change in law, the percentage of contribution by the employer will rise to 15.25% of the salary of each employee.

Additionally, the law provides for the payment of professional risk insurance which must be paid by the employer at a rate of 0.56% up to 5.67%.

#### Educational Tax

The educational tax is divided between the employer and the employee, with the employer being obliged to contribute 1.50% of the employee's salary and the employee contributing 1.25% of their salary.

Both social security and educational tax contributions should be withheld by the employer.

### 5.2 Taxes Applicable to Businesses

Companies operating in Panama may be subject to several taxes, including the following.

- Corporate Income Tax: companies must pay a 25% tax on their net taxable income.
- Dividend Withholding Tax: when a company distributes dividends or profit shares to its shareholders or partners, it must withhold:
  (a) 10% if the income is from Panamanian sources; and
  (b) 5% if the income is from foreign or tax-exempt sources (eg, export activities).
- Complementary Tax: if a company is subject to dividend tax but does not distribute at least 40% of its after-tax income, it must pay a 4% complementary tax on its net earnings. If the applicable dividend withholding rate is 5%, and the company distributes less than 20% of its after-tax income, the complementary tax is 2%.
- Withholding Tax on Payments to Non-Residents: payments made by Panamanian companies to non-residents for services, royalties, licences, or similar charges are subject to a 12.5% withholding tax, provided the expense is deductible for income tax purposes in Panama.
- Value Added Tax (VAT): VAT applies to imports, transfers of tangible goods located in Panama, and services rendered within Panama, regardless of where the contract is signed or where the payment originates. The standard VAT rate is 7%.
- Passive foreign-source income: Law No 526 of 2026 introduces an exceptional tax regime applicable to certain categories of passive foreign-source income when such income is received by entities incorporated under Panamanian law, which are members of multinational groups, and which fail to demonstrate that they possess adequate economic substance in the Republic of Panama. It provides for the application of a 15% rate on the net taxable income for the relevant fiscal period, without giving rise to any additional tax, without prejudice to the provisions contained in Article 733 of the Fiscal Code.

### 5.3 Available Tax Credits/Incentives

Panama has a number of special regimes which offer a variety of tax credits and incentives designed to

attract foreign investment, promote economic development and support specific industries. Some of these regimes are outlined below.

### Free Trade Zones

Free Trade Zones are designated areas within Panama where domestic and foreign companies can establish operations in different sectors, including higher education centres, scientific research centres, specialised centres for the provision of health services, high-tech enterprises, assembly enterprises, finished or semi-finished product processing enterprises, service enterprises, environmental service companies, general service companies, logistics service companies, and manufacturing companies.

Currently, there are 16 Free Trade Zones in Panama and six in development, focusing on various industries. Companies established in the Free Trade Zones can benefit from tax, immigration and labour incentives.

### Colón Free Zone

The Colón Free Zone is a free trade zone located at the Atlantic entrance of the Panama Canal. Companies established in the Colón Free Zone are primarily dedicated to the international purchase and sale of merchandise, forming a distribution centre from Asia to countries in South America, the Caribbean and Central America.

The most common activities of companies established in the Colón Free Zone are the import, export and re-export of merchandise received in large, duty-free volumes, which is subsequently repackaged, labelled, assembled, manufactured and reshipped in smaller quantities to customers.

The Colón Free Zone offers tax, immigration, labour and corporate advantages to companies establishing themselves in this zone. Some of the tax benefits are tax exemption on imports, re-exports, and manufacturing goods, tax exemption on re-export income, etc.

### Panama Pacifico Regime

The Panama Pacifico Regime supports the development of an international business centre, attracting large multinational companies, logistics services companies, various commerce and general industries. The main objective of this regime is to attract foreign direct investment and create jobs in Panama. The Panama Pacifico Regime offers customs, immigration, labour and tax benefits to companies involved in logistics, maritime and airport services, high technology, call centres and shared services, among others.

The development of economic activities under the Panama Pacifico Regime will be open to nationals and foreigners. The requirements, criteria and review procedures for registration applications will be applied in a fair, transparent and equitable manner to all applicants, through non-discriminatory commercial treatment, respecting the principles of free competition and free market access.

### Multinational Companies Headquarters (SEM) Regime

The SEM regime aims to encourage multinational business groups to establish their reginal and global operations centres in Panama. The Multinational Companies Headquarters is an office with management control in the region, providing services from Panama to related companies (parent, subsidiaries or affiliates) in other countries.

To apply to this regime, the company's business group must have assets equal to or greater than USD200 million; or must provide services to at least seven subsidiaries of the group. The SEM regime offers tax, immigration and labour benefits. In terms of immigration and labour benefits, there is no limit on the hiring of foreigner workers under the SEM regime. Expatriates will be exempt from income tax, mandatory social security affiliation and are eligible for a special SEM visa. Moreover, the SEM regime grants a fixed income tax rate of 5%, services provided to business groups are exempt from VAT, and there is an exemption from paying withholding dividend tax and complementary tax.

### Multinational Companies for the Provision of Services Related to Manufacturing (EMMA)

Companies, whether foreign or domestic, can apply to the EMMA regime, provided they operate from Panama to provide services to their parent company or to

their subsidiaries, affiliates, or companies associated with entities of the same group.

These companies must provide services related to:

- manufacturing, assembly, maintenance and conditioning products, machinery and equipment, product development, research, or innovation;
- analysis, laboratories, testing, or other services related to manufacturing; and
- logistics such as storage, deployment, and distribution centres for components or parts.

Any company interested in applying for the benefits granted by this special regime must apply for the relevant licence from the Technical Secretariat of the Multinational Enterprise Licensing Commission.

By holding a licence under the special regime for the establishment and operation of multinational companies for the provision of manufacturing-related services, the company enjoys a series of immigration, labour and tax benefits. Moreover, the SEM regime grants a fixed income tax rate of 5%, services provided to business groups are exempt from VAT, and there is an exemption from paying withholding dividend tax and complementary tax.

### City of Knowledge

The City of Knowledge is an international community made up of academic organisations, technology companies, and non-governmental organisations. The City of Knowledge is a knowledge platform focused on enhancing the innovative and competitive capabilities of the conglomerate's users. It also facilitates access to a series of benefits and services tailored to user needs.

This regime grants tax benefits such as:

- exemption from all taxes, contributions, rates, or import duties on machinery, equipment, furniture, vehicles, artifacts, and supplies necessary for the development of the project;
- exemption from the Tax on the Transfer of Personal Property (local VAT) on machinery, equipment, vehicles, artifacts, and supplies acquired and necessary for the development of the project;
- exemption from the Real Estate Tax on property of this nature owned by City of Knowledge;
- exemption from any tax, fee, duty, or levy levied on the remittance of funds abroad, when such remittance or transfer of funds is carried out for the purposes of the project; and
- innovative companies that produce, assemble, or process high-tech goods or provide similar services in technology parks that may be destined for sale in the local or international market will enjoy the following benefits:
  (a) their activities, operations, transactions, procedures, and transfer of movable and immovable property, the purchase and import of construction equipment and materials, raw materials, equipment, machinery, tools, accessories, supplies, and all goods or services required for their operations, including capital, will be exempt from direct national taxes, including taxes on patents or licences.

## 5.4 Tax Consolidation

In Panama, tax consolidation is not available or applicable, as it is in order jurisdictions. In Panama, each operative company is obliged to prepare and file the income tax return and pay the corresponding taxes.

## 5.5 Thin Capitalisation Rules and Other Limitations

Currently, in Panama there are no capitalisation rules or exact equivalent rules. However, Panama has adopted Transfer Pricing rules, under the local legislation. There is also a restriction on the interest deductibility, ie, only interest related to the operation of the business is deductible. If the loan is used for investments outside of Panama, the interest will not be deductible.

## 5.6 Transfer Pricing

Panama applies transfer pricing rules. Cross-border intercompany transactions conducted by Panamanian taxpayers are subject to transfer-pricing obligations if the transactions result in income, costs or expenses that are considered in the determination of taxable income.

The transfer pricing rules are based in the arm's length principle established in the Organization for Economic

Co-operation and development (OECD) Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

An annual statement of transactions (Form 930) with related parties must be submitted to the tax authorities within six months of the end of the fiscal year. In addition, taxpayers must prepare a transfer pricing study and make it available to the tax authorities. If the Form 930 is not filed, a 1% fine capped at USD1 million applies to the gross amount of the transactions with related parties.

### 5.7 Anti-Evasion Rules

According to the Tax Procedure Code, the Panamanian Tax Authorities may disregard the adoption of legal forms when premeditated acts are carried out with the sole purpose of avoiding the payment of taxes or obtaining some type of tax advantage, thereby violating the obligation to contribute with sufficient will and knowledge.

Moreover, Panamanian legislation defines tax avoidance as the performance of acts or transactions for a purpose other than that established by law, and with no justification other than to reduce the tax burden of the person performing them, including to obtain undue tax credits, or, in general, some tax benefit in violation of the tax law.

### 5.8 Tariffs

Currently, Panama uses the Harmonized System (HS) to classify goods, and a large portion of products have low or zero tariffs. Panama participates in free trade agreements, such as the Trade Promotion Agreement with the USA and the Agreement with the EU, allowing for preferential tariffs.

In Panama, the highest tariffs apply to agricultural products and some industrial goods, and the tariffs applicable can range from 15% to 30%.

## 6. Competition Law

### 6.1 Merger Control Notification

Under the Consumer Protection and Competition Defense Law, mergers and acquisitions must be notified in cases that qualify as an economic concentration. To be considered as such, the merger or acquisition must occur between suppliers or potential suppliers, customers or potential customers, or other economic agents that are actual or potential competitors.

When assessing the impact, consideration may be given to whether the merger or acquisition promotes or includes, as part of its objectives, the increase in production or distribution of goods and/or services in the local or global market, stimulates technical or economic progress, or fosters the competitive development of an industry or sector. In such cases, the benefits must be verifiable.

Economic concentrations whose effects are or may be detrimental to free economic competition in the country are prohibited.

However, the notification system in Panama is voluntary and not mandatory to complete a transaction. Nevertheless, if an economic concentration has not been the subject of prior verification, the Authority might initiate an investigation within three years following the closing date of the transaction.

### 6.2 Merger Control Procedure

In Panama, there is no specific statutory deadline for the notification of mergers and acquisitions under the framework of competition and consumer protection law.

The economic agent may submit a notification of the economic concentration to the authority prior to its entry into effect - that is, before the merger or acquisition is completed.

The interested party must submit the notification in writing, accompanied by a copy of the relevant legal instrument, whether it concerns a merger or an acquisition.

Within 20 days of receiving the notification, the Consumer Protection and Competition Defense Authority may request additional documentation. The Authority then has 70 days from the date of receipt of the notification - or from the date on which additional infor-

mation or documents are received, as applicable - to issue its resolution.

As part of the review process, the competent authority will examine the financial statements of the parties involved in the transaction, copies of relevant business valuation or investment projection documents, and a description of the goods and/or services produced or offered by each economic agent, among other requirements, to ensure that the economic concentration does not adversely affect the market.

In this regard, the authority will assess the market share of the participating agents within the relevant market in relation to their competitors and customers, the likelihood that the concentration may restrict free competition, or whether it may facilitate unilateral price increases without current or potential competitors being able to effectively counteract such market power.

### 6.3 Cartels

Anti-competitive practices are regulated under Law No 45 of 2007 and include the following:

- any intentional or wilful act that creates confusion regarding the services or commercial or industrial activities of a competitor;
- any false statement made during trade that discredits the commercial or industrial activities of a competitor;
- any deceptive action intended to divert, for personal benefit or that of another, the clientele of a business or industry;
- any misleading indication that may confuse or deceive consumers regarding the origin, characteristics, production process, method of use, or the quality, quantity, or cost of a seller's goods or services; and
- any other act that, by any means, results in a restriction of trade, a reduction in production aimed at increasing prices, or the establishment of uniform prices or rates for products and services, to the detriment of fair competition and consumer welfare.

### 6.4 Abuse of Dominant Position

Article 16 of Law No 45 of 2007 prohibits unilateral acts, combinations, arrangements, or agreements that have the purpose of unreasonably displacing other competitors or preventing their access to the market, in the following cases:

- between economic agents that are not competitors, the fixation, imposition, or establishment of the exclusive distribution of goods or services, by reason of the subject, geographic location, or for a determined period of time;
- the imposition or fixing of prices;
- the sale or transaction conditioned upon the purchase, acquisition, sale, or provision of another additional good or service;
- the sale or transaction being subject to the condition of not using or acquiring, selling, or providing goods or services produced, processed, distributed, or marketed by a third party;
- unilateral conduct consisting of refusing to sell or provide to certain people goods or services that are available and normally offered to third parties;
- any act that unreasonably damages or impedes the process of free economic competition and free market participation in the production, processing, distribution, supply, or commercialisation of goods or services; and
- any other cases set forth and regulated under Panamanian law.

## 7. Intellectual Property

### 7.1 Patents

Patents are granted to those inventions that are patentable subject matter and meet with the requirements of novelty and non-obviousness. The procedure is requested before the General Directorate of Intellectual Property (DIGERPI) accomplishing with all the required documents which, if the documents are issued abroad, must be duly apostilled and translated into Spanish by an authorised public translator.

Panama is a member of the Patent Cooperation Treaty (PCT), therefore international applications are allowed. During the national phase from a PCT application, the same requirements and procedure as with any other

PCT member state will apply. There is no extension to the deadline for entering the national phase in Panama.

### Protection Term and Supplementary Protection

Patents are granted for 20 years. This term is not extendible, unless the DIGERPI has incurred an imputable delay in the application process and the applicant files a request for supplementary protection within the six months of obtaining the patent.

If the application procedure lasts more than five years from the filling date or three years from the date of the request for a substantive examination, this will be considered an imputable delay to the PTO. Supplementary protection will depend on the specific case and delay and, in any case, will not be granted for more than seven years and six months.

### Remedies

Patents grant the right to the rightsholder to prevent third parties from:

- manufacturing the product;
- promoting, offering for sale, using, importing or storing the product for any of these purposes, including when patented procedures are used to obtain a product; and
- use the patented process.

Panamanian law establishes civil and criminal remedies in the case of patent infringement. The civil procedure for patent infringement is handled under a special procedure established in the Industrial Property Law. The Criminal Code establishes a penalty of four to six years for patent infringement. While cease and desist letters are not binding or recognised by law, they are commonly used in practice and are acceptable.

## 7.2 Trade Marks

Industrial property law has a wide scope when classifying distinctive signs that might be protected by trade marks such as words, images, 3D forms, colours, sounds, colours or flavours, indication of origin and geographical indications.

### Application Process

Trade mark application is handled at the Directorate of Intellectual Property (DIGERPI). Since Panama is a member of the Trademark Law Treaty, the process does not require major formalities, for example a soft copy without any legalisation of the power of attorney is sufficient for the application. Availability searches are not mandatory, but are highly recommended.

After submitting application, it usually, takes between nine to 12 months to obtain a trade mark in Panama. The application will first undergo an examination of the form and subject matter requirements, during which the examiner can issue a request to amend the application or a rejection if there is a lack of subject matter or if the trade mark incurs one of the causes that impedes protection. In the case of a rejection, the applicant can request a reconsideration before the same examiner or appeal to the decision to the Minister of Commerce and Industry.

If no rejection or request to amend is filed, the application will be published for two months, which commences the opposition procedure. After publication, any third party that considers their right, whether registered or not, is affected by the application, has the right to file an opposition. Once an opposition is filed, this procedure will be resolved in the Judicial branch in the Commerce and Competition Courts. Opposition proceedings may take a minimum of one year to be resolved.

If there is no opposition within the opposition term, the trade mark will be granted for a period of ten years, renewable for the same period. Renewal must be done before the expiration date, if not a grace period of six months is granted. Failure to comply with this period will result in the expiration of the trade mark.

It is important to note that applicants might apply for a trade mark for a period of five years instead of ten years.

### Special Registrations

Even though the trade mark registration is given by the PTO, it is important to also register the trade mark in key zones and authorities to proactively tackle coun-

terfeit products within the commerce or importation, exportation or transit throughout Panama.

Registration of the trade mark title, as well as specimens of the products, with the Trade Zones and the National Authority of Customs enables entities to promptly identify counterfeit products and to stop them before they reach their destination or enter Panamanian commerce. Once the products are seized, the trade mark owner can start a counterfeit procedure in Panama. It is important to note that not having registered the trade marks in these authorities will not affect the ability of the trade mark owner to take measures against counterfeits, however, such a measure provides another source of enforcement.

### Remedies

All remedies in Panama are resolved in the judicial branch in the Commerce and Competence Courts. Cease and desist letters are commonly used but not recognised by law. Trade mark owners are able to start procedures such as infringement procedures, cancellation actions for non-use and nullity procedures. Also, non-authorised use of a trade mark and/or copying constitute a crime under the Criminal Code, which could be subject to prosecution.

## 7.3 Industrial Designs

In Panama, industrial designs and models are recognised and protected under the Industrial Property Law.

These two categories differ primarily in their dimensional characteristics. Both are eligible for legal protection provided they meet the statutory requirements.

An industrial model refers to any three-dimensional form that serves as a prototype or pattern for the manufacture of an industrial product, giving it a distinctive appearance. Meanwhile, an industrial design, on the other hand, consists of any combination of figures, lines or colours incorporated into an industrial product for ornamental purposes.

To qualify for protection, both must meet the criteria of novelty and industrial applicability. If these conditions are met and the design or model has been disclosed without prior registration, it will be granted a protection period of three years from the date of its first disclosure in Panama, what is known as unregistered industrial designs.

Additionally, protection may be obtained through formal registration, which grants exclusive rights for a period of ten years from the filing date in Panama. Upon request by the rights holder, this term may be renewed for an additional five years.

## 7.4 Copyright

Copyright law is primarily focused on works of a literary, scientific or artistic nature. It is a declarative process rather than a constitutive one, meaning that rights arise from the creation of the work itself and not from its registration.

The duration of copyright protection depends on the type of work; however, as a general rule, it is recognised for the lifetime of the author and for 70 years following their death.

All remedies in Panama are resolved in the judicial branch in the Commerce and Competence Courts. Cease and desist letters are commonly used but not recognised by law. Copyright owners are permitted to start infringement proceedings in the civil and criminal branch.

## 7.5 Others

The intellectual property protection applicable to software in Panama is governed by Law No 64 of 10 October 2012. This statute regulates copyright and related rights. Chapter II of the Law specifically addresses computer programs (software) and provides that they are protected under the same terms and conditions applicable to literary works. Furthermore, the Law establishes that such protection extends to any successive versions of the software, as well as to any derivative works created from it.

In addition, Law No 35 of 10 May 1996, which establishes provisions relating to industrial property, provides in Article 1 that one of its purposes is the protection of, among other rights, industrial and trade secrets.

In this regard, Title IV of said Law, entitled “Industrial and Trade Secrets,” provides that an industrial

or trade secret is any information of an industrial or commercial nature that is maintained as confidential by a natural or legal person, which enables such person to obtain or maintain a competitive or economic advantage over third parties in the conduct of business activities, and with respect to which sufficient measures or mechanisms have been adopted to preserve its confidentiality and restrict access thereto.

## 8. Data Protection

### 8.1 Applicable Regulations

Data protection is regulated under Law 81 of 2019, which is further regulated by the Executive Decree 285 of 2021. Data privacy laws in Panama describe data as any source of information that identifies or makes identifiable a natural person. The scope of application applies either to public and private entities, whether they are lucrative or not, as well as any other person involved in data treatment.

#### Scope of Application of the Data Privacy Law

The Data Privacy Law applies to all databases domiciled in the Republic of Panama, as well as to any processing activities carried out by data controllers domiciled in Panama. The Law establishes the guiding principles, data subject rights, lawful bases for processing, rules on data transfers, and exceptions applicable to the processing of personal data.

#### Lawful Bases for Data Processing

The processing of personal data shall be deemed lawful if it is based on one of the following legal grounds:

- the data subject expresses consent;
- processing is necessary for the performance of a contract to which the data subject is a party;
- processing is necessary for compliance with a legal obligation to which the data controller is subject; or
- processing is authorised by a special law or by regulations issued pursuant thereto.

#### Data Subject Rights (ARCO Rights)

Panamanian legislation recognises the following rights of data subjects, commonly referred to as ARCO rights.

- Right of Access – to obtain confirmation as to whether personal data concerning them is being processed and to access such data.
- Right to Rectification – to request the correction of inaccurate or incomplete data.
- Right to Erasure (Cancellation) – to request the deletion of data when it is no longer necessary or is being processed unlawfully.
- Right to Object – to object to the processing of their data on legitimate grounds.
- Right to Data Portability – to receive their personal data in a structured, commonly used, and machine-readable format and to transmit it to another controller.

The data controller must ensure that the exercise of these rights is facilitated in a free and easily accessible manner. Depending on the nature of the request, the controller must respond within five to ten business days.

#### Data Transfers

The transfer of personal data, whether domestic or cross-border, is permitted if it is carried out under one of the lawful conditions established by law. These include, among others:

- the data subject's consent;
- the recipient country ensures an adequate or higher level of data protection; and
- the transfer is made to an entity within the same corporate group as the data controller, provided that the purpose of the processing remains the same.

In the case of intra-group transfers, it is essential to implement appropriate safeguards to ensure compliance with data protection regulations. Such measures may include maintaining records of transferred databases, adopting Binding Corporate Rules (BCRs), or implementing other enforceable self-regulatory mechanisms.

### 8.2 Geographical Scope

Unlike other jurisdictions, Panamanian data protection regulations apply exclusively to databases domiciled within the territory of the Republic of Panama or in

cases where the data controller is domiciled in Panamanian territory.

However, it is important to note that the protection of personal data is also enshrined at the constitutional level, through the recognition of the right of access to information, the inviolability of correspondence, and the constitutional remedy of habeas data.

Failure to comply with personal data protection provisions may result in administrative fines ranging from USD1,000 to USD10,000.

### 8.3 Role and Authority of the Data Protection Agency

In Panama, the competent authority responsible for overseeing compliance with data protection regulations is the National Authority for Transparency and Access to Information (*Autoridad Nacional de Transparencia y Acceso a la Información* – ANTAI), acting through its Directorate for the Protection of Personal Data.

This entity plays a fundamental role in monitoring adherence to data protection laws and holds administrative sanctioning powers to enforce compliance.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

By means of Law No 508, dated 12 February 2026, the approval of the agreement between the government of the Republic of Panama and the government of the Republic of Ecuador for the exchange of information on tax matters (hereinafter, "Law No 508 of 2026") was enacted.

Among the information contained in Law No 508 of 2026 that the authors consider to be of relevance, the following may be noted.

- All information that is foreseeably relevant for the determination, assessment, and collection of taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax-related matters.
- The applicable taxes in accordance with each jurisdiction are as follows:
  - (a) Republic of Panama: all national taxes. Notwithstanding the foregoing, this shall not apply to taxes imposed by municipalities or other political subdivisions.
  - (b) Republic of Ecuador: Income Tax and other taxes whose collection is the responsibility of the Central Government.
- This Agreement shall have effect with respect to tax matters for all fiscal periods commencing on or after 1 January of the calendar year immediately following its entry into force. Notwithstanding the foregoing, the contracting states may request information relating to the six fiscal years preceding the date of entry into force of the Agreement.

# Trends and Developments

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**BDO Legal Panama** is a leading professional services firm with over 35 years of experience in the Panamanian market. As a member of the BDO international network, present in over 160 countries, BDO Legal Panama offers a comprehensive suite of services including audit and assurance, tax, legal, advisory, and business outsourcing. The firm is known for combining global standards with extensive local expertise, providing tailored solutions to clients across various industries such as construction, technology and consumer goods. The firm is recognised for its client-centric approach, multidisciplinary teams, and commitment to innovation and efficiency.

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## The New Tax Framework for Foreign-Source Passive Income

### *Background*

On 30 April 2026, the Ministry of Economy and Finance of the National Government of Panama (MEF) filed Bill No 641 of 2026, before the National Assembly of Deputies, entitled "Which Modifies and Adds Provisions to the Fiscal Code Regarding Income Tax, Establishes Economic Substance Requirements for Certain Categories of Passive Foreign-Source Income, and Provides Other Provisions" (hereinafter "Bill 641").

The proposed reform was subject to multiple exchanges, debates, and contributions at the level of the Public Finance Committee of the National Assembly of Deputies during its first debate and represents a significant structural change to the traditional principle of territoriality, considering that such income has historically not been subject to taxation in Panama. It introduces a differentiated regime based on the demonstration of adequate economic substance in the country.

Likewise, Bill 641 was discussed, analysed, amended, and approved in its second debate, where, primarily, various economic sectors were included as excluded from the special regime applicable to passive income, considering that, in theory, they are subject to prudential supervision by other governmental regulatory entities, such as the Superintendency of Banks, the Superintendency of Insurance and Reinsurance, and the Superintendency of the Securities Market. Similarly, an exclusion was established for the Panamanian merchant marine, which is subject to supervision by the Panama Maritime Authority. The Bill was subsequently approved in the third debate before the Plenary of the National Assembly of Deputies on 27 May 2026.

Finally, Bill 641 was sanctioned by the Executive Branch on 28 May 2026, resulting in its enactment in the Official Gazette of the Republic of Panama as Law No 526 of 28 May 2026, "Which Modifies and Adds Provisions to the Fiscal Code Related to Income Tax and Economic Substance for Certain Passive Foreign-Source Income" (hereinafter "Law 526")

### *What does the exceptional tax regime on passive foreign-source income consist of?*

Law 526 introduces an exceptional tax regime applicable to certain categories of passive foreign-source income when such income is received by entities (corporations, limited liability companies, or private interest foundations) incorporated under Panamanian law, which are members of multinational groups and which fail to demonstrate that they possess adequate economic substance in the Republic of Panama. It provides for the application of a 15% rate on the net taxable income for the relevant fiscal period, without giving rise to any additional tax, without prejudice to the provisions contained in Article 733 of the Fiscal Code.

For purposes of determining net taxable income for the relevant fiscal period, costs and expenses necessary for the generation, preservation, and maintenance of income - duly documented and directly related to the generation of passive foreign-source income - shall be deductible from gross income, in accordance with general rules

### *What income is subject to the new tax regime established under Law 526?*

The following categories of passive income are subject to this tax: "dividends, interest, royalties, capital gains, real estate capital income, and other movable capital income, provided that such income is derived from assets located or rights economically used outside the national territory," that is, what has historically been referred to as extraterritorial or offshore activities. Law 526 defines the principal activities of these entities as "the generation, administration, control, acquisition, preservation, exploitation or disposition of passive foreign-source income, the execution, direction or effective control of which must be carried out in the Republic of Panama by the entity itself or through outsourcing," in accordance with the conditions provided therein.

Failure to demonstrate economic substance shall result in the classification of the entity as a "non-qualified entity." Consequently, such income shall be subject to the exceptional tax regime provided in Law 526.

*What are the special rules applicable to income derived from intangible assets?*

With respect to income derived from the transfer or exploitation of intangible assets - such as patents, trademarks, copyrights, or similar rights - registered in accordance with Panamanian law but economically exploited outside the national territory, the reform introduces a technical mechanism allowing a portion of the net income to be classified as non-taxable or extraterritorial. Such partial exclusion shall be subject to compliance with specific registration, documentation, and proper accounting traceability requirements allowing for the reasonable substantiation of the determination made.

Failure to comply with these obligations shall result in the automatic classification of the entity as non-qualified, triggering the application of the exceptional tax regime to the entirety of the relevant passive income.

*What is the definition of a multinational group adopted for purposes of Law 526?*

For purposes of this new regulation, qualified or non-qualified entities, depending on whether they demonstrate the economic substance requirements set forth in Law 526, must belong to multinational groups, defined as a group of two or more entities, related through ownership or control (understood as distinct concepts), which are tax residents in different jurisdictions. This definition includes the parent company, its subsidiaries, and permanent establishments.

Certain specific rules are established for this determination:

- the entity is included in the consolidated financial statements of the group for reporting purposes under the accounting principles applied by its parent company;
- it would have been included had the parent company been required to prepare such financial statements; or
- it would be included in consolidated accounts if its participations were traded on a public securities market.

If the Panamanian entity is excluded from such consolidation due to size or materiality, it shall still be considered part of the multinational group for purposes of this regulation.

*Is it possible to demonstrate economic substance through outsourcing of certain functions and services?*

Law 526 allows the outsourcing of relevant functions for demonstrating economic substance, meaning that Panamanian entities may subcontract functions and activities to comply with this requirement.

However, this possibility is limited and subject to specific rules:

- activities related to maintaining adequate human resources; and
- operational costs and expenses necessary for the development of the entity's activities may be carried out by third parties, provided that such services are rendered within the territory of the Republic of Panama (ie, resources or means located outside the national territory shall not qualify).

For these purposes, the resources used by the provider to demonstrate adequate substance for an entity may not result in overlapping hours of such resources where services are provided to multiple recipients. The contracting entity must maintain effective supervision and control over the outsourced activities, duly supported by sufficient contractual, operational, and accounting documentation, and outsourcing outside the territory of Panama is expressly prohibited.

Non-compliance with this prohibition shall result, by operation of law, in the loss of qualified entity status and the application of the exceptional tax regime to the relevant passive income.

*What method to eliminate or mitigate double taxation does Law 526 provide with respect to taxes paid abroad?*

Panamanian entities within a multinational group that obtain passive foreign-source income may credit income tax or similar taxes paid abroad against the tax payable in Panama arising from the application of this special regime. Such foreign tax credit is limited to the maximum amount that would have been payable in Panama upon applying the 15% rate established

in Law 526. This credit shall not be subject to refund, assignment, or transfer under any title whatsoever.

*Which entities are excluded from the application of this special regime applicable to passive income?*
The regime excludes entities belonging to a multinational group that qualify as financial entities subject to supervision by:

- the Superintendency of Banks of Panama;
- the Superintendency of the Securities Market of Panama;
- the Superintendency of Insurance and Reinsurance of Panama; and
- any other competent financial supervisory authority in the Republic of Panama.

Likewise, entities engaged in the commercial operation of ships or vessels under Panamanian registry governed by the special merchant marine legislation, including ship owners, operators, and administrators, are also excluded. Such entities must demonstrate economic substance by complying with the following three conditions:

- being registered before the competent authority or authorised by the Panama Maritime Authority (AMP);
- carrying out activities supervised by the AMP; and
- foreign-source passive income subject to this exclusion must be directly and effectively linked to the regulated maritime activity, including returns derived from the placement of surplus cash, reserves, or guarantees associated with the operation of vessels or ships.

The regulation contemplates the possibility that the Ministry of Economy and Finance, in co-ordination with these supervisory authorities, may verify, at any time, compliance with the economic substance requirements applicable to these entities.

These exclusions are based on the premise that the aforementioned regulatory authorities have access to information regarding economic substance, personnel, assets, risks, resources, and expenses incurred by their regulated entities. However, it is clear that the supervisory approach of each sector differs, and in no way resembles the tax information upon which taxable net income is determined in accordance with the provisions of the Tax Code.

Therefore, it is highly likely that this exception rule may be challenged when Panama's status as a non-cooperative jurisdiction is reassessed at the European Union level. This is a specific technical tax matter, either the Panamanian Tax Administration has access to the information necessary to conduct an adequate audit of the taxation of such passive income, or it does not. To avoid this outcome, all exempt entities must comply with the same standard of inclusion and annual reporting of information, and such information must be made available in a uniform manner across each regulated sector.

*What are the new rules applicable to companies operating under special regimes and legal stability in Panama?*
Entities and companies incorporated under Panamanian law that are members of multinational groups, benefit from preferential tax regimes, and are required to file annual economic substance returns must also report to the General Directorate of Revenue (*Dirección General de Ingresos*- DGI), within their sworn income tax return, all income derived from foreign-source passive income and evidence their status as qualified entities.

Such substantiation shall require demonstrating adequate economic substance with respect to each asset generating foreign-source passive income, as an indispensable condition for such income not to be subject to taxation in Panama. Failing this, such income shall be subject to income tax as provided under Law 526.

*Why is an anti-abuse clause included in Law 526?*
A general anti-abuse clause is introduced, granting the Ministry of Economy and Finance the authority to disregard, through a duly reasoned resolution, any structure, arrangement, or legal form whose principal purpose, or one of its principal purposes, is to obtain a tax advantage that is contrary to the object and purpose of the regime applicable to foreign-source passive income.

In such cases, foreign-source passive income shall be subject to the 15% tax rate applicable to the fiscal period in which it was generated, without prejudice to the application of penalties, surcharges, and interest in accordance with the provisions of the Tax Code.

### *Why are the rules applicable to intermediaries and the permanent establishment regime in the Tax Code being modified?*

In line with the most recent amendments to the OECD Model Tax Convention, certain activities - such as the provision of services, the execution of works, the exploitation of resources, the use of equipment, or the performance of professional activities - may constitute a permanent establishment when carried out in Panama through an agent or representative authorised to contract in the name or on behalf of a foreign entity. Likewise, situations that previously did not constitute a permanent establishment due to the contractual status of an "independent agent" may now give rise to such status where such agent plays the principal role in the conclusion of contracts, provided that the economic substance and operational elements - such as assets, functions, and risks - indicate that these are effectively assumed by a contracting entity domiciled abroad.

### *What does the new obligation to file a foreign-source passive income return consist of?*

To strengthen audit and traceability mechanisms, entities or companies that are members of multinational groups, as defined under the new regulations, and that earn foreign-source passive income will be required to file an annual sworn return including such income. This obligation applies regardless of whether such income is deemed to be sourced within Panamanian territory, that is, even where no tax payment obligation arises, the obligation to report such income to the DGI remains.

Additionally, such entities must submit the necessary information to evidence compliance with the conditions demonstrating adequate economic substance for the relevant entity or company.

### *Final considerations*

In general terms, Law 526 entails a profound modification of the regime applicable to passive foreign-source income in Panama by introducing a substantial departure from the traditional principle of territoriality. These new rules shall become effective as of fiscal year 2027.

This new scenario effectively signals the end of the incorporation of shell entities with no real economic activity or role and will require companies with international corporate structures to comprehensively review their structures, outsourcing schemes, models for holding and exploiting intangible assets, as well as their compliance and documentation systems, in an environment characterised by a higher level of tax scrutiny and exchange of information.

In this context, preventive tax planning technically supported and aligned with these new legislative provisions, which respond to international standards on tax co-operation and exchange of information, will be essential.

# PHILIPPINES




## Trends and Developments

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**Cruz Marcelo & Tenefrancia** (CMT), established in 2013, is a leading full-service law firm in the Philippines recognised for its expertise in corporate and special projects, litigation and dispute resolution, intellectual property, and mining, natural resources and energy. The firm likewise maintains strong practices in M&A, capital markets and securities regulation, infrastructure, transportation and public utilities, taxation, labour and employment, telecommunications, data privacy, competition, financial technology, and family law. CMT adopts a multidisciplinary and collaborative approach, enabling its lawyers across various practice groups to work seamlessly in delivering strategic, practical and comprehensive legal solutions tailored to clients' needs. The firm represents a broad range of domestic and international clients, including major corporations, financial institutions and emerging enterprises. CMT's lawyers are consistently recognised for their excellence, professionalism and deep industry knowledge, earning commendations from clients, peers, and leading legal publications and directories both locally and internationally.

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## Legal Framework and Investment Landscape in the Philippines

### *Introduction*

The Philippines has emerged as one of South-East Asia's dynamic investment destinations, driven by a sustained programme of economic liberalisation, infrastructure modernisation, energy transition, and digital transformation. Over the past several years, the government has undertaken a series of legislative and regulatory reforms designed to enhance the country's competitiveness within the ASEAN region and position it as a strategic destination for foreign direct investment.

These reforms have coincided with broader geopolitical and economic developments that continue to reshape global investment flows. As multinational corporations reassess supply chains, and diversify manufacturing locations, the Philippines has increasingly attracted attention as an alternative investment hub. The country's large domestic market, strategic location, English-speaking workforce, and expanding middle class provide compelling fundamentals for long-term growth.

The Philippines also benefits from strong demographic advantages. With a population exceeding 110 million and a young, digitally connected labour force, the country offers both a substantial consumer market and a competitive talent pool for regional operations. At the same time, the government's continued focus on infrastructure development, energy security and digital connectivity has significantly improved the investment environment.

Most significantly, the Philippines has moved away from the traditionally restrictive approach that characterised many sectors of its economy for decades. Recent reforms have opened key industries to greater foreign participation, reduced regulatory barriers, and introduced a more commercially oriented framework for cross-border investment.

The Philippines is also beginning to position itself within the rapidly evolving artificial intelligence (AI) and digital infrastructure landscape. Policymakers have expressed growing interest in developing domestic AI capabilities, strengthening cloud and computing infrastructure, and supporting technology-driven innovation. While many of these initiatives remain at an early stage, they reflect a broader policy direction towards enhancing the country's role in the regional digital economy and attracting investment into technology infrastructure, data services and advanced computing capabilities.

As a result, the Philippine investment landscape in 2026 is defined not merely by market size and growth potential, but by a broader transformation towards liberalisation and integration with regional and global markets.

### *The Philippines' shift towards investment liberalisation*

The central feature of the Philippines' current investment story is its deliberate shift towards investment liberalisation. Long regarded as one of the more restrictive jurisdictions in South-East Asia with respect to foreign ownership, the country has undertaken a series of reforms aimed at expanding foreign participation in strategic sectors while maintaining safeguards for areas considered critical to national interest.

One of the most important reforms has been the amendment of the Public Service Act (PSA). Historically, an expansive interpretation of the constitutional concept of public utilities subjected numerous industries to a 40% foreign equity limitation. This framework constrained foreign participation in sectors that in many jurisdictions are open to international investment.

The amended PSA fundamentally altered this landscape by narrowing the definition of public utilities to a limited category of essential monopoly services. As a result, several industries previously subject to foreign ownership restrictions, including telecommunications, airports, railways, tollways, expressways and domestic shipping, may accommodate greater levels of foreign ownership, subject to applicable regulatory requirements and national security safeguards.

The reform significantly expanded foreign participation opportunities in infrastructure, transport, logistics and communications sectors. It has also created new possibilities for mergers and acquisitions, public-pri-

vate partnerships, greenfield developments and long-term institutional investments that were previously constrained by ownership limitations.

The liberalisation trend extends beyond infrastructure. The renewable energy sector has experienced a major transformation following policy clarifications allowing full foreign ownership of renewable energy projects. Historically, uncertainties surrounding constitutional restrictions on natural resource utilisation created practical barriers for foreign investors seeking to participate in renewable energy development.

The Department of Justice issued DOJ Opinion No 21, Series of 2022, which clarified that solar, wind, hydro and biomass energy projects may be wholly foreign-owned, opening the sector to international developers, infrastructure funds and institutional investors seeking opportunities in the energy transition. This reform is particularly significant given the Philippines' substantial renewable energy potential and growing demand for sustainable power generation.

The retail sector has likewise benefited from liberalisation. Amendments to the Retail Trade Liberalization Act lowered capitalisation requirements for foreign-owned retail enterprises, reducing barriers to entry for international brands and facilitating greater competition within the domestic consumer market. These reforms are expected to support continued growth in consumer spending while enhancing product availability and market efficiency.

Telecommunications has also undergone significant reform. Regulatory changes have facilitated greater foreign participation and increased competition in a sector that serves as a critical foundation for economic development and digital transformation. Although sector-specific licensing and regulatory requirements remain applicable, recent reforms have contributed to increased investment in telecommunications infrastructure and digital connectivity.

Complementing these ownership reforms is the government's continuing effort to improve the fiscal attractiveness of the Philippines as an investment destination. The CREATE MORE Act represents an important development in the country's investment incentive framework by enhancing fiscal predictability, streamlining the administration of incentives, and strengthening support for export-oriented and high-value industries. The reforms are intended to provide investors with greater certainty regarding long-term incentive availability while improving the competitiveness of the Philippines relative to other jurisdictions in the region.

A significant policy development reinforcing the Philippines' investment liberalisation agenda is the approval of the 2026 Strategic Investment Priority Plan (SIPP) under Memorandum Order No 47 issued in May 2026. As the government's principal roadmap for the grant of fiscal incentives under the CREATE MORE Act, the revised SIPP reflects a more targeted approach towards attracting high-value and innovation-driven investments. The 2026 SIPP places particular emphasis on sectors aligned with infrastructure modernisation, energy transition, advanced manufacturing, digital transformation, supply chain resilience, and emerging technologies. By identifying these areas as national investment priorities, the government has provided investors with greater visibility regarding the sectors expected to benefit from long-term policy support and incentive availability. The inclusion of advanced technology and digital infrastructure projects among the priority investment areas further underscores the Philippines' intention to position itself as a competitive destination for future-oriented industries and foreign direct investment.

For investors, these reforms collectively signal a broader policy direction. Rather than treating foreign participation as an exception, the Philippines increasingly views foreign capital, expertise and technology as essential components of long-term economic development.

### *Infrastructure and energy as key investment drivers*

Infrastructure and energy have emerged as two of the most important drivers of foreign investment activity in the Philippines. The government's infrastructure modernisation agenda continues to generate significant opportunities across transport, logistics, utilities and digital connectivity. Liberalisation measures under the PSA have expanded the range of sectors that may

attract substantial foreign participation, allowing global investors to pursue opportunities that were previously unavailable.

Transport infrastructure remains a priority area. Investments in airports, seaports, rail systems, toll roads and logistics networks continue to attract interest from infrastructure funds, strategic operators and institutional investors. These projects play a critical role in addressing historical connectivity constraints while supporting domestic commerce and regional integration.

Global supply chain diversification strategies have further enhanced the Philippines' attractiveness as an investment destination. As multinational companies continue to reassess production and distribution networks in response to geopolitical developments, supply chain resilience concerns and evolving trade dynamics, ASEAN jurisdictions have emerged as important beneficiaries of new investment flows. While countries such as Vietnam and Indonesia remain major recipients of manufacturing investment, the Philippines is increasingly positioning itself as a complementary location for electronics, logistics, technology-enabled services, and regional support operations.

The expansion of logistics infrastructure has become particularly important as global supply chains evolve. Manufacturers and distributors increasingly require integrated transportation, warehousing, cold-chain and distribution capabilities. The Philippines' growing role within regional supply chains has consequently increased demand for logistics investments that support both domestic consumption and export-oriented production.

Energy security and energy transition have likewise become central themes in the investment landscape. The Philippines faces the dual challenge of meeting growing electricity demand while reducing dependence on imported fuel and enhancing sustainability. Renewable energy development therefore occupies a central position within the country's long-term economic strategy.

The opening of the renewable energy sector to full foreign ownership has significantly increased investor interest in utility-scale solar, onshore and offshore wind, hydroelectric and biomass projects. International developers and infrastructure funds are actively evaluating opportunities across the country as demand for clean energy continues to rise.

Several factors support this momentum. First, multinational corporations increasingly seek access to renewable power as part of broader decarbonisation commitments and environmental, social and governance (ESG) objectives. Second, growing electricity consumption driven by industrial expansion, urbanisation and digital infrastructure creates substantial demand for new generation capacity. Third, government policy continues to prioritise renewable energy deployment as a means of enhancing energy security and reducing exposure to external supply shocks.

Infrastructure and energy investment are increasingly interconnected. Large-scale industrial developments, technology parks, manufacturing facilities and data centres require reliable power and transport infrastructure. As a result, investors frequently evaluate opportunities across these sectors as part of integrated development strategies rather than standalone projects.

The convergence of infrastructure modernisation and energy transition has therefore created a broad ecosystem of investment opportunities extending well beyond traditional public works projects. For many investors, these sectors represent the clearest manifestation of the Philippines' broader liberalisation agenda.

### *The growth of technology-enabled and digital businesses*

The rapid growth of the digital economy represents another defining feature of the Philippine investment landscape. Over the past decade, digital adoption has accelerated across virtually every sector of the economy. Consumers increasingly rely on digital platforms for payments, commerce, transportation, entertainment and financial services. Businesses have similarly embraced digital tools to improve efficiency, expand market reach and support innovation. This transfor-

mation has attracted substantial domestic and foreign investment.

Fintech remains one of the most active segments of the digital economy. Digital wallets, electronic payments, online lending, embedded finance solutions and alternative credit platforms continue to expand their presence in both consumer and commercial markets. Increasing financial inclusion and widespread mobile adoption provide significant opportunities for further growth.

Digital banking has also gained momentum as technology-driven financial institutions seek to expand access to financial services while improving customer experience. Foreign investors continue to participate through strategic partnerships, venture capital investments and technology collaborations.

At the same time, investment interest increasingly extends beyond consumer-facing applications towards the underlying infrastructure supporting the digital economy.

Data centres have emerged as a particularly significant area of growth. Rising demand for cloud services, digital content, enterprise technology solutions and AI-related applications has increased the need for local data storage and processing capacity. The Philippines' strategic location, growing digital economy and improving infrastructure have strengthened its attractiveness as a destination for data centre investment.

Cloud computing and hyperscale infrastructure have likewise become increasingly important components of the digital economy. As businesses continue to digitise operations and migrate workloads to cloud environments, demand for reliable digital infrastructure continues to expand. International technology companies increasingly view South-East Asia as a critical growth region, creating opportunities for investment across the broader digital infrastructure ecosystem.

The growing policy focus on artificial intelligence further reinforces this trend, with the government's interest in developing domestic AI capabilities. Recent policy discussions concerning AI infrastructure, advanced computing capacity and digital innovation reflect a broader effort to strengthen the country's competitiveness in emerging technology sectors. These developments underscore the increasing importance of computing infrastructure as a strategic asset within the broader digital economy.

From an investment perspective, initiatives such as Pax Silica highlight the increasing importance of computing infrastructure as a strategic asset. The development of AI capabilities requires substantial investments in data centres, high-performance computing facilities, cloud infrastructure, cybersecurity systems, fibre connectivity and reliable energy supply. Consequently, investors evaluating opportunities in the Philippines are increasingly examining the entire digital infrastructure value chain rather than focusing solely on software or platform-based businesses.

Telecommunications investment remains essential to supporting these developments. Continued expansion of fibre networks, mobile broadband coverage and digital connectivity infrastructure enhances the country's ability to participate in increasingly technology-driven economic activity.

However, the growth of technology-enabled businesses also creates regulatory challenges. Digital business models frequently blur traditional sectoral boundaries. A single platform may simultaneously provide financial services, technology services, marketplace functions, advertising services and data-driven products. Determining the applicable regulatory framework can therefore require careful analysis.

Cybersecurity and data privacy have become increasingly important considerations. Organisations that collect, process and store personal information must comply with the requirements of Philippine data protection laws while implementing appropriate governance and security measures.

As digital ecosystems become more sophisticated, investors must assess not only commercial opportunities but also the evolving regulatory environment governing technology, data and digital platforms.

### *Increased regulatory sophistication and compliance expectations*

As the Philippines becomes more attractive to international capital, regulatory expectations have become increasingly sophisticated. The investment environment is no longer characterised primarily by licensing requirements and administrative filings. Instead, regulators increasingly focus on transparency, accountability, risk management, and alignment with international standards.

One of the most notable developments has been the growing emphasis on beneficial ownership transparency. Corporate entities are subject to enhanced disclosure obligations designed to identify ultimate beneficial owners and improve transparency within corporate structures. These measures form part of broader efforts to combat money laundering, terrorism financing, tax evasion and other forms of financial crime.

Data privacy and cybersecurity have likewise become increasingly important areas of regulatory focus. As businesses collect and process growing volumes of personal and commercial data, regulators continue to emphasise compliance with data protection requirements, cybersecurity governance and responsible data management practices. For investors operating technology-driven businesses, data governance has become a key component of both compliance and enterprise risk management.

The continued growth of AI-enabled technologies and digital infrastructure is also expanding the regulatory conversation beyond traditional data protection concerns. Policymakers are increasingly examining issues relating to AI governance, algorithmic accountability, cybersecurity resilience, cross-border data flows and responsible deployment of emerging technologies. Investors participating in technology-intensive sectors should therefore anticipate continued regulatory development as the Philippines seeks to balance innovation objectives with consumer protection and public trust.

Anti-money laundering compliance continues to evolve alongside international standards and recommendations. Businesses operating in regulated sectors must increasingly implement comprehensive compliance programmes, conduct customer due diligence and maintain appropriate governance frameworks.

Competition regulation has also become a significant consideration for investors. The Philippine Competition Commission has established itself as an active regulator responsible for reviewing transactions that meet applicable notification thresholds. Competition analysis now forms an important component of transaction planning, particularly for large mergers, acquisitions and joint ventures. Early assessment of potential competition issues has become increasingly important, as regulatory review may affect transaction timelines, conditions and execution strategies.

ESG considerations likewise play an increasingly prominent role in investment decision-making. Institutional investors, lenders, multinational corporations and regulators are placing greater emphasis on sustainability, responsible business conduct, climate-related risks and stakeholder accountability. ESG considerations increasingly influence project financing, investment approvals, corporate governance practices and reporting obligations.

Regulatory co-ordination has also become more complex. Many investments require interaction with multiple government agencies, each possessing distinct mandates and regulatory priorities. Successful projects often depend upon comprehensive regulatory mapping conducted at an early stage of the investment process.

Consequently, compliance is no longer viewed solely as a legal obligation. Increasingly, it represents a strategic component of investment planning and risk management.

### *Strategic structuring considerations for investors*

As foreign participation opportunities expand, investors continue to place significant emphasis on transaction structuring and operational design. For long-term commercial operations, foreign investors frequently favour domestic subsidiaries. This structure provides operational flexibility, facilitates local contracting and asset ownership, and generally limits the exposure of

the foreign parent to liabilities arising from Philippine operations.

Although branch offices remain available and may be appropriate for certain business models, many investors prefer the flexibility and risk allocation advantages offered by a locally incorporated subsidiary.

Structuring decisions also require careful consideration of foreign investment regulations, capitalisation requirements, tax implications, incentive availability and sector-specific restrictions. While liberalisation has expanded investment opportunities, certain industries continue to be subject to ownership limitations or special regulatory requirements.

Export-oriented enterprises, technology-driven businesses and enterprises qualifying for investment incentives may benefit from regulatory and fiscal frameworks designed to encourage investment and job creation. Investors therefore increasingly evaluate structure, incentives and operational objectives as interconnected considerations rather than isolated decisions.

Transaction planning has also become more sophisticated. Investors routinely assess competition law implications, beneficial ownership disclosure requirements, tax considerations, data privacy obligations and ESG expectations during the structuring phase rather than after implementation.

In addition, businesses increasingly recognise the importance of workforce governance. Labour compliance, contractor arrangements, immigration requirements and employment practices remain important operational considerations, particularly for multinational employers establishing significant local operations.

The most successful investments are typically characterised by comprehensive planning that integrates commercial objectives with regulatory, tax, operational and governance considerations from the outset.

### *Conclusion*

The Philippines in 2026 presents a markedly different investment landscape from that of previous decades. A sustained programme of liberalisation has expanded foreign participation opportunities across infrastructure, energy, telecommunications, retail and other strategic sectors. At the same time, improvements in investment incentives, digital connectivity and regulatory modernisation have strengthened the country's competitiveness within South-East Asia.

Infrastructure development, energy transition and digital transformation continue to generate substantial opportunities for foreign capital. These trends are reinforced by favourable demographics, a growing consumer market, increasing regional integration, and evolving global supply chain strategies that position the Philippines as an attractive destination for long-term investment.

At the same time, investors must navigate an increasingly sophisticated regulatory environment characterised by heightened transparency requirements, competition oversight, ESG expectations, and cross-agency co-ordination. Success therefore depends not only on identifying commercial opportunities but also on implementing effective structuring, governance and compliance strategies.

Looking forward, the Philippines is well positioned to capitalise on regional growth, technological transformation and the global transition towards sustainable development. While constitutional and regulatory restrictions remain relevant in selected sectors, the overall direction of policy is increasingly clear: the Philippines is pursuing a more open, competitive and internationally integrated investment environment. For foreign investors seeking long-term exposure to South-East Asia's next phase of growth, the Philippines offers a compelling combination of market opportunity, liberalisation momentum and economic potential.

# POLAND




## Law and Practice

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**Clifford Chance** opened its Warsaw office in 1992 and today has a team of more than 110 lawyers, including ten partners. Most of its lawyers are qualified in Polish law, several are dual qualified, and all are fluent in Polish and English. The firm has close working relationships with major banks, financial institutions and corporates, and works with domestic and international clients. Polish companies value how the team uses the firm's resources on their behalf, and international companies rely on its local capability to deliver results. Clients can rely on the firm's technical excellence, pragmatic advice and client-focused approach.

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# 1. Legal System

## 1.1 Legal System and Judicial Order

Poland's legal system is based on the civil law tradition. The Polish legal system underwent substantial changes between 1989 and 2004, to accommodate the transition to a free-market economy and the implementation of EU legislation, and has continued to evolve.

The basic legislative framework for business activities in Poland is currently provided by the Civil Code of 1964, the Commercial Companies Code of 2000 and the Act on Entrepreneurs of 2018. The Act on Rules of Foreign Entrepreneurs' and Other Foreign Persons' Involvement in Trading in Poland of 2018 covers foreign investment.

### Courts

The Polish Constitution of 2 April 1997 vests judicial powers in:

- the Supreme Court;
- the common courts (district, regional and appeal courts);
- the administrative courts (provincial administrative courts and the Supreme Administrative Court); and
- military courts.

The judicial order is based predominantly on the common courts. The role of the administrative courts is to control the activity of the public administration.

Proceedings before a common court generally consist of two stages (although extraordinary cassation appeals to the Supreme Court are available in certain circumstances). The first stage of civil proceedings is conducted in a district court, whose rulings may be appealed before a regional court. However, where a case is heard by a regional court in the first instance, it is appealed before an appeal court.

The Supreme Court's role is to ensure uniformity and accuracy of interpretations of the law, and to issue opinions on statutes.

# 2. Restrictions on Foreign Investments

## 2.1 Approval of Foreign Investments

In general, foreign investment in Poland does not require special approval from the authorities. As a member state of the EU, Poland applies the principles of free movement of capital and non-discrimination. Therefore, investors from EU, European Economic Area (EEA) or European Free Trade Association (EFTA) member states may invest according to the same principles as Polish citizens, and are not treated as foreigners.

However, in order to enjoy the same rights as Polish citizens, foreign investors need to meet certain criteria, such as obtaining a residence permit in Poland. Otherwise (save for where international treaties provide differently), an investor may only participate in a limited liability company, joint stock company, limited partnership or partnership limited by shares.

Moreover, there are limitations on foreign equity participation with regard to some sectors of the economy, such as aviation and radio and television broadcasting.

### Limitations

Certain limitations apply regardless of the investor's origin, with regard to certain regulated activities where a concession, licence or registration in the register of regulated activities may be required. If so, the relevant regulatory bodies may be authorised to revoke licences for state security interest reasons. In some sector regulations, the regulators have the express right to revoke a licence upon change of control.

### Consents

Some consents may be required (eg, antitrust approval or consent of the Polish Financial Supervisory Authority to acquire certain stakes in a bank or certain other, regulated financial institutions), regardless of whether the investor is foreign or domestic.

The government may also veto investment in specific strategic Polish companies in protected sectors (the regulation currently applies to 23 named companies but may change at the government's discretion). The same restrictions apply to domestic investors invest-

ing in strategic Polish companies on the list, so this is not a typical foreign direct investment (FDI) regime.

### FDI Regime

The FDI regime was introduced in response to the COVID-19 pandemic and applies to the following foreign investors:

- in the case of natural persons – persons who are not citizens of an EU/EEA/OECD country; or
- in the case of other entities – entities that do not have their registered office in an EU/EEA/OECD country and/or entities that have not had their registered office in an EU/EEA/OECD country for at least two years.

This regime also applies to indirect acquisitions by foreign investors. The list extending the application of the rules is broad and includes the following in particular:

- acquisitions made through subsidiaries;
- acquisitions made at the request of a foreign investor (including acquisitions by investment portfolio managers made for their clients); and
- acquisitions made by entities acting in concert with a foreign investor.

An FDI transaction is one that results in a foreign investor acquiring:

- a stake equal to or greater than 20% or 40% of the total number of votes in a Polish company or, in the case of a Polish partnership, making a contribution to a Polish partnership equal to or greater than 20% or 40% of the total contributions in the partnership;
- a participation in the profit of a Polish company equal to or greater than 20% or 40%; or
- a significant participation in, or a dominant position over, a Polish company – eg, via the acquisition or lease of an organised part of the enterprise from a Polish company, through entering into a control (management) agreement and/or a profit transfer agreement in relation to a Polish company, or via the acquisition of a majority of votes in a Polish company.

If the FDI transaction concerns a company that operates in any "strategic" sectors or conducts "strategic" activities, it is subject to the FDI regime and requires prior clearance from the ministry responsible for economic affairs.

The regime affects the following:

- companies that conduct economic activity across a wide range of sectors, including energy, science, technology, telecommunications, medicine and food produce;
- companies active in the development or modification of software across sectors including energy, water, science, technology and commerce, food supply, and all software – regardless of sector – that is used for data gathering and processing;
- companies that own "critical infrastructure" (as defined in a separate act); and
- all Polish public companies listed on the Warsaw Stock Exchange, regardless of the sector in which they operate.

A de minimis exemption applies for Polish target companies with Polish revenue below EUR10 million in both of the two financial years preceding the notification. Furthermore, the Polish government is entitled to introduce additional exemptions.

### Permit to Acquire Real Property

The acquisition of real property (including the so-called perpetual usufruct right in real property) by foreigners requires a permit from the minister of the interior and administration. This restriction also applies to the acquisition of shares by a foreigner where this results in the takeover of control over a company owning real property and to the purchase of shares in a company owning real property that is a controlled entity. In general, agricultural land may only be purchased by individual farmers; all other entities must first obtain permission from the president of the National Agriculture Support Centre, and this is subject to the fulfilment of strict requirements.

Therefore, regulatory requirements, if any, must always be double-checked at an early stage of the preparations for a proposed investment.

## 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

### General

Where a permit issued by the minister of the interior and administration is required for the acquisition of real property or shares in companies that own real properties, acquisition without such a permit will be null and void. It may take several months to obtain a permit; the actual duration of the proceedings may vary depending on the circumstances.

In respect of certain sectors, where the formal consent of the regulator is not required but a change in the shareholding would trigger certain rights for the regulator, it is usually recommended, where feasible and practicable, for the proposed investor to introduce itself to the regulator before making the investment in order to determine whether the investment would raise any concerns for the regulator.

In addition, a failure to notify the acquisition of a dominant/significant participation in protected Polish companies listed by name in the governmental regulation could lead to both criminal sanctions (from six months to five years of imprisonment) and financial penalties (PLN100 million).

### FDI Regime

#### *Procedure*

The approval of the relevant authority is generally required prior to the completion of an FDI transaction (although in some instances the filing can be made only by the target entity after completion of the acquisition). The notification procedure should be commenced prior to:

- entering into any agreement resulting in an obligation to acquire or achieve a significant participation/dominance;
- the announcement of a tender offer for the acquisition of a Warsaw Stock Exchange-listed company; or
- any other event resulting in the acquisition or achievement of a significant participation/domination.

However, in a multi-stage transaction, notifications are accepted before the signing of the last agreement resulting in the acquisition or achievement of a significant participation/domination, on the basis of, for example, a conditional/preliminary agreement or a letter of intent.

Following the notification, the authority has 30 business days to complete the initial proceedings and approve the FDI transaction or initiate additional control proceedings, which may last up to 120 calendar days. However, the authority may extend this deadline substantially by asking questions, as the clock stops ticking each time the authority sends out its question, to resume only when the response is actually delivered to it. There is no pre-notification procedure.

### Sanctions

Any FDI transaction made in breach of the FDI regime will be null and void, and the investor will not be able to exercise its rights attached to the acquired shares (including any voting rights).

Non-compliance with the FDI regime constitutes a criminal offence subject to a penalty of imprisonment from six months to five years and a fine of up to PLN50 million. A penalty of imprisonment from six months to five years and a fine of up to PLN5 million may also be imposed on managers of target companies who fail to notify the authority of the shareholders' non-compliance with the FDI regime, and on those who attempt to exercise voting rights in breach of the FDI regime.

## 2.3 Commitments Required From Foreign Investors

While the authorities do not make approval conditional upon certain commitments, some commitments will usually be required if an investor (whether foreign or domestic) applies for state aid for its investment.

Certain regulators (eg, the Polish Financial Supervisory Authority) expect various specific commitments from both foreign and domestic investors who wish to acquire large stakes in regulated financial institutions.

## 2.4 Right to Appeal

There is no specific authorisation procedure; however, where licences, concessions and permits are required, they are granted in administrative proceedings, and any unsatisfactory decision may be challenged.

In contrast to regular competition law proceedings before the Polish Competition Authority (PCA) (where one may appeal to a special court), the FDI regime will follow the standard administrative appeal route; appeals will be decided by administrative courts.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

Foreign investors usually operate in Poland through one of the available domestic entities. However, it is not uncommon for investors (especially from the EEA) to register an overseas company as having a branch or representative office in Poland, without incorporating a new Polish legal entity.

The choice of an appropriate legal form usually depends on the nature of the contemplated business.

#### Most Common Forms of Legal Entities in Poland

*Limited liability company*

A limited liability company (*spółka z ograniczoną odpowiedzialnością*, or sp. z o.o.) is the most popular form of corporate vehicle in Poland, which can be established for nearly all business purposes, except in situations where the applicable law requires another form of legal entity (only a joint stock company can be listed on the stock exchange). The minimum share capital of a limited liability company is PLN5,000, and the nominal value of one share may not be less than PLN50. There is no minimum number of shareholders, so the company may have only one shareholder. However, the company may not be formed by another sole-shareholder limited liability company.

The governance structure includes the following corporate bodies.

*Management board*

The management board manages the affairs of the company and consists of at least one member appointed from among the shareholders or outsiders. Unless the articles of association provide otherwise, the members of the management board are appointed and dismissed by way of a resolution passed by the shareholders' meeting.

*Shareholders' meeting*

The shareholders' meeting makes the decisions on the company's most crucial affairs, as stipulated in the articles of association or in the Commercial Companies Code, which distinguishes between "ordinary" and "extraordinary" shareholders' meetings. The first must be held within six months of the end of each financial year and should adopt resolutions to approve:

- the management board report;
- the financial statement for the previous financial year;
- the distribution of profits or financing of losses; and
- the discharge of duties by members of the company's corporate bodies.

*Supervisory board*

A supervisory board or audit committee is optional as long as the company's share capital does not exceed PLN500,000 and there are no more than 25 shareholders; if appointed, it must be composed of at least three persons. The role of the supervisory board is to exercise day-to-day supervision over all areas of the company's activity. It may give the management board instructions, but they are not binding. The audit committee's duties are limited to reviewing the financial statements and the management board's motions to distribute profit and cover loss.

The shareholders of a limited liability company are not personally liable for the company's liabilities. The company is treated as a legal entity separate from its shareholders, so the shareholders may lose only their investment in the company.

A limited liability company is quite a flexible vehicle, suitable for numerous purposes.

*Joint stock company*

In general, a joint stock company (*spółka akcyjna*, or S.A.) is quite similar to a limited liability company in its three corporate bodies (the general meeting, the management board and the supervisory board), which share most characteristics and competences. The fundamental difference is that a joint stock company may raise its capital by public subscriptions and issue shares in the form of securities, so the form is usually used by businesses intending to raise capital through

an IPO or when Polish law requires this form of company (eg, in the case of financial institutions, banks, pension funds and insurers).

*Boards*

The management board deals with the company's affairs, and members are appointed and removed by the supervisory board, unless the statutes provide otherwise. Some issues listed in the Commercial Companies Code or the statutes require resolutions adopted by the general meeting.

A supervisory board is a requirement in a joint stock company. Its role is to monitor the company's activities and review the financial statement and management report on company activity. Its members are appointed by the general meeting, but the statutes may provide otherwise. In principle, the supervisory board acts collegially, but it may also delegate certain activities.

*Shareholders*

Shareholders are not liable for the company's liabilities. The minimum share capital of a joint stock company is PLN100,000, and the nominal value of one share may not be less than PLN0.01. All shares in joint stock companies are dematerialised (ie, no share certificates are in place). Each share transfer becomes effective upon registration in the shareholders' register, and shareholders are no longer able to remain anonymous.

There is no minimum number of shareholders, so the joint stock company may have only one shareholder. However, it may not be formed by a sole-shareholder limited liability company.

### *Simple joint stock company*

A simple joint stock company (*prosta spółka akcyjna*, or P.S.A.) is a new type of corporate vehicle. It is intended to be suitable for start-ups, as the founder will not be obliged to obtain the amount needed for share capital and the shares can be subscribed for in exchange for any contribution that has economic value, in particular the provision of labour or services (prohibited for other companies). It cannot, however, undergo an IPO.

*Governing bodies*

Corporate governance in a simple joint stock company may be based on either the two-tier model (similar to a limited liability company) or the one-tier model (only a board of directors is appointed, on which there are executive and non-executive directors).

*Shareholders*

The minimum share capital is PLN1 and all shares are dematerialised (ie, there are no share certificates). The shares have no par value, do not form part of the share capital and are indivisible. There is no minimum number of shareholders, so the simple joint stock company may have only one shareholder. However, similar to other Polish companies, it may not be formed by a sole-shareholder limited liability company. The shareholders are not liable for the company's liabilities.

Subject to a few exceptions (eg, a change in the statutes, mergers and demergers), shareholders' meetings may take place outside Poland, and minutes do not need to be drawn up by a notary public. Therefore, holding a shareholders' meeting is less burdensome than for joint stock companies.

## Less Common Types of Corporate Vehicles in Poland

### *General partnership*

A general partnership (*spółka jawna*, or sp.j.) is a basic type of partnership. Although it does not have a legal personality, it has the capacity to acquire rights, incur debts, sue and be sued.

It is managed and represented by its partners. In principle, each of the partners is entitled to deal with the general partnership's affairs and represent it; however, the partnership deed or a resolution of the partners may provide that the partnership is managed by one or several partners. Moreover, the management of the partnership may be entrusted to third parties, but not in a way that excludes all the partners.

Decisions on matters beyond the ordinary scope of the partnership's business require the consent of all the partners (including those with a limited right to manage it). Regardless of such limitations, all the partners have the unlimited right to be informed of the state of the partnership's assets and its business, and

the right to review its books and documents. All the partners are jointly and severally liable for the general partnership's debts, but this liability is subsidiary – ie, the partnership's creditors should first seek satisfaction from the partnership's assets. If that proves ineffective, they may institute enforcement against a partner's assets. The partners' liability may not be limited.

There is no minimum share capital requirement in a general partnership, but it must have at least two partners. Most often, a general partnership is used when a large amount of capital is not required, the partners wish to have a personal impact on the business and the business itself is not risky.

### *Professional partnership*

A professional partnership (*spółka partnerska*, or sp.p.) is designed for certain groups of freelancers (such as lawyers, doctors, tax advisers and architects) for the purpose of exercising their professions in a partnership. Only natural persons licensed to practise their professions may be partners in a professional partnership, which must have at least two partners.

Each partner has the right to manage the partnership's affairs individually. In addition, the professional partnership may be managed and represented by a management board, modelled on the one in a limited liability company. At least one of the partners must sit on the board.

The partners' liability is similar to that in a general partnership, but the partners are not liable for the partnership's obligations arising in relation to the practice of professions by the other partners or resulting from acts or omissions of the partnership's employees who are supervised by another partner. As in a general partnership, there is no minimum share capital requirement.

### *Limited partnership*

In a limited partnership (*spółka komandytowa*, or sp.k.), there are two groups of partners:

- general partners, who have unlimited liability; and
- limited partners, whose liability is limited.

The status of the general partners is similar to the status of partners in a general partnership; they represent the limited partnership and manage its affairs. Limited partners may represent the partnership only on the basis of a power of attorney granted by the partnership; although management of the partnership is the general partners' right and duty, decisions on matters exceeding the ordinary scope of the partnership's business activity require the consent of the limited partners as well.

The general partners are liable for the partnership's obligations to the extent of all their personal assets, whereas the limited partners are liable up to the declared limited contribution (*suma komandytowa*). There is no minimum share capital requirement. A limited partnership must have at least one partner who is the general partner and at least one partner who is the limited partner.

### *Partnership limited by shares*

A partnership limited by shares (*spółka komandytowo-akcyjna*, or S.K.A.) is a combination of a joint stock company and a limited partnership, and has two corporate bodies:

- the general meeting; and
- the supervisory board.

A partnership limited by shares does not have a management board; instead, it is managed and represented by the general partners. However, certain matters listed in the Commercial Companies Code or partnership deed require the resolution of a general meeting.

Both the general partners and the shareholders participate in the general meeting, but only the latter are entitled to vote. A supervisory board is not mandatory unless the partnership has more than 25 shareholders, and such board must have at least three members. Once appointed, the supervisory board exercises permanent supervision over the partnership's activities.

The general partners' liability is unlimited, whereas the shareholders are not liable for any of the partnership's debts and may lose only their investment in the partnership. The minimum share capital of a partnership limited by shares is PLN50,000, and the nominal value

of one share may not be less than PLN0.01. All shares in a partnership limited by shares are dematerialised. A partnership limited by shares must have at least one general partner and at least one shareholder. Most often, a partnership limited by shares is used in atypical venture capital/private equity investments.

#### *Other forms*

Other forms are also available, such as a co-operative (*spółdzielnia*), a European company (*Spółka Europejska*, or *Societas Europea*) or foundations (*fundacja*).

The family foundation (*fundacja rodzinna*) is a mechanism of succession by owners of medium and large family businesses or owners of private assets of significant value. A family foundation may carry out business activities such as joining commercial companies, taking out loans or buying and selling shares or securities.

### 3.2 Incorporation Process

All legal entities must be registered in the National Court Register. There are two ways of establishing the companies – ie, traditional and electronic. Family foundations are registered in a separate register.

#### Traditional Establishment

The process begins with signing the articles of association or deed of formation. For companies and limited partnerships or partnerships limited by shares, the articles of association or statutes must be executed before a Polish notary public in the form of a notarial deed.

The next step is to file an application to enter the company in the National Court Register, which usually takes several weeks. A partnership is established upon registration. Companies come into existence upon the conclusion of the articles of association, but receive legal personality upon registration.

#### Electronic Establishment

General partnerships, limited partnerships and companies may be established electronically through a special internet portal, in which case there is no requirement to draft the articles of association in the form of a notarial deed. Instead, they are concluded based on the template provided in the system.

However, the template has basic wording, and any amendments to it must be in the form of a notarial deed and must be registered with the court. This method of incorporation is usually simpler and faster than the standard procedure, especially for SPVs, but it is not always suitable for more complex investments.

### 3.3 Ongoing Reporting and Disclosure Obligations

Polish private companies and partnerships are subject to disclosure obligations, which are of an informational nature.

Companies are obliged to notify the registry court of any changes to information disclosed in the register, such as:

- the composition of their decision-making bodies;
- rules of representation;
- registered office and address;
- the amount of share capital; and
- the names of their shareholders or partners.

Companies must also report any amendments made to the articles of association. Applications to the registry court are filed electronically.

After the end of each financial year, a company must file approved financial statements, the management board's report on the company's activity and the auditor's opinion (if required). Currently, these financial documents are only filed electronically.

Companies are obliged to electronically file declarations with the Central Register of Beneficial Owners to record or update the company's beneficial owners.

#### Reporting Duties

Ongoing tax and employment-related reporting duties will also apply (eg, in respect of taxes and various social security contributions). Certain additional reporting duties vis-à-vis the National Bank of Poland may apply regarding foreign exchange transactions and other financial matters, for example. The company will usually be expected to provide certain data to the statistical authorities, on a periodic basis.

Depending on the type of business, certain other ongoing duties will apply (eg, waste disposal or other duties related to the environment). If regulated, other regulatory duties may also apply.

### 3.4 Management Structures

Under Polish law, there is a two-tier management structure. The management board manages a company's affairs and has executive directors, whereas the supervisory board (with non-executive directors) or, less commonly, the audit committee monitors its activities. Please see **3.1 Most Common Forms of Legal Entity** for more details.

### 3.5 Directors', Officers' and Shareholders' Liability

Each officer of the company is obliged to act in the company's interests and is liable to the company for any damage caused by acts or omissions in breach of the law or articles of association. Members of the corporate bodies are liable for any damage caused by lack of required diligence in the course of performance of their functions or a breach of the duty of loyalty towards the company, resulting in the damage.

The members of the management board (and directors of the simple joint stock company) may be jointly and severally liable for the company's debts in terms of all their assets if enforcement against the company proves ineffective (ie, if the company's assets are insufficient to cover the claims). However, a member of the management may be released from this liability in certain circumstances – for example, if they can prove that a petition to have the company declared bankrupt was filed in due time (or was delayed without their fault).

As the burden of proof will rest entirely with the management board member, it may sometimes be very difficult for the member to succeed in being released from liability. Similar rules regarding the personal liability of management board members apply to taxes and certain other public charges. Finally, a breach of certain duties (eg, reporting duties) may also trigger criminal liability.

In practice, the members of the management board (as executive directors) are more exposed to each type of liability than the members of the supervisory board (as non-executive directors), which is worth considering when deciding on the structure and composition of the boards. Polish law does not currently recognise the concept of "piercing the corporate veil", and attempts to introduce the concept have so far been unsuccessful. As it stands, shareholders are liable to the company only to the extent that they fail to make agreed contributions or that they receive unlawful distributions, or under the general principles of tort law.

A major amendment to the Commercial Companies Code came into force on 13 October 2022, changing the rules on the liability of members of the corporate bodies and introducing a regulated group concept and related holding company law. A member of the management board or supervisory board is not liable for damage caused to the company when acting within the limits of a justified economic risk on the basis of information, analyses and opinions that should be taken into consideration in the relevant circumstances. However, this does not override the duty to act with professional due diligence and loyalty to the company, which applies to the members of the management board and supervisory board of a limited liability company and a joint stock company.

The right of a parent company to issue a binding instruction to a subsidiary was also introduced. However, under certain circumstances, a subsidiary is entitled to refuse to carry out the instruction issued. The members of the management board, the supervisory board or audit committee and the liquidators of a subsidiary and a parent company are exempt from liability for damage caused by the execution of a binding instruction if they acted in the interest of the group. Accordingly, the liability of the parent company is correspondingly enhanced, creating the possibility of holding a parent company liable for damage caused by its binding instructions given to a subsidiary, the minority shareholders of a subsidiary or the creditors of a subsidiary. Establishment of the group and, therefore, application of these regulations is not mandatory.

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

Employment regulations are contained in a number of legal sources, including statutes of law, collective bargaining agreements and other collective arrangements based on statutes and regulations issued by the employer. Statutory employment laws are of a semi-imperative nature, which means that other provisions regulating terms of employment – such as collective bargaining agreements, other collective arrangements and internal regulations – may modify statutory provisions, but only for the benefit of employees. Modifications to the employees' detriment will be ineffective. The same applies to individual employment contracts.

### 4.2 Characteristics of Employment Contracts

An employment contract should be signed in wet ink or with a qualified electronic signature (QES), although failure to satisfy this requirement does not result in the invalidity of the contract – an employment contract is also valid and enforceable when concluded orally or even per facta concludentia. However, where the contract has not been signed in wet ink or with a QES, the employer is obliged to confirm to the employee the arrangements regarding the parties to the contract, the type of contract and the conditions of the contract in writing prior to admitting the employee to work.

Any change to the terms of employment should also be made in writing. A unilateral change that is detrimental to the employee requires notice of change to conditions of work and pay (in writing or signed with a QES). If the proposed new conditions are rejected by the employee, this results in the termination of the employment contract.

Polish law provides for three types of employment contracts, based on whether the contract is concluded for:

- a probationary period;
- a fixed term; or
- an indefinite term.

The purpose of a probationary period contract is to verify an employee's suitability for the given position. It may be concluded for a maximum period of one, two or three months, with the maximum period depending on the type and duration of contract the parties intend to conclude subsequently. It is possible to contractually extend the probationary period by periods of holidays and any other justified absences. The contract for a probationary period can, in principle, be concluded only once in relation to a specific position.

A fixed-term contract can be concluded for a maximum of 33 months. The duration of subsequent fixed-term contracts concluded with the same employer is calculated in aggregate for that purpose. At the same time, no more than three subsequent fixed-term contracts may be concluded; if these limits are exceeded, the contract automatically becomes a contract for an indefinite term. The law provides for certain exceptions where the limits may be exceeded without the contract becoming a contract for an indefinite term, including the conclusion of a contract for a term of office or a situation where the employer can objectively justify exceeding the limit.

### 4.3 Working Time

Employees may work full-time or part-time, and there are no minimum working hours. The standard full-time working hours system provides for eight hours of work a day and 40 hours a week. These limits may be modified based on the system and work time schedule adopted. However, in any case the average weekly working time must not exceed 48 hours, including overtime, in a settlement period. The employer must also ensure minimum periods of uninterrupted rest – ie, a minimum of 11 hours per day and 35 hours once a week.

Overtime work is, in principle, permitted for the employer's justified needs or the need to carry out a rescue action. Overtime should not exceed 150 hours annually, but the employer may modify this limit to up to 416 hours per annum.

Employees are entitled to their regular remuneration plus an addition of 50% or 100% of their salary for overtime work, depending on the moment when overtime work takes place: the higher addition applies if overtime work is performed at night, on a Sunday or a holiday, or on a day off granted to the employee for work on a Sunday or holiday, and also for every

hour of overtime exceeding the weekly limit of working hours (ie, 48 hours). Instead of an addition to remuneration, employees may be compensated for overtime work by time off in lieu.

## 4.4 Termination of Employment Contracts

Employment contracts may be terminated with or without notice or by a termination agreement. The length of the notice period depends on the type of contract and the duration of employment. For employment contracts for a fixed or indefinite term, the notice period is:

- two weeks if the period of employment lasted less than six months;
- one month if the period of employment lasted at least six months but less than three years; and
- three months if the period of employment lasted at least three years.

### Termination by the Employer

To terminate a fixed-term or an indefinite contract unilaterally, the employer must state the reason for termination in the termination notice signed in wet ink or with a QES. The reason must be real, specific and serious enough to justify termination. Moreover, the employer must consult the trade union representing the relevant employee (if present) on the intention to terminate the contract, although the employer is not bound by the opinion of the trade union.

Some categories of employees are protected from termination – eg, employees who are of pre-retirement age or pregnant. It is also generally not admissible (with some limited exceptions) to give notice of termination while an employee is on holiday or on sick leave.

There is no obligation to make any additional payments to an employee whose contract is being terminated with notice (apart from regular remuneration until the end of the notice period and payment in lieu of holiday leave), except where the termination takes place due to redundancy (organisational reasons on the part of the employer), in which case the employer is required to pay statutory severance pay of one, two or three months' remuneration (depending on tenure). The statutory severance rules apply only to employers with 20 employees or more.

The employer may terminate an employment contract without notice through the fault of the employee in the following circumstances:

- severe violation of basic employee duties;
- committing a crime that makes it impossible to continue employment in a given position; and
- loss of qualifications to perform work in a given position through the fault of the employee.

The employer may also terminate the contract without notice without the fault of the employee if the employee remains on sick leave for a certain period (longer than three or nine months, depending on the duration of employment) or where the employee's justified absence for other reasons lasts longer than one month. There is no obligation to make any additional payments to the employee in the case of termination without notice.

### Termination by the Employee

An employee can terminate an employment contract with or without notice. Termination without notice can take place where a doctor diagnoses a detrimental effect of work on the health of the employee and they are not transferred to another position by the employer, or where the employer severely breaches its basic duties to the employee. In the latter case, the employee is entitled to compensation in the amount of their remuneration for the notice period applicable to their contract or, in the case of a contract for a fixed term, for the remainder of the term of the contract, but for no more than the notice period.

### Termination by Mutual Agreement of the Parties

The terms of termination agreements are agreed by the parties, and it is common for the employer to make an additional severance payment to the employee, although this is not a legal requirement.

### Collective Redundancies

If an employer with at least 20 employees terminates employment contracts for reasons not attributable to the employees, it is referred to as "collective redun-

dancy" if the redundancies are made during 30 consecutive days and the termination involves:

- ten or more employees, where the employer has fewer than 100 employees;
- 10% or more of the employees, where the employer has at least 100 employees but fewer than 300 employees; or
- at least 30 employees, where the employer employs 300 employees or more.

The employer is obliged to consult the trade unions (if present) regarding the intention to carry out collective redundancies, and must also notify the trade unions of the reasons for the planned redundancies, the number of employees to be made redundant and the period during which the redundancies will take place, among other things. This information must be submitted to the relevant labour office. If there are no trade unions at the employer's establishment, the relevant rights are exercised by elected employees' representatives.

Within 20 days of the date of notification, the employer must conclude an agreement with the trade unions regulating the collective redundancy process. If an agreement cannot be reached, the employer unilaterally regulates the process in the relevant by-laws. If there are no trade unions at the employer's establishment, the employer issues the by-laws after consulting the employees' representatives. The relevant labour office must be notified of the agreement concluded or the by-laws issued.

Employees whose contracts are terminated in a collective redundancy procedure are entitled to additional statutory severance pay of one, two or three months' remuneration, depending on the duration of their employment (respectively: less than two years, from two to eight years, or longer than eight years).

### 4.5 Employee Representations

In principle, there is no legal requirement to have any kind of employee representation. However, a company that has more than 50 employees is obliged to inform employees that they may (but are not obliged to) set up a works council. Works councils have consultation and information rights, but they do not participate in the management of the company.

Employees of privatised companies have certain rights of representation on the supervisory board. If the company has more than 500 employees on average over the year, the employees have the right to elect one member of the management board.

Trade unions, if present at the company, retain significant influence; negotiations with trade unions may be required in some situations, particularly if there is a planned collective redundancy. In general, under Polish law, there are no requirements to negotiate or consult with trade unions or works councils when a Polish company or its assets are being acquired. However, such negotiations or information obligations are common when the company being sold is state-owned.

If there are no trade unions, in some situations the law requires the employer to inform/consult employee representatives. Employee representatives can be elected ad hoc for this purpose, or a permanent employee representation may be formed at the employer.

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/Employers

#### Personal Income Tax (PIT)

In principle, employees in Poland are subject to PIT at the rate of 12%, provided that a 32% rate applies on the portion of the taxable profit exceeding PLN120,000 in the tax year. Certain incomes are taxable at 19% or 20% flat PIT rates. Incomes from different sources are not mixed, and tax is calculated for each source of income separately.

Tax-reducing amounts apply, ranging from PLN3,600 (if the annual income is PLN120,000) to PLN10,800 (if the annual income exceeds PLN120,000). No tax is effectively payable on an annual income of up to PLN30,000.

Income of up to PLN85,528 received by a person under the age of 26 is exempt from PIT.

A limited number of reliefs and allowances may be available to employees – eg, for the use of the internet

and for certain donations made to charity and/or if they have children who are:

- under 18;
- under 25 and continuing their education without having their own income; or
- disabled and receiving special benefits.

From 2022, health insurance contributions are no longer tax-deductible costs for employees. However, certain employees who create IP rights as part of their duties may be eligible for lump-sum costs at the rate of 50% of the portion of their remuneration allocated to such IP rights (provided that such costs do not exceed PLN120,000 in total).

### Social Security Contributions

Health insurance contributions are paid by the employee at the rate of 9%. Social security contributions (to finance retirement, disability pensions and sick leave benefits) may total up to 29.97% – ie, 13.71% payable by the employee (as a non-deductible cost) and 16.26% payable by and tax-deductible for the employer. The basis for calculation of the retirement and disability pensions contributions is capped at PLN282,600 for 2026.

Additional occupational accident contributions and some other social security contributions payable by and tax-deductible for employers may apply, depending on the circumstances and the type of business and work carried out, and the number of employees employed by the employer. Generally, the contributions amount to the following:

- for retirement – 19.52% of the basis of assessment;
- for disability pensions – 8% of the basis of assessment; and
- for sick leave benefits – 2.45% of the basis of assessment.

Social security contributions may differ slightly from the above (eg, for accident contributions, the rate varies from 0.67% to 3.33%, with the accident contribution for a small company employing up to nine people being 1.67%).

### Payment of Tax and Reporting Duties

The employer is obliged to calculate and remit the tax advances to the relevant tax office, and the health insurance and other social security contributions to the Social Security Office (ZUS).

Employees are obliged to make annual tax filings (which may be done electronically). Employees who do not intend to take advantage of any allowances or deductions and who settle under the general rules (tax scale at 12% and 32% rates) and only receive income settled through a remitter (eg, employer or principal) may leave the tax settlement to the tax office.

## 5.2 Taxes Applicable to Businesses

### Company Income Tax (CIT)

Legal entities in Poland are obliged to pay CIT on their income in Poland, at the rate of 19%. A reduced 9% rate applies to taxpayers in the first year of starting a business and to those taxpayers whose annual income (including VAT) does not exceed EUR2 million.

In respect of partnerships that are tax-transparent, tax is payable by partners (CIT for partners that are legal entities; PIT for individuals). Partnerships limited by shares and limited partnerships are treated as CIT payers (ie, non-tax-transparent entities), with special tax reliefs for limited partners.

The CIT Act provides for specific rules to determine whether or not an item may count as a tax-deductible cost, and expressly identifies a list of items that cannot constitute tax-deductible costs. Certain allowances and reliefs may be available (eg, a 50% allowance in respect of the acquisition of new technologies).

The tax basis is calculated separately for capital gains (as defined in the CIT Act) and other incomes.

"Minimal" CIT of 10% came into force in 2024. Therefore, an entity that has incurred an income loss (other than capital gains source) or whose tax yield in the basket of so-called operating profits does not exceed 2% is taxed at 10% of the taxable base. The CIT Act also provides for a number of other exemptions from the "minimal" tax for certain entities.

Polish CIT provides for several tax reliefs and exemptions for specific business types.

In addition, tax capital groups and entities whose revenues exceed EUR50 million are obliged to prepare and publish information about their tax strategy.

Poland implemented the Pillar 2 directive on 1 January 2025 and introduced three new taxes: a global minimum tax, a domestic minimum tax and a top-up tax on undertaxed profits. The purpose of the global minimum tax is to level the tax rules for the largest multinational companies. New obligations will be applied to domestic and international companies that are part of capital groups and had a total annual revenue amounting to at least EUR750 million in two of the last four financial years. Such companies will need to calculate their effective tax rate for this timeframe, and will face additional taxes if it will fall below the 15% minimum level of taxation. The top-up tax will be the difference between the minimum rate and the effective tax rate in a particular jurisdiction.

JPK-CIT (Poland's Standard Audit File for Corporate Income Tax) is a mandatory annual digital tax report that companies must file with the tax authorities, along with their corporate income tax returns. It requires businesses to submit a standardised electronic extract of their financial records (accounting books) for the tax year, making corporate tax filings easier to review and verify by the tax office.

### Taxation of Sole Traders

Individuals running businesses as sole traders (for which certain requirements need to be met) may elect whether to pay taxes in the following manners:

- according to the same rules and rates as employees (except the actual tax-deductible costs, subject to statutory limitations similar to those applicable to CIT payers, would apply instead of lump sums);
- at a flat rate of 19%; or
- according to special rules, in respect of some types of smaller businesses (eg, a lump sum of 2% to 17% of gross income or by means of the so-called tax card, where the amount of tax is a lump sum payable irrespective of income or profit).

From 1 January 2022, the basis of assessment for health insurance contributions is determined depending on what type of business activity the remitter conducts and what form of taxation is applied to the income from that activity. Any person conducting business activity who pays social contributions for their own insurance was required to submit an annual health insurance contribution return for the first time in 2023. For example, for an individual running a business as a sole trader who settles tax based on a tax scale for January 2026, the lowest contribution assessment basis is PLN5,652, and the minimum contribution is PLN432.54.

The new amount of the minimum wage (PLN4,806) will be the lowest contribution base only for the contributions due for January 2026, and will be in effect until January 2027.

### Withholding Tax

Polish income tax laws provide for withholding tax on payments made to non-Polish residents at the rate of:

- 20% on interest, royalties and certain services (eg, legal, advisory, management, data processing, HR and financial services); and
- 19% on dividends and other capital gains and interest payable to individuals on some debt instruments.

Lower rates or exemptions from withholding tax may apply if provided for under bilateral treaties. Moreover, under the provisions of the Parent-Subsidiary Directive and the Interest and Royalties Directive (which have been implemented into the Polish tax system), dividends, interest and royalties payable to a company with its registered office in an EU country are, in principle, exempt from withholding tax, provided that the company receiving the interest (its beneficial owner) holds at least 10% (in the case of dividends) or 25% (in the case of interest and royalties) of the shares in the company making such payments for at least two years. This holding period may end after the payments have been made.

The tax remitter is obliged to act with due care when verifying the requirements to apply such lower rates

or exemptions on payments to a single entity of up to PLN2 million per annum.

Under the withholding tax pay-and-refund mechanism, if the total amount of "passive" payments (ie, dividends, interest and royalties) to a single taxpayer that is a related party exceeds PLN2 million in the relevant tax year, the tax remitters will be obliged to collect withholding tax on said payments on the day they are made, at the standard Polish rates (ie, 19% in the case of dividends and 20% in the case of interest and royalties) on the surplus over PLN2 million, without the possibility of waiving collection of the tax under the relevant double tax treaty and without taking into account the exemptions or reduced rates as determined under special provisions or double tax treaties.

In such a case, the taxpayer or the tax remitter (if it paid the withholding tax from its own funds and bore the economic burden of the withholding tax) may claim a withholding tax refund. However, a tax remitter may apply reduced withholding tax rates or withholding tax exemptions if:

- the tax remitter provides the tax authority with a written statement confirming (under threat of tax criminal liability for breach) that all the requirements for a lower rate or an exemption have been fulfilled; or
- a tax remitter or a withholding tax payer receives an opinion on the applicability of the withholding tax exemption from the tax authority, valid for three years.

Significant fines apply if, in the absence of an exemption, a tax remitter does not collect the statutory withholding tax.

### Value Added Tax

In principle, anyone whose total sales of goods and/or services (with some sector exceptions) in the previous year exceeded PLN240,000 must register as a VAT payer (such threshold shall be reduced pro rata if the activity was conducted only for part of the previous year). The basic VAT rate is 23% (reduced rates of 8%, 5% or 0% may apply to some goods and services).

VAT rules are fairly strict and under some circumstances provide for the joint and several liability of members of the supply chain for its payment. Under certain circumstances, additional penalty rates of 15%, 20%, 30% or 100% may apply. An electronic accounting ledger detailing all VAT-able transactions must be submitted to the tax authorities on a monthly basis, or quarterly in some cases (VAT return).

The split payment mechanism applies to some B2B transactions, whereby the payment that corresponds to the VAT amount of the invoice is paid into a special bank account of the supplier – the VAT subaccount. This mechanism is compulsory in the case of payments for certain goods and services.

The reverse charge in VAT for the supplies of certain energy products came into force on 1 April 2023 and will remain in force until 31 December 2026.

From 1 April 2026, entrepreneurs are required to use a National e-Invoice System (minor exceptions apply).

### Other Taxes

Other taxes may apply from time to time, depending on the type of business, such as property tax, excise duty, tax on civil law activities, tax on means of transport or tonnage tax.

## 5.3 Available Tax Credits/Incentives

Subject to the restrictions and limitations resulting from EU state aid laws, some tax incentives (such as income and property tax reliefs) may be available to investors that obtain a permit to invest in so-called Special Economic Zones.

Some tax relief may also be available for the purposes of restructuring.

## 5.4 Tax Consolidation

A tax group that enables a participating company to be treated as a single CIT payer (and to consolidate the profits and losses of the group members) is available to Polish companies that meet the following criteria:

- the registered share capital per participating company in the group is not lower than PLN250,000 on average;
- a parent company directly holds at least 75% of the shares in the remaining group members;
- no group member is in arrears in respect of taxes;
- no group member may benefit from any tax exemptions or reliefs; and
- all transactions between the tax group members and their affiliates outside the tax group must be on an arm's length basis.

A written agreement to form a tax group for a period of no less than three tax years must be concluded and registered with the tax office. Members of the tax group are jointly and severally liable for the CIT liabilities of the group for the period during which the tax group agreement remains in force. If the status of a tax group is lost as a result of a breach of the applicable obligations, each participating company will have to adjust its tax filings for the three most recent tax years (as if the tax group did not exist) and, where applicable, settle any outstanding taxes.

From 1 January 2026, Poland significantly improves the stability and attractiveness of tax capital groups (PGKs) under the CIT Act. The most important change is the abolition of the automatic loss of PGK status for non-arm's length transactions with related parties outside the group. While the arm's length principle and transfer pricing controls still apply, a dispute over pricing no longer triggers the extreme sanction of dissolving the entire PGK (including retroactively). This change also applies to past cases where no final decision on deregistration had been issued before 2026, greatly reducing tax risk and increasing legal certainty for existing and new PGKs.

In addition, 2026 brings greater flexibility and transparency. PGKs can be re-established more smoothly after a regular expiry of the group agreement (without breaches), and the rules no longer force unnecessary waiting periods in such cases. At the same time, digital reporting obligations (JPK-CIT) now fully apply: each company within a PGK must submit its own electronic accounting files, giving tax authorities deeper insight into intra-group data. Finally, special rules ensure that higher CIT rates for banks cannot be avoided by placing banking income inside a PGK – only PGKs that include banks are affected, while non-financial PGKs continue to be taxed at the standard 19% rate.

### 5.5 Thin Capitalisation Rules and Other Limitations

Since 2022, taxpayers are obliged to exclude from tax-deductible costs the costs of debt financing for the part in which the excess of the costs of debt financing exceeds PLN3 million (this does not apply to debt financing costs associated with obtaining funding from a family foundation, directly or indirectly) or 30% of taxable EBITDA. In addition, the costs of debt financing obtained from affiliated entities are not regarded as a tax-deductible expense for the part in which they were earmarked directly or indirectly for capital transactions, particularly the purchase or acquisition of shares (stock), the acquisition of all rights and obligations in a partnership without legal personality, additional contributions, share capital increases or the purchase of own shares for redemption. Costs that are not deducted in a given year due to the above mechanism may be carried forward for up to five consecutive tax years.

### 5.6 Transfer Pricing

In Poland, transactions between related parties (defined on the principle of a 25% ownership stake interpreted broadly, including not only shares but also, for example, certificates in investment funds or similar instruments) should be done on an arm's length basis. Where applicable, transfer pricing documentation must demonstrate that all relevant transactions have been executed on terms that would have been applicable to unrelated parties.

The requirement to prepare the transfer pricing documentation applies in respect of transactions with a value of:

- PLN10 million for commodity and financial transactions; and
- PLN2 million for services and other transactions not included above.

Lower thresholds of PLN2.5 million in the case of a financial transaction and PLN500,000 in cases other than a financial transaction apply to transactions with

related parties based in countries that would be tax havens under the OECD rules. The transfer pricing rules include a simplification whereby a mark-up of 5% is applied to certain low-value services, such as accounting, human resources, IT services and general services of an administrative and office nature, in recognition that these services are provided at arm's length.

It is possible to obtain an advance pricing arrangement from the tax authorities.

An updated list of tax havens came into force on 1 January 2025, according to which the Principality of Andorra is no longer classified as a tax haven.

### 5.7 Anti-Evasion Rules

In 2016, Poland introduced rules on counteracting tax avoidance, covering any act that satisfies both of the following conditions:

- it was effected primarily for the purpose of obtaining a tax advantage that, in the given circumstances, is an advantage contrary to the subject and purpose of tax law; and
- the party that carried out the act acted in an artificial manner.

The tax consequences of an act identified as having been effected primarily with the aim of achieving a tax advantage are determined based on the state of affairs that would have existed if an "appropriate act" had been effected. Where circumstances indicate that the achievement of a tax benefit was the only purpose of carrying out the act, the tax consequences are determined in such a way as if the act had not been carried out.

To obtain protection against the application of anti-avoidance rules in respect of a transaction in the future, a company or individual may apply for a so-called security ruling. The authority decides on the application over six months, and may refuse to issue a ruling if the application relates to a case of tax avoidance.

#### Mandatory Disclosure Rules

The Polish law provisions adopting mandatory disclosure rules implementing the DAC6 Directive have a broader scope than those under the DAC6 Directive, and also include some specific local Polish hallmarks mainly applicable to distributions from Poland.

### 5.8 Tariffs

As an EU member state, Poland applies the EU common customs policy, which means that all member states apply the same rules and tariff rates to countries outside the EU.

As of 2025, the EU has increased tariffs on a wide range of goods imported from Russia and Belarus, as part of EU sanctions in response to Russia's continued aggression against Ukraine and Belarus's support for the conflict, with the aim of reducing the revenue streams that could support military operations. On 17 June 2025, the European Parliament adopted a modification of customs duties applicable to imports of certain goods originating in or exported directly or indirectly from Russia and Belarus. The modification focuses on fertilisers, to which a 6.5% base tariff will be applied, plus a fee that will increase from EUR40–45 per ton to EUR315–430 per ton by 2028. The changes are planned from July 2025 to July 2028 but it is difficult to predict further changes in tariffs, due to the ongoing conflict in Ukraine.

Trade relations between Poland and China have recently become more strained. The European Commission has imposed anti-subsidy tariffs of up to 35.3% on electric vehicles imported from China. In response, China has introduced retaliatory tariffs targeting various European exports. Reports of negotiations between the EU and China appeared when trade tensions initiated by US President Donald Trump escalated.

## 6. Competition Law

### 6.1 Merger Control Notification

The following transactions are subject to mandatory merger control by the PCA:

- mergers;

- acquisitions of direct or indirect control (be it sole or joint) over one or more undertakings and/or assets; and
- the creation of a joint venture (including non-full-function joint ventures).

The PCA must be notified of a transaction if the following occur in the financial year preceding the concentration:

- the combined global turnover of the parties exceeds EUR1 billion; and/or
- the combined turnover of the parties exceeds EUR50 million in Poland.

Turnover includes the turnover of each party's capital group and part of the turnover of their jointly controlled entities (but the seller's turnover is excluded). The notification obligation is triggered if either of these thresholds is met; the thresholds may be met by one party only.

### Exemptions

A transaction does not have to be notified if any of the following exemptions applies:

- in the case of the acquisition of control and/or assets – if the target's turnover in Poland did not exceed EUR10 million in either of the two financial years preceding the concentration;
- in the case of mergers or the creation of a joint venture – if the turnover of any party (their capital group) to the merger or joint venture did not exceed EUR10 million in Poland in either of the two financial years preceding the concentration; and
- in the case of inter-related transactions (simultaneous or subsequent acquisitions from one and the same capital group of assets and/or control over an undertaking or undertakings that occur within a two-year period) – if the combined turnovers of all the acquired targets and targeted assets generated in Poland did not exceed EUR10 million in either of the two financial years preceding the most recent concentration.

In addition, there is a soft law exemption from the notification obligation in the case of extraterritorial joint ventures with no operations in a relevant market covering Poland (eg, Polish/EU-wide/global market), no plans to conduct such operations within the next three years and no vertical links with companies operating in Poland.

### Other Transactions

The following transactions fall outside the merger control system:

- intra-group transactions;
- acquisitions of shares, on a temporary basis, by a financial institution or by an undertaking for the purpose of securing liabilities; and
- acquisitions of control or assets in bankruptcy proceedings (if the target does not compete with the buyer's capital group).

## 6.2 Merger Control Procedure

There is no formal pre-notification procedure in Poland, although consultations with the PCA prior to a transaction are possible. There is no statutory deadline by which a notification must be made to the PCA. However, the parties may not close the transaction until the PCA's clearance has been obtained or the statutory period for a decision to be issued by the PCA has lapsed (the standstill obligation).

As a general rule, the PCA should examine the transaction within one month of the date the merger control proceedings are instituted (Phase 1). The PCA may extend the proceedings for an additional four months (Phase 2) if:

- the case is complex;
- the transaction raises competition concerns; or
- a market survey is required.

The statutory time limit for issuing a clearance decision is suspended each time the PCA requests additional information and/or documents, and resumes only when the response is actually delivered to it.

When a proposed concentration threatens to significantly limit effective competition, the PCA informs the parties in writing of its objections to the concentration. In order to enable clearance to be given, the PCA may accept a party's proposed commitments (remedies) – eg, divestment.

### Sanctions

The PCA may impose a fine on an undertaking taking part in a concentration (only on the buyer in the case of the acquisition of control and/or assets) of up to 10% of its turnover for a breach of the standstill obligation or failure to notify the transaction. The PCA may also impose a fine of up to 50 times the average wage in Poland on managers who have failed to give notification of an intended concentration.

## 6.3 Cartels

Like EU competition law, the Polish Act on Competition and Consumer Protection prohibits agreements/concerted practices between undertakings (or associations of undertakings) that have as their object or effect the elimination, restriction or other infringement of competition (Article 6). The non-exhaustive statutory list of infringements includes the following in particular:

- price fixing;
- limiting or controlling production/sales/investments;
- market sharing;
- imposing onerous/discriminatory contract terms;
- restricting access to the market; and
- collusive tendering (between tender participants or with the awarding entity).

The PCA also has the right to apply EU competition law directly (Article 101 of the TFEU) if the infringement affects trade between EU member states.

The PCA may impose a fine on undertakings and individuals for involvement in anti-competitive agreements. An undertaking may be fined up to 10% of the turnover of the entire capital group generated in the year preceding the year the fine is imposed. The PCA may also impose a fine of up to PLN2 million on managers who allow the undertaking to conclude a prohibited anti-competitive agreement through their deliberate actions or omissions (except in the case of bid-rigging).

Under Polish law, leniency (immunity or reduction of a fine) is available for both horizontal and vertical agreements.

An agreement that violates competition law is invalid in its entirety or in the anti-competitive part. The PCA may also enforce abandonment of the practice, or order the offending undertaking to remedy its effects.

## 6.4 Abuse of Dominant Position

Like EU competition law, the Polish Act on Competition and Consumer Protection prohibits abuse of a dominant position within a relevant market (Article 9). The abuse may consist of the following in particular:

- imposing unfair prices or trading conditions;
- limiting production, market sale or technical development;
- applying onerous/discriminatory contract terms to third parties;
- preventing the development of competition; and
- market sharing.

A dominant position is held by an undertaking if it is able to prevent effective competition in the relevant market and to act independently of competitors, contracting parties and consumers to a significant degree. In Poland, there is a presumption of a dominant position if an undertaking has a market share exceeding 40%. However, this presumption may be challenged by the undertaking involved.

The PCA may impose a fine for abuse of a dominant position only on undertakings (not individuals), which are liable to a fine of up to 10% of the turnover of the entire capital group generated in the year preceding the year in which the fine is imposed.

Any legal transactions that constitute abuse of a dominant position are invalid in their entirety or in the relevant part. The PCA may also enforce abandonment of the practice, or order the offending undertaking to remedy its effects.

Significant amendments to the Polish competition law (implementing the ECN+ Directive) came into force on 20 May 2023, relating in particular to the leniency programme, liability for infringement (introduction of parental liability), levels and methods of the calculation of fines, the dawn raids procedure, legal professional privilege and international co-operation of the PCA with other national competition authorities.

## 7. Intellectual Property

### 7.1 Patents

In addition to the rights registered with the Polish Patent Office (see below, as well as **7.2 Trade Marks** and **7.3 Industrial Design**), it is possible to apply for protection over inventions, trade marks and other industrial properties through international channels. For trade marks and industrial designs, it is possible to obtain protection throughout the EU with a single application.

Patents protect inventions that:

- are new;
- have an inventive step – ie, the invention is not obvious to a person skilled in the given field; and
- are capable of industrial application – ie, based on the invention, a product may be obtained or a method used in any industrial activity.

Patent protection lasts up to 20 years (subject to the payment of annual maintenance fees).

To obtain a patent, the application must be filed with the Patent Office and must contain a motion, a description of the invention, claims and an abstract of the invention. If the application is not filed by the creator, it is necessary to ensure the acquisition of the right to obtain a patent by the entity applying for patent protection (future patent holder). If statutory requirements are met, the Patent Office then issues a relevant decision, provided that the fee for the first protection term is paid. When a patent is granted, this is entered in the patent register.

Claims concerning infringement of a patent are heard before a court in civil proceedings. The patent holder may demand cessation of the infringement or the surrender of any unlawfully obtained benefits. If the infringement is culpable, the patent holder may also demand reparation of damage in accordance with general principles or by the payment of a sum of money in the amount of a licence fee or other relevant remuneration that would be due and payable to the patent holder for consenting to use of the invention. In addition, the patent holder may demand that the ruling concerning the infringement be made public.

### 7.2 Trade Marks

A trade mark is any mark capable of distinguishing the products (or services) of one entity from those of another, and enables determination of the scope of protection in a clear and precise manner. A word (including a name), picture, letter, digit, colour, object (eg, the shape of a product or its packaging) or sound may constitute a trade mark.

Upon registration, trade mark protection rights last ten years and may be extended for subsequent ten-year periods, provided that the fee is paid. However, a protection right over a trade mark expires (and the trade mark is eligible for invalidation) if the registered trade mark is not in genuine use within five years of the date protection was granted.

#### Protection Rights

To obtain a protection right, a relevant application describing the trade mark and listing the products (or services) it covers (based on the classes of goods and services set out in the Nice Classification) must be filed with the Patent Office. The Patent Office examines the content of the application and the capability of registering the trade mark, but at this stage it will not examine any potential conflict with prior registrations or other third-party rights. If the statutory requirements are met, the Patent Office publishes notification of the application in the Patent Office Bulletin.

Third parties have three months to file an opposition to a trade mark application on the basis of their earlier trade marks or other rights. The opposition may be brought in respect of one, some or all of the classes of the Nice Classification. If successful, the Patent Office may grant protection for those classes that have not been challenged, unless the opposition has been proved to be unfounded, or it may refuse protection.

Claims concerning infringement of a protection right over a trade mark are heard before a court in civil proceedings. In addition to the remedies available in the case of infringement of a patent, the trade mark holder may demand that the infringing party ceases placing a mark identical or similar to the registered trade mark on packaging, labels and tags, or ceases offering, marketing, importing, exporting and storing such packaging, labels and tags.

## 7.3 Industrial Designs

Industrial design is a new and original appearance of a product, or part thereof, resulting from the features of the lines, contours, shape, colours, texture and/or materials of the product itself and/or its ornamentation. The right conferred by the registration of an industrial design is granted for 25 years, divided into five-year periods.

To register an industrial design, an application containing an illustration of the industrial design must be filed with the Patent Office. If the industrial design meets the statutory requirements for granting protection, the Patent Office issues a decision granting protection.

Claims concerning an infringement of a right conferred by registration of an industrial design are heard before a court in civil proceedings. The remedies are the same as in the case of an infringement of a patent.

## 7.4 Copyright

Copyright protects any manifestation of human creative activity of an individual nature in any form, regardless of its value, purpose or manner of expression.

Copyright consists of economic rights and moral rights. Economic rights entitle the copyright holder to use and dispose of a work and receive fair and appropriate remuneration for the use of it, and these rights may be transferred or assigned. Along with the economic rights, there is also the exclusive right of the author to authorise the use of derivative rights to the original work (eg, translation).

Moral rights entitle the author to sign the work with their name, decide on its first publication and allow modification thereof. Moral rights cannot be transferred, assigned or licensed, but it is common practice to oblige the author in contracts transferring economic copyrights not to exercise the moral rights. Economic rights are generally protected until 70 years after the death of the author of the work; moral rights last indefinitely.

Economic rights may be transferred (or licensed) only within the fields of exploitation explicitly specified in an agreement. A field of exploitation means any manner of exploitation considered technically and economically independent in trading practice. Omitting a field of exploitation in the agreement deprives the acquirer (or licensee) of the rights to exploit a field not listed therein. The fields of exploitation make it possible to seek remuneration for each of them.

Copyright protection does not depend upon a registration process or satisfaction of any formal requirements. Once the work is established (even if not completed), it automatically receives protection.

In the event of an infringement of economic rights, the author may demand cessation of the infringement, remedy of the results of the infringement, damage compensation and the surrender of any unlawfully obtained benefit. The author may also request publication of an announcement in the press or payment of an appropriate sum of money to the copyright holder, determined at twice the amount of remuneration that would be required for a licence to use the work.

## 7.5 Others

### Software and Databases

There is no special regime for the protection of software, which is primarily protected under copyright law (with certain specific provisions applicable to computer programs), with minor differences compared to the works described in **7.4 Copyright**.

Databases that are collected in a way that requires substantial investment of effort to compile, verify or present their content, in terms of quality or quantity, are protected by the Act on the Protection of Databases. Such protection does not depend on registration and lasts for 15 years. Regardless, databases may be protected by copyright if they can be considered a “work”.

### Business Secrets

Business secrets are protected under the Polish Act on Combatting Unfair Competition, and may be violated if unlawfully disclosed, used or obtained. In the violation of a business secret, the entrepreneur may demand:

- cessation of the violation;
- removal of the effects of the violation;
- a relevant statement;

- redress of damage;
- the surrender of any unlawfully obtained benefits; or
- the award of an appropriate sum of money for social purposes associated with supporting Polish culture or protecting the national heritage.

In addition, the entrepreneur may demand that the ruling concerning the violation of the business secret is made public.

## 8. Data Protection

### 8.1 Applicable Regulations

Data protection issues are principally regulated by the EU General Data Protection Regulation (Regulation 2016/679 – the GDPR). The following local acts, among others, supplement the GDPR:

- the Personal Data Protection Act of 2018;
- the Act Amending Certain Acts in Relation to Ensuring Compliance with Regulation 2016/679;
- the Act on the Rules of Obtaining Information of a Clean Criminal Record of Persons Seeking Employment and Persons Employed in Financial Sector Entities; and
- the Labour Code (which regulates the processing of employees' data).

It is worth noting that, in some cases, local employment laws provide for stricter rules than those of the GDPR – eg, with regard to the scope of data and the admissibility of monitoring. In particular, background screening of employees and candidates (especially regarding criminal record) is substantially restricted, except in the financial sector, where a dedicated act applies, and for some specific positions in other sectors where not having a criminal record is a legal requirement.

### 8.2 Geographical Scope

Local law does not modify the applicability of the GDPR; the geographical scope of application stems directly from the GDPR.

### 8.3 Role and Authority of the Data Protection Agency

The local data protection agency is the President of the Data Protection Office (*Prezes Urzędu Ochrony Danych Osobowych*), whose main role is to:

- control and monitor the processing of personal data;
- review complaints of data subjects;
- conduct inspections;
- issue decisions and impose fines;
- oversee accreditation;
- grant certifications; and
- issue interpretations and guidelines.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

#### Employment Law

##### *Pay transparency*

In December 2025, an Act amending the Labour Code came into force, introducing some amendments to pay transparency in the recruitment process, but its practical importance is very limited. The adopted provisions require employers to provide job applicants with information about remuneration offered (its initial amount or range) and about relevant provisions of collective bargaining agreements or remuneration regulations concerning remuneration terms. Employers are also required to ensure that job advertisements and job titles are gender-neutral.

The Act does not address any other substantive requirements of the Pay Transparency Directive, such as reporting on pay gap, restrictions on pay secrecy clauses or ensuring transparent and non-discriminatory remuneration systems.

In order to implement some further requirements, a new draft bill on strengthening the right to equal pay for men and women for equal work or work of equal value was published on 29 April 2026. The draft includes the following, in particular:

- rules and procedures for assessing the value of work;

- rules and procedures for creating remuneration structures;
- measures to ensure transparency of remuneration; and
- rules and procedures for monitoring employers' compliance with the principle of equal pay.

The content of the draft is still under intense discussions and it is not known when the final act will be adopted.

### *New powers granted to the State Labour Inspectorate*

Risk related to reclassifying civil law contracts into employment contracts (if, in practice, work is performed in conditions meeting the characteristics of employment contracts) may potentially increase in near future, as an act was adopted in April 2026 granting new powers to the State Labour Inspectorate and entitling it to issue administrative decisions on the reclassification of civil law contracts (including contracts of mandate, contracts for the performance of specific work, and B2B contracts) as employment contracts without the need to obtain a court judgment, which was required previously. This change will materially speed up the reclassification process and will likely increase the number of reclassified civil law contracts. The act will come into effect on 8 July 2026.

## Tax Law

### *Mandatory Disclosure Rules (MDR)*

The government intends to simplify the MDR regulations in alignment with DAC6, with the aim of harmonising Polish and EU provisions in this area.

# PORTUGAL




## Law and Practice

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**LVP Advogados**

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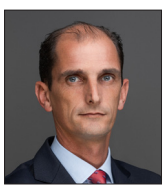
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**LVP Advogados** assists international clients with investment, residence, and citizenship matters in Portugal. Its clients, from over 150 countries, include high-net-worth individuals and families, family offices, businesses and institutions. Its legal team supports foreign clients throughout the entire process, from initial planning to ongoing operations. Where needs extend beyond legal services, it connects clients with trusted third-party professionals and coordinates matters on their behalf, offering a single point of contact for all matters related to Portugal. It makes extensive use of advanced, integrated software to enhance client experience, ensure data security and confidentiality, improve efficiency, and minimise the risk of human error. At the same time, it maintains a personalised approach, taking the time to understand each client's specific circumstances.

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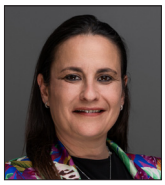
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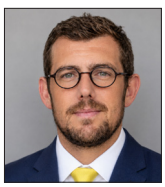
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# 1. Legal System

## 1.1 Legal System and Judicial Order

Portugal follows a civil law system, rooted in the continental European legal tradition and primarily based on codified statutes rather than judicial precedent.

The legal framework is strongly influenced by Roman law and legislative codes, with the Constitution as the supreme source of law. Other key sources include statutes enacted by parliament, decree laws approved by the government, regulations, international treaties and European Union law, which has particular relevance in areas governed by EU competence. Although court decisions are not generally binding as precedent, case law, especially from the higher courts, is influential in the interpretation and application of legal rules.

The judicial system is organised into separate jurisdictions, mainly judicial courts, which hear civil and criminal matters, and administrative and tax courts, which decide public law disputes involving public authorities, administrative acts, public contracts, taxation and related matters. In addition, there are specialised bodies, including the Constitutional Court, which reviews constitutional matters, and the Court of Auditors, which supervises public expenditure and financial legality.

The judicial courts operate under a three tier hierarchical structure:

- first instance courts, known as *Tribunais de Comarca*, which hear cases initially;
- courts of Appeal, known as *Tribunais da Relação*; and
- the Supreme Court of Justice, which is the highest court within the ordinary judicial jurisdiction.

Similarly, the administrative and tax jurisdiction is structured around first instance administrative and tax courts, the Central Administrative Courts, divided between North and South, and the Supreme Administrative Court. Appeals are generally available subject to procedural rules, thresholds and admissibility requirements, depending on the type of proceedings and the value or legal relevance of the case.

Overall, the Portuguese legal system is characterised by judicial independence, codification, specialised court jurisdictions and a clear hierarchical appeal structure. Proceedings are mainly conducted in writing, although oral hearings and trial sessions play an important role in evidentiary matters, particularly in civil, criminal and certain administrative cases.

Alternative dispute resolution mechanisms are also widely used. Arbitration is common in commercial disputes and certain administrative and tax matters, particularly through the Administrative Arbitration Centre (CAAD). Peace Courts (*Julgados de Paz*) provide simplified procedures for lower-value civil disputes and place particular emphasis on mediation and consensual resolution.

# 2. Restrictions on Foreign Investments

## 2.1 Approval of Foreign Investments

Foreign investment in Portugal, in general, does not require approval from the authorities. However, a screening mechanism applies specifically to non-EU/EEA investors (including EU entities controlled by third-country persons) who seek to acquire control (direct or indirect) over strategic assets. These assets are essential for national defence, security and the supply of essential services.

The Portuguese government evaluates investments based on whether they pose a real and sufficiently grave threat to national security or the continuity of essential services, namely if:

- it affects physical security and operational availability of the assets;
- the investor has the ability to fulfil public service obligations;
- it affects the protection of sensitive data and technological assets; and
- it is linked to third-country governments that do not respect the rule of law, connections to criminal organisations or a history of disrupting public services in other countries.

Approval does not necessarily need to be obtained prior to completion of the investment.

The government has 30 working days from the signing of the deal (or its public disclosure) to initiate an evaluation. During this period, the authorities may request any information or documentation deemed necessary from the involved parties and other public bodies. If an evaluation is opened, the government has 60 days to decide. Absence of a decision within this timeframe acts as a "tacit approval." If the government opposes the deal, all legal acts related to the transaction are deemed null and void.

The screening rules are focused on sectors critical to the national interest, such as energy, transportation and communications.

In addition to this general screening, specific industries like banking and insurance require prior authorisation from their respective regulators (Bank of Portugal and ASF) regardless of the investor's nationality.

Furthermore, in addition to national law, foreign investments in Portugal are also governed by European Union regulations that impose specific restrictions within the single market. Notably, Regulation (EU) 2019/452 establishes a framework for the screening of foreign direct investments on grounds of security or public order, while the Foreign Subsidies Regulation (FSR) addresses distortions caused by non-EU subsidies. These European instruments are applicable and operate alongside domestic legislation, creating an additional layer of scrutiny that significantly impacts how foreign capital enters and operates within the Portuguese jurisdiction.

### 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

Investors may either wait for an ex-officio evaluation from the government as outlined in **2.1 Approval of Foreign Investments** or proactively seek prior confirmation. In this case, investors can request a "safe harbour" confirmation, which is granted if the government fails to initiate an evaluation within 30 days of the request.

The consequences of proceeding with an investment that is subsequently vetoed are severe, given that a decision of opposition renders all related legal acts and transactions null and void, stripping them of any legal effect. This sanction is extensive, as it prohibits the economic exploitation of the assets and prevents the investor from exercising any corporate or voting rights over the strategic entities involved, effectively neutralising the investment.

### 2.3 Commitments Required From Foreign Investors

The legal framework does not explicitly provide a formal mechanism to bypass an opposition decision through negotiated commitments or mitigation agreements that provide a precise timeline. As a result, the government either opposes the transaction or allows it to proceed.

However, any approved investment is inherently bound by the operational and regulatory requirements already applicable to all market participants. Especially in highly regulated strategic sectors, investors must comply with strict conduct standards and public service obligations overseen by sectoral regulators, ensuring that the investment remains aligned with the national interest regardless of the absence of specific ad hoc commitments.

### 2.4 Right to Appeal

The entity affected by a decision of opposition may challenge its legality by filing an appeal before the Portuguese administrative courts. While the law grants this right of judicial review, providing a precise timeline for a final ruling is difficult. However, it is widely recognised that Portuguese administrative courts are generally subject to significant delays, often resulting in lengthy litigation periods that may span several years.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

In Portugal, the most common corporate vehicles are private limited liability companies (eg, *sociedades por quotas*, Lda) and public limited companies (eg, *sociedades anónimas*, SA).

A private limited liability company (Lda) is the most widely used structure for small and medium-sized businesses. It requires at least one shareholder, with

a minimum share capital of EUR1. Shareholders' liability is limited to their contributions to the share capital.

The governance model of a Portuguese private limited liability company (Lda) is characterised by its simplicity and flexibility, primarily consisting of two mandatory bodies: the general meeting of shareholders (eg, a *ssembleia geral*) and the management (eg, *gerência*). The general meeting is the supreme sovereign body where shareholders exercise their voting rights to approve annual accounts, elect directors and amend bylaws, while the management, composed of one or more directors (eg, g *erentes*), handles the day-to-day operations and legal representation, making it suitable for closely held businesses and family-owned structures. The appointment of a statutory auditor (ROC) becomes mandatory if the company exceeds two of the following three thresholds for two consecutive fiscal years:

- a balance sheet total of EUR1.5 million;
- net turnover of EUR3 million; and
- or an average number of 50 employees during the fiscal year.

A public limited company (SA) is generally used for larger projects, investment structures or companies seeking external funding. It requires a minimum of five shareholders (unless fully owned by a single entity) and a minimum share capital of EUR50,000.

Governance is more structured and may include different management and supervisory models. Typically, it is governed by a mandatory three-tier structure regardless of its size:

- the general meeting, led by a chairman and a secretary;
- the board of directors (eg, c
- *onselho de administração*), which may be replaced by a sole director (eg, *administrador unico*) if the share capital does not exceed EUR200,000; and
- a supervisory body, typically a sole supervisor (eg, *fiscal unico*) who must be a statutory auditor (ROC).

Unlike the more flexible Lda companies, an SA requires these permanent governance bodies and mandatory account auditing to ensure legal compliance and institutional transparency.

### 3.2 Incorporation Process

The incorporation of a company in Portugal is relatively straightforward and can be completed within a few days, depending on the chosen procedure.

The main steps include:

- obtaining Portuguese tax numbers (NIF) for all shareholders and directors;
- defining the company structure, including corporate purpose, share capital and management;
- executing the incorporation deed (which may be done online or through a pre-approved template);
- registering the company with the Commercial Registry; and
- obtaining a corporate tax number and completing tax and social security registrations.

In practice, incorporation can be completed within one to five business days, particularly where standard procedures are used.

### 3.3 Ongoing Reporting and Disclosure Obligations

Private companies in Portugal are subject to several ongoing reporting and disclosure obligations. These obligations are primarily aimed at ensuring transparency and compliance with corporate and tax regulations.

Key obligations include:

- filing annual accounts and financial statements with the Commercial Registry;
- updating the commercial registry in case of changes to directors, shareholders or articles of association;
- maintaining updated records of the ultimate beneficial owner (UBO) in the central register; and
- complying with tax reporting obligations, including periodic tax filings.

Failure to comply with these obligations may result in fines and restrictions on the company's activity.

### 3.4 Management Structures

Portuguese law provides for different management structures, particularly in public limited companies (SA), while private limited companies (Lda) follow a simpler model.

In an Lda, management is carried out by one or more directors who are responsible for the day-to-day operations of the company. There is no requirement for a supervisory body, although one may be established voluntarily.

In an SA, companies may adopt one of several governance models:

- a one-tier model, consisting of a board of directors and a statutory auditor;
- a two-tier model, with a management board and a supervisory board; or
- a model combining a board of directors with an audit committee.

These structures allow flexibility depending on the size and complexity of the business.

### 3.5 Directors', Officers' and Shareholders' Liability

Directors and officers are subject to duties of care, loyalty and compliance with the law.

They must act in the best interests of the company and may be held liable for damages resulting from breaches of these duties.

Liability may arise towards the company, shareholders or third parties, particularly in cases of negligent management, unlawful acts or failure to comply with statutory obligations. In certain circumstances, directors may also incur criminal or administrative liability.

Portuguese law recognises the principle of separate legal personality, meaning that shareholders are generally not liable beyond their capital contributions. However, in exceptional cases, courts may disregard this separation (piercing the corporate veil), particularly where there is abuse of the corporate structure, fraud or misuse of the company to harm creditors.

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

Employment relationships in Portugal are governed by a structured set of legal sources, including the Labour Code, supplementary legislation, collective bargaining agreements, case law and individual employment contracts.

Labour rules are predominantly mandatory in nature, reflecting the protective function of employment law. As a general principle, they establish minimum standards that cannot be waived or reduced by agreement. However, Portuguese labour law also recognises an important role for collective bargaining, allowing collective bargaining agreements, in specific matters expressly provided for by law, to derogate from statutory rules within the limits established by the Labour Code.

Collective bargaining agreements play a central role in shaping working conditions and may be extended to non-signatory employers and employees through administrative extension orders, ensuring consistency within sectors and preventing distortions of competition.

Case law, particularly from higher courts, contributes to the interpretation and consistent application of labour rules.

In an international context, under the Rome I Regulation, the parties may choose the law applicable to the employment contract. However, such choice cannot deprive the employee of the protection afforded by the mandatory rules of the country where the work is habitually carried out. As a result, employees working in Portugal will generally benefit from Portuguese labour law protections, even when employed by foreign entities.

Individual employment contracts give effect to the employment relationship and must comply with the applicable legal and collective framework, allowing deviations only where more favourable to the employee.

### 4.2 Characteristics of Employment Contracts

In Portugal, employment contracts are not generally subject to a written form and may be concluded verbally. However, written form is required in specific cases, including fixed-term contracts, temporary work, part-time work, telework and other regulated arrangements.

Regardless of form, employers are subject to information obligations regarding the essential terms of the employment relationship.

Permanent contracts are the standard form of employment. Fixed-term contracts are only permitted where a genuine temporary business need exists and must be properly justified in the contract. The stated reason must correspond to an actual temporary need, and improper use may result in the contract being reclassified as a permanent contract from the outset, representing a significant legal risk.

Fixed-term contracts are subject to maximum duration limits of two years, including renewals, while open-ended fixed-term contracts (of uncertain duration) may not exceed four years in general.

The law also provides for very short-term contracts, mainly for seasonal activities, which do not require written form provided they do not exceed 35 days, with a maximum of 70 days per year with the same employer.

Overall, contractual terms are heavily influenced by mandatory rules and collective agreements, limiting individual negotiation.

### 4.3 Working Time

Working time is subject to statutory limits and may not, in general, exceed eight hours per day and 40 hours per week. Employees are also entitled to minimum rest periods, including 11 consecutive hours of daily rest and a weekly rest.

The legal framework provides for flexibility mechanisms, including adaptability arrangements, working time banks and compressed working schedules, allowing companies to adjust working time to operational needs within defined limits.

Adaptability allows working time to be calculated on an average basis, enabling longer working periods in certain phases balanced by shorter periods, provided the applicable average is respected.

Working time banks allow additional working hours to be performed and compensated at a later stage, either under collective agreements or group-based arrangements subject to employee approval and labour authority oversight. Compressed working schedules allow the weekly working time to be performed over fewer days, resulting in longer daily working periods within legal limits.

The law also provides for working time exemption regimes applicable to managerial or high-trust roles, allowing increased flexibility while maintaining essential protections. Overtime work is exceptional in nature and subject to legal limits and increased pay rates. In practice, this results in higher labour costs for employers and acts as a disincentive to its regular use.

### 4.4 Termination of Employment Contracts

Termination of employment in Portugal does not follow an “employment at will” model and is subject to statutory grounds and formal procedures.

Employer-initiated termination is only permitted in legally defined situations, including disciplinary dismissal, collective dismissal, redundancy (elimination of position) and dismissal for unsuitability.

Termination may also occur through expiry, mutual agreement, termination by the employee (with or without cause) or other legally established forms.

From an economic perspective, a distinction is made between compensation and indemnity. Compensation is payable in lawful terminations based on objective grounds, while indemnity arises in cases of unlawful dismissal, where the employee may choose reinstatement or compensation.

Collective dismissal is based on economic, structural or technological reasons and involves a formal, phased procedure. This includes initial communication to employee representatives and to the Directorate-General for Employment and Labour Relations,

the definition of objective selection criteria, and a mandatory information and consultation phase aimed at assessing the grounds and exploring alternative measures. Following this phase, the employer may issue a final decision, which must be individually communicated to the affected employees and takes effect after the applicable notice period.

Employees affected by collective dismissal are entitled to statutory compensation, outstanding payments and, generally, access to unemployment benefits.

Termination by mutual agreement may, in certain cases, allow access to unemployment benefits under Decree-Law No. 220/2006, where it occurs in a context comparable to redundancy or collective dismissal.

All termination mechanisms are subject to judicial review, and employees may challenge the legality of dismissal.

### 4.5 Employee Representations

The Portuguese system is based on the principle of freedom of association, meaning that employees are not required to join or be represented by collective bodies.

Employee representation depends on workers' initiative and is not mandatory in all companies. Nevertheless, the legal framework provides for information and consultation mechanisms that ensure employee participation.

The main forms of representation include workers' committees, trade union structures and union representatives, which exercise information, consultation and participation rights.

Workers' committees play a particularly relevant role, especially in matters such as company activity, restructuring processes and collective dismissals. These structures are also involved in health and safety matters, including risk assessment and the implementation of preventive measures.

Even in the absence of representative bodies, employers remain subject to information and consultation obligations in certain situations. Employee representatives benefit from enhanced protection, particularly against dismissal.

Overall, the Portuguese system combines freedom of association with structured participation mechanisms, ensuring employee involvement without imposing rigid representation models.

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/ Employers

In the context of an employment relationship governed by a subordination agreement, the employee's salary is subject to progressive personal income tax (PIT) rates ranging from 12.5% to 48%. The applicable withholding rate is determined by the employee's monthly gross salary, and the employer is responsible for withholding and remitting the corresponding amount to the tax authorities on the employee's behalf.

In addition to income tax, employees contribute 11% of their gross salary to the social security system, an amount equally withheld and remitted by the employer. Employers are further required to make their own social security contribution of 23.75%, calculated on the basis of the salary paid to the employee.

### 5.2 Taxes Applicable to Businesses

#### Taxes Applicable to Businesses

Companies that are tax resident in Portugal, namely those with their registered office or place of effective management in Portuguese territory, are subject to corporate income tax (CIT) on their worldwide income. The standard CIT rate currently stands at 19% (for tax periods beginning on or after 1 January 2026), under a phased reduction schedule set to reach 17% by 2028. SMEs and Small Mid Cap companies benefit from a reduced 15% rate on the first EUR50,000 of taxable income, with the standard rate applying to the excess.

Non-resident companies without a permanent establishment in Portugal are taxed only on Portuguese-source income, at a flat rate of 25%.

### VAT

VAT applies to the supply of goods and services in Portugal. The standard rate is 23% in mainland Portugal, with a reduced rate of 13% and a super-reduced rate of 6% applying to certain goods and services. Lower rates apply in the Autonomous Regions of Madeira and the Azores.

### Withholding Tax on Dividends and Interest

Withholding tax treatment depends on the nature and residence of the beneficiary. Where the beneficiary is an individual resident in Portugal, dividends and interest are generally subject to a 28% withholding tax. For corporate beneficiaries resident in Portugal, the applicable rate is 25%, although distributions may be fully exempt under the participation exemption regime, provided the following conditions are met:

- the entity is subject to and not exempt from a tax similar to CIT at a legal rate not lower than 60% of the CIT rate currently in force in Portugal;
- the entity holds at least 10% of the capital or voting rights of the Portuguese entity;
- the entity holds this participation uninterruptedly for the year prior to the distribution; and
- the entity is not resident or domiciled in a country, territory or region subject to a clearly more favourable tax regime, as identified under the list of tax havens approved by Portuguese legislation.

For non-resident beneficiaries, whether individuals or companies, the domestic withholding tax rate is 25%, rising to 35% where the beneficiary is resident in a jurisdiction listed as a tax haven under Portuguese law.

These rates may be reduced under an applicable double tax treaty. Interest paid to non-residents is equally subject to a 25% withholding tax as a general rule, again subject to potential reduction under a double tax treaty or exemption under the EU Interest and Royalties Directive, provided the applicable conditions regarding ownership threshold and holding period are satisfied.

### Real Estate Acquisition Taxes

Companies acquiring real estate in Portugal are subject to two transfer taxes. Municipal Property Transfer Tax (IMT) applies at progressive rates ranging from 0% to 7.5%, calculated on the higher of the purchase price or the tax registration value of the property. Stamp Duty applies at a flat rate of 0.8% on the same basis. Both taxes are due prior to completion of the transaction.

### Pillar Two

Portugal transposed the EU Minimum Tax Directive into domestic law in 2024, implementing the OECD's Pillar Two framework for large multinational and domestic groups with annual consolidated revenues exceeding EUR750 million.

The legislation introduced three rules:

- the Income Inclusion Rule (IIR), under which the parent company of a group calculates and pays its share of the top-up tax in respect of low-taxed group entities;
- the Undertaxed Profits Rule (UTPR), a backstop mechanism applicable where the IIR is not applied by the parent's jurisdiction, allocating top-up tax liability to other group entities; and
- a Qualified Domestic Minimum Top-Up Tax (QDMTT), which ensures that any top-up tax owed in respect of Portuguese low-taxed entities is collected domestically, preserving Portugal's tax revenue and preventing reallocation to other jurisdictions.

The Portuguese QDMTT has been granted safe harbour status on the OECD's central record.

## 5.3 Available Tax Credits/Incentives

### IFICI regime (Tax Incentive for Scientific Research and Innovation)

The IFICI regime grants a flat 20% personal income tax rate on qualifying Portuguese-source income derived from eligible activities and exempts from Portuguese taxation certain categories of foreign-source income. The regime is available for a period of ten consecutive years from the year of registration and is not compatible with other tax benefits, including the former Non-Habitual Resident (NHR) regime, the Young Personal Income Tax (IRS) regime and the Returning Residents regime (*programa regressar*).

To benefit from the regime, the individual must become tax resident in Portugal, must not have been tax resident in Portugal in any of the five preceding years and must carry out an activity that falls within the scope of the regime.

Eligibility is subject to a two-tier validation: the applicant must exercise a qualifying activity as defined by law, and the entity for which the activity is performed must itself be recognised as eligible under the applicable rules.

Qualifying activities include:

- higher education teaching and scientific research;
- qualified positions in contractual investment projects;
- highly qualified roles in specific sectors of strategic relevance to the national economy;
- R&D personnel eligible under the Tax Incentive System for Business Research and Development (SIFIDE) framework;
- positions or members of governing bodies in certified startups; and
- certain activities carried out by tax residents in the Autonomous Regions of the Azores or Madeira, subject to criteria defined under regional legislation.

### Wage Enhancement Tax Incentive

Introduced by the State Budget for 2025 and updated by the State Budget for 2026, the Wage Enhancement Tax Incentive is designed to reward employee performance through benefits at the level of IRS, social security contributions and CIT.

With regard to employees, an exemption is granted on amounts paid or made available to employees by way of productivity bonuses, performance bonuses, profit-sharing payments and balance sheet gratifications, for IRS and social security contribution purposes, up to a limit of 6% of the employee's annual base salary.

In order to benefit from this exemption, the employer must:

- increase the average annual base salary across the company, by reference to the end of the prior year, by a minimum of 4.6%; and
- ensure that the increase in the annual base salary of employees earning a value equal to or lower than the company's average annual base salary at the end of the prior year is also a minimum of 4.6%.

It should also be noted that, for CIT purposes, costs corresponding to the qualifying salary increases are deductible at 200% of their actual amount, recognised as an expense of the relevant financial year.

### SIFIDE – R&D Tax Credit

In the context of available tax incentives, the SIFIDE regime deserves particular attention. Under this regime, certain research and development expenses may be deducted directly from the CIT tax liability, including:

- research expenditure incurred with a view to acquiring new scientific or technical knowledge; and
- development expenditure arising from the exploitation of research results or other scientific or technical knowledge, with a view to the discovery or substantial improvement of raw materials, products, services or manufacturing processes.

Within these categories, eligible expenditure includes costs relating to fixed assets such as personnel costs for technical staff involved in research and development tasks, and costs associated with the participation of directors and senior staff in the management of research and development institutions.

The deductible expenditure is calculated on the following basis.

- Base rate – 32.5% of eligible expenses incurred in the relevant tax period.
- Incremental rate – 50% of the increase in eligible expenses incurred in the relevant tax period compared to the simple arithmetic mean of the two preceding financial years, up to a maximum of EUR1,500,000.

### RFAI – Investment Support Tax Regime

The RFAI is a tax incentive regime available to companies carrying out activities in sectors specifically listed under Portuguese law, including:

- extractive and manufacturing industries;
- tourism, including activities of interest to the tourism sector;
- IT activities and related services;
- agricultural, aquaculture, fishing, livestock and forestry activities;
- research and development and high-technology activities;
- information technology, audiovisual production and multimedia;
- defence, environment, energy and telecommunications; and
- shared services centre activities.

In addition to the sectoral requirements, companies must cumulatively satisfy the following conditions:

- maintain properly organised accounts;
- have their taxable profit determined by direct assessment methods rather than indirect methods;
- retain the assets subject to investment within the company and in the relevant region for a minimum period of three years from the date of investment, in the case of micro, small and medium-sized enterprises, or five years in all other cases, or for the minimum useful life of the assets if shorter, or until the assets are written off, dismantled, abandoned or rendered unusable;
- have no outstanding debts to the state or social security in respect of contributions, taxes or levies, or have such debts duly secured; and
- make qualifying investments that generate job creation and maintain those jobs until the end of the minimum retention period applicable to the assets subject to investment.

Where these conditions are met, the following tax benefits are available:

- CIT deductions – in the case of investments made in the Norte, Centro, Alentejo, Autonomous Region of the Azores and Autonomous Region of Madeira, a deduction of 30% of qualifying expenditure applies to investments up to EUR15,000,000, and 10% on the portion exceeding that threshold. For investments in the Algarve and Lisbon regions, a deduction of 10% of qualifying expenditure applies.
- IMI exemption or reduction – for a period of up to ten years from the year of acquisition or construction of the property, in respect of properties used in connection with qualifying investments.
- IMT exemption or reduction – in respect of acquisitions of properties constituting qualifying investments.
- Stamp Duty exemption – in respect of acquisitions of properties constituting qualifying investments.

### Capitalisation Tax Incentive Regime (ICE)

The tax incentive regime for company capitalisation was introduced by the State Budget for 2023 and replaced the DLRR regime, the deduction for retained and reinvested profits, which was repealed in that same year.

The regime consists of a deduction from taxable profit, available to Portuguese companies, corresponding to the application of the 12-month Euribor rate, equal to the average for the tax period, calculated on the basis of the last day of each month, plus a spread of two percentage points, applied to the net increase in eligible equity.

The deduction may not exceed, in each tax period, the greater of the following limits:

- EUR4,000,000; or
- 30% of earnings before depreciation, amortisation, net financing costs and taxes.

For the purposes of the ICE regime, the following are considered net increases in eligible equity:

- cash contributions made in the context of the incorporation of a company or the share capital increase of the beneficiary company;
- in-kind contributions made in the context of a share capital increase corresponding to the conversion of debt into equity;
- share issue premiums; and

- the appropriation of distributable accounting profits, in accordance with commercial law, to retained earnings or directly to reserves or to a share capital increase.

### 5.4 Tax Consolidation

Tax consolidation is available in Portugal through the Special Group Taxation Regime (RETGS).

The regime is optional and allows the parent company of a qualifying group to elect for a consolidated determination of the group's taxable base, aggregating the taxable profits and losses of all group members through an algebraic sum.

A group exists for these purposes where a parent company holds, directly or indirectly, at least 75% of the share capital of one or more subsidiaries, provided that such holding also confers more than 50% of the voting rights.

The election is only available where all of the following conditions are met on a cumulative basis:

- all group companies must have their registered office and place of effective management in Portuguese territory and their income must be subject to the standard CIT regime at the highest applicable rate;
- the parent company must have held its participation in each subsidiary for more than one year prior to the start of the regime;
- the parent company must not itself qualify as a subsidiary of another Portuguese resident company that meets the conditions to be treated as a parent; and
- the parent company must not have renounced the regime in the three years preceding the election.

### 5.5 Thin Capitalisation Rules and Other Limitations

Portugal historically applied traditional thin capitalisation rules, which were replaced in 2013 by a broader interest limitation regime, in line with the OECD BEPS recommendations and subsequently aligned with the EU Anti-Tax Avoidance Directive (ATAD).

The key rule to highlight is the limitation on the deductibility of net financing expenses. Net financing expenses are deductible up to the higher of EUR1,000,000 or 30% of earnings before depreciation, amortisation, net financing expenses and taxes (EBITDA). The purpose of this rule is to prevent excessive debt financing from artificially reducing taxable income.

Net financing expenses that exceed the applicable threshold in a given tax period may be carried forward and deducted in any of the five subsequent tax periods, subject to the same limitations applying in each of those periods.

### 5.6 Transfer Pricing

Transfer pricing rules apply in Portugal. Under the applicable legal framework, transactions carried out between a taxpayer and any related entity must be conducted on terms and conditions that are substantially identical to those that would normally be agreed between independent parties in comparable transactions.

This is the arm's length principle, which aims to ensure tax equity between companies forming part of multinational groups and independent enterprises, neutralise tax avoidance practices, protect the domestic tax base and reduce obstacles to international investment and trade.

In this sense, related party relationships exist where one entity has the power to exercise, directly or indirectly, a significant influence over the management decisions of another.

To determine the arm's length terms and conditions, taxpayers must adopt the most appropriate method having regard to, among other factors:

- the nature of the transaction;
- the availability of reliable information; and
- the degree of comparability between the controlled transaction and comparable uncontrolled transactions.

The available methods are:

- the comparable uncontrolled price method;

- the resale price method;
- the cost plus method;
- the profit split method; and
- the transactional net margin method.

Where none of these methods can be applied due to the unique nature of the transactions or the absence of reliable comparable data, other generally accepted economic valuation techniques may be used, in particular where the transactions involve real estate rights, shares in unlisted companies, credit rights or intangibles.

### 5.7 Anti-Evasion Rules

#### Anti-Avoidance Framework

Portugal has a number of rules designed to prevent and combat tax avoidance and evasion.

As a starting point, it should be noted that Portugal has a general anti-abuse rule, which may always be invoked where a situation considered abusive for tax purposes is at issue. Under this rule, arrangements or series of arrangements that are put in place with the principal purpose of obtaining a tax advantage that defeats the object or purpose of the applicable tax law, and that are carried out through an abuse of legal forms or are not considered genuine having regard to all relevant facts and circumstances, are disregarded for tax purposes.

Taxation is then applied in accordance with the rules applicable to the transactions or acts that reflect the underlying economic substance, and the intended tax advantages are not recognised.

The rule operates as a safeguard against aggressive tax planning. An arrangement is considered non-genuine to the extent that it is not carried out for valid economic reasons that reflect economic substance. An arrangement may consist of more than one step or part.

In addition to the general anti-abuse rule, which may be invoked by the tax authority whenever it considers a given structure or transaction to be abusive, a number of specific rules deserve mention.

#### CFC Rules

Under Portugal's Controlled Foreign Company rules, profits or income obtained by a non-resident entity may be attributed to a Portuguese tax resident entities where such income originates from a jurisdiction subject to a clearly more favourable tax regime, provided the Portuguese resident holds, directly or indirectly, at least 25% of the share capital, voting rights, or rights over the income or assets of that entity.

#### Blacklisted Jurisdictions

Portugal has, by means of a specific ministerial order, identified an extensive list of jurisdictions considered to have a clearly more favourable tax regime. Income paid to or received from entities in those jurisdictions is subject to several tax aggravations. A tax rate of 35% applies to capital income and securities capital gains arising from or paid to those jurisdictions.

#### Exit Tax Rules

Where an individual taxpayer of Portuguese nationality transfers their tax residence to a jurisdiction identified as having a clearly more favourable tax regime, that individual may continue to be treated as a Portuguese tax resident for taxation purposes in the year of the transfer and the following four years, unless they can demonstrate that the transfer was motivated by legitimate reasons, such as the temporary exercise of an activity in that territory on behalf of an employer domiciled in Portugal.

### 5.8 Tariffs

Portugal, as a Member State of the European Union, does not operate an independent tariff regime. Customs and trade policy are an exclusive EU competence, meaning that the tariffs applicable to goods imported into Portugal from third countries are those established under the EU Common Customs Tariff, applied uniformly across all Member States.

## 6. Competition Law

### 6.1 Merger Control Notification

The Portuguese regulator competent to enforce competition law in Portugal, including the rules on merger control, is the *Autoridade da Concorrência* (Portuguese Competition Authority, PCA).

The relevant legislation concerning national merger control is Law No 19/2012 of May 8, as amended (Portuguese Competition Law, PCL), which establishes the general Competition Law regime.

The definition of undertaking under PCL (article 3) is:

An undertaking shall be understood as "any entity carrying out an economic activity, regardless of its legal status and its method of financing" and, for the purposes of this law, shall be considered as a single enterprise, the set of entities which, although legally distinct, constitute an economic unit or maintain interdependent links between them arising, in particular:

- from a majority shareholding in the share capital;
- the holding of more than half of the votes attributed by the shareholdings;
- the possibility of appointing more than half of the members of the management or supervisory body; and
- the power to manage their business.

### Prior Notification of Merger Operations

In order to assess whether a particular transaction is subject to the obligation of prior notification (either to the European Commission or to the PCA), it is necessary to go through two stages. The first stage is to assess whether there is a concentration of undertakings for the purposes of competition law. Secondly, if the transaction qualifies as a concentration within the meaning of these rules, it is necessary to determine whether such merger of undertaking is subject to mandatory prior merger notification under the applicable law.

The legal definition of concentration of undertakings under PCL (Article 36) is:

A concentration of undertakings shall be deemed to occur, for the purposes of the PCL, where there is a lasting change of control over all or part of one or more undertakings, as a result of:

- the merger of two or more undertakings or parts of previously independent undertakings; and
- the acquisition, directly or indirectly, of control of all or part of the share capital or assets of one or more other undertakings, by one or more undertakings or by one or more persons who already control at least one undertaking.

The creation of a joint venture shall constitute a concentration of undertakings where the joint venture performs, on a lasting basis, the functions of an autonomous economic entity.

Control shall derive from any act, regardless of its form, which entails the possibility of exercising, on a lasting basis, alone or jointly, and considering the circumstances of fact or law, a decisive influence on the activity of an undertaking, in particular:

- the acquisition of all or part of the share capital;
- the acquisition of rights of ownership, use or enjoyment over all or part of the assets of an undertaking; and
- the acquisition of rights or the conclusion of contracts which confer a decisive influence on the composition or on the deliberations or decisions of the organs of the company.

If it is found that there is a concentration of companies for the purposes of Competition law, the next step in the analysis will be to check whether the notification criteria, whether European or national, are met.

### Obligation to (Prior) Notify a Merger – Minimum Thresholds

If the triggers for mandatory notification to the European Commission are not met, a concentration will still be subject to a prior control regime (ex ante intervention) by the PCA when it meets one of the following conditions (as per Article 37 (1) of PCL).

- As a consequence of the concentration, a market share equal to or greater than 50% of the Portuguese market in a specific product or service, or in a substantial part of it, is acquired, created or reinforced.
- As a consequence of the concentration, a market share equal to or greater than 30% but smaller than 50% of the Portuguese market in a specific product or service, or in a substantial part of it, is acquired, created or reinforced provided that the individual turnover in Portugal in the previous

financial year, by at least two of the undertakings involved in the concentration are greater than five million euros, net of taxes directly related to such a turnover.
- The undertakings that are involved in the concentration have reached an aggregate turnover in Portugal in the previous financial year greater than EUR100 million, net of taxes directly related to such a turnover, as long as the turnover in Portugal of at least two of these undertakings is above five million euros. The assessment of the market share and the calculation of the turnover of each undertaking involved in the concentration shall be performed in accordance with specific criteria and special rules apply in some specific cases.

A set of concentrations between the same entities within a period of two years – even if the operations, individually considered, would not be considered subject to prior notification – are considered a single concentration subject to prior notification when the concentrations jointly reach the turnover's threshold entailing the mandatory notification to PCA after the conclusion of the agreement on the last of the operations and before its implementation.

### 6.2 Merger Control Procedure

Concentrations that are considered, under the thresholds set out in **6.1 Merger Control Notification**, to be of mandatory filing before the PCA shall be notified to such authority after the conclusion of the agreement and before being implemented; or, where applicable, after the date of the preliminary announcement of a public takeover bid or exchange offer, or the announcement of the acquisition of a controlling interest in a company whose shares are admitted to trading on a regulated market; or, in the case of a concentration resulting from a public procurement procedure, after the final award and before being implemented.

Also, PCL expressly provides for the possibility of voluntary notification when there is a serious intention of concluding an agreement. A concentration subject to mandatory prior notification may not be put into effect before it has been notified and has been the object of an explicit or tacit decision of non-opposition and, accordingly, the validity of any legal transaction carried out during the evaluation period depends upon the clearance of the concentration (standstill obligation).

A notification only becomes effective after duly submission with all the elements and the respective payment of the fee due.

The procedure for assessing a concentration under the PCL comprises two phases: an initial investigation phase , and an eventual phase two, usually called the "in-depth investigation phase".

- In phase one PCA has 30 working days from the date when the notification becomes effective to decide: that the concentration is not subject to mandatory filing;
- not to oppose the concentration; or
- to initiate an in-depth investigation, if, in view of the evidence gathered, it has serious doubts that the concentration will result in significant impediments to effective competition.

In straightforward cases and if some criteria are met – such as absence of horizontal overlap, the absence of vertical relationships, minimal market shares, transition from joint to sole control or negligible activity – a short-form notification can be used, which requires significantly less data and typically leads to a faster clearance decision.

During phase one, if PCA considers that there are serious competition concerns, it decides to initiate an in-depth investigation (ie, phase two). In this phase, PCA has a maximum of 90 working days to carry out the additional inquiries that it considers necessary (this time period already incorporates all the working days used by PCA during phase one). This period may be extended by the competition authority, at its own initiative or at the request of the notifying party/parties, for a period that, in total, may not exceed 20 working days.

The time period is suspended whenever there are PCA's additional requests of information (to the participant parties and/or other interveners) and respective replies. If no decision is issued by PCA within such deadlines (considering said extensions and sus-

pensions), a non-opposition decision is considered to have occurred. In phase two, PCA must conduct a hearing of the parties (a procedural step that is usually initiated by the issuance of a draft final decision) within 75 working days from notification.

By the end of the phase two PCA must decide:

- not to oppose the concentration (with or without commitments offered by the notifying parties); or
- to prohibit the concentration, prescribing appropriate measures, should the concentration have already occurred.

### 6.3 Cartels

PCL establishes the general competition legal framework concerning anticompetitive agreements and abuses of dominant position. This law applies to all economic activities carried out, whether on a permanent or occasional basis, in the private, public and cooperative sectors. PCL shall be interpreted in accordance with European Union Law and considering the case law of the Court of Justice of the European Union.

Regarding restrictive agreements and similar practices, PCL prohibits, in Article 9, agreements between undertakings, concerted practices and decisions by associations of undertakings which have as their purpose or effect the prevention, restriction or distortion of competition. Said agreements between undertakings may be legally binding agreements, informal agreements or simple arrangements between undertakings.

In regards to concerted practices, they generally involve fixing market conditions and business actions taken in parallel, for instance through a sudden and simultaneous rise in prices for a given product.

As with Article 101 of the TFEU, PCL provides examples of restrictive practices.

- Direct or indirect fixing of purchase or selling prices or of any other trade conditions.
- Limitation or control over production, the distribution, technical development or investments.
- Sharing of markets or sources of supply.
- Application to trade partners of dissimilar conditions to equivalent transactions, therefore placing them in disadvantage in the competition.
- Make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
- Establishing, within the scope of the supply of goods or accommodation services in tourist developments or local accommodation establishments, that the other contracting party or any other entity may not offer, on electronic platforms or in physical establishments, prices or other sales conditions for the same good or service that are more advantageous than those practiced by an intermediary operating through an electronic platform.

Similarly to what is provided by Article 101 (3) of TFEU, in accordance with Article 10 of the PCL, any restrictive practice under the terms of article nine (agreements between undertakings, concerted practices and decisions by associations of undertakings which have as their purpose or effect the prevention, restriction or distortion of competition) may be deemed justified when it contributes to improve the production or distribution of goods or services or to promote technical or economic development, provided that, cumulatively, they:

- offer the users of such goods or services a fair part of the benefit arising therefrom;
- do not impose to the undertakings concerned any restrictions that are not indispensable to the attainment of such objectives; and
- do not grant such undertakings the opportunity to suppress the competition in a substantial part of the goods or services market at stake.

As to the public interest defence/importance, it is established by Article 4 of the PCL that the undertakings that have been legally entrusted with the management of services of general economic interest, or are by their nature legal monopolies, are subject to the provisions of the PCL, to the extent that enforcement of these provisions does not create an obstacle to the fulfilment of their specific mission.

Article 7 (1) of the PCL sets the priorities of PCA's mission and states that in carrying out its responsibilities, the PCA shall be guided by the public interest criterion of promoting and protecting competition and may, based on this criterion, assign different degrees of priority to the matters it is called upon to analyse and reject the handling of matters it deems non-priority.

I is also established by the PCL that the PCA shall exercise its sanctioning powers on a case-by-case basis, whenever the public interest of pursuing and punishing infringements of competition rules entails the initiation of administrative offence proceedings, taking into account in particular the priorities in competition policy and the elements of fact and law brought by the parties.

The PCA registers all complaints but will only initiate proceedings if there are sufficient grounds to do so. Should PCA consider a complaint to be non-priority or lacking legal basis, it must inform the complainant, who then has ten working days to submit written observations. If the complainant fails to do so, the complaint is deemed withdrawn. If observations are submitted (within the deadline), the PCA may, in light of such observations, either initiate proceedings or, alternatively, notify the complainant of an express decision of rejection.

### 6.4 Abuse of Dominant Position

PCL prohibits the abuse of a dominant position which is deemed to occur where an undertaking holds a dominant position in the relevant market, and exploits it in an abusive manner.

According to the European Court of Justice's jurisprudence, a dominant position relates to a position of economic strength that enables an undertaking to prevent effective competition from being maintained in the relevant market by granting it the power to behave in a considerable extent regardless of its competitors, customers and consumers.

There shall be an individual or collective dominant position with regard to a given product or service if:

- a company acts in a market in which it is not subject to significant competition; or
- two or more companies behave in a concerted manner on a market in which they do not have significant competition or in which they prevail over others (joint dominance).

As with Article 102 of the TFEU, PCA also provides examples of restrictive practices.

- Directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions.
- Limiting production, markets or technical development to the prejudice of consumers.
- Applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage.
- Making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
- Refusing access for another undertaking to a network or other essential facilities that it controls, against the appropriate payment, provided that such undertaking without it cannot act, for de facto or legal reasons, as a competitor of such undertaking in a dominant position in the upstream or downstream markets, except if the dominant undertaking evidences that such access is not reasonably possible for operational or other reasons.

The last example is innovative when comparing the wording of the national law with EU Law provisions. However, in practical terms, the same understanding and practice is followed within the EU scheme.

In addition to the abuse of dominant position, PCL also prohibits, in Article 12, the abuse of economic dependence, which intends to prevent the abuse by one or more undertakings of the economic dependence over a supplier or client that has no equivalent alternative.

Portuguese legislation also prohibits unilateral commercial practices regarding activities which do not necessarily or per se have effects on competition. The Decree-Law No 166/2013, of December 27 sets out the legal regime applicable to individual restrictive trade practices which impose transparency and

balance in commercial relations (establishing some obligations such as and prohibits some specific unilateral conducts such as selling below cost (with some specific exceptions), discriminatory pricing and abusive trade practices.

## 7. Intellectual Property

### 7.1 Patents

Patents protect technical inventions that are new, involve an inventive step and are capable of industrial application. In Portugal, patents are governed mainly by the Industrial Property Code and are granted by the Portuguese Institute of Industrial Property (INPI). Protection is territorial and, for national patents, lasts for 20 years from the filing date, subject to payment of annual fees. Utility models may also be relevant for certain technical solutions and have a shorter maximum term of ten years.

#### Registration and Procedure

A patent application may be filed directly before INPI, or protection may be obtained through the European patent system, including validation in Portugal, or through international routes such as the PCT. A national application is subject to formal examination, publication in the Industrial Property Bulletin, a period for third-party observations or opposition, substantive examination and a final decision. The process is technical and investors should normally conduct prior searches and freedom-to-operate analysis before launching products or technology in Portugal.

#### Enforcement and Remedies

Patent rights allow the holder to prevent unauthorised manufacture, use, sale, importation or commercial exploitation of the patented invention. Enforcement is usually brought before the Portuguese Intellectual Property Court, although alternative dispute resolution may be available in specific cases. Remedies may include interim and final injunctions, seizure of infringing goods, removal from the market, destruction of infringing products or means of infringement, damages and publication of the decision. Patent infringement may also have criminal relevance in certain circumstances.

Portugal also participates in the European patent framework. For European patents and unitary patent matters, businesses should consider at an early stage whether protection and enforcement will be pursued through national routes, the European Patent Office and, where applicable, the Unified Patent Court system.

### 7.2 Trade Marks

Trade marks protect signs capable of distinguishing the goods or services of one undertaking from those of another. These signs may include words, names, logos, letters, numbers, colours, shapes, sounds or other signs, provided that they are distinctive and can be represented in a way that allows the scope of protection to be clearly identified. In Portugal, national trade marks are governed by the Industrial Property Code and granted by INPI. Registration is valid for ten years from the filing date and can be renewed indefinitely for further ten-year periods.

#### Registration and Procedure

Applications are filed before INPI and must identify the sign, the applicant and the goods or services covered, classified under the Nice Classification. INPI examines absolute and relative grounds for refusal, such as lack of distinctiveness, descriptiveness or unlawfulness, and third parties prior rights, and the application is published so that third parties may oppose registration. A prior clearance search is strongly recommended, especially before adopting a brand name, launching a product or investing in packaging, domain names or marketing.

Businesses can also protect trade marks in Portugal through an EU trade mark filed with the European Union Intellectual Property Office (EUIPO), which covers all EU member states, or through an international registration designating Portugal or the EU. The best route depends on the geographical scope of the business, budget, likelihood of conflict and enforcement strategy.

#### Enforcement and Remedies

A registered trade mark gives the owner the right to prevent unauthorised use of identical or confusingly similar signs for identical or similar goods or services, and, in some cases, use that takes unfair advantage

of or harms the reputation of a well-known or reputed mark.

Remedies include injunctions, damages, seizure, withdrawal or destruction of infringing goods, customs action and publication of judgments.

Trade mark infringement and counterfeiting may also trigger criminal proceedings. Owners should monitor the market and the INPI, EUIPO and domain name registers, since non-use for a continuous period may expose the registration to revocation.

## 7.3 Industrial Designs

Industrial designs protect the appearance of the whole or part of a product. This may include lines, contours, colours, shape, texture, materials or ornamentation, provided that the design is new and has individual character. Design protection is particularly relevant for consumer products, fashion, packaging, furniture, technology hardware, interfaces and other products where appearance has commercial value.

### Registration and Duration

In Portugal, designs are registered before INPI under the Industrial Property Code. Once granted, national design protection may last for up to 25 years, usually through successive five-year periods of protection. Applicants may also seek protection through the EU design system, which is often attractive where the product will be marketed across several EU jurisdictions.

The registration process involves filing representations of the design and identifying the product to which it applies. Businesses should pay particular attention to the timing of disclosure. Public disclosure before filing may affect novelty, although certain grace-period rules can be relevant. As a practical matter, filing before launch is usually the safest approach.

### Enforcement and Remedies

A registered design allows the holder to prevent third parties from making, offering, putting on the market, importing, exporting or using a product incorporating a design that does not produce a different overall impression on the informed user. Enforcement may be brought before the Portuguese Intellectual Property Court, with remedies including interim and final injunctions, seizure, withdrawal from the market, destruction of infringing goods, damages and publication of the judgment. Where the appearance of a product is also distinctive or creative, overlapping protection through trade marks, copyright or unfair competition rules may also be considered.

## 7.4 Copyright

Copyright protects original literary, scientific and artistic works. In Portugal, the main legal framework is the Code of Copyright and Related Rights. Protected works may include books, articles, music, lyrics, audiovisual works, photographs, software, architectural works, visual arts and other original creations. Copyright protects the form of expression of an idea, not the idea, method, concept or business model itself.

### Creation, Ownership and Duration

Copyright arises automatically upon creation of the work and does not depend on registration. As a general rule, economic rights last for 70 years after the author's death, although specific rules apply to collective, anonymous, audiovisual and other categories of works. Moral rights are also important under Portuguese law and include the right to claim authorship and to object to certain distortions or uses that harm the author's honour or reputation.

Ownership should be addressed carefully in contracts. In many business contexts, such as commissioned works, employment, software development, marketing materials and audiovisual production, the main risk is not whether copyright exists, but whether the company has obtained the necessary rights to use, adapt, distribute, communicate or sublicense the work. Written assignments or licenses should therefore identify the works, rights, territory, term, permitted uses and remuneration.

### Registration and Enforcement

Registration with the Inspectorate-General for Cultural Activities (IGAC) is optional, but may be useful as evidence of authorship, ownership or date of creation. Copyright can be enforced through civil and, in certain cases, criminal proceedings. Remedies may include injunctions, seizure, removal of infringing copies, damages, publication of the decision and measures

against online infringement. For online businesses, music, audiovisual content, software and platform-based services, rights clearance and evidence of the chain of title are often as important as enforcement itself.

### 7.5 Others

#### Software

Computer programs are protected in Portugal primarily by copyright, under specific software legislation and the general copyright framework. Protection covers the expression of the program, including source code and object code, but not the underlying ideas, principles, algorithms or functionalities as such. Patent protection for software-related inventions may be available only where the invention has the required technical character and meets the general patentability criteria.

In commercial practice, software protection usually depends on a combination of copyright, confidentiality, trade secret protection, licensing terms, escrow arrangements, access controls and careful treatment of open-source components. Development agreements should clearly regulate ownership, third-party materials, repositories, documentation, maintenance, cybersecurity, audit rights and permitted use.

#### Databases

Databases may be protected by copyright if the selection or arrangement of their contents is original. Separately, a sui generis database right may protect the maker of a database where there has been substantial investment in obtaining, verifying or presenting its contents. This is particularly relevant for data-driven businesses, platforms, directories, catalogues and digital services.

The practical value of database protection depends heavily on evidence. Businesses should document the investment made in collecting, verifying and maintaining data, restrict unauthorised extraction or re-utilisation through contractual terms, and implement technical controls where appropriate.

#### Trade Secrets and Confidential Information

Trade secrets are protected where information is secret, has commercial value because it is secret, and has been subject to reasonable steps to keep it confidential. This may include technical know-how, business plans, customer lists, pricing models, algorithms, manufacturing processes, financial information and strategic data. Protection does not require registration, but it does require active internal management.

Companies doing business in Portugal should use non-disclosure agreements, confidentiality clauses, internal access controls, employee policies, clean-room procedures where needed and clear rules for contractors and consultants. Remedies for unlawful acquisition, use or disclosure may include injunctions, corrective measures, damages and restrictions on the use or dissemination of the trade secret.

#### Other Rights and Practical Considerations

Other protected subject matter may include domain names, geographical indications, appellations of origin, semiconductor topographies, plant varieties and unfair competition claims. In practice, IP protection in Portugal should be treated as a portfolio exercise. Businesses should combine registrations, contracts, internal policies, monitoring and enforcement planning, rather than relying on a single right.

## 8. Data Protection

### 8.1 Applicable Regulations

The main data protection framework applicable in Portugal is the General Data Protection Regulation, Regulation (EU) 2016/679 (GDPR), together with Law No 58/2019 of 8 August, which implements and supplements the GDPR at national level. Law No 58/2019 also identifies the Portuguese supervisory authority and contains certain national rules on matters such as processing in an employment context, processing by public entities, video surveillance, secrecy obligations and sanctions.

Portuguese data protection law follows the core GDPR principles: lawfulness, fairness and transparency; purpose limitation; data minimisation; accuracy; storage limitation; integrity and confidentiality; and accountability. In practice, organisations doing business in Portugal must be able to demonstrate that personal data is collected and used on a valid legal

basis, that individuals receive clear information, and that appropriate technical and organisational measures are in place.

### Key Compliance Obligations

For companies operating in Portugal, the main compliance obligations usually include:

- preparing privacy notices and internal policies;
- mapping processing activities and maintaining records of processing, where required;
- ensuring that contracts with processors include GDPR-compliant clauses;
- assessing whether a data protection officer must be appointed;
- implementing security measures appropriate to the risk;
- managing data subject rights requests;
- assessing and documenting international data transfers;
- notifying personal data breaches to the supervisory authority where required; and
- carrying out data protection impact assessments for high-risk processing.

Sector-specific rules may also be relevant, depending on the business activity. These include rules on electronic communications and direct marketing, cybersecurity, consumer protection, financial services, health data, employment, video surveillance and the use of digital platforms.

### Practical Approach

In Portugal, as in the rest of the EU, data protection compliance is not only a documentation exercise. Companies are expected to implement procedures that work in practice, particularly where they process sensitive data, monitor employees or customers, use CCTV, rely on digital marketing, transfer data outside the European Economic Area or deploy automated decision-making tools.

## 8.2 Geographical Scope

The GDPR applies directly in Portugal and has broad territorial scope. It applies to organisations established in Portugal that process personal data in the context of their activities, even if the actual processing takes place outside Portugal or outside the European Union. It may also apply to organisations that are not established in Portugal or elsewhere in the EU, where they offer goods or services to individuals located in the EU or monitor their behaviour within the EU. This means that a foreign company with no Portuguese subsidiary may still be subject to Portuguese and EU data protection rules if, for example, it targets Portuguese customers, operates a Portuguese-facing website or app, runs behavioural advertising campaigns aimed at users in Portugal, or tracks users located in Portugal.

### International Transfers

Transfers of personal data from Portugal to countries outside the European Economic Area (EEA) are subject to the GDPR transfer rules. Such transfers may take place where there is an adequacy decision, appropriate safeguards such as standard contractual clauses, binding corporate rules, or another valid transfer mechanism under the GDPR.

In practice, companies should also assess the legal and practical risks of the destination country, particularly where personal data is transferred to service providers, cloud platforms, group companies or technology vendors located outside the EEA.

### Representative and Lead Authority

Non-EU organisations subject to the GDPR may need to appoint an EU representative, unless an exemption applies. Where a company operates in more than one EU Member State, the GDPR's one-stop-shop mechanism may also be relevant, with a lead supervisory authority being determined by reference to the organisation's main establishment in the EU.

For companies entering the Portuguese market, it is therefore important to assess early whether the business model triggers GDPR applicability, whether a Portuguese or EU establishment is being created, and which supervisory authority is likely to be competent.

## 8.3 Role and Authority of the Data Protection Agency

### The CNPD

The Portuguese data protection authority is the *Comissão Nacional de Proteção de Dados*, commonly referred to as the CNPD. Law No 58/2019 confirms that the CNPD is the national supervisory authority

for the purposes of the GDPR and Portuguese data protection law. It is an independent administrative authority with public law powers and administrative and financial autonomy, operating in connection with the Portuguese Parliament.

The CNPD's role is to supervise and enforce data protection law in Portugal. It also cooperates with other EU supervisory authorities, particularly in cross-border cases involving organisations operating in several Member States.

### Powers and Enforcement

The CNPD has investigative, corrective, advisory and authorisation powers under the GDPR and national law. These include the power to request information, carry out audits and investigations, issue warnings or reprimands, order controllers or processors to bring processing into compliance, impose temporary or definitive limitations on processing, order the suspension of data flows and impose administrative fines.

Administrative fines may follow the GDPR framework and can be significant, depending on the nature, gravity and duration of the infringement, the number of individuals affected, the degree of responsibility of the controller or processor, and any mitigating or aggravating factors.

### Practical Role for Businesses

In practice, the CNPD is relevant not only in contentious matters, but also in day-to-day compliance. Organisations may need to interact with the CNPD in the context of personal data breach notifications, complaints submitted by data subjects, prior consultation in high-risk cases, audits, investigations or requests for guidance.

Companies doing business in Portugal should therefore treat data protection governance as an operational risk area. Good documentation, clear internal responsibilities, staff training, vendor management and incident response procedures are important not only to comply with the law, but also to demonstrate accountability if the CNPD reviews the organisation's practices.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

No single, comprehensive overhaul of Portuguese private or regulatory law is expected in the short term. Instead, legal development is being driven predominantly by EU-level regulation and targeted national reforms across specific sectors. The most significant trend is the increasing convergence between digital regulation, data governance, AI, cybersecurity and sector-specific regulatory frameworks, alongside incremental reforms in employment and immigration law.

### Intellectual Property, Data Protection and AI

No major structural reform of Portuguese intellectual property or data protection statutes is expected in the immediate future. However, the legal framework is undergoing substantial transformation through directly applicable EU legislation.

### Industrial Designs

A significant development is the EU design reform package. Regulation (EU) 2024/2822 modernises the EU design regime, with key provisions applicable from May 2025 and further procedural changes entering into force in July 2026. Directive (EU) 2024/2823 must be transposed by December 2027.

The reform broadens design protection to include digital and animated designs, clarifies scope of protection, and introduces changes affecting spare parts and repair clauses. This is particularly relevant for businesses in product design, fashion, consumer goods, software interfaces and digital assets.

### Copyright and Artificial Intelligence

Portugal has already implemented the Digital Single Market Copyright Directive via Decree-Law No. 47/2023, introducing significant updates including text and data mining exceptions, press publisher rights and online content-sharing rules.

The most significant ongoing development is the intersection between copyright law and AI regulation. The EU AI Act, directly applicable in Portugal, imposes obligations on providers of general-purpose AI models, including transparency and copyright compliance

requirements relating to training data. The European Parliament's March 2026 resolution on copyright and generative AI signals further EU-level regulatory development in this area.

As a result, copyright compliance is increasingly extending beyond traditional infringement analysis to include AI training datasets, opt-out mechanisms for text and data mining, content provenance and contractual allocation of AI-related risk.

### Data Protection and Digital Regulation

The GDPR remains the cornerstone of Portuguese data protection law, with no replacement anticipated. However, it is increasingly complemented by a broader EU digital regulatory framework.

Key developments include:

- EU AI Act – phased implementation, with significant compliance obligations for AI developers and deployers; Portugal is expected to designate ANACOM as a key supervisory authority.
- Data Act (applicable since September 2025) – introduces rules on access to and use of data generated by connected products and related services, with particular relevance for IoT, industrial systems, mobility, energy, and cloud services.
- NIS2 Directive (transposed via Decree-Law No. 125/2025, effective April 2026) – significantly strengthens cybersecurity obligations for essential and important entities, including governance, incident reporting, and risk management requirements.
- Digital Services Act implementation (Law No. 12-A/2026) – establishes national competent authorities and updates the regulatory framework for intermediary and platform services.

The cumulative effect of these reforms is a regulatory environment increasingly defined by EU-level instruments rather than domestic legislative overhaul. Businesses operating in Portugal should therefore adopt a cross-regulatory compliance approach spanning IP, AI governance, cybersecurity and data regulation.

### Immigration and Nationality Law

Portuguese immigration law has recently undergone targeted amendments, particularly affecting family reunification procedures and job seeking residence permits. These changes reflect a broader policy focus on administrative efficiency and migration control. Further legislative reforms to the Immigration Act remain under discussion and may introduce additional restrictions to family reunification and other residence pathways.

### Forthcoming Reforms

A significant reform of Portuguese nationality law entered into force on 19 May 2026. The minimum residence period for naturalisation has been extended from five years to seven years for EU and CPLP nationals and ten years for all other foreign nationals. The qualifying period now begins on the date of issuance of the first residence permit, rather than the date of the residence application, materially extending eligibility timelines for new applicants. Importantly, the reform applies only to nationality applications submitted on or after its entry into force, with pending applications remaining subject to the previous legal framework.

In addition, the reform strengthens the integration requirements for naturalisation by introducing new requirements relating to Portuguese culture, history, national symbols, and civic knowledge, alongside the existing Portuguese language requirement. Some aspects of these new requirements remain subject to implementing regulations.

### EU-Level Developments and Enforcement

At EU level, the Pact on Migration and Asylum became applicable from June 2026, requiring adjustments to Portuguese border management, asylum processing, return procedures, and administrative cooperation mechanisms.

At national level, the Government continues to pursue broader immigration reforms aimed at strengthening enforcement against irregular migration, including more effective return procedures and enhanced administrative powers. However, some of these measures remain subject to the legislative process and judicial scrutiny.

These reforms indicate a clear policy shift towards tighter immigration control, longer integration timelines, and increased enforcement efficiency, with

material consequences for residence planning, litigation, and family reunification strategies.

### Employment Law

No comprehensive structural reform of the Portuguese Labour Code is expected in the short term. However, labour law is evolving through a combination of national policy proposals and EU-driven regulatory change.

### National Developments

A proposed "labour package" is currently under discussion and may introduce amendments in key areas such as:

- working time organisation;
- fixed-term employment contracts;
- dismissal regimes; and
- employee rights protections.

While the final scope remains uncertain, the direction of reform suggests a recalibration of flexibility versus protection, with a gradual strengthening of employee safeguards.

### EU Influence and Structural Change

EU-level developments continue to exert increasing influence on Portuguese employment law, particularly in areas such as:

- platform work regulation;
- algorithmic management and AI in employment; and
- data protection in the workplace.

These changes are progressively reshaping HR practices, including recruitment, performance evaluation and workforce monitoring.

Although the core structure of Portuguese labour law is expected to remain stable, incremental regulatory tightening and digitalisation-driven obligations are likely to reduce employer flexibility and increase compliance complexity.

### Competition and Merger Control

A significant evolution is underway in EU merger control policy, which is expected to materially influence Portuguese enforcement practice.

The European Commission published its draft revised Merger Guidelines on 30 April 2026. Following a public consultation period that closed on 26 June 2026—with stakeholder feedback currently being published and analysed by DG COMP—the final version of the guidelines is expected to be formally adopted in the fourth quarter of 2026.

The Portuguese Competition Authority (*Autoridade da Concorrência*) is expected to align closely with this evolving EU approach. While no immediate legislative change is confirmed at national level, a shift in enforcement practice is anticipated, particularly in:

- The substantive assessment of mergers – driven by the newly introduced "theory of benefit", which allows companies to justify mergers based on broader efficiencies such as supply chain resilience, sustainability, and security of supply, balanced against stricter scrutiny of dynamic efficiencies;
- The evaluation of non-price effects – placing greater emphasis on the impact of mergers on innovation and investment, including the application of the new "Innovation Shield" to protect start-ups from anticompetitive acquisitions;
- Market structure analysis in digital sectors and ecosystems – increasing scrutiny of killer acquisitions, data accumulation, and theories of harm based on market power entrenchment.

This development suggests a gradual but meaningful shift in merger control enforcement, with increased scrutiny of strategic and digital markets and greater alignment with EU analytical standards.

### Cross-Sector Outlook

Across all practice areas, three overarching trends are evident:

- EU regulatory dominance – Portuguese law is increasingly shaped by directly applicable EU regulations rather than domestic legislative reform.

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- Digital convergence – IP, data protection, cybersecurity and AI governance are becoming structurally interconnected.
- Increased compliance burden – businesses face expanding obligations across multiple regulatory layers, particularly in technology-driven sectors.

For companies operating in Portugal, the key challenge is no longer isolated legislative change, but continuous adaptation to a fast-evolving, multi-layered EU regulatory ecosystem.

# Trends and Developments

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**LVP Advogados** assists international clients with investment, residence, and citizenship matters in Portugal. Its clients, from over 150 countries, include high-net-worth individuals and families, family offices, businesses and institutions. Its legal team supports foreign clients throughout the entire process, from initial planning to ongoing operations. Where needs extend beyond legal services, it connects clients with trusted third-party professionals and coordinates matters on their behalf, offering a single point of contact for all matters related to Portugal. It makes extensive use of advanced, integrated software to enhance client experience, ensure data security and confidentiality, improve efficiency and minimise the risk of human error. At the same time, it maintains a personalised approach, taking the time to understand each client's specific circumstances.

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## Immigration and Nationality in Portugal: Strategic Considerations for International Investors and Businesses

### *Introduction: a changing landscape*

Portugal remains an attractive destination for international investors, businesses and families seeking to relocate within the European Union. However, the conditions governing immigration and nationality have changed significantly in recent years, both in terms of legal framework and practical implementation.

For many years, Portugal was perceived as a relatively accessible jurisdiction, combining residence routes with moderate stay requirements, a stable legal environment and a path to Portuguese citizenship after a comparatively moderate period of legal residence. That perception is now evolving. The country continues to offer relevant opportunities, but the legal and administrative environment has become more demanding.

This shift has become particularly evident over the past two years. Applicants are now more likely to encounter challenges not only in meeting legal requirements, but in navigating the practical aspects of the process. Timing, documentation, administrative access and procedural strategy have become central elements of immigration planning.

As a result, successfully navigating the Portuguese immigration system can no longer be viewed as a purely legal exercise. It requires a structured and strategic approach that integrates legal eligibility, administrative dynamics, timing, documentation and long-term objectives, particularly for international clients whose decisions involve mobility, tax exposure, business operations and family structuring.

### *Nationality Law reform*

Nationality law has undergone one of the most significant reforms in Portugal in recent years, with direct impact on international families, investors and long-term residents.

Following parliamentary approval, promulgation by the President of the Republic and publication in Portugal's official gazette, the *Diário da República*, the new framework entered into force on 19 May 2026.

The reform increased the minimum period of legal residence required for naturalisation from five years to seven years for European Union and CPLP (Community of Portuguese Language Countries) nationals, and to ten years for other foreign nationals.

Access to Portuguese nationality by origin for children born in Portugal to foreign parents has also become more restrictive. Subject to the remaining statutory conditions, a declaration that the child wishes to be Portuguese must be made and, at the time of birth, one parent must have been legally resident in Portugal for at least five years.

Special nationality regimes were also affected. In particular, the previous naturalisation route available to descendants of Portuguese Sephardic Jews under Article 6 (7) of the Nationality Law was revoked. The revocation of this provision represents the effective closure of one of the most internationally known special nationality routes within the Portuguese system.

At the same time, the reform introduced a new naturalisation route for descendants in the third degree in the direct line of Portuguese nationals of origin. This may be relevant for great-grandchildren of Portuguese nationals, but it is not an automatic route to nationality by origin and requires at least five years of legal residence in Portugal.

Another particularly relevant change concerns the calculation of the residence period itself. The reform revoked the previous rule under which, for nationality purposes, the residence period could be counted from the date of submission of an application for a temporary residence permit, provided that the application was ultimately approved. The relevant period must now be assessed by reference to periods during which the applicant's stay in Portugal was legally regularised under a qualifying title, visa or authorisation. This change may have considerable practical impact, particularly in light of the delays currently affecting immigration procedures and residence permit issuance.

This reform represents a fundamental shift in Portugal's broader approach to nationality and long-term integration. While citizenship remains an important

long-term objective for many international clients, the pathway towards Portuguese nationality has become longer and more demanding.

In practical terms, applicants will remain dependent on the immigration system for a longer period before becoming eligible for citizenship. This has implications in terms of residence permit renewals, costs, minimum stay requirements, documentary compliance and overall planning. The new framework also expressly reinforces the requirement that applicants demonstrate the ability to support themselves financially, which may result in greater scrutiny of income sources, financial documentation and long-term economic stability.

The impact varies depending on the residence route. Golden Visa (a residence-by-investment scheme for non-EU nationals) applicants may be required to maintain their investment for a longer period and manage additional renewal cycles. Holders of residence permits such as the D2 (entrepreneur), D7 (passive income) or D8 (remote work) may need to maintain a stronger and more continuous connection to Portugal over an extended period.

These changes are already influencing decision-making, particularly where relocation strategies were initially structured around a shorter timeline to citizenship.

The new framework also reinforces broader integration criteria, including requirements connected to knowledge of Portuguese culture, history, national symbols, civic principles and the political organisation of the Portuguese State, in addition to Portuguese language proficiency.

Despite the entry into force of the reform on 19 May 2026, as of the date of writing, the Portuguese Nationality Regulation has not yet been amended to reflect the changes introduced. Consequently, the practical implementation of certain new requirements, including the integration assessments and the relevant evidentiary and documentary procedures, remains unclear.

Timing has therefore become a critical factor. The moment at which a residence application is initiated, the time taken for the residence permit to be issued and the applicant's ability to maintain residence compliance may now directly affect the long-term nationality timeline and overall strategic positioning.

Importantly, the new framework generally preserves the application of the previous rules to nationality procedures already pending at the time the reform entered into force, reducing the immediate impact on applicants who had already submitted their requests before May 2026.

Portuguese citizenship remains attainable and continues to represent an attractive long-term objective for many international families and investors. However, nationality planning must now be approached with a significantly longer strategic horizon, requiring earlier preparation, closer monitoring of immigration timelines and more careful long-term structuring.

### *Immigration in practice*

A defining feature of the Portuguese immigration system is the growing gap between the legal framework and its practical implementation.

Meeting the legal requirements does not always result in a timely or predictable outcome.

While the law provides a structured set of requirements, the application of those rules may vary. Applicants may be asked to provide supplementary documentation or clarifications, depending on the circumstances of the case and the administrative assessment.

The main challenge is increasingly not whether an applicant qualifies, but whether the administrative process can move forward within a commercially or personally acceptable timeframe.

The Agency for Integration, Migration and Asylum (AIMA) continues to face significant operational constraints. Delays in scheduling appointments, processing applications and issuing residence cards have become structural.

Applicants may wait several months to secure an appointment, even where all requirements are met,

with further delays occurring throughout the process. This can create uncertainty regarding legal status and may affect travel, employment, access to services and family arrangements.

Digitalisation has the potential to improve efficiency but has also introduced transitional challenges, including technical issues and fragmented systems. Communication with the authorities remains limited, and resolving pending matters can be difficult.

These factors have direct consequences for international clients. Business operations, employee mobility, relocation timelines and family stability may all be affected by administrative delays.

Successful immigration planning therefore depends not only on legal eligibility, but also on anticipating procedural bottlenecks and adopting a structured and pragmatic approach.

### *Golden Visa*

The Portuguese Golden Visa programme remains in force and continues to be relevant for certain international investors, although its positioning has changed.

Following the removal of real estate as a qualifying investment, the programme is now based on a narrower range of eligible options, including job creation, investment in scientific research or cultural activities, qualifying non-real-estate investment funds, and certain company capitalisation and job-creation structures.

The Golden Visa is increasingly understood not only as an investment-driven pathway, but also as a long-term residence, mobility and citizenship planning strategy.

Its main advantage remains its flexibility. The limited physical presence requirement makes it particularly suitable for investors who do not intend to relocate to Portugal on a full-time basis. This may also provide flexibility in structuring tax residence, although tax implications should always be assessed independently.

At the same time, administrative delays have reduced predictability. Backlogs in biometric appointments and residence permit issuance mean that the programme must be approached with a longer-term perspective.

The Golden Visa remains a relevant option, but it is not suitable for all profiles. It should be assessed carefully in light of the client's broader objectives, including mobility, tax exposure, investment strategy and long-term plans.

In this context, it should be understood as a long-term mobility, residence and citizenship planning tool, rather than a short-term investment solution.

### *Alternative routes*

Alternative residence routes have gained increasing importance, particularly as the Golden Visa has become more specialised.

A key development has been the reinforced role of consular processing. Following the abolition of the expression-of-interest procedures, consular visa applications have become the main entry route for many new residence cases

Family reunification has also become more restrictive in several respects. As a general rule, many sponsors must hold a valid residence permit for a specified period before applying, subject to statutory exceptions, while accommodation, subsistence and integration requirements have also been strengthened. As a result, relocation planning often needs to begin earlier.

Within this context, the D2, D7 and D8 visas remain key options.

The D2 visa may be suitable for entrepreneurs and individuals developing economic activity in Portugal, provided that the business project is credible and properly structured.

The D7 visa continues to be widely used by individuals with stable passive income, particularly those intending to reside in Portugal on a more permanent basis.

The D8 visa has become increasingly relevant for remote workers, although it requires careful assessment of income structure, tax implications and long-term residence objectives.

These routes are often more effective for clients with a genuine intention to relocate. However, they involve a higher level of physical presence and ongoing connection to Portugal.

Following the extension of the residence period required for naturalisation, these routes must also be assessed by reference to whether applicants can realistically comply with residence, renewal and physical presence requirements over a substantially longer period.

The choice of residence route should therefore be based on a broader assessment of the client's circumstances, including mobility needs, tax exposure, business plans and long-term objectives.

### *Key risks and strategic considerations*

The current environment raises several practical considerations for investors, businesses and international families.

- Processing timelines – increasing unpredictability may affect relocation plans, business operations and family arrangements.
- Administrative capacity – eligibility alone may not ensure a smooth process.
- Timing of residence and nationality planning – the new nationality framework increases the strategic importance of timing, particularly in relation to residence permit issuance, renewals and long-term eligibility for citizenship.
- Choice of residence route – different routes serve different strategic objectives.
- Tax exposure – certain routes may trigger Portuguese tax residency.
- Physical presence – minimum stay requirements must be realistically assessed.
- Documentation – incomplete or inconsistent documentation may lead to delays.
- Family planning – should be considered at an early stage of the process.
- Litigation – may become necessary in cases of prolonged administrative delay.

Immigration planning should therefore be approached in a structured and forward-looking manner, taking into account both legal and operational factors.

### *Litigation and legal remedies*

The operational constraints of the Portuguese immigration system have led to a significant increase in litigation, which is no longer limited to exceptional cases.

Judicial proceedings are increasingly used to address administrative inaction, particularly where applications or renewals remain pending for extended periods without a decision. In such cases, litigation may be used to seek an order requiring the authorities to act or issue a decision within an appropriate timeframe.

This reflects a broader shift in how the system operates. In certain situations, access to an effective administrative outcome may depend on initiating judicial proceedings.

Litigation may also arise in cases involving adverse decisions, including disputes regarding eligibility, documentation or compliance with legal requirements. Judicial review provides a structured mechanism to challenge administrative assessments and obtain legal certainty.

At the same time, litigation must be considered within a broader strategic framework. Courts are also under pressure, particularly in Lisbon, which may affect the duration of proceedings. Judicial action involves cost and procedural considerations that must be assessed in advance.

Litigation is now being considered at an earlier stage, particularly where delays may affect legal status, business operations, family stability and long-term nationality timelines.

In the current environment, litigation is no longer purely reactive. It is increasingly used as a strategic tool to reduce uncertainty, protect legal position and ensure that applications progress within a reasonable timeframe.

### *Looking ahead*

Portugal remains an important jurisdiction for international mobility, investment and relocation. However, the conditions under which immigration and nationality processes operate are evolving.

The overall trend points towards increased regulation, longer timelines and greater scrutiny. At the same time, demand is expected to remain strong, particularly from investors, entrepreneurs, remote workers, highly qualified professionals and international families.

At EU level, the Pact on Migration and Asylum has become applicable on 12 June 2026, requiring Member States to implement changes primarily in their asylum, border, reception and migration-management systems.

For international clients, this means that decisions should be structured before any practical steps are taken. The residence route, documentation, family planning, tax position and long-term objectives should be considered together.

Portugal continues to offer relevant opportunities, but successful outcomes increasingly depend on preparation, timing and the ability to navigate both legal and administrative dimensions effectively.

# SAUDI ARABIA




## Law and Practice

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**Derayah LLPC** is an independent Saudi Arabian law firm that regularly acts for international clients in disputes before Saudi Arabian courts. It has played an impressive role in high-profile transactions and developed a reputation for providing high-quality advice on some of the largest and most complex transactions in Saudi Arabia. Recent clients include F. Hoffmann-La Roche AG, Citicorp Trustee Company, and Richard Attias & Associates. Derayah maintains offices in Jeddah and Riyadh, and remains the first-choice Saudi counsel for many foreign companies and international law firms seeking advice on Saudi Arabian law.

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# 1. Legal System

## 1.1 Legal System and Judicial Order

### Islamic Law

Since the creation of the Kingdom of Saudi Arabia on 23 September 1932, it has been the government's express policy that the country is governed by Islamic law (Sharia). This was confirmed in 1992 by the Basic Law of Rule (Royal Order No A/90 of 27 Sha'ban 1412 Hejra corresponding to 1 March 1992), which is, in effect, the country's constitution. Historically, the Hanbali school of Islamic law has been dominant in the territory that is now Saudi Arabia. The Islamic law texts that Saudi jurists regard as authoritative were compiled during the 13th to 17th centuries CE; as such, they reflect the concerns of a pre-industrial society and do not address many commercial, business or economic issues.

There are numerous areas of law where Islamic law offers few or no guidelines, and where government-made legislation is, therefore, the only law. For example, company law, capital markets law, foreign investment law and employment law are governed by largely self-contained codes. However, until recently the Saudi Arabian government was reluctant to legislate in areas where a given subject matter is covered in some detail in the authoritative Islamic law texts. This has changed with an ambitious reform programme under the supervision of the Main Committee for the Preparation of Judicial Legislation, who have been working on a modern model of legislation consistent with Islamic law principles and international norms. The Evidence Regulation was enacted under Royal Decree No M/43 of 26 Jumada Awwal 1443 Hejra corresponding to 30 December 2021, the Personal Status Regulation under Royal Decree No M/73 of 6 Sha'ban 1443 Hejra corresponding to 9 March 2022, and the Civil Transactions Regulation under Royal Decree No M/191 of 29 Shawwal 1444 Hejra corresponding to 18 June 2023. Taking their cue from the codes of other Arab states as well as European and North American laws, these new Regulations are primarily a codification of Islamic law rules with guidance from internationally accepted principles where Islamic law is silent or unclear. Therefore, they are not a radical departure from Saudi law, but rather have consolidated and clarified existing rules, with some changes where this is possible without conflicting with Islamic law. For example, Article 385 of the Civil Transactions Regulation confirms the clear Islamic law rule that agreements to charge or pay interest are void, while Article 137 permits awarding damages for loss of anticipated income, which was traditionally opposed by the Saudi judiciary without being based on a clear Islamic law prohibition.

An obvious advantage of the new regulations is that one no longer has to ascertain legal principles with reference to 400 to 800-year-old texts, the language of which requires a specialist education to understand – the equivalent of reading Blackstone's commentaries in their original language.

### *Contract law*

The Civil Transactions Regulation entered into force on 20 December 2023, with retroactive effect except for relevant conflicting regulations and judicial principles. It codifies Saudi Arabian contract law, liabilities for harm caused other than in contract, and property rights. There is a section on general principles of contract law, and another section covering nominate contracts such as sales, leases, loan agreements, service contracts, agencies, bailments and partnerships that are not covered by the Companies Regulation. Areas of law which are covered by existing legislation remain largely unaffected; for example, the sections on employment contracts and insurance merely confirm that they are governed by the existing statutes.

Article 104 of the Civil Transactions Regulation confirms the established rule that clear contract terms must be applied as written, reflecting the Islamic law maxim "the contract is the law of the parties" (Al Aqd Shari'at Al Muta'aqdin). Courts may only seek to ascertain the parties' common intention if the contract's wording is unclear. In such situations, judges may have regard to, for example:

- custom;
- the circumstances and nature of the transaction; and
- equality in bargaining power.

## Courts and Tribunals

Saudi Arabia has courts that are administered by the Ministry of Justice, and specialised tribunals. The General Courts (also known as the Sharia Courts), the Commercial Courts and the Labour Courts are under the administration of the Ministry of Justice.

Other specialised tribunals (whose names mostly explain their scope of jurisdiction fully) include the following:

- the Administrative Court, also known as the Board of Grievances, which has exclusive jurisdiction over disputes to which the government or government agencies are party;
- the Committee for the Resolution of Securities Disputes, which deals with disputes falling within the ambit of the Capital Markets Regulation and its Implementing Rules;
- the Committee for Banking Disputes; and
- the Committee for the Settlement of Insurance Disputes.

### *Administration of justice*

The past decade has seen considerable change to the administration of justice in Saudi Arabia, which was initiated under the Judiciary Regulation (Royal Decree No M/78 of 19 Ramadan 1428 Hejra corresponding to 1 October 2007). The Board of Grievances used to have jurisdiction in commercial disputes, but this was transferred to the newly formed Commercial Courts in October 2017, and the definition of commercial disputes was widened to include construction cases and commercial property disputes. Labour disputes used to be administered by the Ministry of Labour's Commission for the Settlement of Labour Disputes, but this jurisdiction was transferred to the new Labour Courts in October 2018.

### *Commercial courts*

Furthermore, the Commercial Courts Regulation (Royal Decree No M/93 of 15 Sha'ban 1441 Hejra corresponding to 8 April 2020) came into force on 16 June 2020, and brought about further innovations to the Commercial Courts. Greater emphasis is placed upon mediating commercial disputes instead of resorting to litigation, and Article 6 provides that, where both parties to a commercial transaction are merchants, they may utilise alternative forms of dispute resolution.

### *Electronic procedures*

Commercial Courts may now engage the services of the private sector for functions such as mediation, notification and judgment delivery. Electronic filing procedures have been introduced, and several court-related procedures may be performed online, such as the exchange of judgments, memoranda and objections.

Parties seeking to litigate commercial claims are subject to a limitation period of five years from the date on which the cause of action arose. Exceptions to this rule exist, such as where the court deems that the plaintiff has a valid excuse for bringing the claim after the expiry of the limitation period.

The past few years have also seen a shift from court proceedings being held in person to being held on online platforms, in no small part in response to the COVID-19 pandemic. Even after regular governmental services resumed in June 2020 following the initial lockdown in the Kingdom, hearings are now mainly held online.

### *Evidence*

The Evidence Regulation regulates civil and commercial transactions. It contains provisions controlling the presentation, examination and interpretation by the courts of evidence, and regulates admissions, oral testimonies, cross-examinations, the taking of oaths, expert evidence and written and digital evidence.

### *Experts*

Where technical or complex financial issues are raised, it is common for the judges to appoint an expert or experts as advisers to the tribunal. The tribunal has discretion over who it appoints as an expert, although as per Article 110 of the Evidence Regulation, should the parties agree on the selection of one or more experts, the court shall abide by their agreement. The court also has discretion over whether or not it accepts or disregards all or part of the expert's findings; however, ordinarily, the determination of technical or complex financial issues falls to the expert.

## 2. Restrictions on Foreign Investments

### 2.1 Approval of Foreign Investments

Until the year 2000, the opportunities for foreign investment in Saudi Arabia were extremely restricted, being limited essentially to foreign minority shareholdings in industrial development projects involving technology transfer to Saudi Arabia. Foreign participation in service or trading businesses was not possible. At the time, the economy was dominated by state-owned monopolies.

With the assistance of the World Bank, a new foreign investment framework was created through the enactment of the new Investment Regulation and the creation of the Saudi Arabian General Investment Authority (SAGIA) in April 2000. Until then, foreign direct investment in Saudi Arabia had been treated as a privilege. Under the new law, all business activities were opened to foreign investment, unless they were expressly excluded from foreign investment under the so-called Negative List.

These reforms immediately opened most forms of industry and services to 100% foreign ownership. Trading activities remained restricted to Saudi nationals until 2007, when the sector was opened up to 75% participation. 100% ownership of trading businesses has been possible since 2016, but is subject to high entry requirements.

In 2020, SAGIA became the Ministry of Investment of Saudi Arabia (MISA). Foreign investors must now obtain approval from MISA before establishing a presence in Saudi Arabia. Approval is obtained after meeting certain conditions (depending on the investment activity) and providing the required documentation. There are various limitations on foreign ownership of joint stock companies, which can vary depending on the nature of the activity carried out by such companies. For example, foreign ownership limits apply to banks, insurance companies and telecommunications companies.

In addition, the Negative List sets out a number of activities that foreign investors are prohibited from undertaking, such as real estate development in the holy cities of Makkah and Madinah.

Until June 2019, foreign investors could not generally own more than 49% of the issued shares or convertible debt instruments of a listed company. The Capital Market Authority has now lifted the maximum foreign ownership limit, permitting foreign investors to increase their investments in some sectors, with the restriction that their shares cannot be sold until they have owned them for two years.

In February 2025, the Investment Law (Royal Decree M/19 of 16 Muharram 1446 Hejra corresponding to 22 July 2024) came into effect. The Investment Law differs from the previous Foreign Investment Law which it replaces (Royal Decree No M/1 dated 5 Muharram 1421 Hejra corresponding to 10 April 2000) in that while the Foreign Investment Law mainly applied to non-Saudi investors, the Investment Law applies to both Saudi and non-Saudi investors alike.

The Investment Law is intended to promote equal treatment between Saudi and foreign investors who are in similar circumstances, and is intended to re-evaluate restrictions on economic activities to treat domestic and foreign investors equally without jeopardising public order in Saudi Arabia.

### 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

Up until recently, foreign investors were required to obtain a foreign investment licence from MISA called a “MISA Licence”. MISA licences have been replaced by “Investment Registration Certificates”. The process for obtaining an Investment Registration Certificate requires the submission of several documents by each shareholder; the required documentation may differ depending on the activity of the company to be incorporated.

For example, the following documents are required for a company to obtain an Investment Registration Certificate from MISA in connection with a limited liability company:

- a commercial registration certificate; and
- articles of association.

In the past, these documents had to be authenticated in accordance with the authentication process in their

country of origin, and attested by the Saudi embassy in the same country before being authenticated in Saudi Arabia. On 7 December 2022, Saudi Arabia acceded to the Convention Abolishing the Requirements of Legalisation for Foreign Public Documents, aka the Apostille Convention. Theoretically, documents now only require an apostille in the country of origin and an Arabic translation to be considered authenticated in the Kingdom; however, some government ministries have yet to adopt these changes.

The name of the company would then have to be reserved through filling out the required form, through the Saudi Business Centre online platform.

An application for the Investment Registration Certificate takes place online, and requires the applicant to fill in certain information on the new company being incorporated, such as:

- general information with respect to each shareholder;
- the activities that will be carried out by the company in Saudi Arabia; and
- some general information with respect to the investment in Saudi Arabia, including the capital.

MISA charges an annual services fee of SAR12,000 for the first year, and SAR260,000 for five years.

Once the online application is complete, it can take up to five business days from the date all the required documents are submitted to obtain the licence.

Carrying on unlicensed economic activities in Saudi Arabia is an offence under the Anti-Concealment Law (Royal Decree No M/4 of 1 Muharram 1442 Hejra corresponding to 20 August 2020). The parties involved may be imprisoned and fined, and the proceeds of the business may be seized. In addition, a non-Saudi may be deported, and a Saudi may have their commercial registration cancelled and be prohibited from practising the same activity for up to five years. Participation in unlicensed economic activities also often involves tax fraud, in respect of which please refer to **5.7 Anti-Evasion Rules**.

## 2.3 Commitments Required From Foreign Investors

Depending on the industry for which the Investment Registration Certificate is issued, certain restrictions may be imposed upon the investor. For example, an investment by a non-Saudi interest in retail and wholesale activities with a Saudi shareholder would be subject to the following requirements:

- at least 25% Saudi Arabian participation;
- a minimum foreign investment of SAR20 million (USD5.3 million);
- a restriction of opening a maximum of one shop per district; and
- training a minimum of 15% Saudi employees each year.

Non-Saudi interests can invest in a wholly owned trading venture subject to the following requirements.

- Alternative 1 – foreign investment of SAR300 million (USD80 million), with a minimum of 30% Saudi employees trained each year.
- Alternative 2 – foreign investment of SAR200 million (USD53 million), with a minimum of 30% Saudi employees trained each year, coupled with one or more of the following:
  (a) manufacturing – a proportion of not less than 30% of products distributed locally to be manufactured in the Kingdom;
  (b) research and development programmes – a minimum of 5% of total sales to be allocated to the establishment of research and development programmes in the Kingdom; or
  (c) logistical services and distribution – a centre to provide such services and after-sales services to be established.

## 2.4 Right to Appeal

A foreign investor seeking to engage in a restricted activity may apply to MISA for approval. Such a request will be referred to The Standing Ministerial Committee for Examination of Foreign Investments (the "Examination Committee"). MISA will notify the foreign investor of the Examination Committee's decision within five working days of receiving the decision. A foreign investor may, in the event that their application for approval to engage in a restricted activity is

rejected, reapply, providing the reference number of their first application, and any information or documents not submitted before which would warrant a re-evaluation of the application.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

The new Companies Regulation (Royal Decree No M/132 of 1 Dhul Hijja 1443 Hejra corresponding to 30 June 2022) and its Implementing Rules came into effect in January 2023, replacing the Companies Regulation (Royal Decree No M/3 of 28 Muharram 1437 corresponding to 10 November 2015), the Professional Companies Regulation (Royal Decree No M/17 of 26 Muharram 1441 Hejra corresponding to 25 September 2019) and the Implementing Rules of the Professional Companies Regulation which were issued on 23 April 2020.

Companies incorporated in Saudi Arabia are usually incorporated as limited liability companies (LLCs) or joint stock companies (JSCs). An LLC can be owned by a single person, and there is no limit on the maximum number of shareholders. There is no minimum share capital requirement for LLCs, but the capital of a company must be sufficient for carrying out the company's activities.

A JSC can be incorporated by one or more persons, whether natural persons or corporate entities. The JSC's capital on establishment must be sufficient to achieve its object, and in any event must not be less than SAR500,000.

Under the 2022 Companies Regulation, a new form of entity called a "simplified joint stock company" can also be created. A simplified joint stock company can be incorporated by one or more persons, and there is no minimum share capital requirement for such companies.

### 3.2 Incorporation Process

The first step towards incorporating an entity with non-Saudi shareholders is obtaining an Investment Registration Certificate from MISA, as further detailed under **2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance**. Once the Investment Registration Certificate has been obtained, the shareholders must submit the company's draft articles of association to the MOC for review and approval. Issuance of the articles of association and commercial registration certificate (which are electronic), and the publication of the articles of association take place in one step once the relevant invoice for this service has been paid.

The timing for incorporating a company from the date of receiving the Investment Registration Certificate up to the issuance of the commercial registration certificate is usually five to ten business days, if the draft articles of association do not deviate too far from the standard articles issued from time to time by the MOC. The duration of the commercial registration is one year and the commercial registration is renewed annually.

Once the commercial registration certificate is issued, the company is incorporated and must complete the post-incorporation registrations with the following government authorities:

- the Ministry of Municipal and Rural Affairs;
- the Ministry of Human Resources and Social Development;
- the General Organisation for Social Insurance; and
- the Zakat, Tax and Customs Authority (ZATCA).

The company may also need to obtain additional approvals from other relevant authorities regulating its activities, depending on the business it will be carrying out. The time to complete these post-incorporation procedures varies widely depending on what registrations with government authorities are required.

### 3.3 Ongoing Reporting and Disclosure Obligations

Any amendments to the articles of association of a company must be submitted to the MOC for review and approval. This includes any change in shareholding, any increase or decrease in the capital of the company, or any change to the activities of the company. Furthermore, the names of the general manager or members of the board of directors are included in the commercial registration certificate of a company, so any change in management must be reported to

the MOC for amendment of the commercial registration certificate.

Companies are required to upload their financial statements in respect of each financial year to the MOC, through the online portal Qawaem.

### 3.4 Management Structures

JSCs are managed by a board of directors, consisting of not fewer than three members, which has the widest powers to manage the company towards achieving its objectives, subject to the limitations set down by the shareholders' general assembly. The board members may be shareholders, or other persons, and are elected by the shareholders in the ordinary general assembly. The first board can be appointed by resolution of the founders or in the JSC's by-laws. The company's by-laws or the shareholders specify the mode of management of the company.

LLCs have more flexibility than JSCs to put a management structure in place that suits the company's shareholders. An LLC can be managed by one or more managers, who can be shareholders or other persons. The shareholders can appoint a board of managers if there are multiple managers.

### 3.5 Directors', Officers' and Shareholders' Liability

As per Article 28 of the 2022 Companies Regulation, "the manager and members of the board of directors shall be responsible by way of joint liability to compensate the company or partners or shareholders or third parties for damage arising by reason of a violation of the provisions of the Regulation or of the company's articles of association or by-laws, or by reason of any error, neglect or default on their part in the performance of their work; any condition providing otherwise shall be void ab initio".

A manager or member of the board of directors who fails to call a shareholders' meeting upon being made aware of the losses of the company reaching 50% may be imprisoned for up to a year and/or fined up to SAR1 million.

Article 242 (1) of the 2022 Companies Regulation provides that the managers or the board of directors of the company must, before the company, the general assembly or the shareholders, pass a resolution to dissolve the company and prepare a declaration stating that they have investigated the financial position of the company, confirming that the assets of the company are sufficient to discharge its debts at the end of the liquidation period proposed, and that the company is not in default under the Bankruptcy Regulation (Royal Decree No M/50 of 28 Jumada Awwal 1439 Hejra corresponding to 14 February 2018) as amended by Royal Decree No M/89 of 9 Rajab 1441 Hejra corresponding to 4 March 2020. This declaration must be presented within 30 days from the date of its separation to the partners, the general assembly or the shareholders for the passing of a resolution to dissolve the company.

Article 242 (2) provides that in a situation where the partners, the general assembly or the shareholders pass a resolution to dissolve the company, when it is apparent from the declaration that the assets of the company are not sufficient to discharge its debts or that the company is in default under the Bankruptcy Regulation, they shall be liable by way of joint liability for any debt outstanding against the company.

Therefore, if a company continues trading while insolvent, eventually the shareholders may be held personally liable for the company's debts, which can only be evaded by either infusing new capital or making an application for a procedure under the Bankruptcy Regulation. Under the Bankruptcy Regulation, a company's manager, member of its board of directors or board of managers, or any of its officers or any other person participating in the establishment or management thereof, or an analogous person, risks imprisonment of up to five years and/or a fine of up to SAR5 million, by "continuing to carry on the activity of the debtor in the absence of the possibility of avoiding liquidation".

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

#### Main Statutes

The main Saudi statutes governing relations between employers and employees are:

- the Labour Regulation (Royal Decree No M/51 of 23 Sha'ban 1426 Hejra corresponding to 27 September 2005), as amended most recently by Royal Decree No M/44 of 8 Safar 1446 Hejra corresponding to 12 August 2024; and
- the Labour Regulation Implementing Rules (Ministerial Resolution No 1982 of 28 Safar 1437 Hejra corresponding to 6 April 2016), as amended most recently by Ministerial Resolution No 115921 dated 19 Sha'ban 1446 Hejra corresponding to 18 February 2025.

The Labour Regulation lays down certain mandatory minimum standards for the treatment of employees, and any agreement reducing an employee's minimum rights is void.

### The Nitaqat System

The basic rule under the Labour Regulation is that Saudi employees shall not represent less than 75% of the total workforce, but that the Minister of Labour may decrease the percentage temporarily. In 2011, the Saudi Ministry of Labour – now the Ministry of Human Resources and Social Development (HRSD) – implemented a detailed list of quotas, known as the *Nitaqat* system, which are determined by the business sector and size of the business entity, with the percentages of Saudi employees currently classed in Red, Low Green, Medium Green, High Green and Platinum sections. These quotas are updated frequently.

### Labour Reforms

In February 2025, certain amendments in relation to the Labour Regulation and its Implementing Rules took effect. These amendments have included the following changes:

- maternity leave has been extended to 12 weeks;
- the introduction of the right to three days of paternity leave, which is to be taken within seven days of the child's birth;
- the maximum probationary period may now be stated to be 180 days in the work contract outright (removing the need for extensions of the previous 90-day probationary period under the Labour Regulation to be by written agreement); and
- in lieu of salary for overtime, with the worker's consent, the worker can be granted compensatory paid leave.

## 4.2 Characteristics of Employment Contracts

*Qiwa* is the official online Saudi Arabian governmental portal for employees and employers. It provides a standard employment agreement for companies to contract with their employees. These online templates are amendable to a certain extent. The Implementing Rules of the Labour Regulation also set out a standard employment contract, certain provisions of which are mandatory. A written employment contract must be executed, but the provisions of the Labour Regulation apply if the employer fails to do so.

The HRSD has recently announced an update to the requirements for compliance with employment contract registration via *Qiwa*, increasing the target compliance rate to 85%, effective 30 April 2026, with the second phase to be completed by increasing the rate to 90% by the end of 30 June 2026. The HRSD has stated that this compliance rate is calculated by comparing the number of registered contracts with the total number of employees' contracts within the company.

Employment contracts with non-Saudis must be on a fixed-term basis, but Saudi employees can be employed on fixed-term contracts or indefinite-term contracts. If a fixed-term contract expires and the parties continue the relationship, it becomes an indefinite-term contract for Saudi employees. If a fixed-term contract contains a renewal provision, it can be renewed twice for less than four years and remains a fixed-term contract. If the contract is renewed three times or the employment period exceeds four years, the contract becomes indefinite for Saudi employees. Accordingly, a Saudi national who has been employed by the same employer for more than four years or whose contract has been renewed three times will automatically be employed on an indefinite-term basis.

## 4.3 Working Time

As a general rule, working hours are eight hours per day for six days per week, with a total of 48 hours per week. During Ramadan, working hours for Mus-

lims are reduced to six hours per day for six days per week, with a total of 36 hours per week. Article 99 of the Labour Regulation provides that statutory working hours may be increased to nine hours per day or decreased to seven hours per day for certain work categories. According to Article 101 of the Labour Regulation, workers may not work continuously for more than five hours at a time, with breaks for meals, rest and prayers of not less than half an hour at a time. Breaks are not counted as working hours, but workers may not remain at the workplace for more than 11 hours per day.

Article 106 of the Labour Regulation provides that the maximum actual working hours may be increased to up to ten hours per day or up to 60 hours per week without a day of rest in certain circumstances, including "if the worker is intended to face extraordinary work pressure". In such situations, overtime is payable at 150% of the employee's base wage.

The circumstances brought about by the COVID-19 pandemic resulted in reductions in the working hours of many employees. In light of this and other changes to contractual relationships caused by the pandemic, the HRSD issued Resolution No 142906 of 13 Sha'ban 1441 Hejra corresponding to 6 April 2020, inserting Article 41 into the Implementing Rules of the Labour Regulation, which is applicable to situations where the government has taken measures in relation to a situation that necessitates a reduction in working hours or has implemented precautionary measures to prevent the worsening of a situation. It allows employers to take certain measures to lessen the adverse impact of the pandemic within six months of the beginning of government-imposed restrictions taking effect. Such options include reducing an employee's salary in proportion to a decrease in their working hours.

On 13 January 2021, the HRSD announced that Article 41 would no longer be effective in relation to the COVID-19 pandemic.

## 4.4 Termination of Employment Contracts

Under Saudi Arabian law, staff can be dismissed in the following circumstances:

- non-renewal of a fixed-term contract;
- for a cause listed under Article 80 of the Labour Regulation; and
- termination of an indefinite-term contract under Article 75 of the Labour Regulation.

### Fixed-Term Contract

A fixed-term contract comes to an end when its term expires. Therefore, an employee can be dismissed by being given notice that the contract will not be renewed. In such circumstances, no compensation is payable other than the statutory end-of-service award, and repatriation costs for non-Saudis.

### Article 80

Article 80 allows an employer to terminate a contract for certain specified causes, most of which involve misconduct. Article 80 (2) permits termination "if the worker fails to perform his essential obligations arising from the employment contract, or to obey legitimate orders, or if, in spite of written warnings, he deliberately fails to observe the instructions related to the safety of work and workers as may be posted by the employer in a conspicuous place".

This is a catch-all provision and is applicable to any breach of the essence of the contract of employment, but the breach must be material. Ordinary, trivial errors are punishable only by disciplinary measures. Any dismissal under Article 80 requires that the employee be given a chance to justify their conduct. For this, a meeting must be called, at which at least two management representatives must be present, and which must be minuted. If the employee fails to respond within a reasonable time, it may be assumed that they have no valid objection to the termination, or that they are not interested in prolonging the employment relationship. Dismissal under Article 80 can only be invoked in isolated instances, and not, for example, to reduce a company's workforce.

### Article 75

Article 75 of the Labour Regulation permits the termination of an indefinite-term contract, where the salary is paid monthly, for lawful cause, upon 60 days' notice by the employer, or 30 days' notice by the employee, although the term "lawful cause" is not defined. In principle, it can include any reason, such as:

- the Labour Regulation and other applicable laws;
- contractual obligations;
- social, religious and customary rules;
- public policy;
- impossibility or frustration of purpose;
- the employer's by-laws and work rules; and
- real business considerations.

However, anything that appears arbitrary or discriminatory will not be accepted by the Labour Courts.

#### Compensation

When a fixed-term contract is terminated prematurely without cause, Article 77 of the Labour Regulation requires the courts to award compensation to the end of the contract (however long this may be), with a minimum of two months' salary. The right to compensation applies not only when the employment contract is terminated early by the employer, but also when the employee terminates early without good cause.

When an indefinite-term contract is terminated without cause, the employee receives 15 days' salary for each year of service, or pro rata for an incomplete year, with a minimum of two months' salary, unless compensation for unlawful termination is set out in the employment contract. The compensation is in addition to the end-of-service benefits (ESBs) that are payable in any event.

Under Article 84 of the Labour Regulation, when an employment contract comes to an end, as a general rule the employee is entitled to:

- one-half of one month's wages for each of the first five years of employment (or pro-rated part thereof); and
- a full month's wages for each year of employment thereafter (or pro-rated part thereof).

Where an employee has resigned for reasons other than force majeure, the ESB is calculated as follows:

- one-third of the Article 84 ESB for two to five years of employment;
- two-thirds of the Article 84 ESB for six to ten years of employment; and
- the full Article 84 ESB for employment of more than ten years.

A waiver of the right to ESB is ineffective under Saudi Arabian law. The ESB is calculated with reference to the employee's gross remuneration, which includes housing and transport allowances, regular bonuses, etc. Where housing and transport are provided to the employee, the actual value or fair market value of such benefits is taken as the basis of the calculation.

### 4.5 Employee Representations

There are no trade unions in Saudi Arabia; employees' interests are represented by the HRSD. The Labour Regulation sets out rules governing the investigation of complaints by labour inspectors.

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/ Employers

There is no personal income tax in Saudi Arabia. The government imposes charges on expatriate employees, which are proportional to the term of the employee's work licence period, and are affected by whether the number of expatriate employees is equal to, fewer than, or exceeds the number of Saudi employees employed by the establishment.

Small businesses with a total workforce of nine employees or less, and industrial companies, may receive a certain number of exemptions from paying these charges on expatriate employees.

In addition, a monthly charge is imposed on expatriates' dependants. While the charges on expatriate employees must be borne by the employer, many employers do not cover the levy on dependants, which is therefore, in effect, a form of income tax.

### 5.2 Taxes Applicable to Businesses

#### Zakat

Saudi Arabian interests pay zakat, which is a religious wealth tax based on the taxpayer's net worth, not income. The effective rate is 2.5% of the net worth of natural persons and 2.5% of the total capital resources of companies. For companies, the tax base for the

calculation of zakat excludes fixed assets, long-term investments and deferred costs from total capital resources, but includes profits from foreign investments that do not consist of investment in real property.

Under the Income Tax Regulation (Royal Decree No M/1 of 15 Muharram 1425 Hejra corresponding to 7 March 2004), most foreign interests that conduct business in Saudi Arabia pay income tax at a flat rate of 20% of the profits. Oil and hydrocarbon production income are taxed at a rate of 50% to 85%. When a company has Saudi and non-Saudi shareholders, the Saudi shareholders pay zakat, and the non-Saudi shareholders pay income tax.

### Withholding Tax

Payments made from a resident party or a permanent establishment to a non-resident party for services rendered are subject to withholding tax, at rates which may, depending on which type of service was performed, vary between 5%, 15% and 20%,

### VAT

Since 1 July 2020, value-added tax (VAT) has been payable at a rate of 15%.

### Real Estate Transaction Tax

The sale of real estate is exempted from VAT. Instead of imposing VAT at a rate of 15%, a real estate transactions tax is imposed on the sale of real estate at a rate of 5% of the value of the property. The real estate transactions tax is imposed on all real estate transactions, including:

- sale;
- bequest;
- financial leasing;
- lease-to-own processes; and
- long-term usufruct contracts where the duration exceeds 50 years.

## 5.3 Available Tax Credits/Incentives

Net operating losses may be carried forward by non-Saudi investors from one year to the next. Any loss that has been carried forward may be deducted from the tax base of future taxable years until the cumulative loss is fully offset.

In March 2020, ZATCA launched an initiative granting amnesty in relation to tax filing and payment penalties for excise tax, VAT, withholding tax, income tax and zakat. The initiative was initially set to run for the period of 18 March 2020 to 30 June 2020, but has been extended multiple times since its launch. The latest extension was until 30 June 2026. The tax amnesty extension is applicable to penalties relating to corporate income tax, withholding tax, VAT, excise tax and real estate transaction tax.

The Regional Headquarters Tax Rules (issued by resolution of the Board of Directors of the Zakat, Tax and Customs Authority No (24-1-9) dated 23 Rajab 1445 Hejra corresponding to 4 February 2024), allows qualifying multinational companies which relocate their regional headquarters (RHQ) to Saudi Arabia to benefit from a 30-year income tax exemption, and a 30-year withholding tax exemption in relation to approved RHQ activities, subject to renewal. Aside from needing to fulfil the necessary criteria with MISA, RHQs need to fulfil the following requirements to qualify for the incentives:

- possessing a valid Investment Registration Certificate, and carrying out only those activities which are within the scope of the licence;
- having adequate premises in the Kingdom suitable for the business activities of the RHQ;
- managing and directing their activities in the Kingdom, including holding board meetings for the RHQ where strategic decisions will be made;
- incurring operational expenditures in the Kingdom, commensurate with the RHQ's activities;
- generating revenue from eligible activities in the Kingdom;
- having at least one director that is resident in the Kingdom;
- employing an adequate number of full-time employees in a tax year that is proportionate to the level of activity carried out by the RHQ; and
- employees of the RHQ possessing the requisite qualifications and skills necessary to execute their duties and fulfil their responsibilities.

## 5.4 Tax Consolidation

For zakat payment purposes, Article 15 of the Implementing Regulation for Zakat Collection permits com-

panies owned by the same partner, or holding companies and their wholly owned subsidiaries both inside and outside Saudi Arabia, to submit consolidated accounts and consolidated declarations.

### 5.5 Thin Capitalisation Rules and Other Limitations

There are no thin capitalisation rules.

Deduction of interest is limited to either the loan charge accumulated during the tax year (if related to taxable income) or the sum of a taxpayer's income from loan charges, whichever is lower, and 50% of taxable income (minus loan charge income and expenses).

### 5.6 Transfer Pricing

Article 63 (c) of the Income Tax Regulation gives ZATCA the power to reallocate income and expenses between related parties as may be necessary to reflect the income that would have been realised if the parties had been independent and unrelated. While this rule has been in force since 2004, it was not widely applied until 2019. On 15 February 2019, ZATCA introduced transfer pricing by-laws based on the OECD's Base Erosion and Profit Shifting Recommendations. On 24 June 2024, ZATCA issued an updated edition of its transfer pricing guidelines. These new guidelines state that the transfer pricing by-laws apply to anyone considered a taxpayer under the income tax system, zakat regulations, or both.

### 5.7 Anti-Evasion Rules

Under the Income Tax Regulation, failure to pay income tax results in a fine of 1% of the unpaid tax for each 30 days of the delayed payment, plus an additional 25% of the unpaid tax if fraud is involved.

### 5.8 Tariffs

The tariff regime employed by Saudi Arabia is based upon the Harmonised Commodity Description and Coding System (HS Code).

Saudi Arabia has signed trade agreements with the Gulf Co-operation Council (GCC) allowing signatories exemptions from customs duties. As a member of the GCC, Saudi Arabia levies the GCC common external tariff of at least 5% on most goods which are imported from non-GCC countries.

Tariff rates vary, with the exact rate depending on the HS Code of the product in question. Saudi Arabia also imposes high excise duties on certain products, for example, cigarettes, cigars, tobacco and tobacco products are subject to an excise tax of 100%.

## 6. Competition Law

### 6.1 Merger Control Notification

Under Article 7 of the Competition Regulation (Royal Decree No M/75 of 29 Jumada Thani 1440 Hejra corresponding to 6 March 2019), businesses that plan to engage in a transaction resulting in an economic concentration must notify the General Authority for Competition (GAC) at least 90 days before the transaction is completed, if the total value of the annual sales for all the enterprises taking part in the economic concentration surpasses SAR100 million. On 29 March 2023, the GAC announced that this minimum threshold for reporting an economic concentration was to be raised to SAR200 million. Since then, the GAC announced additional reporting limits for economic concentrations, which have been subject to amendment. They are, as at the time of writing, as follows:

- the total worldwide annual sales value of the parties to the economic concentration must exceed SAR200 million;
- the total worldwide annual sales value of the target establishment must exceed SAR40 million; and
- the total annual sales value in Saudi Arabia of all of the parties to the economic concentration must exceed SAR40 million.

Article 1 of the Implementing Rules of the Competition Regulation issued by the GAC Board Resolution No (337) dated 25 Muharram 1441 Hejra corresponding to 24 September 2019, defines an economic concentration as "any action that results in a total or partial transfer of ownership of assets, rights, equity, stocks, shares or liabilities of a firm to another by way of merger, acquisition, takeover or the joining of two or more managements in a joint management, or any other form that leads to the control of a firm(s) including influencing its decision, the organisation of its administrative structure, or its voting system". Therefore, a full merger or acquisition is not necessary to trigger

the reporting requirement; for example, the formation of an unincorporated joint venture or a consortium may also be sufficient.

Special rules apply to mergers and acquisitions involving listed companies, which are set out in the Merger and Acquisitions Regulations (Resolution of the Board of the Capital Market Authority No 1-50-2007 of 21 Ramadan 1428 Hejra corresponding to 3 October 2007), as amended by Resolution No 3-45-2018 of 7 Sha'ban 1439 Hejra corresponding to 23 April 2018.

### 6.2 Merger Control Procedure

Under the 2019 Competition Regulation and its Implementing Rules, the parties to an economic concentration exceeding the threshold must submit a report for GAC approval at least 90 days before the completion of the action. This report is submitted through the GAC's website and must contain the following information:

- the basic information concerning the operation of the economic concentration and the parties thereto;
- the sectors and markets concerned;
- the likely effect of the economic concentration on competition generally;
- the most prominent customers; and
- the most prominent competitors.

The report must also contain any other data the GAC requires to review the economic concentration.

Certain documents must also be submitted to the GAC in connection with the buyer and target entities, namely:

- their articles of association;
- their commercial registration certificate or an equivalent document; and
- their financial statements for the past two years.

Once the report and required documents are received, the GAC may publish basic information on the economic concentration and request comments from the public. The GAC must evaluate the application in light of the following factors:

- the structure and level of competition in the market in Saudi Arabia, and abroad in situations where the competition has an impact on the Saudi market;
- the financial positions of the parties to the economic concentration;
- the availability and accessibility of alternative commodities;
- the distinctness of the commodities;
- consumer interests and welfare;
- the probable effect of the economic concentration on prices, quality, diversification, innovation or development in the market;
- advantages and disadvantages to competition arising from the economic concentration;
- the growth and direction of supply and demand in the market;
- the barriers to entry and exit or the expansion of enterprises in the market, including regulatory barriers;
- the likelihood that the economic concentration will create or enhance influential market strength or the dominant position of the enterprise in any particular markets;
- the degree and history of practices prejudicial to competition in the relevant market; and
- the views of the public, the parties related to the economic concentration, and the sector regulators.

At the conclusion of the enquiry, the GAC may approve or reject the application, or may set conditions for its approval. If no ruling is made within 90 days of submission of the application, the application is deemed to be approved.

### 6.3 Cartels

Article 5 of the 2019 Competition Regulation prohibits practices that have the effect or intention of disturbing competition. Such practices can involve express or implied agreements between businesses, but a single entity can also be guilty of engaging in anti-competitive practices.

Article 5 sets out a non-exclusive list of practices that are considered anti-competitive, as follows:

- fixing or proposing prices for goods, consideration for services, conditions of sale or purchase, and the like;

- fixing the volumes, weights or quantities of production of commodities or the performance of services;
- restricting the freedom of flow of commodities or services to the markets, or wholly or partially removing them therefrom by concealing or storing them without right, or refusing to deal therein;
- any conduct tending to impede the entry of an enterprise to the market, or excluding it therefrom;
- withholding commodities or services available on the market wholly or in part from a particular enterprise or enterprises;
- dividing up the markets for the sale or purchase of commodities or goods, or allocating them in accordance with any criterion, particularly according to geographical areas, distribution centres, types of customers, or seasons and periods of time;
- freezing operations of manufacture, development, distribution and marketing and all other modes of investment, or restricting them; and
- colluding or co-ordinating in bids or offers in governmental or other auctions or tenders in such a manner as to disturb competition.

The GAC has both an investigation department and a tribunal that adjudicates on violations of the Competition Regulation. The decisions of the Committee for the Determination of Violations of the Competition Regulation are appealable to the Administrative Court, but such appeals have so far, for the most part, been unsuccessful. Since the GAC was established in 2004, originally as the Competition Protection Council, it has taken to court and convicted enterprises in a variety of industries, including cement, medical gases, rice, sugar and soft drinks.

### 6.4 Abuse of Dominant Position

Under the 2019 Competition Regulation, a dominant entity is defined as having a 40% market share or the ability to influence a particular market.

Dominant businesses may not abuse their position, nor disturb or limit competition. Article 6 of the 2019 Competition Regulation sets out the following non-exclusive list of practices that are prohibited for dominant businesses:

- selling a commodity or service at a price less than the total cost, in order to exclude enterprises from the market or to expose them to grave loss, or to impede the entry of potential enterprises;
- fixing or imposing prices or conditions for the resale of commodities or services;
- reducing or increasing the available quantities of products in order to control prices or fabricate a non-genuine abundance or shortage;
- discriminating in dealings between enterprises in respect of similar contracts with regard to the prices of commodities, consideration for services, or conditions of sale or purchase thereof;
- refusing to deal with another enterprise without objective cause, in order to restrict its entry to the market;
- imposing a requirement on an enterprise that it should refrain from dealing with another enterprise; and
- making the sale of a commodity or the provision of a service conditional upon the assumption of obligations or the acceptance of goods or services that – by their nature or under commercial usage – are unconnected with the commodity or service that is the subject matter of the original contract or transaction.

## 7. Intellectual Property

### 7.1 Patents

Originally, intellectual property rights were administered and protected by three different government authorities:

- King Abdulaziz City for Science and Technology (KACST) for patents;
- the MOC for trade marks; and
- the Ministry of Media for copyrights.

These functions are now handled by the Saudi Authority for Intellectual Property (SAIP), which aims to organise, support, sponsor, protect and promote intellectual property in the Kingdom, in accordance with global best practices.

Patents

Patents are governed by the Patent, Layout Designs of Integrated Circuits, Plant Varieties, and Industrial Models Regulation (Royal Decree No M/27 of 20 Jumada Awwal 1425 Hejra corresponding to 17 July 2005), which gives effect to the Paris Convention for the Protection of Industrial Property under Saudi law. This law was amended in 2023 to extend the period of protection for industrial designs from ten to 15 years. Additionally, the law now formally recognises the Hague Agreement and the World Intellectual Property Organization.

A protection document is granted by the SAIP, which gives full protection within the Kingdom to an invention, a layout design of an integrated circuit, a plant variety or an industrial design. The protection document grants the owner the right to commercially exploit the subject matter of protection.

In accordance with the provisions of the Patent, Layout Designs of Integrated Circuits, Plant Varieties, and Industrial Models Regulation, a patent may be granted for an invention if it is novel, involves a creative step and is capable of industrial application. The invention may be a product or an industrial process, or may relate to either.

Applications for protection documents can now be filed through the SAIP website by filling out a template which requires the input of:

- a summary;
- a full description;
- the elements being protected; and
- drawings (if any) for the invention being patented.

For certain patent applications, the patent application fast track examination programme is also available, which provides a potentially quicker avenue for obtaining a protection document.

The protection document is the personal right of the owner, who may transfer or assign it, or grant a contractual licence to others to commercially exploit the subject matter of protection. Protection is granted to the owner for:

- 20 years for an invention;
- 15 years for an industrial design; and
- 20 to 25 years for a new plant variety.

These periods are renewable, for an annual fee.

Disputes arising from patent infringement are handled by the Commercial Courts.

### 7.2 Trade Marks

Trade marks are regulated under the Trade Marks Regulation (Royal Decree No M/21 of 28 Jumada Awwal 1423 Hejra corresponding to 8 August 2002), which defines a trade mark as:

"… anything having a distinctive form such as names, words, signatures, letters, figures, drawings, logos, titles, hallmarks, seals, pictures, engravings, packs or any other mark or group of marks if used or intended to be used either to distinguish goods, products or services of a facility or other facilities or to indicate the rendering of a service or the control of inspection of goods or services."

Applications for the registration of trade marks are made online. The process is as follows.

- Authorisation must be obtained to register the trade mark.
- A power of attorney must be obtained to register the trade mark.
- A request must be submitted to register the trade mark, which includes the payment of a SAR1,000 consideration fee.
- The request is examined. The SAIP may allow the applicant to modify the trade mark if the SAIP finds the trade mark is not fit for registration.
- If the trade mark is accepted, the SAR500 publication fee must be paid to proceed.
- The trade mark is published for 60 days.
- If no objections are made during the publication period, once it lapses, the applicant must pay the final invoice within 30 days of its issuance, and the trade mark certificate will be issued. The trade mark registration and certificate issuance fees are SAR5,000.

In November 2023, two significant developments took place in Saudi trade mark law.

- The 12th Edition of the Nice Classification was adopted by Saudi Arabia and is now required when new trade mark applications are filed.
- The Saudi Cabinet approved the Kingdom's accession to the Madrid Protocol for international trade mark registration.

In Saudi Arabia, it is not permitted for anyone other than the rightful owner to register a trade mark that is similar to an internationally known mark. Registration of a trade mark provides the holder with protection for ten years from the date of registration, renewable for similar periods. Any renewal must be specifically applied for before the end of the year of expiry of the registration, and the procedure for renewal is the same as that for the initial registration of the trade mark. A trade mark is deemed to be owned by the person who effects the registration. Once the registration is effected in the trade marks register, the party who has registered the trade mark shall be considered the owner thereof, to the exclusion of others.

A trade mark can be licensed, pledged or transferred by the rightful owner. The trade mark may be deleted or cancelled if it is not used for five consecutive years.

Penalties for infringement of a valid trade mark include imprisonment for a period of no more than one year, and a fine of no less than SAR50,000 and no more than SAR1 million. The Commercial Courts preside over infringement-related disputes.

### 7.3 Industrial Designs

An industrial design is defined as "a collection of two-dimensional lines or colours, or a three-dimensional form that gives any industrial product or product of traditional crafts a special appearance, provided that it is not merely for a functional or technical purpose, including textile designs". The industrial design is protected by a protection document called an "industrial design certificate".

Industrial designs are governed by the Patent, Layout Designs of Integrated Circuits, Plant Varieties, and Industrial Models Regulation. A protection certificate shall be granted for an industrial model if it is novel and has features that distinguish it from known industrial models. The industrial model shall be deemed novel if it was not disclosed to the public through publication anywhere in a tangible form, by use or by any other means, prior to the date of filing the registration application or the priority application.

Protection is granted to the owner for ten years for an industrial design. The above-mentioned regulation gives the owner of an industrial model protection certificate the right to initiate an action before the Commercial Courts against any person who infringes the industrial model by exploiting it for commercial purposes without their consent within the Kingdom through the manufacture, sale or importation of a product that includes or represents a wholly or substantially copied industrial model.

Note that the procedure for applying for a protection certificate for an industrial design is similar to the procedure for registering a patent, as described in **7.1 Patents**.

### 7.4 Copyright

The Copyright Regulation (Royal Decree No M/41 of 2 Rajab 1424 Hejra corresponding to 30 August 2003) and its Implementing Rules define copyright protection to include architectural designs, speeches and theatrical, musical, photographic and cinematographic works, as well as works for radio and television, maps, video tapes and computer software. The Regulation gives the author financial and moral rights to:

- print or publish the work;
- make amendments or delete the work;
- withdraw the work from circulation; and
- assign the work as they wish.

The SAIP has launched a copyright registration service for computer software, apps and architectural designs. To register, applicants must complete the registration application on the SAIP website and pay the requisite examination fee.

Upon successful registration, the copyright holder is issued a registration certificate.

In general, the duration of protection afforded to different types of copyrighted works is as follows:

- protection of copyright for the author of a work lasts for the duration of their life and for 50 years following their death;
- protection for works where the author is a corporate entity, or where their name is unknown, lasts 50 years from the date of the first publication of the work;
- the protection period for sound works, audio-visual works, films, collective works and computer programs lasts 50 years from the date of the first show or publication of the work, regardless of republication;
- protection for applied art (handcrafted or manufactured) and photographs lasts 25 years from the date of publication;
- protection for broadcasting organisations lasts 20 years from the date of the first transmission of a programme or broadcast materials; and
- protection for the producers of audio recordings and performances lasts 50 years from the date of performance or the first recording, as the case may be.

Disputes arising from copyright infringement are handled by the Commercial Courts. Infringers of copyright may be punished with a fine of up to SAR250,000 for first-time offenders, which may be doubled to SAR500,000 for repeated infringement.

### 7.5 Others

The Regulations for the Protection of Confidential Commercial Information, issued by the Minister of Commerce and Industry's decision No 3218 dated 25 Rabi Awwal 1426 Hejra corresponding to 4 May 2005, as amended by His Excellency's decision No 431 dated 1 Jumada Awwal 1426 Hejra corresponding to 8 June 2005, enumerate a list of situations where information is considered a commercial secret, namely where:

- the information in its basic constituents or its final form is not generally known, and is difficult to obtain by practitioners of the type of business to which the information pertains;
- the information is commercially valuable due to its confidentiality; or
- the owner of the information takes steps to safeguard its confidentiality.

The obtainment, usage or disclosure of commercial secrets without the owner's consent, through a manner that is deemed to be "inconsistent with honest commercial practices", is deemed an abuse of commercial secrets under the Regulation.

Activities considered contrary to honest commercial practice include:

- the breaching of contracts concerning commercial secrets;
- breaching or encouraging the breaching of confidential information; and
- obtaining commercial secrets from a third party who is known to have obtained the information through one of these activities.

Persons harmed by an abuse of commercial secrets may file a lawsuit to claim compensation for damages they have sustained.

The new Law of Trade Names (Royal Decree No M/83 of 19 Rabi Awwal 1446 corresponding to 22 September 2024), which came into effect in April 2025, replaces the previous Law of Trade Names (Royal Decree No M/15 of 12 Sha'ban 1420 Hejra corresponding to 20 November 1999), and regulates the reservation and registration of trade names. The law enables trade names to be reserved prior to registration, for specific durations, which can be extended. Trade name options have been expanded so that trade names may be Arabic, non-Arabic, transliterated Arabic or alphanumeric. No person may use a registered trade name which belongs to someone else.

## 8. Data Protection

### 8.1 Applicable Regulations

The Personal Data Protection Regulation (PDPR) (Royal Decree No M/19 of 9 Safar 1443 Hejra corresponding to 16 September 2021) amended by Royal Decree No M/148 of 5 Ramadan 1444 Hejra corresponding to 27 March 2023 governs the collection and processing of data in the Kingdom. The regulation places a strong emphasis on obtaining the consent of data owners for the collection of their data, and

maintaining transparency with data owners regarding how their personal information is processed.

Controlling entities, which is to say public bodies, natural persons or private bodies corporate that determine why and how personal data is processed (whether they themselves are processing it or whether this is done through a processing entity), may only (with certain exceptions) collect personal data directly from the owner of the data in question, and process such data solely for the purpose for which the data was collected. Privacy policies need to be adopted by controlling entities and made available to the owners of data. These privacy policies must inform data owners of:

- the reason for their data's collection;
- the contents of the personal data that must be collected;
- the method of data collection, storage and processing;
- the means of deleting the data; and
- the rights of the data owner in connection therewith, as well as the manner in which such rights may be exercised.

A number of industries are also currently governed by regulations that set out measures to protect data collected in those fields. Examples include the following.

- The Health Profession Practice Regulation (Royal Decree No M/59 of 4 Dhul Qada 1426 Hejra corresponding to 6 December 2005), which provides that a medical practitioner must not disclose any confidential information obtained during the course of their work. The regulation lists a few exceptions to this rule, such as a court order requiring disclosure.
- Article 5 of the E-Commerce Regulation (Royal Decree No M/126 of 7 Dhul Qada 1440 Hejra corresponding to 9 July 2019), which provides that online merchants may not retain consumer data beyond the period required for an electronic commerce transaction, and that online merchants must adopt the necessary safeguards to protect consumer data while it is retained. The same regulation prohibits online retailers from the unauthorised disclosure and usage of consumer data.

### 8.2 Geographical Scope

The PDPR applies to any processing of the personal data of individuals, carried out in the Kingdom by any means whatsoever, including the processing of personal data relating to individuals resident in the Kingdom, by any means whatsoever, by any entity residing outside the Kingdom.

Article 2 (b) of the 2018 E-Commerce Regulation details the provisions and sanctions in place to safeguard the protection of consumer data, and also applies to traders outside Saudi Arabia who provide products or services inside the country by offering them in a manner that enables the consumer to obtain them.

### 8.3 Role and Authority of the Data Protection Agency

Although each government authority supervising an activity is responsible for enforcing its specific data protection rules, the National Data Management Office is the national data regulator of Saudi Arabia, and creates laws, regulations and policies to facilitate the protection of data.

The Saudi Authority for Data and Artificial Intelligence is the authority which supervises the implementation of the PDPR.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

One of the key aspects of Saudi Vision 2030, a government programme launched with the goal of diversifying Saudi Arabia's economy and culture, is the reformation of the country's legal and judicial framework. To this end, there have been increased efforts to legislate upon previously uncodified areas of the law, in order to create a more predictable legal environment, and encourage foreign investment.

In 2022, the draft of the Commercial Transactions Law was uploaded to Istitlaa, the Saudi public consultation platform for feedback on legislation. The consultation period for this draft has since ended. The official publication of the Commercial Transactions Law is highly anticipated, as it regulates a wide array of commercial

contracts, and will serve as the first comprehensive codification of commercial law in the Kingdom.

A new Copyright Law issued under Royal Decree No M/169 of 14 Sha'ban 1447 Hejra, corresponding to 2 February 2026, will come into effect in August 2026, replacing the current Copyright Law. The 2026 Copyright Law will strengthen copyright enforcement mechanisms, modernise the law to account for the emergence of artificial intelligence, move towards a safe harbour regime for internet content providers, and raise penalties for copyright violations.

# SINGAPORE




## Law and Practice

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**Collyer Law LLC** is a Singapore-based boutique law firm with a team of 14 lawyers and professionals. The firm advises start-ups, venture capital funds, investors and growth-stage businesses on mergers and acquisitions, venture capital and private equity transactions, corporate finance, employment, intellectual property, technology, media and telecommunications, regulatory matters and dispute resolution. Through its cross-border network, the firm regularly advises on transactions involving clients across 50 countries from Asia-Pacific, Europe, MENA and the Americas. The firm is particularly active in the technology, financial services, healthcare, life sciences, consumer and renewables sectors. Recent representative matters include advising Meesho on its acquisition of Kirana Club for approximately USD23 million; advising Tata Capital Limited on Singapore law aspects of financing transactions; advising Burger King on the renewal of its lease at Loyang Point, Singapore; and advising founders, companies and investors on venture capital financings, strategic investments, restructurings and exit transactions.

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# 1. Legal System

## 1.1 Legal System and Judicial Order

Singapore has a common law system. Its sources of law are the Constitution of the Republic of Singapore, legislation, subsidiary legislation and case law. The judicial order is divided into the Supreme Court, which comprises the Court of Appeal and the High Court, and the subordinate courts as may be provided for by any written law for the time being in force.

### The Supreme Court

The Court of Appeal is Singapore's apex court. The High Court consists of the General Division, which exercises original civil and criminal jurisdiction, and the Appellate Division, which hears civil appeals allocated to it under the statutory framework. Specialised lists have been set up in the General Division to hear certain types of disputes; such lists comprise docketed judges and a team of assistant registrars, who manage cases in consultation with the docketed judges as appropriate. The Singapore International Commercial Court is a division of the General Division and hears qualifying international commercial disputes.

### The State Courts and Family Justice Courts

The State Courts comprise the District Courts, Magistrates' Courts and other specialist courts and tribunals. They hear most first-instance civil and criminal matters, subject to statutory jurisdictional limits. The District Courts generally hear civil claims of between SGD60,000 and SGD250,000, or up to SGD500,000 for road traffic accident claims and claims for personal injuries arising out of industrial accidents. The Magistrates' Courts hear claims not exceeding SGD60,000 in value.

The Family Justice Courts hear family proceedings, including divorce, maintenance, guardianship and related matters.

# 2. Restrictions on Foreign Investments

## 2.1 Approval of Foreign Investments

### General Position

Singapore is generally open to foreign investment and does not have a broad foreign investment approval regime. Foreign investors may typically incorporate or acquire full ownership of Singapore businesses without a local equity partner. However, targeted restrictions and approval requirements apply where an investment falls within the Significant Investments Review Act 2024 (SIRA) or sector-specific legislation.

### SIRA

SIRA regulates significant investments in, and control of, entities designated as critical to Singapore's national security interests. Designated entities are identified by the Minister of Trade and Industry and published in the Government Gazette.

Under the SIRA, the following applies:

- a person who becomes a 5% controller must notify the Minister within seven calendar days;
- prior approval is required before a person becomes a 12%, 25% or 50% controller;

- approval is required for acquisitions of all or part of a designated entity's business or undertaking as a going concern; and
- an existing controller must obtain prior approval before ceasing to be a 50% or 75% controller.

The Minister may vary these thresholds for specific designated entities.

### Sector-Specific Controls

Separate approval requirements apply in regulated sectors.

- Banks: under the Banking Act 1970, no person may become a substantial shareholder (generally 5% or more of voting shares) of a Singapore-incorporated bank without prior approval from the Minister for Finance.
- Newspapers: under the Newspaper and Printing Presses Act 1974, foreign corporations cannot hold management shares without ministerial approval from the Minister for Communications and Information.
- Broadcasting: under the Broadcasting Act 1994, a broadcasting licence will not be granted to any company that is controlled by foreign sources, or where foreign sources hold 49% or more of the shares or voting power.
- Real estate: under the Residential Property Act 1976, foreigners must seek prior written approval from the Minister for Law before purchasing real estate such as vacant residential land, landed properties and residential shophouses.

These are illustrative only, and other sector-specific regimes may apply.

## 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

### Process for Obtaining Approval

The steps for foreign investors to obtain approval depend on the applicable regime, but broadly involve the following.

- Determining whether the proposed investment triggers any notification or approval thresholds.
- Making submissions to relevant authorities:
  - (a) for SIRA matters, submissions are made to the Ministry of Trade and Industry through the Office of Significant Investments Review (OSIR); and
  - (b) for regulated sectors, submissions are made to the relevant sector regulator.
- The relevant authority will assess the submissions, focusing on national security, public interest or continuation of the entity in providing critical function.
- Approval may be granted with or without conditions, or refused.

The timeline varies depending on the complexity of the transaction and the nature of the sector, and may range from a few weeks to several months.

### Non-Compliance

The consequences of non-compliance depend on the applicable regime. Under SIRA, the Minister of Trade and Industry has broad enforcement powers, such as:

- directing the disposal of shares or interests;
- unwinding or voiding the transaction; and
- imposing restrictions on business operations.

Non-compliance may also attract financial penalties and, in some cases, criminal liability.

Sector-specific regimes may impose additional sanctions, including licence-related action (such as suspension or revocation) and directions to divest offending shareholdings.

## 2.3 Commitments Required From Foreign Investors

Singapore authorities may grant approval subject to conditions, particularly where the investment raises national security, public interest or regulatory compliance concerns. The nature and extent of commitments depend on the applicable regime and the nature of the sector.

For SIRA, the statute itself does not prescribe a closed list of conditions. Instead, it confers wide discretion to impose such conditions as the Minister considers appropriate having regard to national security. Conditions may include:

- restrictions on ownership or control rights, including limits on voting power or board representation;
- requirements to notify and seek approval for future changes in ownership of shares or control; and
- obligations relating to the appointment of directors or senior management.

In regulated sectors, conditions may also include demonstrating adequate financial resources, operational capability, governance framework and compliance systems.

### 2.4 Right to Appeal

#### SIRA Reconsideration and Appeal

Under SIRA, a party may apply through the OSIR for the Minister of Trade and Industry to reconsider his decision. The application must generally be submitted within 14 calendar days after the decision was made.

If the party remains aggrieved following reconsideration, a further appeal may be made to a Reviewing Tribunal within 30 calendar days of the reconsideration decision.

Given that there may be diverse and complex considerations relating to national security concerns, the Minister of Trade and Industry and the Reviewing Tribunal should be allowed adequate time to conduct thorough assessments and properly review the case before them. Nonetheless, they endeavour to process all appeals expeditiously.

The original decision continues to have effect unless and until it is overturned. The decision of the Reviewing Tribunal is final within the statutory appeal framework.

#### Limited Judicial Review

SIRA significantly limits recourse to the courts. Determinations, orders and other decisions made under SIRA are final and conclusive, and are generally not subject to challenge, appeal or review by the courts.

Judicial review is only available on very narrow grounds, namely in relation to procedural compliance with SIRA or applicable regulations or rules. The courts will not review the substantive merits of the decision.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

The most commonly used corporate vehicles in Singapore are as follows.

#### Private Company Limited by Shares (Pte Ltd)

The most common vehicle for carrying on business in Singapore is a private company limited by shares, which has the following features.

- Nature: separate legal person.
- Governance: managed by directors, with at least one director being ordinarily resident in Singapore.
- Shareholders: at least one and not more than 50 shareholders. Shares cannot be offered to the public.
- Liability: generally limited to the amount unpaid on their shares.
- Capital: no minimum share capital. They are commonly incorporated with SGD1 or its equivalent.

This vehicle is commonly used for operating businesses, holding companies, joint ventures and greenfield investments.

#### Exempt Private Company Limited by Shares (Pte Ltd)

An exempt private company is a sub-category of a private company. It is similar to a private company limited by shares, with the difference being that shareholders are limited to not more than 20, all of whom are individuals (with limited exceptions).

This vehicle is commonly used for small businesses or start-ups.

#### Public Company Limited by Shares (Ltd)

Public companies are subject to more extensive governance and disclosure requirements, and have the following features.

- Nature: separate legal person.
- Governance: managed by directors, with at least one director being ordinarily resident in Singapore.
- Shareholders: no maximum limit. They may raise capital from the public, subject to complying with the applicable securities laws.

- Liability: generally limited to the amount unpaid on their shares. If the company fails, shareholders only lose the money they invested.
- Capital: no minimum share capital, but higher practical thresholds apply for public fundraising or listing.

This vehicle is typically used for listed companies or large-scale fundraising.

### Limited Liability Partnership (LLP)

The features of an LLP include the following.

- Nature: separate legal person.
- Governance: managed by partners, with at least one manager ordinarily resident in Singapore.
- Partners: at least two partners.
- Liability: generally limited, except for a partner's own wrongful acts.

This vehicle is often used for professional service firms and SMEs.

### Foreign Company Branch

A foreign company may register a Singapore branch.

- Nature: not a separate legal entity from the foreign head office.
- Liability: the foreign company bears full liability for the branch.
- Governance: operations are controlled by the foreign head office.

This structure may suit businesses that prefer to operate directly through the foreign entity, although the head office remains exposed to the branch's liabilities.

## 3.2 Incorporation Process

The incorporation of a company in Singapore is generally straightforward and efficient, and is carried out electronically through the Accounting and Corporate Regulatory Authority (ACRA) via its BizFile system.

### Main Steps

The typical steps are as follows.

- Name reservation: the proposed company name must not be identical to existing businesses, and must not contain undesirable words. Approval is usually immediate, unless the name requires referral to another authority.
- Determination and submission of key information: the applicant identifies the company type and submits key information, including:
  (a) the registered office address;
  (b) the financial year end;
  (c) particulars of directors, shareholders and (where applicable) controllers;
  (d) share capital and initial share allotment; and
  (e) the constitution of the company.
- Registration: upon successful submission, ACRA issues a Unique Entity Number (UEN) and electronic certificate of incorporation.
- Post-incorporation requirements: a company must appoint a company secretary within six months, and should also complete its internal registers and corporate records, arrange banking and tax registrations, consider employment and immigration requirements, and obtain any required business licences.

### Timing

A straightforward incorporation can typically be completed within one to three business days.

Additional time may be required where:

- the proposed name or business activity requires regulatory referral;
- there are complex ownership structures; or
- foreign documentation or approvals are needed.

In such cases, incorporation may take several days to a few weeks.

## 3.3 Ongoing Reporting and Disclosure Obligations

Private companies in Singapore are subject to ongoing reporting, filing and record-keeping obligations under the Companies Act 1967, applicable to any changes in corporate particulars, annual reporting and ownership transparency.

### ACRA Filings and Registers

Companies must lodge filings with ACRA within prescribed timelines for key changes, including:

- directors, chief executive officers, secretaries and auditors;
- registered office address;
- share capital and shareholdings; and
- amendments to the constitution.

Companies are also required to maintain up-to-date statutory registers (including registers of members, directors and secretaries).

### Annual Reporting

A private company must comply with ongoing annual reporting requirements, which include the following.

- Preparing financial statements in accordance with applicable accounting standards, unless exempted (eg, dormant companies or certain exempt private companies).
- Holding an annual general meeting (AGM) to present and approve the financial statements, unless exempt. Private companies may dispense with AGMs by passing written resolutions, subject to statutory requirements.
- Filing annual returns with ACRA, including updated company information and, where applicable, financial statements. The filing must be made within prescribed timelines after the financial year end.

Audit requirements depend on whether the company qualifies for exemptions, such as the small company audit exemption, which is based on size criteria (eg, revenue, assets and number of employees).

Tax filing obligations with the Inland Revenue Authority of Singapore (IRAS), including corporate income tax returns and filings, apply separately from ACRA requirements.

## 3.4 Management Structures

### Companies Limited by Shares (Public and Private)

The board of directors is responsible for managing the company's business and affairs, and may delegate authority to management, committees or authorised officers.

Shareholders do not participate in day-to-day management, but retain powers reserved to them under the Companies Act, the constitution and any shareholders' agreement, including approval of specified matters and the appointment or removal of directors.

In practice, the allocation of decision-making powers is determined by the Companies Act, the company's constitution and shareholders' agreements, which should be read together.

### LLPs

The management structure for partnerships differs from companies and is generally more flexible. The management of an LLP is governed primarily by the LLP agreement, subject to the Limited Liability Partnerships Act 2005. Partners typically manage the business, and each LLP must have at least one manager ordinarily resident in Singapore for compliance purposes.

### Branches

A Singapore branch does not have a separate governance structure. It is managed as part of the foreign company, which retains control over its operations. Branches must comply with local registration requirements and appoint locally resident authorised representatives, but management authority remains with the head office.

## 3.5 Directors', Officers' and Shareholders' Liability

### Directors and Officers

Directors and officers of Singapore companies are subject to duties under both the Companies Act and common law. These duties apply to all directors, including de facto and shadow directors in certain circumstances.

Generally, directors have the duties to:

- act bona fide in the best interest of the company;
- act for proper purpose;
- avoid conflicts of interest; and
- exercise care, skill and diligence in the discharge of their duties.

These duties are owed to the company, rather than directly to shareholders or creditors (subject to limited exceptions, such as insolvency situations).

Depending on the circumstances, breach of duties may give rise to:

- civil liability, including damages, account of profits or equitable remedies;
- statutory liability – eg, for failure to disclose interests, maintain proper records or comply with filing requirements; and
- criminal liability in specified cases, such as engaging in fraudulent trading, making false statements or being involved in certain disclosure breaches.

Directors may also be personally liable where they are involved in insolvent or wrongful trading, or where they incur liabilities without a reasonable expectation of the company meeting its obligations.

### Shareholders

A company is ordinarily treated as a separate legal person from its shareholders. Shareholders in a company limited by shares are generally not liable for the company's debts beyond any unpaid amount on their shares. Singapore law recognises the concept of piercing (or lifting) the corporate veil, but this is applied sparingly and only in limited circumstances.

The courts may disregard the separate legal personality of a company where it is used as a sham or façade to conceal wrongdoing, but will generally uphold the principle of separate corporate personality, except in the following exceptional situations:

- fraud or improper conduct;
- use of the company to evade existing legal obligations; and
- situations expressly provided for under statute (eg, a company carrying on business without at least one Singapore resident director for more than six months).

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

Employment relationships in Singapore are governed by statute, contract, common law and, where applicable, collective agreements.

### Statute

The Employment Act 1968 (EA) is the primary employment statute governing most employment relationships in Singapore (excluding seafarers, domestic workers, civil servants and statutory board employees). It sets minimum standards on matters such as salary payment, leave, termination, records, key employment terms and, for employees covered by Part 4, working hours, rest days and overtime. Other employment-related statutes include:

- the Central Provident Fund Act 1953;
- the Employment of Foreign Manpower Act 1990;
- the Retirement and Re-employment Act 1993;
- the Workplace Safety and Health Act 2006;
- the Work Injury Compensation Act 2019;
- the Child Development Co-Savings Act 2001;
- the Platform Workers Act 2024; and
- the Workplace Fairness Act 2025.

### Case Law

Common law principles remain relevant to interpret statute and contractual terms.

### Contract

The employment contract is the primary document governing the relationship between the employer and employee, and sets out the mutually agreed terms and conditions between them. The employee handbook or manual supplements the employment contract and sets out workplace procedures and policies.

### Collective Bargaining Agreements

Collective bargaining is available to recognised trade unions under the Industrial Relations Act 1960. Collective agreements regulating wages and working conditions are valid for two to three years, and must be filed with the Industrial Arbitration Court within one week of signing to be enforceable. Recognised trade unions may also provide limited representation to executive employees in relation to dismissal appeals, retrenchment benefits, breaches of employment contracts, victimisation and re-employment.

### Guidelines, Advisories and Tripartism

A notable feature of Singapore's system is tripartism: a collaborative model involving the Ministry of Manpower (MOM), the National Trades Union Congress,

and the Singapore National Employers Federation, through which guidelines and advisories are issued to supplement the law. Tripartite guidelines and advisories are not primary legislation, but are important in practice and may be considered by regulators when assessing matters such as fair employment practices, flexible work requests and retrenchment exercises.

The Tripartite Alliance for Dispute Management and the Employment Claims Tribunals were set up in 2017 to provide an efficient, cost-effective avenue for resolving salary and wrongful dismissal claims. They were jointly established by the tripartite partners.

## 4.2 Characteristics of Employment Contracts

### Specific Requirements and Statutory Minimums

The EA recognises both written and oral contracts, but written terms are strongly recommended.

Employers must issue written key employment terms to employees who are employed for at least 14 continuous days, no later than 14 days after the day that the employee starts employment with the employer. Such terms must cover matters such as job title, main duties and responsibilities, start date, salary, working arrangements, leave entitlements, notice period, probation period, place of work, bonus or incentives, and other medical benefits.

Under the EA, employers must issue itemised pay slips either with the salary payment or within three working days after the salary payment is made. For termination or dismissal, the pay slip must be issued on the last salary period preceding the end of employment or on the employee's last day of employment with the employer.

An employment contract shall not contain terms that are less favourable to the employee than those prescribed by the EA; any such term is illegal and void to the extent that it is less favourable. The employer is not restricted from granting more favourable terms to the employee.

### Duration

Singapore law does not require employment contracts to be indefinite. Employment may be open-ended or fixed-term, provided the arrangement is genuine and consistent with statutory protections.

## 4.3 Working Time

The statutory working time, rest day, overtime and other conditions set out in Part 4 of the EA only apply to workers (doing manual labour) earning not more than SGD4,500 a month and other employees (non-managerial, non-executive) earning not more than SGD2,600 a month.

For employees covered by Part 4, the main protections are as follows:

- they must not be required under their contract to work more than eight hours a day (and not more than six consecutive hours without a period of break) or 44 hours a week;
- overtime must generally be paid at no less than 1.5 times the hourly basic rate of pay;
- overtime work generally cannot exceed 72 hours a month, unless an exemption applies;
- employees are entitled to one rest day each week; and
- work on rest days is subject to separate statutory payment rules, depending on whether it was requested by the employee or the employer.

For employees not covered by Part 4 of the EA, these terms are governed primarily by the employment contract, which can be negotiated between the employer and the employee.

## 4.4 Termination of Employment Contracts

Singapore is not an "employment at will" jurisdiction in the sense understood in some other common law systems. An employment contract may be terminated without cause on notice (or payment in lieu of notice), or for cause.

An employer may terminate employment only in accordance with the contract and applicable statutes, including the EA. Termination may be by written notice, payment in lieu of notice, expiry of a fixed term, mutual agreement, redundancy or dismissal for cause.

### Termination by Written Notice or Payment in Lieu of Notice

The length of the notice must be the same for both employer and employee, and is to be determined by any provision made for the notice in the terms of the contract of service; in the absence of such provision, it must be determined in accordance with the EA, depending on the length of service by the employee.

Either party to a contract of service may terminate the contract of service without notice or, if notice has already been given in accordance with Section 10, without waiting for the expiry of that notice, by paying to the other party a sum equal to the amount of salary at the gross rate of pay that would have accrued to the employee during the period of the notice – ie, payment in lieu of notice.

### Termination by Cause

An employer is deemed to have broken the employer's contract of service with the employee if the employer fails to pay salary in accordance with the EA.

An employee is deemed to have broken the employee's contract of service with the employer if the employee is absent from work for more than two days continuously without prior leave from the employer and the employee has no reasonable excuse for the absence or does not inform or attempt to inform the employer of the excuse for the absence.

Either party to a contract of service may terminate the contract of service without notice in the event of any wilful breach by the other party of a condition of the contract of service.

Termination by cause on the grounds of misconduct inconsistent with the fulfilment of the express or implied conditions of the employee's service is permitted only after due inquiry. The Tripartite Guidelines on Wrongful Dismissal provide non-exhaustive examples of misconduct, which include theft, dishonest or disorderly conduct at work, insubordination, and bringing the organisation into disrepute. It is common to find other terms in the employment contract or employment handbook upon which the employer may terminate the employee's employment for cause.

In addition to civil claims before the courts, employees may bring a wrongful dismissal claim (ie, dismissal without just cause or excuse) under the Employment Claims Act 2016 for reinstatement in the employee's former employment or compensation.

### Payment on Termination

The total salary and any sum due to an employee who has been dismissed by the employer must be paid on the day of dismissal or, if this is not possible, within three days thereafter, not being a rest day or public holiday or other holiday.

The total salary due to an employee who terminates his or her contract of service with his or her employer by paying in lieu of notice, or after giving due notice to the employer as required, must be paid to the employee on the day on which the contract of service is terminated.

### Retrenchment

Employers may also dismiss an employee with notice on the grounds of retrenchment or redundancy. Employers with ten or more employees that retrench any employee must submit a Mandatory Retrenchment Notification to MOM within five working days of the employee being informed of their retrenchment. Employers must notify their employees of their retrenchment according to their terms for termination in their employment contract.

MOM states that employees who have served the company for at least two years are eligible for retrenchment benefit. Those with less than two years' service could be granted an ex-gratia payment out of goodwill. The amount of retrenchment benefit depends on what is provided for in the employment contract or collective agreement (for unionised companies). If there is no provision, it will have to be negotiated between the employees (or their union) and the employer. MOM recommends that the prevailing norm is to pay a retrenchment benefit of between two weeks to one month salary per year of service, depending on the employer's financial position and the industry. MOM has published the Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment for employers to carry out a fair and responsible retrenchment.

### Collective Redundancies

An employee who considers themselves dismissed without just cause or excuse by their employer may make a representation through their trade union to MOM to be reinstated in their former employment within one month of the dismissal.

### Fixed-Term Employment Arrangements

Employers and employees may agree that employment will continue for a specified period. In such cases, the contract will generally run until the agreed expiry date, after which the employment relationship comes to an end unless the parties agree otherwise.

## 4.5 Employee Representations

Singapore does not require employees to be represented, informed or consulted by management in every workplace. There is no general requirement for employee representation on company boards.

Employee representation may become relevant where employees are unionised. Under the Industrial Relations Act 1960, a trade union may represent employees in collective bargaining only after it has been formally recognised by the employer. Once recognised, the union acts as the representative body for the employees it covers, and may negotiate with the employer on matters relating to employment terms and conditions.

Consultation may also arise in specific circumstances, including retrenchment exercises involving unionised employees, business transfers affecting employment arrangements, or other situations where consultation is required under applicable collective agreements or sector-specific frameworks.

Since 1 January 2025, platform workers, including ride-hail and delivery workers, have been able to be represented by recognised platform work associations under the Platform Workers Act 2024. These associations may represent platform worker members in engagements and negotiations with platform operators on work-related matters.

# 5. Tax Law

## 5.1 Taxes Applicable to Employees/Employers

In Singapore, the employment relationship is subject primarily to income tax and, where applicable, Central Provident Fund (CPF) contributions.

### Employee Taxation

An individual is subject to Singapore income tax if they are:

- tax resident in Singapore (ie, present or working in Singapore for 183 days or more in a calendar year); or
- non-resident, deriving income from employment exercised in Singapore (generally where presence exceeds 60 days but is less than 183 days; short-term employment of 60 days or less is generally exempt from the income tax regime).

Employees are taxed on employment income, including salary, bonuses and benefits-in-kind. Tax residents are taxed at resident rates, with a current maximum of 24%. Non-residents are generally taxed at a flat rate of 15% or resident rates, whichever results in a higher tax.

Employers are responsible for reporting employee income, but the employee usually remains responsible for their own tax liability.

### Employer Obligations

The CPF is a mandatory social security system for Singapore citizens and permanent residents. Both employers and employees are required to contribute to the CPF. Contribution rates vary based on age and residency status, with total contributions generally up to 37% of ordinary wages, subject to applicable wage ceilings. Employers are responsible for deducting the employee's share and making monthly contributions.

CPF contributions are generally not required for foreign employees.

Employers must also:

- file employee income information with the IRAS and may be required to withhold tax in certain cases, such as when a non-citizen employee ceases employment and leaves Singapore; and
- pay the Skills Development Levy (SDL) for all employees, calculated as a percentage of monthly wages, subject to minimum and maximum amounts.

### Other Taxes

Foreign employees are generally not subject to CPF contributions. However, employers may be required to pay foreign worker levies for certain categories of work pass holders.

## 5.2 Taxes Applicable to Businesses

### Tax Residence and Scope of Taxation

Companies carrying on business in Singapore may be subject to corporate income tax, Goods and Services Tax (GST), where applicable, and certain withholding taxes, regardless of where they are incorporated.

A company is subject to Singapore tax if it is tax resident or derives Singapore-sourced income. A company is regarded as tax resident if its control and management are exercised in Singapore – ie, typically where board decisions are made.

Singapore operates a territorial tax system, under which income sourced in Singapore is taxable and foreign-sourced income is generally not taxed unless received in Singapore, subject to exemptions.

### Corporate Income Tax

The prevailing corporate income tax rate is 17% of chargeable income. Various tax incentives and exemptions, including start-up and industry-specific schemes, may reduce the effective tax rate.

### Capital Gains Tax

Singapore does not impose capital gains tax. However, gains may be taxed where they are revenue in nature, based on the facts and circumstances.

### GST

GST is a broad-based consumption tax on imports and most local supplies of goods and services. The prevailing rate is 9%.

GST registration is compulsory where a business exceeds the SGD1 million taxable turnover threshold under either the retrospective test or the prospective test. Under the retrospective test, a business must register if its taxable turnover for the past 12 months exceeds SGD1 million. Under the prospective test, a business must also register if it is reasonably expected that its taxable turnover will exceed SGD1 million in the next 12 months. Registration must generally be completed within 30 days of meeting either threshold.

Exemptions and zero-rating apply to specified transactions, including certain financial services, residential property supplies, exports and qualifying international services.

### Withholding Tax

Withholding tax may apply to specified Singapore-sourced payments made to non-residents, including certain interest, royalty, technical assistance, management fee and service payments. Rates depend on the nature of the payment, and may be reduced under applicable double taxation agreements.

Singapore does not impose withholding tax on dividends.

### Stamp Duty

Stamp duty may apply to instruments relating to Singapore immovable property and transfers of shares. Share duty is generally 0.2% of either the purchase price or the value of the shares transferred, whichever is higher.

### Transfer Tax

Singapore does not impose a general transfer tax on business assets.

### OECD Pillar Two

Singapore has implemented Pillar Two of the OECD's Two-Pillar solution through the introduction of an Income Inclusion Rule (IIR) and a domestic minimum top-up tax (DTT). These rules apply to multinational enterprise groups with annual consolidated revenue of at least EUR750 million, for financial years beginning on or after 1 January 2025.

The IIR requires the parent entity of a multinational group to pay a top-up tax where group entities are subject to an effective tax rate below 15%, while the DTT ensures that such top-up tax is collected in Singapore in respect of low-taxed Singapore entities.

## 5.3 Available Tax Credits/Incentives

Singapore offers a range of tax incentives, exemptions, deductions and grants to support business activities and innovation. Some common examples are set out below.

### Start-Up Tax Exemption

Newly incorporated companies may benefit from partial tax exemptions for their first three years of assessment, subject to conditions. The exemption applies to qualifying new companies incorporated in Singapore and provides for:

- a 75% tax exemption on the first SGD100,000 of normal chargeable income; and
- a 50% tax exemption on the next SGD100,000 of normal chargeable income.

### Partial Tax Exemption

All companies are eligible for the following partial tax exemption, unless they are claiming the tax exemption for new start-up companies:

- a 75% exemption on the first SGD10,000 of normal chargeable income; and
- a further 50% exemption on the next SGD190,000 of normal chargeable income.

### Foreign-Sourced Income Exemption

Foreign-sourced income refers to income derived from outside Singapore. As a general rule, such income is taxable in Singapore when it is received or deemed received in Singapore.

However, several forms of relief are available to Singapore tax residents, such as:

- the exemption of specified foreign-sourced income – certain foreign-sourced income, such as foreign dividends, foreign branch profits and foreign-sourced service income, may be exempt from tax in Singapore, subject to conditions;
- relief under double taxation agreements (DTAs) – where a DTA exists, Singapore tax may be reduced or eliminated in accordance with the treaty provisions; or
- foreign tax credit (FTC) – credit may be granted for foreign taxes paid, to offset Singapore tax payable on the same income.

### Enterprise Innovation Scheme (EIS)

The EIS supports research, innovation and capability-building activities by providing enhanced tax deductions and allowances for qualifying activities such as:

- qualifying research and development (R&D) undertaken in Singapore;
- the registration of intellectual property (IP) rights;
- the acquisition and licensing of IP rights;
- employee training and skills development; and
- qualifying innovation projects conducted in collaboration with polytechnics, the Institute of Technical Education, or other approved partner institutions.

### Other Investment and Industry Incentives

In addition to the above, Singapore offers targeted incentive regimes administered by agencies such as the Economic Development Board and Enterprise Singapore. These incentives typically provide tax exemptions or concessionary tax rates to companies undertaking activities that contribute to Singapore's economic development.

Common schemes include the Maritime Sector Incentive (MSI) for maritime activities, the Finance and Treasury Centre (FTC) incentive for treasury and financing operations, and broader programmes such as the Pioneer Certificate Incentive and the Development and Expansion Incentive for strategic and high-value activities.

## 5.4 Tax Consolidation

Singapore does not have a full tax consolidation regime. Each company within a group is generally taxed separately for corporate income tax purposes.

### Group Relief System

Instead, Singapore provides a limited form of group relief through the group relief system, which permits qualifying Singapore-incorporated companies in the

same group to transfer specified current year unutilised tax losses, capital allowances and donations to another company within the same group. The relief applies only to current year losses and does not extend to losses carried forward or carried back.

Broadly, to qualify for group relief, companies must:

- be incorporated in Singapore;
- be part of the same group, with at least 75% direct or indirect shareholding, maintained throughout the relevant basis period; and
- have the same financial year end.

The transfer is made by election between the surrendering and claimant companies.

### Other Reliefs

Companies may also carry forward unutilised tax losses, capital allowances and donations. Subject to qualifying conditions being met, unutilised capital allowances and trade losses can be carried forward indefinitely, while unutilised donations can be carried forward for up to five years of assessment.

Companies may also carry back current year unutilised capital allowances and trade losses to offset income of the immediately preceding year of assessment, subject to a cap of SGD100,000.

Transaction-specific reliefs may also be available, such as stamp duty reliefs for qualifying intra-group transfers.

## 5.5 Thin Capitalisation Rules and Other Limitations

Singapore does not impose specific thin capitalisation rules, such as fixed debt-to-equity ratios, that restrict the amount of interest deductible based on a company's capital structure. However, the deductibility of interest is subject to general tax principles, including the requirement that expenses be wholly and exclusively incurred in the production of income, as well as transfer pricing rules requiring related-party financing to be conducted on an arm's length basis.

In addition, the general anti-avoidance provisions may apply to disregard or vary arrangements entered into for the purpose of obtaining a tax advantage. These rules may, in practice, limit the extent to which interest expenses are deductible.

For large multinational groups, the introduction of OECD Pillar Two may indirectly affect financing structures. While not a thin capitalisation rule, it imposes a minimum effective tax rate of 15%, which may reduce the tax benefits of highly leveraged structures.

## 5.6 Transfer Pricing

Singapore applies transfer pricing rules to transactions between related parties, including dealings between a head office and branch. The regime is based on the arm's length principle, which requires related-party transactions to be conducted on terms that would have been agreed between independent parties in comparable circumstances.

IRAS may adjust a taxpayer's profits where such transactions are not conducted on an arm's length basis. In such cases, IRAS may impose upward tax adjustments and a surcharge (generally 5% of the transfer pricing adjustment).

Taxpayers are required to maintain transfer pricing documentation for at least five years from the end of the basis period in which the transaction took place, unless an exemption applies. This documentation should support the pricing of related-party transactions and demonstrate compliance with the arm's length principle. Additional penalties may apply for failure to maintain adequate documentation.

## 5.7 Anti-Evasion Rules

Singapore has anti-evasion and anti-avoidance rules under the Income Tax Act 1947. The primary provision is the general anti-avoidance rule (GAAR), under which the Comptroller of Income Tax may disregard or make relevant adjustments to arrangements where they are entered into with the main purpose or effect of avoiding tax. In particular, this applies where the purpose of the arrangement is, directly or indirectly:

- to alter the incidence of any tax that is payable, or that would otherwise have been payable, by any person;

- to relieve any person from any liability to pay tax or to make a return under the Income Tax Act 1947; or
- to reduce or avoid any liability imposed or that would otherwise have been imposed under the Income Tax Act 1947.

The rule applies broadly and is intended to address artificial or contrived arrangements, even where they comply with the literal wording of the law.

In addition to the GAAR, Singapore has various targeted anti-avoidance provisions, including:

- transfer pricing rules, ensuring that related-party transactions are conducted on an arm's length basis;
- shareholding test rules, restricting the carry-forward of tax losses and allowances following substantial changes in ownership; and
- deductibility limitations, restricting deductions where expenses are incurred in relation to non-taxable or exempt income.

### 5.8 Tariffs

As a major trading hub, Singapore adopts an open and largely tariff-free regime, with most imports not being subject to customs duties. Goods that are not subject to duty may still attract import GST, unless a relief or exemption applies. In practice, importers are expected to classify goods correctly, determine customs value and obtain the necessary permits.

#### Dutiable Goods

Singapore Customs identifies four principal categories of dutiable goods:

- intoxicating liquors;
- tobacco products;
- motor vehicles; and
- petroleum products and biodiesel blends.

Rates may be ad valorem or specific, depending on the goods.

In addition, certain controlled or prohibited goods are subject to separate regulatory regimes and may require approvals from the relevant authorities.

#### Trade Agreements

Singapore is party to a wide network of free trade agreements (FTAs), under which tariffs are often reduced or eliminated where the relevant rules of origin are met.

As a matter of policy, Singapore does not use tariffs to protect specific sectors. Instead, the focus is on keeping trade flows efficient and maintaining the country's position as a regional trading and distribution hub.

#### Global Developments

Global trade developments have not led to significant increases in tariffs in Singapore. However, businesses should monitor sanctions and export controls, strategic goods and customs requirements and supply chain disruptions. These factors may affect the ability to move goods or benefit from preferential treatment, even where tariffs remain low.

## 6. Competition Law

### 6.1 Merger Control Notification

#### Section 54 Prohibition

Singapore's merger and acquisition control regime is governed by the Competition Act 2004 and is based on the Section 54 prohibition, which prohibits mergers that have resulted in a substantial lessening of competition in any market in Singapore, or that may be expected to do so. The regime is effects-based and applies regardless of whether the parties are incorporated in Singapore or elsewhere.

#### Types of Transactions Covered

The Section 54 prohibition applies to transactions that result in a change of control on a lasting basis, including:

- acquisitions of shares or assets;
- mergers or amalgamations; and
- the creation of joint ventures to perform, on a lasting basis, all the functions of an autonomous economic entity.

The key consideration is whether the transaction confers decisive influence over the target.

### Voluntary Notification

Singapore operates a voluntary merger notification regime. There are no mandatory filing requirements and no statutory turnover or revenue thresholds that trigger notification prior to completion.

However, parties are expected to conduct a self-assessment and may notify the Competition and Consumer Commission of Singapore (CCCS) where a transaction may raise competition concerns. Completion without notification does not prevent CCCS from investigating the transaction subsequently, including after completion.

While non-notification is not itself an infringement, parties proceeding without clearance assume completion risk. CCCS may impose remedies such as divestment or unwinding, and may impose financial penalties if the merger substantially lessens competition. For this reason, parties are generally encouraged to notify pre-completion.

### Market Share Indicators

CCCS guidelines provide the following indicative market share thresholds to help assess whether a merger is likely to raise concerns:

- the merged entity has a market share of at least 40%; or
- the merged entity has a market share of 20% to 40%, and the combined market share of the three largest firms is at least 70%.

These thresholds are indicators only and not conclusive safe harbours. The assessment remains focused on whether there is a substantial lessening of competition.

In practice, parties will also consider factors such as:

- the level of concentration in the market;
- closeness of competition;
- barriers to entry;
- buyer power; and
- vertical or conglomerate effects.

## 6.2 Merger Control Procedure

### Main Steps

Singapore's merger notification process is administered by CCCS and is typically carried out on a voluntary, pre-completion basis. The main steps are as follows.

- Pre-notification engagement: parties may engage informally with CCCS to discuss the transaction, the scope of information required, and potential competition issues. This is optional but is commonly done to reduce the risk of infringing Singapore's competition laws.
- Preparation of notification: the notifying party prepares a filing setting out details of the transaction, including:
  (a) transaction description and rationale;
  (b) relevant markets and competitive landscape;
  (c) market shares and supporting data; and
  (d) analysis of competitive effects.
- Submission of notification: a formal application is submitted to CCCS, together with supporting documents and the prescribed filing fee.
- CCCS review process: the review generally proceeds in two phases:
  (a) Phase 1 review is the initial screening to determine whether the transaction raises competition concerns; and
  (b) Phase 2 review (if required) is a more detailed assessment where concerns arise.
- Decision: CCCS may clear the transaction, issue clearance subject to commitments or remedies, or determine that the merger infringes the Section 54 prohibition.

### Timeline

The timing depends on the complexity of the transaction and whether a detailed review is required:

- Phase 1 is typically completed within 30 working days from acceptance of a complete filing; and
- Phase 2 may take an additional 120 working days or more, depending on the issues involved.

The review timeline generally begins only once CCCS confirms that the notification is complete. Requests for further information by CCCS may suspend or extend the review timeline.

## 6.3 Cartels

### Section 34 Prohibition

Anti-competitive agreements and practices in Singapore are governed by the Competition Act 2004, in particular the Section 34 prohibition. Section 34 prohibits agreements, decisions or concerted practices that have as their object or effect the prevention, restriction or distortion of competition within Singapore. The prohibition is also enforced by CCCS.

### Scope of the Prohibition

The Section 34 prohibition applies to a wide range of arrangements between undertakings, including horizontal agreements between competitors and informal arrangements and concerted practices, even where there is no formal contract.

Common examples of anti-competitive conduct include:

- price fixing;
- market sharing;
- output limitations between competitors; and
- bid rigging.

Certain forms of conduct (such as price fixing and bid rigging) are treated as hardcore restrictions and are likely to infringe the prohibition without the need for detailed analysis of actual effects.

### Exemptions

The Competition Act provides for block exemptions and individual exemptions where an agreement generates net economic benefits (eg, improvements in production or distribution), although these apply narrowly in practice.

### Territorial Scope

Singapore adopts an effects-based approach to jurisdiction. The Section 34 prohibition applies where an agreement has the object or effect of restricting competition within Singapore, regardless of where the agreement was entered into or implemented. As such, arrangements entered into overseas may still fall within the scope of the law if they have an appreciable effect on competition in Singapore markets.

### Infringement Consequences

Any provision of an agreement is void and unenforceable to the extent that it infringes Section 34.

Where an infringement of the Section 34 prohibition is committed intentionally or negligently, CCCS may impose a financial penalty of up to 10% of the undertaking's turnover in Singapore for each year of infringement, subject to a maximum of three years.

A party that has suffered loss or damage directly as a result of an infringement may bring a civil claim for damages against the relevant undertaking. However, such private actions may only be commenced after CCCS has made a final infringement decision and any appeal process has been exhausted.

## 6.4 Abuse of Dominant Position

### Section 47 Prohibition

Unilateral conduct in Singapore is governed by the Section 47 prohibition under the Competition Act, which prohibits conduct by one or more undertakings that amounts to an abuse of a dominant position in a market in Singapore. Dominance is assessed by reference to market power rather than market share alone. The law does not prohibit dominance itself, but only its abuse.

### Scope of the Prohibition

An undertaking is considered dominant if it has the ability to act independently of competitors, customers or suppliers. Abuse may take various forms, including:

- predatory pricing;
- exclusive dealing or tying arrangements;
- refusal to supply;
- margin squeeze; and
- discriminatory pricing or conditions.

The assessment is fact-specific and considers market definition, the degree of market power, barriers to entry, any objective or commercial justification, and overall competitive effects.

Singapore law does not recognise a standalone concept of "economic dependence". However, conduct affecting dependent trading partners may still fall

within Section 47 where it amounts to an abuse of dominance.

### Exemptions

Unlike the Section 34 prohibition, there is no equivalent system of block or individual exemptions for abuse of dominance. However, the Competition Act 2004 provides for statutory exclusions, including where conduct is:

- undertaken to comply with a legal requirement;
- necessary to avoid conflict with an international obligation of Singapore; and
- required for exceptional and compelling reasons of public policy.

### Territorial Scope

The regime adopts an effects-based approach. The Section 47 prohibition applies where conduct has the object or effect of restricting competition in Singapore, regardless of where it occurs. Accordingly, conduct outside Singapore may still fall within the Act if it produces appreciable effects in Singapore markets.

### Infringement Consequences

CCCS may impose directions to remedy, mitigate or eliminate the effects of the infringement, and to prevent recurrence.

Where an infringement of the Section 47 prohibition is committed intentionally or negligently, CCCS may impose a financial penalty of up to 10% of the undertaking's turnover in Singapore for each year of infringement, subject to a maximum of three years.

A party that has suffered loss or damage directly as a result of an infringement may bring a civil claim for damages against the relevant undertaking. However, such private actions may only be commenced after CCCS has made a final infringement decision and any appeal process has been exhausted.

## 7. Intellectual Property

### 7.1 Patents

#### Definition

A patent protects an invention that is new, involves an inventive step and is capable of industrial application.

#### Duration

A Singapore patent generally lasts 20 years from the filing date, subject to renewal fees. Limited extensions may be available, including in relation to pharmaceutical products where statutory conditions are met.

#### Registration Process

Applications are filed with the Intellectual Property Office of Singapore (IPOS) and must include the prescribed request, description, claim or claims, drawings where required, and an abstract. Applicants should confirm inventorship, ownership, priority claims and whether parallel overseas or Patent Cooperation Treaty filings are required. IPOS conducts formalities checks, and the applicant must proceed through the relevant search and examination route before the patent is granted. Singapore operates a positive grant system, under which IPOS will not grant a patent where the examination report contains outstanding objections, which supports the robustness of the granted right.

#### Enforcement

A patent proprietor may bring infringement proceedings against unauthorised acts within the statutory scope, including making, disposing of, offering to dispose of, using, importing or keeping a patented product.

#### Remedies

Remedies may include an injunction, damages or an account of profits, delivery up or destruction/disposal of infringing articles, and declarations of validity and infringement. Defendants commonly raise non-infringement and invalidity arguments.

### 7.2 Trade Marks

#### Definition

A trade mark is a sign capable of distinguishing one undertaking's goods or services from those of another.

Registrable signs may include words, names, logos, letters, numerals, shapes and colours.

### Duration
A Singapore registration lasts ten years and may be renewed for further ten-year periods.

### Registration Process
Applications are filed with IPOS for specified goods and services under the applicable classification. IPOS examines the application for absolute and relative grounds. If the application is accepted, it is published for opposition. If no opposition is filed, or if opposition is resolved in the applicant's favour, the mark proceeds to registration.

### Enforcement
A registered proprietor may sue for infringement where an identical or similar sign is used without consent in relation to goods or services in circumstances covered by the Trade Marks Act.

### Remedies
Remedies may include injunctions, damages or an account of profits, and delivery or disposal of infringing goods, materials or articles. Certain counterfeiting conduct and the false application of trade marks may also be criminal offences. Unregistered marks may be protected by passing off, but registration usually provides clearer and more efficient enforcement rights.

## 7.3 Industrial Designs
### Definition
A registered design protects the appearance of a product or non-physical product, not its underlying technical function. Protection may cover features such as shape, configuration, colours, pattern or ornamentation, including qualifying graphical user interfaces and other non-physical products.

### Duration
Registration initially lasts five years and may be extended in five-year periods up to a maximum of 15 years.

### Registration Process
Applications are filed with IPOS, and should identify the applicant, the design, the article or non-physical product to which it is applied, and the required representations. IPOS conducts formalities checks and may register the design if statutory requirements are met.

### Enforcement
The registered owner may sue for infringement where a person performs acts reserved to the owner without consent, such as making, importing, selling, hiring or exposing for sale or hire an article or non-physical product to which the registered design, or a substantially similar design, has been applied.

### Remedies
Remedies include injunctions, damages or an account of profits, and orders relating to infringing articles.

## 7.4 Copyright
### Definition
Copyright protects qualifying original works and other protected subject matter, including literary, dramatic, musical and artistic works, films, sound recordings, broadcasts and published editions. Computer programs are protected as literary works.

### Duration
For most authorial works, copyright generally lasts for the life of the author plus 70 years, although different terms apply to other subject matter.

### Registration Process
There is no general copyright registration system in Singapore; protection arises automatically when the statutory requirements are met. Businesses should therefore focus on documenting authorship, ownership, assignments, licences and creation dates, especially for commissioned works, software, marketing materials and employee-created works.

### Enforcement
Copyright owners may sue for unauthorised acts such as copying, communication to the public, distribution or other restricted acts.

### Remedies
Remedies include injunctions, damages or an account of profits, statutory damages where available, and delivery up or disposal of infringing copies. Certain

deliberate commercial infringements may also attract criminal liability.

### 7.5 Others

#### Software

Software is usually protected first through copyright in source code and object code. A software-related invention may also be patentable if it meets the patentability requirements and is not excluded.

#### Databases

Databases may be protected through copyright where the database structure or compilation qualifies for protection. Database content may also be protected through confidentiality, contract, access controls, technological measures and personal data or cybersecurity obligations, where relevant.

#### Trade Secrets and Confidential Information

Singapore protects trade secrets principally through the law of confidence, contract and equitable remedies, rather than through a registration system. Protection is strengthened by confidentiality agreements, employment provisions, access controls, need-to-know restrictions, information classification, audit logs and exit procedures.

#### Other Rights

Singapore also protects geographical indications, plant varieties and layout designs of integrated circuits under dedicated statutory regimes. Rights-holders may generally enforce these rights through civil proceedings and seek remedies such as injunctions, damages and, where available, an account of profits. Businesses may also rely on passing off to protect goodwill associated with unregistered brands.

## 8. Data Protection

### 8.1 Applicable Regulations

#### General Framework

The Personal Data Protection Act 2012 (PDPA) is Singapore's primary general data protection statute for the private sector. It governs the collection, use and disclosure of personal data by organisations, and establishes the Do Not Call Registry framework.

#### Core PDPA Obligations

The main obligations include:

- accountability;
- purpose limitation;
- notification;
- consent or reliance on an exception;
- access;
- correction;
- accuracy;
- protection;
- retention limitation;
- transfer limitation; and
- data breach notification.

Organisations must designate at least one data protection officer and make the officer's business contact information available to the public.

#### Related Regimes

The PDPA is not the only relevant regime. Sector-specific or activity-specific obligations may arise under laws and regulatory rules relating to cybersecurity, financial services, healthcare, employment, telecommunications, spam control, electronic transactions and state-sector data governance. Where another written law is inconsistent with the PDPA, the other written law prevails to the extent of the inconsistency.

### 8.2 Geographical Scope

#### Jurisdictional Application

The PDPA can apply to organisations carrying out activities involving personal data in Singapore, even if the organisation is incorporated overseas. The analysis depends on the activities conducted in Singapore, local operations, service providers and data flows.

#### Cross-Border Transfers

An organisation transferring personal data outside Singapore must comply with Section 26 of the PDPA and the prescribed requirements in the Personal Data Protection Regulations 2021. In broad terms, the organisation must take appropriate steps to ensure that the overseas recipient is bound by legally enforceable obligations providing a standard of protection comparable to the PDPA, unless another prescribed basis applies.

### Data Intermediaries

A data intermediary processing personal data for another organisation under a written contract is directly subject to selected PDPA obligations, including protection, retention and certain breach-notification obligations. The engaging organisation remains responsible for personal data processed on its behalf and should manage processing instructions, security controls and onward transfers contractually.

## 8.3 Role and Authority of the Data Protection Agency

### Regulator

The Personal Data Protection Commission (PDPC) administers and enforces the PDPA. Its statutory functions include:

- promoting awareness of data protection;
- administering and enforcing the PDPA;
- advising the government;
- representing Singapore internationally on data protection matters; and
- issuing advisory guidelines.

### The PDPC's Role

In practice, the PDPC:

- issues policies, directives, advisory guidelines and guides;
- promotes compliance;
- reviews complaints and data breach notifications;
- conducts investigations;
- accepts voluntary undertakings; and
- takes enforcement action where appropriate.

The Infocomm Media Development Authority supports the PDPC's functions.

### Enforcement Powers

The PDPC may issue directions requiring an organisation to stop collecting, using or disclosing personal data, destroy personal data, comply with access or correction obligations, or pay a financial penalty. The maximum financial penalty is generally SGD1 million; for organisations with annual Singapore turnover exceeding SGD10 million, it is either SGD1 million or 10% of that organisation's annual Singapore turnover, whichever is higher.

# 9. Looking Forward

## 9.1 Upcoming Legal Reforms

### Workplace Fairness Legislation

The Workplace Fairness Act 2025 is slated to take effect by the end of 2027 and will establish statutory protections against workplace discrimination and related employer obligations, while the Workplace Fairness (Dispute Resolution) Act 2025 establishes the dispute resolution framework. Employers should monitor commencement notifications and prepare policies, grievance processes, training and record-keeping practices in anticipation of the new regime.

### CPF Changes

CPF contribution rates for older employees increased from 1 January 2026, with further senior worker adjustments expected from 1 January 2027. Employers should update payroll systems, employment cost forecasts and employee communications.

### Corporate Governance and Anti-Money Laundering

Singapore has continued to strengthen its anti-money laundering and corporate governance framework. Key changes under the Corporate and Accounting Laws (Amendment) Act 2025 commenced in April 2026, including a new director disqualification ground for persons convicted of specified money laundering offences.

# SOUTH AFRICA




## Trends and Developments

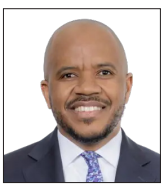
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**Bowmans**

**Bowmans** helps its clients to solve complex legal problems and achieve their objectives as efficiently as possible while minimising legal and regulatory risks. With over 650 lawyers and nine offices in six African countries, the firm offers its clients a service that uniquely blends expertise in the law, knowledge of local markets and an understanding of their businesses. Its clients include domestic and foreign corporates, multinationals, funds and financial institutions, across a range of industry sectors, as well as state-owned enterprises and governments. Bowmans has a premier M&A practice, closely integrated with market-leading competition, tax, regulatory, banking and finance, private equity, projects, ESG and dispute resolution teams, enabling it to support inbound investors throughout the full investment lifecycle. The firm is consistently instructed on some of Africa's most significant and innovative transactions.

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South Africa continues to stand out as one of the continent's most sophisticated and diversified economies, and remains the dominant African mergers and acquisitions market by value. Its strategic position as the gateway to Africa, underpinned by deep and liquid capital markets, an independent judiciary, predictable commercial law and a highly regulated financial sector, makes it a compelling jurisdiction for international investors seeking both direct exposure and a platform for broader continental expansion.

This publication provides a concise overview of the key legal, regulatory and commercial considerations for clients wishing to do business in or invest in South Africa. It is intended as a practical guide to the current landscape, drawing on recent market developments and policy reforms that shape the operating environment in 2026.

## Legal System and Regulatory Architecture

South Africa operates a hybrid legal system drawing on Roman-Dutch substantive law, English common law principles and a body of customary law, with the Constitution serving as the supreme law. As a general rule, civil procedure follows English law, while contract law, the law of delict and the law of persons derive from Roman-Dutch common law. The country's statutory company law, originally rooted in English legislation, is increasingly influenced by international best practice, including Delaware law concepts.

The jurisdiction has a sophisticated corporate, competition and regulatory architecture. Core statutes relevant to commercial transactions include the Companies Act 2008 and its regulations, the Competition Act 1998, the Financial Markets Act, the Broad-Based Black Economic Empowerment (B-BBEE) Act, exchange control regulations issued under the Currency and Exchanges Act, labour legislation (including the Labour Relations Act and the Basic Conditions of Employment Act), the Protection of Personal Information Act (POPIA) and a range of sectoral statutes governing mining, telecommunications, banking, insurance and broadcasting.

Principal regulators include the Companies and Intellectual Property Commission (CIPC), the Takeover Regulation Panel (TRP), the Johannesburg Stock Exchange (JSE), the Competition Commission and Competition Tribunal, the South African Reserve Bank Financial Surveillance Department (FinSurv), the Prudential Authority, the Financial Sector Conduct Authority (FSCA), the Independent Communications Authority of South Africa (ICASA) and the Department of Mineral Resources and Energy (DMRE).

## Investment Climate and Confidence Drivers

South Africa remains an attractive destination for foreign direct investment (FDI) by virtue of its diversified economy, strategic location, membership of the Southern African Development Community (SADC) and the African Continental Free Trade Area (AfCFTA), and its position as the continent's primary financial centre.

Several developments have materially bolstered market confidence in recent periods.

- Removal from the Financial Action Task Force (FATF) grey list, signalling improved compliance with international anti-money laundering and counter-terrorism financing standards.
- Meaningful progress in energy and infrastructure reform, including the liberalisation of private generation and wheeling structures, and the restructuring of Eskom through the establishment of a separate transmission function.
- Subdued inflation and successive interest rate cuts, improving financing conditions and business confidence.
- A credit-rating upgrade, reflecting improved fiscal discipline and structural reform momentum.
- The successful hosting of the G20 and B20, coupled with accelerating regulatory reform.
- The Government of National Unity (GNU) framework, formed after the 2024 election, which has positioned cooperative governance with stated priorities around growth, job creation and building a capable state.

The South African rand, having experienced volatility in mid-2025 amid global trade and policy uncertainty, has since strengthened and outperformed many emerging market currencies, reflecting broader economic improvements and continued investment opportunities in reform-aligned sectors.

### Foreign Direct Investment Framework

The Protection of Investment Act ensures that foreign investors are treated no less favourably than South African investors in like circumstances. Critically, South Africa does not operate a general FDI screening regime. Although the Competition Act provides for national security screening by a presidential committee for notifiable mergers involving foreign acquirers and critical infrastructure, these provisions are not yet in force and there is no anticipated effective date.

Notwithstanding the absence of a general screening mechanism, investors must carefully consider sector-specific regulatory frameworks. A number of industries are subject to tailored restrictions: domestic control requirements apply in the air services sector; foreign ownership in commercial broadcasting is capped; and mining, financial services and telecommunications impose fit-and-proper and change-of-control approvals that often interact with B-BBEE ownership targets. Sector-specific advice should therefore be obtained at an early stage of any transaction.

### The M&A Market in 2026

Global M&A activity entered 2026 with renewed momentum, yet the market is defined less by exuberance than by selectivity. After several years of macroeconomic volatility, persistent geopolitical tension and elevated financing costs, dealmakers are pursuing strategic transactions with greater discipline and sharper scrutiny of execution risk. Boards and investors are prioritising durability, regulatory preparedness and long-term value creation.

South Africa reflects many of these global dynamics through a distinctly local lens. Domestic deal activity continues to be shaped by evolving competition regulation, transformation imperatives, exchange control reform and sector-specific policy developments.

The market is characterised by measured confidence. The most effective dealmakers in 2026 are those capable of balancing commercial ambition with regulatory acumen, stakeholder engagement and long-term strategic positioning. The emphasis has shifted decisively from speed and scale to execution certainty and adaptability.

Energy remains among the strongest drivers of South African deal activity. Secondary sales of operational renewable portfolios, minority stake disposals and institutional capital deployment into de-risked contracted assets have defined transaction flow. The market's defining constraint is no longer capital availability but grid access. Consolidation in renewables is expected to continue, with battery storage emerging as a parallel growth theme.

Mining M&A is shifting from traditional scale-driven consolidation toward strategic, value-led transactions shaped by geopolitical developments, supply chain security and commodity exposure. Elevated gold prices act as a near-term catalyst, while access to critical minerals such as copper and platinum group metals underpins the energy transition. M&A continues to provide an alternative to slower, capital-intensive greenfield development. Portfolio optimisation, divestments of non-core assets and jurisdictional diversification have driven considerable activity.

Financial technology and digital payments represent one of the most active areas of M&A in South Africa. Major banks and financial institutions have acquired fintech businesses to secure proprietary technology, reduce third-party dependency and expand digital offerings.

South African banking groups continue to pursue disciplined regional expansion, particularly into East African markets. Domestic players continue to record strong growth through advanced technology and operating models.

Healthcare remains attractive, with portfolio optimisation and multinational capital redeployment driving deal flow.

In telecoms and digital infrastructure, activity is concentrated in fibre networks, tower portfolios and data centres, with investors targeting scalable, wholesale-oriented platforms. Technology-driven transactions continue to dominate strategic priorities, with artificial intelligence, cybersecurity and digital infrastructure assets remaining highly sought after.

## Key Regulatory Considerations

### *Companies Act and Takeover Regulation*

The Companies Act 2008 (as amended) provides the core statutory framework governing South African corporate law and M&A, regulating schemes of arrangement, amalgamations and mergers, disposals of all or the greater part of a company's assets, shareholder approvals, appraisal rights, fiduciary duties and disclosure obligations.

Recent amendments have introduced enhanced corporate governance, transparency and M&A oversight, including expanded beneficial ownership disclosure obligations, extended periods for liability claims and stricter compliance enforcement via the CIPC.

Remuneration disclosure requirements are now in effect for public and state-owned companies, requiring shareholder approval before implementing a remuneration policy (every three years or where there is a material change to the policy) and the remuneration report (which now has more detailed disclosure requirements) annually. Where the remuneration report is not approved in two consecutive years, among other considerations, the non-executive directors on the remuneration committee will be barred from serving on that committee for a further two years (the "two-strike" rule).

Certain other changes, though signed into law, remain subject to the proclamation of an effective date. Most notable among those are the amendments to the triggers rendering private companies subject to the additional scrutiny of the takeover regulations and the TRP. Under the proposed amendments, private companies with ten or more shareholders will fall within the regulatory ambit of the TRP, provided they cross a financial threshold that remains to be finalised. This marks a departure from the existing framework, which applies based on whether the company has undertaken significant transactions within the preceding 24 months. Affected companies intending to enter into fundamental transactions should anticipate increased oversight by the TRP, factoring this into closing conditions and transaction timelines.

### *King V*

The King V Code, market regulation on corporate governance best practice, effective January 2026, marks an evolution in South African corporate governance, streamlining principles whilst sharpening focus on accountability and the rhythm of governance, director independence and expanded guidance on artificial intelligence, whistleblowing, sustainability and responsible remuneration. Companies claiming compliance with King V are also now under an obligation to compile new disclosure templates that need to be approved by the board and displayed on their webpages.

### *JSE reforms*

The JSE Listings Requirements are the rules governing companies listed on Africa's largest stock exchange by market capitalisation, regulating disclosure, corporate actions, transaction categorisation and shareholder approvals, with related-party and significant transactions attracting additional requirements.

The JSE has undertaken a comprehensive overhaul of its Listings Requirements as part of a broader simplification initiative, segmenting the Main Board into Prime and General segments alongside AltX, and modernising disclosure and approval frameworks to align with changes to the Companies Act and King V.

### *Competition/antitrust and public interest*

South Africa has a comprehensive competition regime under the Competition Act. The regime regulates, among other things, restrictive horizontal and vertical practices (including price-fixing and market allocation, as well as anti-competitive restraints between parties operating at different levels of the supply chain), abuse of dominance and mergers.

South Africa's merger control regime under the Competition Act is well established and plays a central role in transaction execution. Transactions meeting prescribed financial thresholds require mandatory notification to the Competition Commission prior to implementation. The substantive test assesses whether a merger is likely to substantially prevent or lessen competition and whether it can be justified on public interest grounds.

The Minister of Trade, Industry and Competition, in consultation with the Competition Commission, has amended the merger notification thresholds and merger filing fees in South Africa, notably increasing these trigger thresholds with effect from 1 May 2026.

There remain two categories of mergers that attract mandatory notification obligations and require approval prior to implementation. These are intermediate and large mergers. The combined assets or turnover threshold for intermediate mergers raised to ZAR1 billion (with the target being required to achieve at least ZAR200 million in assets or turnover) and for large mergers to ZAR9.5 billion (with the target being required to achieve at least ZAR280 million in assets or turnover). Mergers that fall below the intermediate merger thresholds are categorised as small mergers and may still be notifiable, but only in limited circumstances. The merger filing fees have always been upwardly revised to ZAR220,000 for intermediate mergers and ZAR735,000 for large mergers.

Public interest considerations are firmly embedded in merger analysis. The competition authorities assess the effect of transactions on a range of public interest factors, with conditions imposed more prominently in relation to employment, the promotion of historically disadvantaged persons (HDPs), and worker ownership, as well as the promotion of small and medium enterprises.

### *B-BBEE and transformation*

B-BBEE is a defining feature of South Africa's corporate landscape, designed to redress the inequalities of the past by promoting the economic participation of black South Africans.

The B-BBEE Act and sector Codes stipulate targets across certain principal elements such as ownership, management control, skills development, enterprise and supplier development, and socio-economic development. The more points a business achieves across these elements, the higher its B-BBEE status level, which translates into a procurement recognition level that determines its ability to contract with government, state-owned enterprises and other measured entities.

The formal introduction of the Transformation Fund framework, alongside ongoing debate regarding the future direction of empowerment policy, underscores the importance of corporates doing business in South Africa proactively engaging with B-BBEE requirements, monitoring evolving sector codes and integrating transformation planning into their broader commercial and investment strategies.

### *Exchange control and capital flow management*

South Africa's exchange control regime, overseen by the South African Reserve Bank Financial Surveillance Department (FinSurv), should not be viewed as a barrier to investment. While cross-border transactions do require approval for capital movements, including share issuances, loans, guarantees, intellectual property transfers and repatriation of proceeds, this is a straightforward process that requires early planning rather than presenting a substantive obstacle, demonstrating the transaction is at fair value and on arm's length terms. Authorised dealer approvals typically take days. For approvals that require elevation to the FinSurv, applications generally take four to six weeks.

Proposed amendments to South Africa's exchange control regime continue to relax certain requirements, while simultaneously streamlining enforcement mechanisms and bringing crypto-assets more squarely within the regulatory perimeter.

National Treasury has earlier this year published Draft Capital Flow Management (CFM) Regulations, which are intended to repeal and replace the current Exchange Control Regulations. The amendments contemplated in the draft CFM Regulations address gaps in the current South African exchange control regulations, including in relation to cross-border crypto asset transactions, which will complement the existing regulation by the Financial Sector Conduct Authority and Financial Intelligence Centre.

## Financing Trends

In addition to capital raises through the JSE, businesses in South Africa access capital through multiple channels. Bank financing remains significant, though private credit is playing an increasingly prominent role in M&A financing, offering flexible and competitive structures. Private equity sponsors continue to deploy

substantial unallocated capital through continuation vehicles and structured solutions.

### Employment

South Africa's employment and labour regime is primarily regulated by a network of legislation providing minimum protection for employees. The Labour Relations Act regulates collective bargaining, unfair dismissal and unfair labour practices, and business transfers, while the Basic Conditions of Employment Act sets minimum standards for working conditions, leave and working hours. The Employment Equity Act prohibits unfair discrimination and promotes workplace diversity through affirmative action measures.

Of particular relevance to M&A, Section 197 of the Labour Relations Act provides that transfers of businesses as going concerns trigger automatic employee transfers, with continuity of employment. The new employer must employ transferring employees on terms and conditions that are on the whole not less favourable than those previously enjoyed with the old employer. South African law affords employees significant protection against unfair dismissal, and dismissals linked to the transfer of a business are deemed automatically unfair. Merger-related retrenchment moratoria are commonly imposed as competition conditions.

### Tax

South Africa operates a residence-based tax system, taxing residents on worldwide income and non-residents on South African-sourced income. The standard corporate income tax rate is 27%. Dividends declared by resident companies are subject to dividends tax at 20%, although this rate may be reduced under applicable double taxation agreements. South Africa has an extensive treaty network that may reduce withholding rates on dividends, interest and royalties. New global minimum tax requirements, also known as Pillar Two, ensure that large multinational enterprises with revenue over EUR750 million pay a minimum 15% effective tax rate on income in every jurisdiction where they operate.

Transaction structuring must consider capital gains tax, transfer duty (on immovable property), securities transfer tax (at 0.25% on share transfers), value-added tax and withholding taxes. Group restructuring relief is available under defined circumstances, and early-stage tax structuring is critical to ensure optimal application of deferral rules and avoid unintended tax consequences.

### Data Protection

The primary data protection legislation in South Africa is the Protection of Personal Information Act (POPIA), which regulates the processing of personal information of both natural persons and juristic persons. POPIA applies where the responsible party is domiciled in South Africa, or where a non-domiciled party uses automated or non-automated means to process personal information in South Africa.

Enforcement has strengthened in recent years, with the Information Regulator conducting assessments and issuing enforcement notices. Administrative fines for non-compliance have ranged up to ZAR5 million, with potential imprisonment of up to ten years for serious offences. Data protection compliance, including cross-border transfer considerations, is now a standard due diligence workstream and a material consideration in post-acquisition integration.

### Intellectual Property

South Africa's intellectual property framework is overseen by the CIPC, managing the registration and regulation of IP rights, including trade marks, designs and patents. The legal framework provides clear mechanisms for the protection and transfer of IP. Copyright assignments must be in writing and signed by or on behalf of the assignor to be valid. Transfers of registered IP rights require an assignment agreement (typically required to be in writing), which is recorded by formal filing with the CIPC, while unregistered IP is typically transferred by way of assignment agreements. Cross-border transfers of IP are subject to exchange control approval, which may result in timing delays of approximately three to six weeks.

IP is a key focus area in M&A due diligence, typically assessed alongside data protection, cybersecurity and broader regulatory compliance considerations.

## Dispute Resolution

South Africa's dispute resolution framework is underpinned by an independent judiciary and a predictable commercial law framework that supports contract enforcement. Commercial disputes are typically resolved through the High Court, which operates divisional structures across the country. Recent court reforms have introduced mandatory mediation requirements in the Gauteng Division of the High Court, a procedural innovation designed to address case backlogs and capitalise on the high incidence of settlements occurring immediately before trial. International arbitration is well supported, and South Africa is a signatory to the New York Convention, facilitating the recognition and enforcement of foreign arbitral awards.

## Practical Observations

South Africa offers investors and those doing business in the country a compelling combination of advantages. The country is widely regarded as offering deep and liquid capital markets, an independent judiciary, predictable commercial law and a well-regulated financial sector. Its sophisticated and diversified economy is strategically located on the African continent, supported by membership in regional communities such as the Southern African Development Community (SADC) and the AfCFTA.

As cross-border African investment activity continues to evolve, driven by shifting trade dynamics, demand for critical minerals and infrastructure investment among other developments, investors are increasingly viewing South Africa as both a domestic market and a gateway into broader African operations through AfCFTA and other trade pathways.

Recent regulatory reforms and the removal of South Africa from the FATF grey list, alongside progress in energy and infrastructure sectors, have significantly bolstered market confidence.

South Africa welcomes foreign investment, having implemented numerous policies and programmes to encourage FDI, including a wide range of incentive schemes. The Protection of Investment Act ensures foreign investors are treated no less favourably than South African investors in like circumstances, and notably, the country does not operate a general FDI screening regime.

While corporates doing business in South Africa should be aware that in addition to the body of laws pertaining to B-BBEE, exchange control, employment, data protection, anti-money laundering, terrorist financing, and consumer protection, several emerging trends are also notably reshaping the regulatory and commercial landscape. Among these, cybersecurity preparedness, AI governance, ESG considerations and supply-chain integrity are front-of-mind considerations for boards.

Overall, the South African business environment is characterised by largely pragmatic and accelerated regulatory reform aligned with international best practice, underpinned by a high degree of legal certainty.

Those engaging experienced local advisers early are able to capitalise on the meaningful opportunities amid the global complexities that necessitate structuring commercially innovative, legally robust and responsive solutions to a rapidly evolving business landscape.

Disclaimer
This publication is provided for general information purposes only and does not constitute legal advice. Clients should obtain specific professional advice tailored to their circumstances before acting on any of the matters discussed herein.

# SOUTH KOREA




## Law and Practice

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**Dentons Lee**

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**Dentons Lee** is one of South Korea's longest operating law firms, with its base established in Seoul. Its practice has continuously grown and expanded to meet the evolving needs of both the domestic and international clients. Dentons Lee (formerly Lee International Law Office) offers a full range of legal services necessary for engaging in international business.

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## 1. Legal System

### 1.1 Legal System and Judicial Order

South Korea is a civil law jurisdiction. Codified legislation is the primary source of law, with the legal hierarchy headed by the Constitution, followed by Acts of the National Assembly, presidential decrees, ministerial rules and local ordinances.

The principal areas of private and public law are governed by statutes, including:

- the Civil Act;
- the Commercial Act;
- the Criminal Act;
- the Civil Procedure Act; and
- the Criminal Procedure Act.

Judicial decisions are not formally binding under the doctrine of stare decisis. In practice, however, Supreme Court decisions carry significant persuasive authority and are generally followed by lower courts. Academic commentary also plays an important role in statutory interpretation.

The ordinary court system has a three-tier structure. District Courts serve as the principal courts of first instance, High Courts hear appeals and the Supreme Court is the court of final appeal. South Korea also has specialised courts, including the Patent Court, Family Courts, the Administrative Court and Bankruptcy Courts.

Separate from the ordinary judiciary, the Constitutional Court has jurisdiction over constitutional review of statutes, constitutional complaints, impeachment proceedings, dissolution of political parties and competence disputes between state organs.

Accordingly, South Korea's judicial system is best characterised as a civil law system with a three-tier ordinary court hierarchy, supplemented by specialised courts and a separate Constitutional Court.

## 2. Restrictions on Foreign Investments

### 2.1 Approval of Foreign Investments

Foreign investment in South Korea generally does not require prior governmental approval. Under the Foreign Investment Promotion Act ("FIPA"), most foreign investments are implemented through a filing or notification process rather than an approval regime.

To qualify as a "foreign investment" under the FIPA, an investment must generally be at least KRW100 million and result in either:

- the acquisition of 10% or more of the voting shares or equity interests of a Korean company; or
- the acquisition of an equity interest together with the right to appoint or dispatch officers.

A foreign investment report is ordinarily filed before completion, although certain transactions – including listed share acquisitions, mergers, stock-for-stock exchanges, inheritance, gifts, dividend reinvestment and conversions or exercises of convertible securities – may instead be reported after completion.

Prior approval or enhanced review is required only in limited circumstances, principally where national security or specially regulated industries are involved.

A foreign investor acquiring shares in a defence industry company must obtain prior approval from the Ministry of Trade, Industry and Energy ("MOTIE"). Even where no sector-specific approval is required, an investment may be subject to national security review if it results in effective managerial control over an existing Korean company and raises concerns such as:

- disruption to defence production;
- diversion of goods or technologies for military use;
- exposure of state secrets;
- material interference with international peace and security obligations; or
- leakage of national core technologies or national high-tech strategic technologies.

Such investments may be reviewed by MOTIE and the Foreign Investment Committee, which may impose corrective measures or require divestment.

South Korea also maintains a limited list of sectors wholly or partially restricted to foreign investment through prohibitions, foreign ownership caps or sector-specific approval or licensing requirements. These include defence-related businesses, broadcasting and certain media industries, air transport, financial services and businesses involving national core technologies or national high-tech strategic technologies. In some cases, approval from the relevant sector regulator is also required.

### 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

As noted in **2.1 Approval of Foreign Investments**, most foreign investments in South Korea are subject not to substantive approval but to a foreign investment reporting requirement under the Foreign Investment Promotion Act ("FIPA"). A foreign investor must generally file a foreign investment report with the relevant authority (typically a designated foreign exchange bank or KOTRA) before completing the investment. Once the report is accepted and a filing certificate issued, the investor may subscribe for or acquire shares and remit the investment funds. Upon completion and payment of capital, the foreign-invested company must complete the required post-closing registration procedures.

Certain transactions – including listed share acquisitions, mergers, comprehensive share exchanges or transfers, inheritance, gifts, dividend reinvestment and conversions or exercises of convertible securities – may instead be reported after completion within the statutory period.

A different regime applies to investments in defence industry companies. A foreign investor acquiring shares in such a company must obtain prior approval from the Ministry of Trade, Industry and Energy ("MOTIE"), following consultation with the Ministry of National Defence. The statutory review period is generally 15 days, extendable once and approval may be granted subject to conditions.

An investment may also be subject to national security review if it would result in effective managerial control over an existing Korean company and raise concerns such as the leakage of national core technologies, national high-tech strategic technologies or other matters affecting national security. Such investments may be reviewed by MOTIE and the Foreign Investment Committee.

The consequences of non-compliance depend on the nature of the breach.

Where a foreign investor acquires shares in a defence industry company without the required approval or in breach of approval conditions, the investor may not exercise the voting rights attached to those shares. MOTIE may also order the disposal of the shares and criminal sanctions, including imprisonment or criminal fines, under the FIPA may apply.

Failure to file a required foreign investment report for an ordinary investment may result in an administrative fine. Criminal penalties may also apply where false documents are submitted in connection with a report or approval application.

### 2.3 Commitments Required From Foreign Investors

Foreign investment approval in South Korea is generally not subject to extensive undertakings because the Foreign Investment Promotion Act ("FIPA") adopts a notification-based rather than approval-based regime. However, where an investment involves a sensitive sector or the investor seeks investment incentives, the authorities may impose conditions or require specific commitments.

The clearest example is an investment in a defence industry company. A foreign investor seeking prior approval to acquire shares in such a company may receive approval from the Ministry of Trade, Industry and Energy ("MOTIE"), following consultation with the Ministry of National Defence, subject to conditions designed to protect national security and continuity of defence operations. These may include:

- maintaining defence production;
- preserving security controls and preventing leakage of sensitive information or technology; and
- separating and disposing of defence-related facilities to a Korean national or Korean company where required.

Compliance with these conditions is required on an ongoing basis. Where the disposal of defence facilities is required, the investor may be restricted from participating in management until the disposal is completed.

Commitments also commonly arise where a foreign investor establishes operations in a Foreign Investment Zone ("FIZ") or seeks state or local investment incentives. These typically relate to:

- the amount and timing of the investment;
- the approved business activities;
- employment or job-creation targets; and
- maintenance of the minimum foreign shareholding required for the incentives.

Preferential treatment, such as reduced rent for state-owned or public land within an FIZ, is generally conditional on implementing the approved investment substantially in accordance with the submitted business plan. Failure to do so may result in:

- the withdrawal of incentives;
- the termination of occupancy or lease arrangements; or the recovery of previously granted benefits.

Where an investment is reviewed from a national security or strategic technology perspective, the authorities may also require safeguards, including restrictions on access to sensitive facilities, technology or information, governance-related limitations or other measures to ring-fence strategic assets or know-how.

### 2.4 Right to Appeal

If the Korean authorities refuse to authorise a foreign investment, the investor may, in principle, challenge the decision before the administrative courts.

Under Korean law, a refusal to grant approval, a permit or a similar authorisation may be challenged by an administrative cancellation action, provided it constitutes an administrative disposition affecting the applicant's legal interests. In the foreign investment context, this includes refusals under the Foreign Investment Promotion Act ("FIPA") or sector-specific legislation, including refusals to approve investments in defence industry companies.

The principal remedy is an action seeking cancellation of the refusal decision. The investor may argue that:

- the statutory requirements for approval were satisfied;
- the authority misinterpreted or misapplied the law;
- the decision was procedurally defective;
- the authority failed to observe the required consultation or review procedures; or
- in the case of a discretionary decision, the authority abused or exceeded its discretion.

The scope of judicial review depends on the nature of the administrative act. Where approval is essentially non-discretionary, the court reviews compliance with the statutory requirements. Where broader administrative discretion is involved (particularly in matters concerning defence, national security or strategic technology), the court generally reviews whether the authority acted within the lawful bounds of its discretion rather than substituting its own policy judgment.

An action must generally be filed within 90 days after the investor becomes aware of the refusal and in any event within one year of the decision. Where an administrative appeal is pursued first, the limitation period runs from the date of notification of the appeal decision.

If the court annuls the refusal, the investment is not automatically deemed approved. Instead, the authority must reconsider the application and issue a new decision in accordance with the court's judgment.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

The Korean Commercial Code recognises several corporate forms. In practice, however, the principal vehicles for business operations and foreign investment are:

- *chusik hoesa* (joint-stock company);
- *yuhan hoesa* (limited company); and
- *yuhan chaegim hoesa* (limited liability company).

As a general rule, there is no statutory minimum capital requirement and most entities may be established by a single shareholder or member, except partnership-type entities. For foreign investors, however, an investment of at least KRW100 million is generally required to qualify as a "foreign investment" under the Foreign Investment Promotion Act.

### Chusik Hoesa (Joint-Stock Company)

The *chusik hoesa* is Korea's standard corporate form and the vehicle most commonly used for medium-sized and large businesses. It is the only form that may be publicly listed and is therefore the default structure for IPOs and equity fundraising. Shareholders' liability is limited to their capital contribution.

Its governance structure comprises:

- a general meeting of shareholders;
- a board of directors;
- one or more representative directors; and
- where required, a statutory auditor or audit committee.

A *chusik hoesa* may be established by a single shareholder without any minimum capital requirement. Owing to its familiarity with investors and lenders and its suitability for capital raising, it is commonly used for large operating businesses, multi-investor joint ventures, holding company structures and businesses contemplating future public offerings or external investment.

### Yuhan Hoesa (Limited Company)

The *yuhan hoesa* is a closely held limited liability company. Members' liability is limited to their contributions and no minimum capital is required. Compared with a *chusik hoesa*, it is intended for a closed ownership structure, with membership interests that are less freely transferable. It is therefore commonly used for wholly owned Korean subsidiaries, closely held businesses, closed joint ventures and companies with no expectation of accessing public capital markets.

### Yuhan Chaegim Hoesa (Limited Liability Company)

Introduced in 2012, the *yuhan chaegim hoesa* is often compared to a US-style LLC, although it is treated as a corporation rather than a tax-transparent entity under Korean law. Its principal attraction is governance flexibility, with management arrangements largely determined by the articles of incorporation rather than a formal board structure. It is frequently used for negotiated joint ventures, start-ups, project-based enterprises and other investment structures that require contractual flexibility.

### Less Common Forms

The Korean Commercial Code also recognises *hapmyeong hoesa* (general partnership) and *hapja hoesa* (limited partnership). Because these forms involve unlimited liability for at least some participants, they are rarely used in mainstream commercial practice or inbound foreign investment.

## 3.2 Incorporation Process

Companies in Korea are incorporated through a registration-based process rather than by governmental charter.

For foreign investors, the most common corporate forms are *chusik hoesa*, *yuhan hoesa* and *yuhan chaegim hoesa*, all of which follow broadly similar incorporation procedures.

Where the investment is intended to qualify as a foreign investment under the Foreign Investment Promotion Act ("FIPA"), the process generally begins with a foreign investment report filed with a designated foreign exchange bank or KOTRA. Once accepted, the investor remits the capital contribution to a Korean bank.

The company is then organised under the Korean Commercial Code through:

- preparation of the articles of incorporation;
- appointment of directors (and, where applicable, an auditor); and
- adoption of the necessary incorporation resolutions.

For a *chusik hoesa*, this ordinarily includes an inaugural shareholders' meeting and, where applicable, appointment of the representative director by the board.

Following payment of capital, the company files for incorporation registration with the competent court registry. Legal personality arises upon registration, typically within two to three business days.

The company must then obtain business registration from the tax office, generally within a further five business days. Where applicable, post-closing registration as a foreign-invested company must also be completed.

The usual sequence is:

- foreign investment report (where applicable);
- capital remittance and incorporation documentation;
- corporate approvals and officer appointments;
- incorporation registration; and
- business registration and foreign-invested company registration.

Absent regulatory approvals, in-kind contributions or document execution delays, incorporation can often be completed within one to two weeks, although additional time may be required for regulated businesses or when foreign documents must be notarised, apostilled or translated.

### 3.3 Ongoing Reporting and Disclosure Obligations

Although private companies in Korea are subject to fewer disclosure obligations than listed companies, they remain subject to ongoing corporate, accounting and registration requirements.

The principal obligations arise under the commercial registry system. Certain corporate changes must be registered and become publicly accessible, including:

- appointment, resignation or removal of directors, auditors and representative directors;
- changes to the company name, head office, business purpose or other registered particulars; and
- amendments affecting matters recorded in the commercial register.

These changes must generally be registered within two weeks.

Private companies must also prepare annual financial statements and obtain approval in accordance with the applicable corporate procedures. For a *chusik hoesa*, approval is generally obtained at the annual shareholders' meeting, although board approval is permitted in limited circumstances. Companies must also maintain accounting books and records.

Certain companies meeting statutory thresholds are subject to external audit requirements, including:

- the appointment of an external auditor;
- the submission of audited financial statements; and
- compliance with enhanced accounting and internal control requirements.

Korea does not maintain a general public register of beneficial ownership for private companies. Beneficial ownership information nevertheless remains relevant for anti-money laundering and KYC compliance, regulated industries and certain sector-specific reporting obligations.

Accordingly, although private companies are not subject to the continuous market disclosure obligations applicable to listed companies, they remain subject to significant registry, reporting and financial compliance requirements.

### 3.4 Management Structures

The governance structure of a Korean company depends on its corporate form. In practice, the principal forms are *chusik hoesa*, *yuhan hoesa* and *yuhan chaegim hoesa*.

#### Chusik Hoesa

The *chusik hoesa* has the most formal governance structure, comprising:

- the shareholders' meeting;
- the board of directors;
- one or more representative directors; and
- a statutory auditor or audit committee, where required.

The board makes major management decisions and supervises directors, while the representative director manages the company's day-to-day affairs and rep-

resents it externally. The structure broadly resembles a one-tier board supplemented by a separate audit function.

For companies with paid-in capital below KRW1 billion, the governance structure may be simplified and a board or statutory auditor is generally not required.

#### Yuhan Hoesa

A *yuhan hoesa* is managed by one or more directors without a board of directors. Management authority is vested directly in the director(s), subject to matters reserved to the members' meeting. A statutory auditor is optional.

#### Yuhan Chaegim Hoesa

The *yuhan chaegim hoesa* provides the greatest contractual flexibility. Management is vested in one or more managers designated in the articles of incorporation and governance arrangements, including management authority and representation rights, may be extensively customised without a statutory board.

### 3.5 Directors', Officers' and Shareholders' Liability

Directors owe duties of care and loyalty to the company. A director who intentionally or negligently breaches the law, the articles of incorporation or those duties may be liable to the company for resulting damages.

Where a wrongful act is approved by board resolution, directors voting in favour may be jointly and severally liable. Directors participating in the resolution are presumed to have approved it unless their objection is recorded in the minutes.

Directors also owe supervisory duties and may be liable for failing adequately to supervise the affairs of the company, including the conduct of fellow directors and officers. Outside or non-executive directors are not automatically exempt. Directors may also incur liability to third parties where damage is caused through wilful misconduct or gross negligence.

Korean law further recognises liability for de facto directors who effectively direct or control the company's affairs. Statutory auditors and audit committee members may likewise incur liability for failing properly to perform their supervisory functions.

As a general rule, shareholders of a *chusik hoesa*, *yuhan hoesa* and *yuhan chaegim hoesa* enjoy limited liability up to the amount of their contributions.

Korean courts nevertheless recognise a limited doctrine of piercing the corporate veil. A company's separate legal personality may be disregarded where the corporate form is abused to evade legal obligations or the company functions merely as an instrumentality of its controlling shareholder. The doctrine is applied sparingly. Sole ownership, close control or parent-subsidiary status alone are insufficient; courts generally require exceptional circumstances such as:

- commingling of assets;
- disregard of corporate formalities;
- abuse combined with undercapitalisation;
- use of the company to evade existing liabilities; or
- operation of the company as the alter ego of its controller.

Accordingly, limited liability remains the general rule, although directors, de facto managers and, in exceptional circumstances, controlling shareholders may incur liability where the corporate form is abused.

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

Employment relationships in Korea are governed by statutory law, case law, collective bargaining agreements, work rules and individual employment contracts. Statutory law is the primary source and many employment protections are mandatory.

The principal statute is the Labour Standards Act ("LSA"), which establishes minimum standards for wages, working hours, overtime, annual leave, dismissal, disciplinary measures and other working conditions. Any contractual or internal provision falling below these standards is generally invalid and replaced by the applicable statutory rule.

Other key legislation includes:

- the Minimum Wage Act;
- the Employee Retirement Benefit Security Act;
- the Act on the Protection of Fixed-term and Part-time Employees;
- the Act on the Protection of Temporary Agency Workers;
- the Equal Employment Opportunity and Work-Family Balance Assistance Act; and
- legislation governing mandatory social insurance, including:
  (a) the national pension;
  (b) national health insurance;
  (c) employment insurance; and
  (d) industrial accident compensation insurance.

Collective labour rights are governed by the Trade Union and Labour Relations Adjustment Act, which regulates trade unions, collective bargaining, collective agreements, industrial action and unfair labour practices. Collective agreements may have a normative effect on covered employees and, in some circumstances, other employees within the same workplace and employee category.

Many employers must also maintain work rules governing working conditions and workplace discipline. These cannot provide terms less favourable than those set by mandatory legislation or applicable collective agreements and adverse amendments generally require employee consent under the statutory procedure.

Individual employment contracts define matters such as duties, wages, workplace and working hours. However, contractual freedom is limited by mandatory employment legislation, collective agreements and valid work rules, with more favourable contractual terms generally prevailing over less favourable work rules.

Although Korea is a civil law jurisdiction in which statutes are the primary source of employment law, Supreme Court precedents are highly influential, particularly in determining employee status, assessing dismissals, interpreting ordinary wages, evaluating amendments to work rules and distinguishing employment from independent contractor relationships.

Accordingly, Korean employment law is best characterised as a mandatory statutory framework supplemented by collective agreements, work rules, individual contracts and influential case law, with statutory minimum standards forming the baseline of the employment relationship.

### 4.2 Characteristics of Employment Contracts

The employer must specify matters including wages, prescribed working hours, holidays and annual paid leave, together with the components, calculation method and payment method of wages. Failure to comply with these written notification requirements may result in statutory sanctions, but does not invalidate the employment relationship.

Additional written requirements apply to certain categories of employees. Fixed-term and part-time employees must receive written terms covering the employment period, working hours, wages, holidays, leave, place of work and duties. Separate written formalities also apply to dismissal notices, which must generally state the reason for dismissal and its effective date.

Employment contracts may be either indefinite-term or fixed-term. A fixed-term employee may generally be employed for up to two years, after which the employment is deemed indefinite unless a statutory exception applies, including project-based employment, replacement of an absent employee, education or vocational training, employment of certain senior employees or other grounds recognised by law.

Even where a contract specifies a fixed term, Korean courts may examine its substance. If the fixed term is merely formal or the employee has a legitimate expectation of renewal based on the contract, work rules, a collective agreement, repeated renewals or other circumstances, refusal to renew without reasonable grounds may constitute an unfair dismissal.

Probationary periods are permitted, but the employment relationship is regarded as having commenced from the outset. Refusal to confirm employment following probation must be supported by reasonable grounds relating to the employee's suitability, per-

formance or qualifications and the statutory written notice requirements for dismissals may also apply.

### 4.3 Working Time

Under the Labour Standards Act, standard working hours are limited to 40 hours per week and eight hours per day, excluding recess periods. A "week" means seven days, including holidays and time during which an employee remains under the employer's direction or supervision, including certain waiting time, constitutes working time.

Korean law does not prescribe a statutory minimum working time for ordinary employees. However, employees whose prescribed working hours average less than 15 hours per week over a four-week period are generally excluded from statutory weekly paid holidays, annual paid leave and, in some cases, retirement benefit coverage.

Overtime is permitted only within statutory limits. With the employee's agreement, an employer may require up to 12 hours of overtime per week, resulting in a maximum 52-hour working week.

Overtime must be compensated at a premium of at least 50% above ordinary wages. The same premium generally applies to night work between 10pm and 6am. Holiday work attracts a premium of at least 50% for the first eight hours and 100% thereafter.

Work exceeding contractual hours but remaining within the statutory maximum does not automatically attract the statutory overtime premium unless otherwise provided by the employment contract, work rules or a collective bargaining agreement.

Employers must provide statutory rest breaks of at least 30 minutes after four hours of work and one hour after eight hours, including where working hours are extended.

The Labour Standards Act also recognises flexible, selective, deemed and discretionary working-hour systems, together with special rules for certain industries and categories of employees, subject to statutory requirements.

Accordingly, the basic rule in Korea is a 40-hour working week with a 12-hour weekly overtime limit, subject to mandatory overtime premiums and limited statutory exceptions.

### 4.4 Termination of Employment Contracts

Korea is not an employment-at-will jurisdiction. Under the Labour Standards Act, an employer may not dismiss, suspend, transfer, reduce wages or otherwise discipline an employee without just cause. Employer-initiated termination is therefore subject to substantive and procedural requirements.

Employment may terminate by expiry of a fixed-term contract, retirement, resignation, mutual agreement or dismissal. A unilateral termination generally constitutes a dismissal and must be supported by just cause, assessed by reference to whether continued employment would be socially unreasonable in the circumstances.

Dismissal must comply with statutory procedures. The employer must provide written notice stating the reason and effective date of dismissal; otherwise, the dismissal is generally invalid. In addition, the employer must give at least 30 days' notice or 30 days' ordinary wages in lieu, unless a statutory exception applies, such as employment of less than three months or serious wilful misconduct.

Employees are also protected during specified periods, including leave for work-related injury or illness and maternity leave, as well as the applicable post-leave protection periods.

An unfair dismissal is generally invalid. Employees may seek relief before the Labour Relations Commission, generally within three months of dismissal or pursue court proceedings. Remedies include reinstatement, back pay and, exceptionally, tort damages.

Upon termination, employers must settle unpaid wages and other statutory payments, generally within 14 days unless otherwise agreed. Employees with at least one year of continuous service are generally entitled to statutory severance or retirement benefits of at least 30 days' average wages for each year of service.

### Collective Redundancies

Collective redundancy (dismissal for managerial reasons) is separately regulated under the Labour Standards Act. The employer must satisfy four requirements:

- an urgent business necessity;
- best efforts to avoid dismissal;
- reasonable and fair selection criteria; and
- advance notice to and good-faith consultation with, the relevant employee representative.

Where a majority trade union exists, it acts as the employee representative; otherwise, consultation must take place with a representative of the majority of employees. The redundancy plan must generally be notified at least 50 days before the intended dismissal date and, where statutory thresholds are met, reported to the Ministry of Employment and Labour.

Unless otherwise provided by a collective bargaining agreement, work rules, an employment contract or a voluntary separation programme, no separate statutory redundancy payment is required beyond ordinary termination entitlements. Employees remain entitled to accrued wages, payment in lieu of notice where applicable, unused statutory leave payments and statutory severance or retirement benefits.

Failure to satisfy these statutory requirements may render the dismissals invalid, entitling affected employees to reinstatement and back pay.

## 4.5 Employee Representations

Korean law requires employee representation, information or consultation in specified circumstances. The principal mechanisms are:

- the labour-management council under the Act on the Promotion of Workers' Participation and Cooperation; and
- the employee representative system under the Labour Standards Act and related legislation.

These operate separately from, but may coexist with, trade unions.

A labour-management council must be established at any business or workplace ordinarily employing 30 or more employees. It consists of an equal number of employer and employee representatives, generally between three and ten on each side. Employee representatives are elected by direct, secret ballot unless a trade union representing a majority of employees exists, in which case the union appoints them.

The council promotes labour-management cooperation rather than replacing collective bargaining. Employers must report or explain specified management matters and the council exercises consultation and, in some cases, resolution functions in areas such as productivity, training, welfare, occupational safety and labour-management policies.

Separately, the Labour Standards Act requires consultation or written agreement with an employee representative in specified circumstances. Where a majority trade union exists, it acts as the employee representative; otherwise, a representative must be democratically selected by the majority of employees.

Employee representative involvement is required for:

- collective redundancies;
- certain flexible, selective and discretionary working-time arrangements;
- substitution of paid leave for overtime pay;
- substitution of annual paid leave; and
- unfavourable amendments to work rules.

Depending on the statute, the employer may be required to consult in good faith or obtain a written agreement or consent. Failure to do so may affect the validity of the employer's action, particularly in relation to collective redundancies and adverse amendments to work rules.

Trade unions remain distinct from both the labour-management council and the statutory employee representative system. They conduct collective bargaining and conclude collective agreements with normative effect, whereas the labour-management council primarily serves as a cooperative consultation body.

Accordingly, Korean law does not require employee representation for ordinary management decisions

but mandates employee information, consultation or consent for specified matters, particularly workforce restructuring, working-time arrangements and adverse changes to employment conditions.

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/ Employers

In Korea, the principal tax and social security obligations arising from employment are the individual income tax, the local income tax and mandatory social insurance contributions.

Employees are subject to Korean income tax on employment income. Korean tax residents are generally taxed on worldwide income, while non-residents are taxed only on Korean-source income. Employment income includes salary, wages, bonuses, allowances and other employment-related compensation. Employers must withhold and remit income tax and conduct a year-end tax settlement.

Employment income is taxed at progressive national rates of 6% to 45%, depending on taxable income after applicable deductions. Local income tax is levied at 10% of the national income tax, resulting in a combined top marginal rate of 49.5% before deductions, credits or special tax regimes. Certain foreign employees may qualify for preferential tax treatment, subject to statutory conditions.

Employees and employers must also contribute to the:

- National Pension;
- National Health Insurance (including long-term care insurance);
- Employment Insurance; and
- Industrial Accident Compensation Insurance.

National Pension and National Health Insurance contributions are generally shared equally. Employment Insurance is funded by both parties for unemployment benefits, with additional employer contributions for employment security programmes, while Industrial Accident Compensation Insurance is borne entirely by the employer.

Employers are responsible for withholding employees' taxes and social insurance contributions and remitting both the employee's and employer's portions to the relevant authorities. Failure to comply may result in surcharges, penalties or other sanctions.

Accordingly, employees bear income tax, local income tax and their share of social insurance contributions, while employers act as withholding agents and bear their own contributions, including the full cost of Industrial Accident Compensation Insurance.

### 5.2 Taxes Applicable to Businesses

A company doing business in Korea may be subject to corporate income tax, local income tax, value-added tax ("VAT"), withholding tax and other transaction- or industry-specific taxes.

A Korean company is generally taxed on its worldwide income, while a foreign company is generally taxed only on Korean-source income, including income attributable to a permanent establishment in Korea.

Corporate income tax is imposed at progressive rates:

- 10% on the first KRW200 million of taxable income,
- 20% on taxable income over KRW200 million and up to KRW20 billion,
- 22% on taxable income over KRW20 billion and up to KRW300 billion and
- 25% on taxable income exceeding KRW300 billion.

Local income tax is imposed at 10% of the corporate income tax liability, resulting in a combined top marginal rate of approximately 27.5%.

VAT is levied at the standard rate of 10% on the supply of goods, services and imports, although exports and certain goods or services are zero-rated or exempt.

Companies may also have withholding obligations. Dividends, interest and royalties paid to non-residents or foreign companies without a Korean permanent establishment are generally subject to Korean

withholding tax, subject to any applicable tax treaty. Dividends and interest paid to residents are likewise generally subject to withholding tax.

Other taxes may apply depending on the company's activities and assets, including securities transaction tax, acquisition tax, property tax, stamp duty, customs duties and, where applicable, the special tax for rural development.

Korea has implemented the OECD Pillar Two global minimum tax regime, generally applying to multinational enterprise groups with consolidated annual revenue of at least EUR750 million and a minimum effective tax rate of 15%. The Income Inclusion Rule applies from fiscal years beginning on or after 1 January 2024. Korea has also introduced or is implementing, a Qualified Domestic Minimum Top-Up Tax regime, although its qualification for the OECD QDMTT safe harbour remains subject to OECD peer review.

### 5.3 Available Tax Credits/Incentives

Korea offers a range of tax credits and incentives, primarily under the Restriction of Special Taxation Act. These are interpreted strictly and taxpayers must satisfy the applicable statutory requirements and retain supporting documentation.

A principal incentive is the research and development ("R&D") tax credit. Companies incurring qualifying R&D or human resources development expenses may be eligible for corporate income tax credits, with preferential rates for SMEs and certain qualifying technologies. Eligibility generally requires that both the activities and expenses satisfy the statutory criteria.

Korea also provides incentives for SMEs, including partial reductions of corporate or individual income tax for qualifying businesses, depending on company size, business type and location.

Investment-related incentives include tax credits for qualifying investments in facilities, equipment and other business assets, particularly those that promote productivity, strategic industries, energy efficiency, digital transformation and regional investment.

Employment-related incentives are available to companies that increase employment, convert non-regular employees to regular employees, retain employees returning from childcare leave or otherwise satisfy statutory employment requirements, generally subject to maintaining employment levels for a prescribed period.

Foreign-invested companies may qualify for incentives in limited circumstances, particularly where investments involve qualifying high-technology businesses, industrial support services or operations in foreign investment zones or free economic zones. Benefits may include reductions or exemptions from certain national or local taxes, subject to statutory conditions.

Additional incentives are available for start-ups, venture companies, regional or environmental investment and certain strategic industries. Availability depends on the taxpayer's status, business sector, investment, location and compliance with statutory requirements.

The combined use of tax incentives is restricted. Where multiple incentives apply to the same income or investment, taxpayers may be required to elect one unless concurrent application is expressly permitted. Minimum tax and carry-forward rules may also affect the amount and timing of available benefits.

Accordingly, although Korea offers a broad range of tax incentives, their availability is highly fact-specific and depends on the taxpayer's activities, investment structure and compliance with statutory requirements.

### 5.4 Tax Consolidation

Korea operates a consolidated tax return regime for qualifying corporate groups. Subject to statutory requirements and prior approval from the tax authorities, a Korean parent company and its qualifying Korean subsidiaries may calculate and file corporate income tax on a consolidated basis.

The regime is available only to Korean domestic corporations. A foreign company cannot be the consolidated parent or subsidiary itself, although Korean subsidiaries of a foreign group may qualify if the statutory ownership requirements are met.

The principal eligibility requirement is ownership. A Korean parent company must generally hold, directly or indirectly, at least 90% of the issued shares or equity interests of each subsidiary. All qualifying subsidiaries must generally be included; selective inclusion is not permitted. Certain entities, including non-profit corporations, companies in liquidation and other entities specified by law, are excluded.

The regime is not automatic. The parent company must obtain approval from the competent tax office and generally remain within the regime for a minimum period.

The parent company is responsible for filing the consolidated return and paying the consolidated corporate income tax. Group companies may bear joint and several liability, with the tax burden allocated internally.

A newly qualifying subsidiary may join the consolidated group from the following taxable year, while a subsidiary that ceases to satisfy the statutory requirements must leave the group in accordance with the applicable rules.

The regime may also be applied for local corporate income tax purposes and is primarily used to offset profits and losses among qualifying domestic subsidiaries, thus simplifying group tax reporting.

### 5.5 Thin Capitalisation Rules and Other Limitations

Korea applies thin capitalisation rules and other interest deductibility limitations to prevent excessive debt financing and base erosion.

Under the International Tax Coordination Law, the thin capitalisation regime applies to borrowings from certain foreign related parties. Where a Korean company's debt to a foreign related party exceeds the prescribed debt-to-equity ratio, interest attributable to the excess debt may be disallowed and treated as a deemed dividend. The standard debt-to-equity ratio is generally 2:1, although a higher ratio applies to certain financial businesses.

Korea has also implemented an earnings-based interest limitation rule broadly consistent with the OECD BEPS Action 4 recommendations. Where net interest expense to foreign related parties exceeds 30% of adjusted taxable income (broadly comparable to tax EBITDA), the excess may be non-deductible for corporate income tax purposes. Certain financial institutions and other specified entities are excluded.

The Corporate Income Tax Act further restricts interest deductibility for non-business assets, non-business loans to related parties, unidentified creditors or recipients and certain capitalised or restricted financing costs. Participation exemption and dividend-received deduction rules may also reduce the benefit of dividend relief by taking related interest expense into account.

Transfer pricing rules may likewise affect related-party financing. Interest rates and financing terms must satisfy the arm's-length principle and the tax authorities may adjust taxable income when it differs from that agreed between independent parties.

### 5.6 Transfer Pricing

Korea has a comprehensive transfer pricing regime governing transactions between Korean taxpayers and foreign-related parties. The regime is primarily set out in the International Tax Coordination Law ("ITCL") and applies the arm's-length principle to cross-border related-party transactions.

Under the ITCL, where the pricing or other terms of an international transaction differ from those that would have been agreed between independent parties, the Korean tax authorities may adjust the taxpayer's income and tax liability. The rules apply to transactions, including the sale of goods, the provision of services, the licensing of intellectual property, financing arrangements and other cross-border dealings.

Korea recognises transfer pricing methods broadly aligned with the OECD Transfer Pricing Guidelines, including:

- the comparable uncontrolled price (CUP) method;
- the resale price method;
- the cost-plus method;

- the profit split method;
- the transactional net margin method (TNMM); and
- other appropriate methods where these cannot be reliably applied.

The most appropriate method is selected having regard to the nature of the transaction and the availability, reliability and comparability of data. The Korean tax authorities bear the burden of justifying a transfer pricing adjustment, although taxpayers may be required to substantiate their pricing once an arm's-length range has been established.

Korea also operates an Advance Pricing Agreement ("APA") programme. APAs may be unilateral, bilateral or multilateral, with bilateral and multilateral APAs generally pursued through mutual agreement procedures under applicable tax treaties.

Depending on the size of the multinational group and the volume of related-party transactions, taxpayers may be required to submit transfer pricing disclosures, a Master File, a Local File and a Country-by-Country Report (CbCR), while maintaining supporting documentation.

Although the OECD Transfer Pricing Guidelines do not have direct legal force in Korea, they are frequently relied upon by the tax authorities and courts as persuasive guidance.

## 5.7 Anti-Evasion Rules

Korea has a comprehensive anti-avoidance regime comprising both a general anti-avoidance rule ("GAAR") and specific anti-avoidance rules ("SAARs").

At the general level, Korean tax law applies the substance-over-form principle under the Framework Act on National Taxes. Taxation is based on the economic substance of income, assets, transactions and legal arrangements rather than their legal form. Where the nominal recipient differs from the true economic beneficiary or transactions are structured primarily to obtain inappropriate tax benefits, the tax authorities may recharacterise the arrangement according to its economic substance. In practice, this principle functions as Korea's principal GAAR.

Specific anti-avoidance rules apply to both domestic and international transactions. Domestically, the Corporate Income Tax Act permits the tax authorities to disregard related-party transactions that unreasonably reduce the taxpayer's tax burden and recompute taxable income on an arm's-length or objectively reasonable basis.

For international transactions, the International Tax Coordination Law provides for:

- transfer pricing rules;
- thin capitalisation rules;
- earnings-based interest limitation rules;
- controlled foreign corporation (CFC) rules; and
- anti-treaty-shopping and other anti-abuse provisions.

Korea also applies anti-avoidance rules to nominee arrangements and beneficial ownership, including deemed-gift and beneficial ownership provisions designed to prevent tax avoidance through nominal ownership structures.

In addition, Korea has implemented OECD BEPS measures, including transfer pricing documentation requirements, interest limitation rules and the Pillar Two global minimum tax framework.

Although the tax authorities may challenge arrangements lacking genuine economic substance or business purpose, taxpayers remain free to organise their affairs in a tax-efficient manner.

## 5.8 Tariffs

Korea imposes customs duties primarily under the Customs Act. Duties are generally levied on imported goods based on tariff classification, customs value and country of origin.

The tariff regime comprises basic statutory tariffs, adjusted and seasonal tariffs, tariff-rate quotas, safeguards, anti-dumping, countervailing and retaliatory duties, together with preferential rates under free trade agreements ("FTAs"). Where multiple rates apply, priority is determined under the Customs Act and related regulations.

For many industrial goods, tariff rates are relatively moderate and a substantial proportion of imports benefit from Korea's extensive FTA network, including agreements with the United States, the European Union, China, ASEAN, Australia and New Zealand. Importers claiming preferential rates must satisfy the applicable rules of origin and documentation requirements.

The highest tariffs generally apply to sensitive agricultural, livestock and food products, protected through tariff-rate quotas and high out-of-quota tariff rates.

Korea also makes active use of trade remedy measures. Anti-dumping duties may be imposed where dumped imports cause material injury to a domestic industry, while countervailing duties and safeguard measures are also available.

Accordingly, Korea combines a generally liberalised tariff regime for industrial goods with targeted protection for sensitive agricultural products and selected industries through tariff-rate quotas, trade remedies and FTA-based preferential tariff rules.

## 6. Competition Law

### 6.1 Merger Control Notification

Korea operates a mandatory merger control regime under the Monopoly Regulation and Fair Trade Act ("MRFTA"). Certain mergers, acquisitions and other transactions constituting a business combination must be notified to the Korea Fair Trade Commission ("KFTC") where the applicable jurisdictional thresholds are met.

The regime is based primarily on party size rather than market share. Accordingly, a filing may be required even where the parties have limited market shares, although competitive effects remain central to the KFTC's substantive review.

Reportable business combinations generally include:

- acquisitions of shares exceeding the prescribed ownership threshold;
- additional share acquisitions resulting in the acquirer becoming the largest shareholder;
- mergers;
- acquisitions of all or a substantial part of another company's business;
- certain interlocking directorates; and
- formation of joint ventures where a participant becomes the largest shareholder.

For share acquisitions, notification is generally required when the acquirer obtains more than 20% of the voting shares of a non-listed company or more than 15% of the voting shares of a listed company. Subsequent acquisitions may also be reportable where they result in the acquirer becoming the largest shareholder.

A filing is generally required when one party (together with its affiliates) has assets or annual sales of at least KRW300 billion and the other has at least KRW30 billion.

Korea has also introduced a transaction-value filing regime for acquisitions of innovative businesses with limited current revenue where the transaction value exceeds the statutory threshold and the target has a significant business presence in Korea.

Although market share is not a jurisdictional threshold, it remains central to the KFTC's substantive assessment and the KFTC may prohibit or impose remedies on transactions that substantially lessen competition.

Accordingly, merger notification in Korea is determined principally by the type of transaction and the size of the parties (or, in certain cases, transaction value and Korean nexus) rather than market share.

### 6.2 Merger Control Procedure

The merger control process in Korea is administered by the Korea Fair Trade Commission ("KFTC") under the Monopoly Regulation and Fair Trade Act ("MRFTA").

The first step is to determine whether the transaction constitutes a reportable business combination and satisfies the applicable jurisdictional thresholds. If so, the parties must determine whether pre-closing or post-closing notification is required.

As a general rule, merger notifications are filed after closing and must generally be submitted within 30 days. However, transactions involving large companies or subject to the transaction-value filing regime require notification after execution of the transaction documents but before completion.

The filing must be submitted to the KFTC with information on the parties, ownership structure, assets and turnover, the transaction, relevant markets and other information necessary for the competitive assessment, together with supporting documents such as transaction agreements and corporate resolutions. Simplified procedures may be available for transactions unlikely to raise substantive competition concerns, including certain intra-group transactions. Where multiple parties have filing obligations, the notification is generally filed jointly.

Following receipt of the filing, the KFTC conducts its review. The statutory review period is generally 30 days, but may be extended by up to 90 days where further examination is required. Transactions raising no significant competition concerns are often cleared within the initial review period.

For transactions requiring pre-closing notification, completion is generally prohibited until the KFTC has completed its review and any applicable waiting period has expired.

Following its review, the KFTC may:

- clear the transaction unconditionally;
- clear it subject to structural or behavioural remedies; or
- prohibit the transaction where it would substantially lessen competition.

Accordingly, the Korean merger control process consists of determining whether a filing is required, submitting the notification, KFTC review and clearance, conditional clearance or prohibition.

### 6.3 Cartels

Korea maintains a comprehensive competition law regime under the Monopoly Regulation and Fair Trade Act ("MRFTA"), prohibiting cartels, abuse of market dominance and unfair trade practices.

The MRFTA prohibits agreements, concerted practices and other forms of coordination between competitors that unreasonably restrict competition. Prohibited conduct includes:

- price fixing;
- allocation of customers, suppliers or geographic markets;
- output restrictions;
- restrictions on investment or production capacity;
- bid rigging; and
- other coordination that substantially restricts competition.

The existence of an agreement or concerted practice is generally sufficient to establish a violation; implementation need not be proved. Price-fixing and bid-rigging are treated as particularly serious infringements.

The MRFTA also prohibits abuse of a dominant market position and regulates unfair trade practices, including discriminatory treatment, tying arrangements, unfair customer inducement and interference with business activities.

Korea applies an effects-based approach to competition law. The MRFTA extends to conduct occurring outside Korea that affects the Korean market, allowing the investigation of foreign companies whose conduct affects competition or customers in Korea.

The Korea Fair Trade Commission ("KFTC") has broad enforcement powers, including corrective orders, administrative fines and, in serious cases, criminal referrals. Businesses harmed by anti-competitive conduct may also bring private damages claims and Korea operates a leniency programme under which cartel participants who co-operate may receive reduced penalties.

Accordingly, Korea maintains a robust competition law regime prohibiting cartels, abuse of dominance and unfair trade practices, with both domestic and extra-

territorial application based on effects in the Korean market.

### 6.4 Abuse of Dominant Position

Korea regulates both unilateral conduct by dominant firms and conduct based on economic dependence under the Monopoly Regulation and Fair Trade Act ("MRFTA").

A company may be regarded as dominant where it can determine, maintain or change prices, output, quality or other trading conditions in the relevant market. Market dominance is presumed where a company holds at least 50% market share or where three or fewer companies together hold at least 75%, subject to statutory exceptions.

A dominant company may not abuse its position by:

- unfairly determining or maintaining prices;
- unjustifiably restricting output or supply;
- interfering with competitors' business activities;
- impeding market entry;
- excluding competitors through unfair practices; or
- otherwise materially harming consumer interests.

The assessment focuses on whether the conduct has or is likely to have, an anti-competitive effect in the relevant market, rather than merely harming an individual trading partner.

The MRFTA also regulates unfair trade practices, including abuse of a superior bargaining position. This regime applies even where a company is not dominant, particularly where one party is economically dependent on another.

Prohibited conduct includes:

- forcing unwanted purchases;
- compelling economic benefits;
- imposing disadvantageous trading terms;
- interfering with management; or
- otherwise placing the counterparty at an unfair disadvantage.

Sector-specific legislation on subcontracting, franchising, large-scale retail businesses and agency or distribution relationships supplements the MRFTA.

The MRFTA applies on an effects basis. Conduct occurring outside Korea may therefore be subject to Korean competition law where it has a sufficient effect on the Korean market, although international comity and conflicts with mandatory foreign law may also be relevant.

Accordingly, Korea regulates unilateral conduct through both the abuse of dominance and superior bargaining position rules, which may also apply to foreign conduct that affects competition in the Korean market.

## 7. Intellectual Property

### 7.1 Patents

Under the Korean Patent Act, an invention is a highly advanced creation of technical ideas using the laws of nature. Patentable inventions include products, methods and methods of producing products. A patent grants the exclusive right to commercially exploit the invention in Korea.

The scope of protection is determined primarily by the claims, interpreted in light of the specification and drawings, without extending or restricting the claim language.

A patent generally lasts 20 years from the filing date and takes effect upon registration. In certain regulated sectors, including pharmaceuticals and agrochemicals, the term may be extended to compensate for regulatory approval delays.

Patent registration is administered by the Korean Intellectual Property Office ("KIPO"). Applications are examined for formal and substantive requirements, including:

- industrial applicability;
- novelty;
- inventive step; and
- sufficiency of disclosure.

If no grounds for refusal exist, the patent is registered upon payment of the registration fee. Korea also recognises a statutory grace period for certain prior disclosures made by or against the will of, the applicant.

Patent infringement may arise through direct infringement, the doctrine of equivalents or certain forms of indirect infringement. Direct infringement generally requires that all elements of the patented claim be present, while equivalent infringement is recognised, subject to limitations including prior art and prosecution history estoppel.

Patent rights may be enforced through civil proceedings. Available remedies include:

- injunctions;
- destruction of infringing products or facilities;
- damages; and
- measures to restore business reputation where appropriate.

Damages may be assessed by reference to lost profits, the infringer's profits, a reasonable royalty or another court-determined measure. Wilful infringement may attract enhanced damages of up to five times the actual damages.

Patent validity may be challenged through an invalidation trial before the Intellectual Property Trial and Appeal Board. A finally invalidated patent is generally deemed never to have existed and courts may refuse enforcement of a clearly invalid patent on abuse-of-rights grounds.

Intentional patent infringement may also give rise to criminal liability, including corporate liability where applicable.

### 7.2 Trade Marks

Under the Korean Trademark Act, a trade mark is a sign used to distinguish one person's goods or services from those of others. Registrable marks include words, figures, symbols, three-dimensional shapes, colours, sounds, smells, holograms and motion marks, provided they function as indicators of origin.

Korea operates a registration-based trade mark system. Rights arise upon registration with the Korean Intellectual Property Office ("KIPO"), although use remains relevant to acquired distinctiveness, non-use cancellation and enforcement.

Trade mark protection lasts 10 years from registration and may be renewed indefinitely for successive 10-year periods.

Registration requires an application identifying the applicant, the mark, the designated goods or services and relevant classes. KIPO examines formal and substantive requirements, including distinctiveness and prior conflicting rights. International registrations designating Korea are also available under the Madrid Protocol.

Trade mark infringement typically occurs when an unauthorised identical or similar mark is used in connection with identical or similar goods or services, resulting in a likelihood of confusion. Preparatory acts (such as possessing, importing or exporting infringing goods under specified conditions) may also be considered infringement.

Trade mark owners and exclusive licensees may enforce their rights through civil proceedings. Available remedies include:

- injunctions;
- destruction of infringing goods or facilities;
- damages, including statutory damages in certain cases; and
- measures to restore business reputation where appropriate.

Damages may be assessed by reference to the infringer's profits, a reasonable royalty or other statutory methods, with enhanced statutory damages available in specified cases of intentional infringement.

Trade mark registrations may be challenged through invalidation or cancellation proceedings before the Intellectual Property Trial and Appeal Board, including cancellation for non-use over a continuous three-year period without justifiable grounds.

Intentional trade mark infringement may also result in criminal liability and infringing goods may be seized or confiscated.

### 7.3 Industrial Designs

Under the Korean Design Protection Act, a design is the shape, pattern, colour or combination thereof embodied in an article (including part of an article, a typeface or a graphical user interface/image) that creates an aesthetic impression through visual perception. Korean design law protects the visual appearance of products rather than their technical functionality.

Korea operates a registration-based design protection system. A design right arises upon registration with the Korean Intellectual Property Office ("KIPO"), giving the owner the exclusive right to commercially exploit the registered design and similar designs.

The protection term is 20 years from the filing date. The right becomes enforceable upon registration, subject to payment of the prescribed maintenance fees.

To obtain protection, an applicant must file a design application with KIPO. A design must generally be industrially applicable, novel and not readily creatable by a designer of ordinary skill based on prior designs. Korea also recognises a statutory grace period for certain prior disclosures.

Design infringement is assessed by comparing the overall visual impression of the registered and accused designs from the perspective of an ordinary observer. Certain forms of indirect infringement are also recognised.

A design owner or exclusive licensee may enforce its rights through civil proceedings. Available remedies include:

- injunctions;
- destruction of infringing products or facilities;
- damages; and
- provisional relief, including preliminary injunctions.

Damages may be assessed by reference to the infringer's profits, a reasonable royalty or other statutory methods, supported by evidentiary presumptions.

The validity of a registered design may be challenged through an invalidation trial before the Intellectual Property Trial and Appeal Board. A finally invalidated design is generally deemed never to have existed and courts may refuse enforcement of a clearly invalid design on abuse-of-rights grounds.

Intentional infringement of a registered design may also give rise to criminal liability under the Design Protection Act.

### 7.4 Copyright

Under the Korean Copyright Act, a copyright work must be a creative expression of human thoughts or emotions. Copyright protects the expression of ideas rather than ideas, concepts, facts, systems or methods. Protection requires a minimum degree of originality expressed in a perceptible form.

Protected works include literary, musical, artistic, photographic, audiovisual and software works, certain databases and other categories recognised under the Copyright Act. Korean law also recognises neighbouring rights of performers, phonogram producers and broadcasting organisations.

Unlike patents, trade marks and designs, copyright arises automatically upon creation. Korea follows the principle of non-formality, so registration or publication is unnecessary.

Copyright comprises moral rights (publication, attribution and integrity) and economic rights, including reproduction, distribution, public performance, public transmission, display, rental and the creation of derivative works.

Economic rights are generally protected for 70 years after the author's death. Different rules apply to joint works, anonymous or pseudonymous works, works made for hire and audiovisual works.

Although registration is not required, Korea maintains a voluntary copyright registration system administered by the Korea Copyright Commission. Registration provides evidentiary benefits and may enhance enforceability against third parties.

Copyright owners may enforce their rights through civil proceedings. Available remedies include:

- injunctions;
- destruction of infringing copies or materials;
- damages; and
- provisional relief, including preliminary injunctions.

Damages may be assessed by reference to the infringer's profits, a reasonable licence fee or another amount determined by the court where precise proof is difficult.

Intentional copyright infringement may also result in criminal liability, although certain offences require a complaint by the rights holder. In cross-border disputes, Korea generally applies the law of the country for which protection is sought, consistent with the Berne Convention.

Accordingly, copyright protection in Korea arises automatically upon creation, provides long-term protection for original works and is enforceable through civil and criminal remedies.

### 7.5 Others

Korean law also protects other forms of intellectual property and commercially valuable information, including software, databases, data assets and trade secrets.

Software is generally protected as a computer program under the Korean Copyright Act. Protection arises automatically upon creation, without registration and extends to the program's creative expression, not its underlying ideas, algorithms or functional concepts. Software owners may seek injunctions, damages and, where appropriate, criminal remedies. Technical protection measures are also protected and unauthorised circumvention may give rise to liability.

Databases are protected under the Copyright Act where data or materials are systematically organised for access or search. In addition to copyright protection, Korea recognises a database producer's right that protects substantial investment in collecting, verifying or presenting database content. Protection generally lasts five years from completion, with a new term available for substantial updates.

Certain commercially valuable data assets are also protected under the Data Industry Promotion and Utilisation Act and the Unfair Competition Prevention and Trade Secret Protection Act. Unauthorised acquisition, use or disclosure of data created through substantial investment may be prohibited where contrary to fair commercial practices or competitive order.

Trade secrets are protected under the Unfair Competition Prevention and Trade Secret Protection Act. A trade secret is technical or business information that is not publicly known, has independent economic value and is subject to reasonable secrecy management. Protection continues as long as these requirements are satisfied.

Trade secret owners may seek injunctions, removal of infringing materials and damages. Serious misappropriation may also result in criminal liability, particularly where trade secrets are acquired, used or disclosed for improper benefit or to harm the owner, with enhanced sanctions for overseas disclosure or use.

Companies should maintain appropriate confidentiality measures, including access controls, confidentiality markings, non-disclosure agreements, exit procedures, IT security controls and contractual restrictions.

Accordingly, Korean law primarily protects software and databases through copyright and related statutory rights, while trade secrets and certain data assets are protected under unfair competition and trade secret legislation, subject to applicable statutory requirements.

## 8. Data Protection

### 8.1 Applicable Regulations

Korea's data protection regime is centred on the Personal Information Protection Act ("PIPA"), the principal statute governing the processing and protection of personal information. PIPA applies broadly to public institutions, companies organisations and individuals

that process personal information for business purposes.

PIPA protects information relating to an identified or identifiable living individual, including information identifiable in combination with other data. Sensitive information, including health, political opinions, trade union membership and genetic information, receives enhanced protection.

PIPA adopts a consent- and purpose-based framework. Personal information may generally be collected and used only for the notified purpose unless another statutory basis applies. It also regulates third-party provision, outsourcing, cross-border transfers, retention, destruction and the processing of sensitive or unique identifying information.

Data controllers must maintain a privacy policy, appoint a privacy officer where required, implement appropriate technical, administrative and physical safeguards and respond to data subject rights, including access, correction, deletion and suspension of processing.

The Act on Promotion of Information and Communications Network Utilisation and Information Protection ("Network Act") remains relevant to information security, cybersecurity and network protection, although most of its personal information provisions have been incorporated into PIPA.

Sector-specific legislation may also apply, including the Credit Information Act, the Location Information Act, the Medical Service Act and legislation governing telecommunications, electronic finance and public-sector data. Certain commercially valuable data assets are also receiving protection under the Data Industry Promotion and Utilisation Act and the Unfair Competition Prevention and Trade Secret Protection Act.

The principal regulator is the Personal Information Protection Commission ("PIPC"), which has investigative and enforcement powers, including corrective orders, administrative fines, penalty surcharges, criminal referrals and civil enforcement. Data subjects may also seek relief through litigation or the personal information dispute mediation system.

Accordingly, Korea's data protection framework is centred on PIPA and supplemented by cybersecurity, sector-specific and data-related legislation.

### 8.2 Geographical Scope

Korean data protection laws may apply to foreign companies whose activities involve Korean data subjects or otherwise have a sufficient connection with Korea. A foreign company targeting Korean customers, offering services in Korea or processing Korean users' personal information may therefore be subject to the Personal Information Protection Act ("PIPA"), even if incorporated or operating servers outside Korea.

PIPA regulates the collection, use, provision, outsourcing, retention, destruction and cross-border transfer of personal information. Foreign companies processing Korean users' personal information must comply with Korean requirements regarding consent, notification, purpose limitation, security measures, privacy policies and data subject rights, unless a statutory exception applies.

Choice-of-law clauses do not necessarily exclude Korea's mandatory data protection rules. Korean courts have recognised that statutory protections for Korean users may apply even where a contract provides for foreign law, particularly in consumer-facing online services.

Cross-border transfers are permitted only where a statutory basis exists, including:

- separate consent from the data subject;
- a statutory, treaty-based or international legal basis;
- transfer to a jurisdiction recognised as providing an adequate level of protection;
- standard contractual clauses or other recognised safeguards; or
- other grounds permitted under PIPA.

The Personal Information Protection Commission ("PIPC") may order suspension of overseas transfers

that violate PIPA or pose a significant risk to data subjects.

Korea has received an EU adequacy decision and participates in the APEC Cross-Border Privacy Rules framework.

Accordingly, the Korean data protection law has a practical extraterritorial effect where foreign companies process Korean users' personal information or target the Korean market, while cross-border transfers remain subject to specific statutory requirements.

### 8.3 Role and Authority of the Data Protection Agency

The principal data protection regulator in Korea is the Personal Information Protection Commission ("PIPC").

The PIPC is an independent central administrative agency established under the Personal Information Protection Act ("PIPA"), responsible for formulating, supervising and enforcing Korea's data protection framework.

Its principal functions include:

- establishing national data protection policy;
- issuing guidance and interpreting PIPA;
- supervising compliance by public and private sector data controllers;
- investigating suspected violations and data breaches;
- overseeing cross-border transfers;
- operating dispute resolution mechanisms; and
- promoting international cooperation on data protection.

The PIPC has broad investigative and enforcement powers, including requesting information, conducting inspections ordering remedial measures, imposing administrative fines and penalty surcharges, making criminal referrals, publishing enforcement outcomes where permitted by law and suspending overseas data transfers that violate PIPA or pose significant risks to data subjects.

The PIPC also oversees public-sector personal information files, privacy impact assessments, privacy certification systems and the personal information dispute mediation framework.

Although the PIPC is the principal privacy regulator, sector-specific regulators may also have jurisdiction, including financial regulators for credit information and communications authorities for network security.

Accordingly, the PIPC serves as Korea's central data protection authority, exercising broad policy-making and enforcement powers, including oversight of cross-border data transfers.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

No single omnibus reform is expected to overhaul the Korean legal system. However, several areas remain subject to active legislative and regulatory development.

In technology and data, the most significant development is the implementation of Korea's AI regulatory framework. The AI Basic Act establishes a general framework for AI governance, including obligations related to high-impact AI, transparency, safety and reliability, with implications for data protection, consumer protection, employment, financial services and technology compliance.

Data protection law also continues to evolve. Amendments to the Personal Information Protection Act focus on governance, security, cross-border transfers, automated decision-making and privacy officers, while enforcement by the Personal Information Protection Commission is becoming more active.

Corporate law reforms continue to focus on directors' duties, shareholder protection, virtual shareholders' meetings and corporate governance. In tax, Korea has implemented the OECD Pillar Two framework, including the Income Inclusion Rule and domestic minimum top-up tax, with further technical guidance expected.

Competition law reforms continue to focus on digital platforms, online marketplaces, merger control in data-driven markets and stronger enforcement by the

Korea Fair Trade Commission. Employment law reform remains focused on labour representation, subcontracted workers, collective bargaining, working-time flexibility and protection of vulnerable workers. In IP, AI, software, data and trade secret protection remain key areas of reform.

Accordingly, while Korea's core legal framework is expected to remain stable, continued reforms are anticipated in AI, data protection, competition, corporate governance, tax, labour law and technology-related intellectual property.

# Trends and Developments

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## Introduction

Over the past two years, South Korea has moved quickly to become a major hub for Artificial Intelligence (AI) in Asia. In doing so, the government is shifting its approach away from outdated "perimeter security" (simply blocking outside connections) toward a modern system focused on safe data use. A primary example of this change is the Framework Act on Artificial Intelligence and the Establishment of a Foundation for Trust, known as the AI Basic Act, which officially took effect in January 2026 and establishes the basic legal rules for AI.

However, South Korea's actual AI market involves much more than just this single law. Multiple government agencies are working together on a sweeping update to the country's digital landscape. These agencies include:

- the Financial Services Commission (FSC);
- the Financial Supervisory Service (FSS);
- the Personal Information Protection Commission (PIPC); and
- the National Intelligence Service (NIS).

Together, they are changing several major policy areas at once. They are dismantling a decade-old rule that strictly separated corporate networks from the outside internet, consolidating the security rules for public cloud computing and buying massive amounts of computing hardware to build national tech independence. For companies and legal professionals, operating successfully in South Korea now requires a clear understanding of how these practical changes affect everyday compliance and business strategy.

## The Architecture of the AI Basic Act: Minimal Enforcement and Administrative Grace Periods

The AI Basic Act serves as the legal foundation for South Korea's AI market. Unlike the European Union's strict risk-classification model under the EU AI Act, which requires extensive government evaluations before a tool can even launch, South Korea uses an administrative style focused on "minimal enforcement". The Ministry of Science and ICT (MSIT) has stated that its priority is to boost industrial growth rather than to punish companies. To give companies sufficient time to prepare, the MSIT has established a mandatory grace period of at least one year from the launch date, during which no active administrative fines will be issued. Instead, officials will focus on education and compliance guidance.

Even with this flexible approach, the Act creates specific legal responsibilities that companies must meet, as outlined below.

### *AI transparency and labelling mandates*

Companies that offer generative AI products or services must make sure users know they are interacting with an AI system. The outputs must be clear and verifiable by both humans and machines. While this labelling rule applies only to the businesses selling the tools, failing to provide a proper notice can result in administrative fines of up to KRW 30 million.

### *High-impact AI operational standards*

AI systems used in important socioeconomic tasks (such as credit scoring and loan reviews by commercial banks) are classified as "High-Impact AI". Businesses operating these systems must follow a structured five-pillar framework:

- risk management – setting up and executing formal risk-management plans;
- explanation – creating automation standards to explain how the AI makes decisions;
- user protection – putting active measures in place to safeguard consumers;
- human oversight – maintaining continuous human supervision over AI; and
- record-keeping – documenting and maintaining clear records of all safety measures.

Under Articles 40 and 43 of the Act, noncompliance with these High-Impact AI rules does not incur immediate fines. Instead, a business can face administrative fines of up to KRW 30 million only if it fails to follow a formal corrective order issued by the MSIT.

### *Mandatory appointment of a domestic representative*

For foreign technology companies and multinational corporations entering South Korea, Article 36 of the AI Basic Act introduces an important local presence rule. Foreign AI businesses that do not have a registered

physical address or local office in South Korea but meet certain thresholds for revenue, user numbers or data volume must legally appoint a domestic representative and report the representative to the MSIT. This representative serves as the local contact for government inquiries, data requests and compliance issues. Under Article 43 of the Act, failing to appoint or report a local representative bypasses the corrective order phase and directly triggers an administrative fine of up to KRW30 million.

To help companies handle these new responsibilities, the MSIT opened an AI Basic Act Support Desk and a specialised consultative body in early 2026 to resolve conflicting rules across different government ministries.

## Data Governance: PIPC's "AI Special Exemption" Framework

South Korea's personal data rules under the Personal Information Protection Act (PIPA) have long been among the strictest in the world, creating high barriers for global cloud providers due to rigid consent requirements and stringent cross-border data transfer policies. However, the rise of large language models (LLMs) has forced the government to pivot toward data utility.

The Personal Information Protection Commission (PIPC) is driving this change by applying its "Guidelines on Personal Data Processing for the Development and Utilisation of Generative AI". This guide divides the AI development lifecycle into four operational phases: purpose definition, strategy formulation, AI training/development and system deployment/management. Two main mechanisms help streamline data processing across these steps:

### *The "AI Special Exemption" regime*

To address the lack of high-quality training data, the PIPC is working on an amendment to PIPA targeted for final approval by the fourth quarter of 2026. This update will create a clear legal pathway for using non-pseudonymised personal data (data that still contains identifying details) for AI training. To qualify, the data use must serve a verified public interest or social benefit, undergo prior review and run entirely within a secure, isolated cloud environment.

### *Fast-track processing mechanism*

To support developers, the PIPC is deploying an accelerated review system. Businesses can submit data exemption applications through a unified government portal and receive a formal decision within 30 days. For applications that feature identical or highly similar technical profiles, the decision timeline drops to just 15 days, drastically reducing time-to-market friction.

### *The relaxation of financial network segregation: transitioning to SaaS and Zero Trust*

For more than ten years, South Korea's financial sector was legally cut off from the global internet. Absolute physical network segregation rules enforced under Article 21 of the Electronic Financial Transactions Act (EFTA) and Article 15 of the Electronic Financial Supervisory Regulations (EFSR) effectively blocked financial firms from using global cloud systems and Software-as-a-Service (SaaS) tools within their internal business networks.

This strict regulatory wall was updated on April 20, 2026, when financial authorities revised the EFSR Enforcement Rules. Under this modernised approach, cloud-based SaaS is now explicitly recognised as a formal exception to the legacy network separation rule. This means financial institutions can deploy these outside software tools directly on internal office computers without going through the slow regulatory sandbox process.

To safely use this new flexibility, financial firms and software vendors must meet three major compliance criteria:

- strict data constraints – the network exception is limited to business tasks that do not process sensitive personal information, unique resident numbers or personal credit histories;
- mandatory security vetting – financial institutions may deploy only SaaS tools that have been explicitly audited and cleared by designated state security vetting agencies; and
- continuous internal governance – banks must install advanced endpoint protections on user devices and run semi-annual internal security

checks, which must be formally reported to their internal information security committee.

This deregulation is paired with an updated enforcement system. The FSS has launched the Financial-IT Incident Response Surveillance Control-Tower. This platform serves as a real-time, interactive communication system that links banks, virtual asset platforms and cloud providers. Instead of relying on slow, one-way paperwork, the platform automatically sends threat alerts to financial firms and allows them to report their mitigation results instantly.

Furthermore, the FSC introduced a streamlined procedure for modifying generative AI models within the financial sector. Financial firms are now exempt from full regulatory sandbox reviews for low-risk updates. The Financial Security Institute (FSI) separates these model changes into three clear categories:

- minor changes – technical updates (like simple version upgrades where the security setup is unchanged and data streams are stable) are granted immediate deployment upon filing a written notice;
- moderate changes – updates that alter the scope or nature of the AI's output while keeping the core security setup identical are allowed after the bank has established internal technical controls and completed an FSI security review; and
- substantial changes – modifications that fundamentally alter the security design or core systems remain subject to the full, formal amendment and approval process under the older sandbox rules.

To assist firms with this transition, the FSI published its Financial Security Level Diagnostic Framework Guide, based on international standards. This tool requires Chief Information Security Officers (CISOs) to audit and log their security maturity, shifting corporate responsibility toward verifiable, self-managed security.

### Public Sector Cloud Reform: CSAP Consolidation and N2SF Alignment

For global technology vendors and hyperscale cloud providers, entering South Korea's public procurement market historically required navigating a dual-track security verification system. Providers had to obtain a Cloud Security Assurance Program (CSAP) certification from the MSIT while concurrently undergoing a separate security review by the National Intelligence Service (NIS).

This overlapping administrative process is being removed through joint restructuring by the NIS and MSIT. The reform consolidates public cloud market entry into a single verification system run entirely by the NIS, simplifying the application pathway. Cloud services that already hold a valid CSAP certification will retain their credentials during a transitional period. Following updates to the national cloud security guidelines, a one-year formal grace period will begin, with the unified NIS verification protocol scheduled to become fully mandatory in the second half of 2027.

This unified verification process coordinates directly with the National Network Security Framework (N2SF) data classification system. The N2SF replaces blanket internet bans with an agile, data-centric tiering model, as outlined below.

- Classified (C) Tier: Applies to high-security national data; requires strict physical isolation and restricts outside internet access.
- Sensitive (S) Tier: Applies to standard internal administrative data; allows external private cloud connectivity under verified security controls.
- Open (O) Tier: Applies to public information; allows unrestricted use of private and international cloud architectures.

While this structural alignment opens the "sensitive" and "open" public sectors to global cloud service providers utilising international standard control frameworks, the consolidation of oversight within national security authorities introduces specific compliance responsibilities. The unified regime places a heightened focus on technical infrastructure resilience, localised incident-response capabilities and strict data residency mandates for core administrative information. Moving forward, long-term technology infrastructure investments in the public sector will depend on a provider's ability to align its system architecture with these evolving data-centric oversight standards.

## Infrastructure Investment and the Rise of Sovereign Computing

South Korea's regulatory changes are backed by an aggressive, state-led industrial policy designed to build national independence in computing power. The government treats computing capacity as a vital national resource, similar to advanced semiconductor manufacturing.

The main tool driving this expansion is the KRW150 trillion Public Growth Fund. Managed by the FSC, the fund focuses on seven strategic areas across AI, semiconductor and battery markets, deploying over KRW30 trillion in initial capital. Of this first tranche, KRW6 trillion is legally earmarked for the AI sector to fund next-generation AI chip manufacturing and massive graphics processing unit (GPU) data clusters.

This public funding runs alongside historic hardware purchase deals. A major global hardware supplier has signed an agreement to deliver 260,000 high-performance GPUs directly to the South Korean market, valued at roughly USD10.4 billion (KRW15 trillion). The distribution of this sovereign computing capacity is strategically split among five key public and private entities to strengthen the nation's core industries:

- the public sector – 50,000 units are allocated to the government for the National AI Computing Centre and public administrative infrastructure;
- semiconductor manufacturing – 50,000 units are designated for integrating AI across advanced semiconductor manufacturing processes;
- next-generation memory – 50,000 units are allocated to a leading memory chip producer to develop next-generation high-speed hardware;
- autonomous mobility – 50,000 units are assigned to a major automotive manufacturer for autonomous driving vehicle testing and validation; and
- sovereign cloud platforms – 60,000 units are allocated to a top-tier domestic cloud provider to build independent, local foundation AI models.

To host these high-density hardware assets, a leading domestic IT service provider is heading a specialised special-purpose company (SPC) consortium to construct the National AI Computing Centre (NACC) in Jeonnam. This facility is engineered to house more than 15,000 high-performance GPUs by 2028, providing subsidised, secure computing power to local research institutions, startups and small- and medium-sized enterprises. These massive industrial infrastructure projects require transactional lawyers to draft complex energy off-take deals, joint venture licensing structures and public-private partnership (PPP) compliance contracts that successfully navigate local zoning laws and tight power-grid regulations.

## Conclusion: Strategic Roadmap for Market Entry and Compliance

South Korea's rapid transformation into an AI-driven digital economy requires a holistic approach to regulatory compliance and market strategy. Business leaders, tech developers and investors can no longer evaluate market risks purely through the baseline text of the AI Basic Act. The true compliance realities and ultimate commercial advantages lie in understanding how shifting administrative guidelines, sectoral data utility programs and massive infrastructure overhauls work together.

To successfully navigate this evolving landscape, market participants should focus on four actionable strategies, as outlined below.

- Strategic use of administrative grace periods: Enterprises should leverage the active one-year grace period under the AI Basic Act to design and deploy necessary machine-readable and human-readable labelling notices for generative products. This window should also be used to self-audit any operational algorithms (particularly in credit, lending or core resource allocations) against the newly defined high-impact AI risk criteria.
- Optimisation of data ingestion pipelines: Organisations must align their ongoing data management with the PIPC's four-phase generative AI lifecycle guidelines. Looking ahead, preparing internal technical setups to take advantage of the upcoming late 2026 PIPA amendments will allow businesses to utilise the new fast-track data exemptions by structuring clear, public-interest impact assessments.
- Transition to zero-trust security models: For financial firms and global technology vendors, moving away from legacy perimeter-isolation systems is

now an operational necessity. Utilising the FSI's diagnostic framework helps document organisational data flows, transit encryption and endpoint protection controls required to maintain the newly introduced internal network exceptions.

- Alignment with public cloud integration timelines: For technology providers targeting the public procurement sector, tracking the consolidation timeline ahead of the 2027 mandatory unified switch is vital. Software designs should be optimised to fit seamlessly into the "Sensitive (S)" and "Open (O)" public data categories while documenting robust localised operational capacities.

As South Korea aggressively builds out its sovereign computing systems and revises its technology laws, businesses that approach the market with an integrated view of AI governance, data utility, cloud security and infrastructure regulations will avoid compliance friction while capturing strong, sustainable market share.

# SPAIN




## Trends and Developments

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**Anaford Abogados** is a boutique law firm built for clients who expect more than technical excellence. Advising investors, family offices and internationally mobile private clients, the firm's multidisciplinary team operates at the intersection of sophisticated business law and private wealth advisory. Its practice spans the full spectrum of corporate and private client matters, including M&A, private equity and venture capital, international taxation, succession planning, wealth structuring and capital markets. What distinguishes the firm is not only the depth of its expertise, but the quality of its judgement. Combining technical precision with commercial acumen and strategic foresight, the team anticipates complexity before it becomes a challenge, transforming legal risk into opportunity and long-term value. Every mandate is partner-led, and every relationship is built for the long term. With offices in Valencia, Madrid, Zurich and San Diego, Anaford delivers genuinely international capability while preserving the responsiveness, agility and personal attention that define a premier boutique practice.

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## Introduction: The International Attractiveness of the Spanish Market

For many years, Spain has been establishing its reputation as one of the leading and most stable destinations for cross-border capital within Europe.

Joseph Oughourlian, chairperson of Amber Capital and the Prisa Group, accurately synopsised how Spain is re-establishing itself within the global community as "…an attractive country for investment. [Spain] has reduced its major [macroeconomic] imbalances" (Spain Investors Day, an international forum held at the start of 2026).

This statement reflects the general sentiment amongst foreign investors, who perceive the Iberian market as offering legal certainty and renewed commercial dynamism. This widespread optimism regarding Spain's financial and industrial markets is firmly supported by key macroeconomic indicators.

The projections set out in the latest country report from the International Monetary Fund (IMF) confirm a clear paradigm shift: Spain led economic growth during FY 2025 within the euro area. Economic indicators suggest that Spain is set to maintain its leading position throughout 2026, standing out from the weaker performance of other major eurozone economies.

This is confirmed by an analysis of global indicators compiled by the prestigious *Guide to Business in Spain*, a leading macroeconomic and legal reference manual designed to support foreign investors and large corporations published annually by the Spanish Foreign Trade Institute (*Instituto Español de Comercio Exterior* – ICEX). Spain currently ranks as the world's 15th largest economy in terms of GDP and has advanced in the global rankings to ninth place in terms of foreign direct investment (FDI). This privileged position reflects the high level of long-term confidence inspired by Spain's corporate and institutional landscape.

This situation has created an ideal environment for growth, as reflected in data published by the Venture Capital Institute in early April. In the first quarter of 2026, a total 300 investments were registered in Spain across the four private equity segments (buyout and growth, seed and venture capital, special situations and debt).

Seed and venture capital led the way, accounting for 214 transactions (around 71% of the total). Buyout and growth ranked second, with 39 acquisitions (13%). In addition, there were 38 debt investments (12% of the total), representing a 21% increase in comparison to 2025. Finally, nine special situations deals (compared to eight in 2025) were executed, accounting for 3% of the total transactions.

In terms of geographical distribution, Cataluña and Madrid account for the bulk of the total transaction volume. According to the *Spanish Journal of Private Equity & Venture Capital* (*Revista Española de Capital Riesgo*), out of a total of 300 transactions carried out in the first quarter of 2026, Cataluña ranked as the leading business destination, accounting for 28% of all transactions (84 acquisitions), ranking ahead of Madrid (26% of all recorded transactions; 77 in total). The Basque Country trailed in third place, with 12% of reported transactions (36 investments). However, regions such as the Canary Islands, Andalucia and the Balearic Islands have emerged as new strategic hubs for corporate investment, leading the way in terms of corporate relocations.

In line with the previous trend, Madrid led FDI in Spain from January to March 2026, according to the statistics published by the Ministry of the Economy on its open data portal (DataInvex), with EUR3.37 billion of gross foreign investment recorded in the region. Catalonia (EUR1.54 billion) and Valencia (EUR486.81 million) were the second- and third-placed regions in the country in terms of gross foreign investment.

Finally, when analysing foreign investment by country of origin, the United States (EUR1,359.16 billion) leads in gross investment inflows, whereas the United Kingdom ranks first regarding net investment (gross investment minus divestment, EUR1.24 billion).

## Business Creation

This section briefly analyses the impact on business creation of one of the most relevant structural changes in company incorporation in Spain – the implemen-

tation of electronic processes – within a favourable macroeconomic and social environment.

### *Electronic incorporation*

Spain has recently adopted legal reforms aimed at simplifying administrative procedures and removing barriers to entry. Start-ups have undergone a particularly significant transformation. This has been strongly driven by the implementation of the Create & Build Act (*Ley Crea y Crece*) (18/2022), a landmark piece of legislation strengthened by Spain's Law 11/2023 on the digitisation of notarial procedures, which has enabled the incorporation of companies entirely online, as well as by Law 28/2022 (*Ley de Start-ups*) on the promotion of start-ups. This regulatory framework has revitalised the business sector, as well as helping consolidate a start-up ecosystem that is highly competitive on the international stage.

The aforementioned legislative developments have completely transformed traditional corporate structures through two substantial operational changes that redefine the rules of company creation.

- The previous process for the incorporation of limited liability companies (the most widely used legal form in Spain) has been abolished, allowing them to be incorporated with a share capital of just EUR1. This measure minimises establishment costs, aligning Spanish company creation with Anglo-Saxon corporate standards.
- Comprehensive digitalisation: The online process for company establishment – via the Single Electronic Document (*Documento Único Electrónico* – DUE) – harmonises procedures involving notaries, mercantile registers and the Tax Agency through a single digital portal. This procedure drastically reduces the time required for registration and obtaining a tax identification number to 24–48 hours. In addition, standardised templates for articles of association are available to the public to streamline the assessment process of the Mercantile Registries (which, under the standard company incorporation procedure, have 15 working days to register and approve the incorporation of any company).

Although these technical advances have significantly facilitated initial administrative procedures, sector reports – such as the prestigious Global Entrepreneurship Monitor Spain National Report 2025–2026 by the National Entrepreneurship Observatory (the "GEM Report 2025–26") – show that while these measures have facilitated business creation, they are not the root cause of the upturn in business activity. It is widely accepted amongst experts in the business sector that the option to establish companies with share capital of EUR1 has had more of a psychological than an operational effect. Most founders continue to prefer limited companies with the traditional EUR3,000 share capital due to liability concerns and commercial image considerations. As a result, these measures have helped democratise access to entrepreneurship, yet they are not the driving force behind business start-ups in Spain.

### *A favourable situation*

The significant increase in the number of companies being incorporated (an increase of over 13% in 2026, according to statistics from the Mercantile Registries in Spain) and the general upturn in business activity are mainly due to the favourable macroeconomic and social climate, driven, amongst other things, by the following factors.

- Cultural change and artificial intelligence (AI): Spain has a well-established culture of entrepreneurship. According to the GEM Report 2025–26, the rate of early-stage entrepreneurial activity has risen to 7.8% (compared to 7.2% in the previous year), fuelled by professionals with higher education qualifications and senior founders with previous corporate experience who are seeking to capitalise on new opportunities. With a more highly educated pool of new entrepreneurs, AI and data analytics are playing a key role in reducing the costs of digital business models. Almost three out of every ten new start-ups operate with integrated AI tools from the outset, enabling highly competitive and efficient micro-enterprises to be launched onto the market instantly.
- Foreign workforce and digital nomads: The attraction of international talent and visas for digital nomads have turned Spain into a hub for skilled human capital. These visas take the form of resi-

dence and work permits that allow foreign professionals to live in Spain whilst working remotely for companies or clients outside the country. One of the main attractions of this visa is access to a special tax regime, popularly known as the "Beckham Law", which has been modified as follows: (i) instead of paying the standard progressive personal income tax (which can exceed 47%), digital nomads and foreign workers are taxed at a flat rate of 24% on employment income not exceeding EUR600,000 per year; and (ii) certain foreign-sourced income, such as dividends, rental income or capital gains obtained outside Spain, is not usually subject to taxation in Spain.

- European funds: Spain's ambitious plan for large-scale digitalisation, supported by Next Generation EU funds and implemented through tools such as Kit Digital, has resulted in a massive indirect injection of liquidity into the domestic market. This financial stimulus has altered the landscape of self-employment in two major ways: (i) encouraging the formation of companies – thousands of self-employed workers in the IT, marketing and consultancy sectors have transformed their individual businesses into limited companies to gain financial strength and access larger-scale projects; and (ii) a boom in the B2B system – there has been a huge increase in the number of micro-enterprises focused exclusively on meeting the operational needs of traditional SMEs, which are being driven towards accelerated digitalisation to remain competitive.

## Future Trends

Addressing Spain's structural strengths remains essential when analysing future trends regarding business incorporation in the country, as outlined herein. Furthermore, from a regulatory standpoint, Spain (in accordance with the legislative changes over the last decade outlined above) continues to consolidate its standing as a pioneer in corporate law tailored to 21st century demands. Accordingly, the overarching trend towards establishing a more transparent and public environment for business creation is explored below ("Potential regulatory changes").

### *Structural strengths*

There are several factors that suggest that, in 2026, Spain will continue to establish itself as a leading global destination for business development. Spain's appeal stems from numerous structural strengths and advantages, as well as optimal macroeconomic conditions.

- Strategic hub: Spain is one of the main hotspots for corporate and financial links between the EU and the Latin American market, attracting both (i) global multinational corporations and (ii) corporations from the Latin American region seeking to establish operational and strategic bases in the country. The cultural and linguistic affinity shared with Latin American countries offers a unique competitive advantage. In February 2026, the Ibero-American Business Observatory, together with the Complutense Institute of International Studies at the Complutense University of Madrid, reported that Spain has the second-highest number of springboard companies of Latin American origin worldwide, behind only the United States.
- Sectors for FDI: The Ministry of the Economy shows on its open data portal (DataInvex) that, with respect to FDI in Spain during 2026, there is a clear pattern of capital allocation to high value-added sectors. International capital is prioritising information technology and telecommunications, driven by data centres and the boom in AI. Close behind is the energy transition and massive-scale sustainability projects, largely thanks to the development of green hydrogen infrastructure and solar farms. These investments benefit from strong regulatory support and decarbonisation incentives. Finally, the high-tech industrial manufacturing sector and the pharmaceutical industry round out the top three investment attractions, reinforcing Spain's position as a strategic industrial and technological hub within the EU.
- Ripening of the start-up ecosystem: The tech-based business landscape is highly consolidated, supported by a dense network of incubators and accelerators. In Spain, high-performance centres are increasingly being seen, not only providing seed capital but also acting as commercial validation hubs, helping start-ups achieve a 70% survival rate in their first five years. Some of the

best-known incubators and accelerators in Spain include Lanzadera (in Valencia), driven by the entrepreneur Juan Roig, and Wayra (in Madrid and Barcelona), Telefónica's corporate investment and innovation hub.
- Strong institutional backing: Business activity benefits from strong public support through leading organisations such as the National Innovation Agency (*Empresa Nacional de Innovación*, *SME*, *SA* – ENISA), the Spanish Foreign Trade Institute (*ICEX España Exportación e Inversiones* – ICEX), the Centre for Technological Development and Innovation (*Centro para el Desarrollo Tecnológico y la Innovación* – CDTI) and Red.es, in close co-ordination with the regional economic development agencies. At the start of the year, Spain announced the creation of a government-owned investment fund called *España Crece*, which would enable the Official Credit Institute (*Instituto de Crédito Oficial* – ICO) to inject up to EUR60 billion into the business sector, shifting its financial profile towards that of public investment. Consequently, all of the aforementioned stakeholders offer tailored and customised financial and direct investment instruments (such as traditional equity-linked loans without enforceable collateral, non-repayable grants for technology-intensive projects and new co-investment venture capital schemes), mitigating the impact of economic down cycles.
- Sophistication of the transactional ecosystem: The market has a network of first-class professional services, including specialist legal advisers and financial institutions with a solid track record, which lend maturity, security and fluidity to high-volume corporate transactions. The strength of this network is directly reflected in current investment statistics. The Spanish M&A and private equity market consistently records annual transaction volumes that exceed tens of billions of euros. This steady flow of foreign and domestic investment demonstrates the confidence that major global funds have in the country's service infrastructure and the rigour of local financial intermediaries.

### *Potential regulatory changes*

Regarding legislative proposals that could impact business creation, the Public Integrity Act stands out on the 2026 political agenda.

The preliminary draft on the Public Integrity Act, approved by the Council of Ministers on 17 February 2026, is currently at an early stage of parliamentary consideration. The initiative aims to strengthen the transparency and traceability of corporate ownership, in line with global trends in regulation and good corporate governance.

The proposal introduces several registration control mechanisms for limited liability companies that have generated considerable discussion within the legal and business communities, particularly due to the practical implications they could have for investment. The most noteworthy aspects are:

- the replacement of the traditional notarial instrument with standardised electronic documentation mechanisms for certain transfers of shareholdings;
- the attribution of constitutive effect to the registration of such transfers, with legal shareholder status linked to prior registration in the Mercantile Registry; and
- the granting of access to information regarding the company's ownership, and to companies' internal records.

If approved as currently proposed, these measures could increase the operational complexity of certain transactions and raise practical challenges in terms of execution times, as well as co-ordination with the Mercantile Registries and overall transaction confidentiality.

However, it is important to emphasise that the draft Act is at an early stage of the legislative process and will be subject to review and amendments. It is expected that the final text will incorporate the necessary adjustments to avoid practical uncertainties, while maintaining an appropriate balance between the transparency objectives pursued and the requirements of legal certainty, flexibility and efficiency.

## Final Considerations

Based on current economic assessments and expert analyses, Spain is projected to maintain a strong outlook for long-term investment and corporate activity. It has demonstrated a remarkable ability to transform

the macroeconomic climate into a favourable and attractive economic environment for investment.

In addition, it is essential to emphasise that sustained interest from domestic and foreign investors is not only due to the size or consumption potential of the Spanish market. What truly sets Spain apart is its role as a strategic platform for comprehensive international outreach. On the one hand, its unique geostrategic location within the political and economic framework of the EU affords it direct, tariff-free and highly interconnected access to a market of over 2.6 billion potential consumers across the Europe, Middle East and Africa (EMEA) region. On the other hand, this geographical advantage is naturally complemented by deep-rooted historical, regulatory, linguistic and cultural ties that indisputably position Spain as the gateway and ideal hub for businesses and investments seeking to expand safely into the Latin American market.

For all these reasons, the regulatory proposals currently under consideration should not be interpreted as a break on business activity. There are reasonable expectations that the parliamentary process for the organic Public Integrity Act will address the current operational uncertainties and preserve the balance between transparency and flexibility that businesses in Spain require. The sophistication of the country's network of legal professionals will enable it to absorb these new control requirements and transform them into a competitive advantage.

By combining a network of top-tier public and private sector players with strong legal certainty, Spain reaffirms its status as one of the safest, most sophisticated and most reliable jurisdictions for investment capital.

# SRI LANKA

## Law and Practice




**Contributed by:**
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# 1. Legal System

## 1.1 Legal System and Judicial Order

### Legal System

Sri Lanka has a hybrid legal system that draws from multiple legal traditions, including Roman Dutch law, English common law, statutory law and customary laws (such as Kandyan, Tesawalamai and Muslim personal laws). This pluralistic structure is a result of the country's colonial history and its diverse cultural and ethnic make-up.

While Roman-Dutch law remains the foundation of the common law, especially in private law matters, English common law principles influence areas such as commercial law, criminal procedure, evidence, administrative law and constitutional interpretation. In addition to written laws, Sri Lanka recognises the doctrine of judicial precedent, whereby decisions of the Supreme Court, as the highest court of the land, are binding on all lower courts. Decisions of the Court of Appeal are also binding on subordinate courts, though not on the Supreme Court or the Court of Appeal itself.

### Judicial Order

Sri Lanka's court system is hierarchical and constitutionally established, with specialised jurisdictions allocated across various tiers of courts.

The Supreme Court of the Democratic Socialist Republic of Sri Lanka is the apex court and exercises constitutional jurisdiction, final appellate jurisdiction, writ jurisdiction in limited matters, supervisory jurisdiction, and original jurisdiction in respect of fundamental rights under the Constitution.

The Court of Appeal has both appellate jurisdiction and writ jurisdiction, hearing appeals from the High Court of the Republic, and entertaining applications for writs such as certiorari, mandamus, prohibition, quo warranto and habeas corpus under the Constitution.

Each High Court of the Provinces exercises appellate and revisionary jurisdiction over all courts and tribunals within their respective province, and are vested with writ jurisdiction in terms of Article 154P of the Constitution. In addition, the High Court of the Western Province in Colombo has special original jurisdiction in:

- commercial matters, within the Western Province, where the value in dispute exceeds LKR50 million;
- applications under the Companies Act, No 07 of 2007 (including winding-up, derivative actions, etc);
- matters arising under the Securities and Exchange Commission of Sri Lanka Act, No 19 of 2021; and
- all proceedings under the Intellectual Property Act, No 36 of 2003, including infringement actions and cancellation of registrations.

The High Court of the Republic is vested with original criminal jurisdiction to try serious offences committed within Sri Lanka's territorial waters, including acts of piracy, marine pollution, illegal fishing, and unlawful acts against maritime navigation. It also exercises admiralty jurisdiction under the Admiralty Jurisdiction Act, No 40 of 1983, enabling it to adjudicate maritime claims including those related to ship arrests, cargo disputes, collisions, salvage, crew wages and ship mortgages.

The District Courts are courts of first instance for all civil matters, including family law, succession, contract disputes, delict, taxation and land cases.

Small Claims Courts have jurisdiction over minor civil claims not exceeding LKR2 million and have simplified proceedings to reduce caseloads in District Courts.

Magistrates' Courts exercise original criminal jurisdiction over summary offences and minor statutory violations. In addition, they are vested with non-summary jurisdiction to conduct preliminary inquiries in respect of indictable offences that are to be tried before the High Courts of the Provinces. These inquiries are conducted to determine whether there is sufficient evidence to commit the accused for trial.

Primary Courts exercise limited original jurisdiction in both civil and criminal matters. Their jurisdiction extends to offences under local government laws and by-laws enacted by Municipal Councils, Urban Councils and Pradeshiya Sabhas. In addition, they are empowered to hear disputes relating to the posses-

sion of land where such disputes are likely to result in a breach of the peace.

## 2. Restrictions on Foreign Investments

### 2.1 Approval of Foreign Investments

#### General Requirements

Foreign investment in Sri Lanka is primarily governed by the Foreign Exchange Act, No 12 of 2017, and is subject to certain sector-specific restrictions, approvals and compliance requirements. Foreign investors seeking to invest in Sri Lanka must comply with the Foreign Exchange (Classes of Capital Transactions Undertaken in Sri Lanka by a Person Resident Outside Sri Lanka) Regulations No 2 of 2021 and other directives issued under the Foreign Exchange Act.

While Sri Lanka generally adopts a liberal policy toward foreign direct investment (FDI), full foreign ownership is not permitted in certain sectors, and investment in others may require special approval, or minimum capital thresholds. Prohibited or restricted areas for foreign investment typically include retail trade with less than USD5 million investment, coastal fishing, pawnbroking and certain regulated professions (eg, legal practice). These restrictions are periodically revised by the government, and reference must be made to the most recent regulations to determine the permissibility of investment in a given sector.

All inward remittances for investment purposes must be routed through Inward Investment Accounts (IIAs) opened with licensed commercial banks in Sri Lanka and must be properly documented. Failure to comply with these procedures may restrict the repatriation of returns or capital at a later stage.

#### Board of Investment of Sri Lanka

The Board of Investment of Sri Lanka (BOI) is the country's principal investment promotion agency, historically established under the Board of Investment of Sri Lanka Law, No 4 of 1978. While that Law has been repealed by the Economic Transformation Act, No 45 of 2024, which provides for the BOI's functions to be reconstituted under new bodies including the Economic Commission of Sri Lanka and Investment Zones Sri Lanka, the provisions affecting the BOI have not yet been brought into force. The BOI accordingly continues to operate as a central facilitation point for foreign and domestic investors under transitional arrangements, with existing BOI approvals remaining valid. Approval from the BOI is typically sought where:

- the investment qualifies under a BOI-approved sector or scheme;
- fiscal incentives such as duty exemptions are being claimed;
- strategic development status is being pursued under the Strategic Development Projects Act; or
- a foreign investor seeks to increase their shareholding percentage or obtain approval for 100% foreign ownership in sectors where ownership is otherwise limited or restricted.

BOI approval is not mandatory for all foreign investments, particularly for minority equity participation in non-restricted sectors. In addition, investments approved by the BOI are entitled to operational conveniences such as streamlined import/export procedures, land allocation in industrial zones, and assistance with obtaining work visas for expatriate staff.

#### Colombo Port City Economic Commission

Foreign investments made within the Colombo Port City Special Economic Zone are governed by a distinct regulatory framework under the Colombo Port City Economic Commission Act, No 11 of 2021. The Colombo Port City Economic Commission serves as the single-window regulator for all business and investment activity within the zone.

Any person wishing to undertake a business, commercial or financial activity in Port City must first obtain a business registration and relevant authorisations or licences from the Commission. Unlike the general regime administered by the BOI, Port City offers a highly liberalised environment with no foreign ownership restrictions, guaranteed capital and profit repatriation, tax incentives, and exemptions from certain domestic laws, subject to the specific guidelines and rules issued by the Commission.

All remittances into and out of Port City must be routed through Port City Investment Accounts (PCIAs), and compliance with the Commission's directives is

mandatory for continued operation. Investors seeking to benefit from the Port City regime must ensure that their project or enterprise aligns with the permitted activities and is duly structured to fall within the scope of the Special Economic Zone as defined under the Port City Act.

### Additional Considerations

In addition to the foregoing, sector-specific approvals may be required from relevant regulatory bodies such as:

- the Central Bank of Sri Lanka, in respect of regulated sectors such as finance and banking;
- the Telecommunications Regulatory Commission of Sri Lanka, for ventures involving telecommunications infrastructure and services;
- the National Medicines Regulatory Authority, for the manufacture, importation, marketing and distribution of pharmaceuticals, medical devices and borderline products; and
- the Central Environmental Authority, for investments involving industrial activity or development projects requiring Environmental Impact Assessments (EIAs) or other forms of environmental clearance.

### Compliance With Listing Rules

In the event of investments in companies that are listed on the Colombo Stock Exchange, compliance with the Listing Rules of the Colombo Stock Exchange will be required. The prior approval of the Securities and Exchange Commission of Sri Lanka is required for any private placement of shares in a listed company if the proposed share issuance will result in an increase of 20% or more of the company's post-issuance outstanding shares.

## 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

Foreign investors may generally invest in Sri Lanka without the requirement for obtaining any special purpose approvals, provided that the investment in made in compliance with the Foreign Exchange Act, No 12 of 2017, and regulations. Nevertheless, if the proposed investment requires BOI approval or if the foreign investors want to set up their business within the Colombo Port City, they must submit an application along with a detailed business proposal, including information about the nature of the project, proposed shareholding, and funding arrangements. Once the application is reviewed and approved, the investor will enter into a formal investment agreement with the BOI or the Port City Commission.

If an investor proceeds without obtaining prior approval, the investment may be treated as unauthorised. This could lead to restrictions on repatriation of profits and capital, possible penalties or regulatory enforcement, and legal complications. Procedural non-compliance may arise in various forms, including:

- failure to channel foreign investment through an IIA;
- undertaking investments in restricted sectors without prior approval;
- engaging in foreign exchange transactions without the prior approval of the Central Bank of Sri Lanka where such approval is legally required; and
- breach of conditions imposed under the BOI or Port City agreements, or violations of sector-specific approvals (eg, operating outside permitted business activities).

Where such non-compliance is detected, the relevant regulatory authorities (such as the Director of the Department of Foreign Exchange, the Central Bank of Sri Lanka, the Board of Investment of Sri Lanka, the Securities and Exchange Commission of Sri Lanka, etc) may initiate investigative or enforcement action. In some cases, a compoundable offence may be resolved by payment of a penalty determined by the relevant authority. However, for more serious or wilful breaches, sanctions may include:

- monetary fines;
- suspension or cancellation of licences or investment approvals;
- prohibition on repatriation of profits or capital;
- forfeiture of improperly held assets; and
- criminal prosecution, in cases of deliberate fraud, misrepresentation or evasion.

Furthermore, non-compliance may adversely affect investor credibility and future dealings with regulatory authorities. In cases involving BOI or Port City registered enterprises, the BOI or the Commission

may also exercise its right to terminate the investment agreement and recommend cancellation of associated approvals and exemptions.

### 2.3 Commitments Required From Foreign Investors

Foreign investors operating under the BOI or the Colombo Port City Economic Commission are required to comply with a range of legal, regulatory and contractual obligations. These typically include remitting capital through designated investment accounts, complying with sector-specific or project-specific conditions, and meeting any timelines or milestones agreed with the relevant authority. Investors must also ensure ongoing compliance with Sri Lankan laws relating to taxation, labour, environmental protection and company administration.

Where approvals or incentives are granted under a BOI agreement or Port City registration, the investor is also expected to honour any commitments set out therein, such as capital infusion deadlines, local employment targets, or reporting obligations. Non-fulfilment of such commitments may result in withdrawal of approvals, suspension of incentives, or other regulatory sanctions.

### 2.4 Right to Appeal

The right to appeal or challenge decisions affecting foreign investment in Sri Lanka depends on the applicable regulatory framework and the nature of the administrative or contractual relationship between the investor and the regulatory agency.

For investments under the BOI or the Colombo Port City Economic Commission, investors may seek administrative review of adverse decisions by making representations to senior officials or the Director General of the BOI or of the Colombo Port City Economic Commission. This internal review process is often the first recourse and is typically expected to be exhausted prior to initiating formal dispute resolution by referring the matter to arbitration.

In addition, the affected parties may seek judicial redress by way of a writ application to the Court of Appeal, challenging the legality or procedural propriety of the administrative act. In addition, if the decision amounts to an infringement of a fundamental right, a fundamental rights application may be filed before the Supreme Court, subject to the 30-day time limit.

Sri Lankan administrative law principles generally require that internal or administrative review mechanisms be pursued first, before resorting to court action, unless such remedies are unavailable, futile or have been unreasonably delayed.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

The most common legal structure adopted by foreign investors in Sri Lanka is the limited liability company incorporated under the Companies Act, No 7 of 2007. This may take the form of a private limited company (designated "(Private) Limited") or a public limited company (designated "PLC") depending on the scale and intended nature of operations.

Foreign investors typically choose their legal structure based on the nature of the business, regulatory requirements, sector-specific approvals, tax considerations, and whether they wish to benefit from BOI or Port City concessions.

#### Private Limited Company

A private limited company is generally preferred due to fewer regulatory burdens, and it requires a minimum of one shareholder and one director, with no restriction on foreign shareholding unless the business falls within a restricted sector. It offers limited liability to its shareholders and there is no minimum capital requirement. This structure is best suited for greenfield projects, subsidiaries of foreign companies, or most business cases due to its simplicity and flexibility.

#### Public Limited Company

A public limited company is permitted to offer its shares and other securities to the public and is generally used by larger enterprises, particularly where the investors intend to raise capital from the market. If a public company seeks to list its shares on the Colombo Stock Exchange (CSE), the Listing Rules and Securities and Exchange Commission (SEC) guidelines impose a minimum capital requirement

and minimum public float, which indirectly requires a larger shareholder base. This, however, is a regulatory requirement for listing, not incorporation.

### Company Limited by Guarantee

A company limited by guarantee is a special category used primarily for non-profit purposes, such as charities, professional associations, NGOs, chambers of commerce, and certain educational or cultural institutions. These companies do not have share capital or shareholders but are formed by guarantors, who undertake to contribute a specified amount to the assets of the company in the event of winding up. They require a minimum of two members and two directors, and there is no restriction on foreigners forming guarantee companies.

### Overseas Companies

Foreign companies may also establish a branch office, a project office or a liaison office in Sri Lanka. A branch office is permitted to carry out commercial activities similar to that of the parent company, and a project office is for carrying out a particular project by the parent company; however, both of these require a minimum inward remittance of USD200,000. A liaison office, by contrast, does not have any minimum investment requirement, but is restricted to non-profit-generating activities such as communications, market research, and co-ordination (ie, cannot engage in trade or revenue-generating operations).

### Offshore Companies

For doing business within the Colombo Port City Special Economic Zone, entities must register with the Colombo Port City Economic Commission and operate in accordance with the prescribed rules for businesses within the zone. The Colombo Port City regime permits 100% foreign ownership and provides for a simplified registration process tailored to international service-oriented businesses.

## 3.2 Incorporation Process

Incorporating a company in Sri Lanka under the Companies Act, No 7 of 2007 involves a series of procedural steps and generally takes between seven and 14 working days, depending on the complexity of the structure and the efficiency of document submission.

The process begins with the reservation of a unique company name, which is done by submitting an online request through the e-ROC online portal of the Registrar General of Companies. Name approval typically takes three to five working days. Once approved, the following incorporation documents must be prepared and submitted:

- Form 1 (limited liability company)/Form 5 (company limited by guarantee) – company registration form (includes company details);
- Form 18 – consent and certificate of each director;
- Form 19 – consent and certificate of the secretary; and
- articles of association – either the standard version provided in the Companies Act or a customised version.

These documents, along with the prescribed registration fee, must be submitted online through the e-ROC online portal of the Registrar of Companies. If all documentation is in order, the Certificate of Incorporation is issued within five to 12 days.

Following incorporation, post-registration formalities include:

- opening of the IIA and a corporate bank account;
- obtaining a Taxpayer Identification Number (TIN) from the Inland Revenue Department; and
- registering for VAT, EPF/ETF or other statutory requirements, depending on the nature and size of the business.

Since 30 March 2026, incorporation is not treated as complete until the company has also filed its beneficial ownership particulars with the Registrar through the dedicated portal, pursuant to the Companies (Amendment) Act, No 12 of 2025, and the Companies (Beneficial Ownership) Regulation, No 1 of 2026. The incorporation timeline is slightly longer for companies limited by guarantee or foreign company branches, as they are subject to additional procedural and regulatory requirements.

### 3.3 Ongoing Reporting and Disclosure Obligations

Private limited companies in Sri Lanka are subject to a number of ongoing reporting and disclosure obligations under the Companies Act, No 7 of 2007, aimed at ensuring transparency, corporate accountability and regulatory compliance.

Any change in company management, such as the appointment or resignation of directors or the company secretary, must be reported to the Registrar of Companies by filing Form 20 within 20 working days of the change. Amendments to the articles of association require the passing of a special resolution and must be filed along with the revised Articles within ten working days.

All private companies are required to prepare annual financial statements. These financial statements must be prepared in accordance with the Sri Lanka Accounting and Auditing Standards Act, No 15 of 1995, and in compliance with relevant Sri Lanka Accounting Standards (SLFRS/LKAS).

In addition, every company must file an annual return (Form 15) within 30 working days of its annual general meeting. This return must provide updated information on the company's registered office, directors, shareholders, share capital and other key particulars.

A significant new layer of disclosure has been introduced by the Companies (Amendment) Act, No 12 of 2025, read with the Companies (Beneficial Ownership) Regulation, No 1 of 2026, which became operational on 30 March 2026. Every company must now identify its beneficial owners – broadly, any natural person who directly or indirectly holds or controls 10% or more of the shares or voting rights, or who otherwise exercises effective control – maintain a register of beneficial owners at its registered office, and file the prescribed particulars with the Registrar of Companies through a dedicated online portal.

Companies incorporated before the operational date are required to comply within six months, and depositaries of licensed stock exchanges must notify the Registrar of holders of 10% or more. Limited beneficial ownership information is publicly accessible, with fuller particulars available to regulators and, on application, under the Right to Information Act. The same amendment prohibits the issuance of bearer shares and share warrants to bearer, requiring existing instruments to be converted into registered form. Non-compliance with the beneficial ownership obligations is a criminal offence and may attract personal liability for directors and officers.

Failure to comply with these reporting obligations may result in the imposition of penalties by the Registrar General of Companies.

### 3.4 Management Structures

Most common legal entities, such as private and public companies, operate under a unitary (one-tier) board structure, in accordance with the Companies Act, No 7 of 2007. Under this structure, a single board of directors is responsible for both the management of the company's day-to-day affairs and the oversight of its strategic direction and compliance obligations.

In private companies, directors frequently assume both executive and non-executive roles, and decision-making is often closely aligned with shareholder interests, particularly in closely held companies. Shareholders exercise their rights primarily through resolutions passed at general meetings, including the appointment and removal of directors, approval of dividends, actioning of reserve rights, and amendments to the articles of association.

There is no statutory provision under Sri Lankan law for a two-tier board structure (ie, a separate supervisory and management board), making the one-tier system the default and standard corporate governance framework for companies incorporated in Sri Lanka. However, companies may internally assign functional roles (eg, managing director, non-executive chairman) or have multiple tiers of governing structures to promote oversight and accountability, particularly in larger or regulated entities. This is generally the case in companies limited by guarantee.

### 3.5 Directors', Officers' and Shareholders' Liability

The liability of directors and officers is primarily governed by the Companies Act, No 7 of 2007, which

imposes both fiduciary and statutory duties on directors. These duties include:

- acting in good faith in the best interests of the company;
- exercising powers for proper purposes;
- avoiding conflicts of interest; and
- performing their functions with care, diligence and skill (see Sections 187–189 of the Companies Act).

Directors may be held personally liable for breaches of these duties, particularly in cases involving unlawful distributions, trading while insolvent, or misstatement of financial information. Officers, including company secretaries, may also face liability for non-compliance with statutory requirements, failure to maintain proper records, or facilitating regulatory breaches. They are also liable for securities law violations or breaches of statutory obligations under laws such as the Employees' Provident Fund Act or the Employees' Trust Fund Act.

In the case of listed companies, directors and senior management must additionally comply with the "fit and proper" criteria under the Listing Rules of the Colombo Stock Exchange and relevant provisions of securities laws. They are expected to avoid conduct such as insider trading, misrepresentation of material facts, and falsification of financial statements. Directors of listed entities operating in regulated sectors (such as banking, finance and insurance) must also satisfy the sector-specific fit-and-proper requirements imposed by regulators such as the Central Bank of Sri Lanka and the SEC.

The principle of separate legal personality protects shareholders from personal liability – as such, they are generally not liable for the debts or obligations of the company, other than for any amount unpaid on their shares. Nevertheless, Sri Lankan courts will pierce the corporate veil in exceptional circumstances, such as in cases involving fraud or offences related to bribery, corruption or money laundering.

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

The nature of the legal rules governing employment relationships in Sri Lanka is primarily regulatory and protective of employees based on equitable standards.

Employment contracts are recognised and enforceable, but they must comply with the minimum standards set by statute. Contractual terms more favourable to the employee than those prescribed by law are valid, but any term less favourable than the statutory minimum is void to the extent of such inconsistency.

The principal statutes regulating employment include:

- the Wages Boards Ordinance, which sets standards, minimum wages and working conditions in all trades;
- the Shop and Office Employees (Regulation of Employment and Remuneration) Act, No 19 of 1954, for employees in shops and offices;
- the Factories Ordinance, which is applicable to industrial establishments and sets basic health and occupational safety standards;
- the Industrial Disputes Act, No 43 of 1950, which regulates terminations, disciplinary action, and resolution of disputes;
- the Termination of Employment of Workmen (Special Provisions) Act, No 45 of 1971 (TEWA), which requires prior approval or consent for termination of certain categories of employees;
- the Payment of Gratuity Act, No 12 of 1983; and
- the Employment of Women, Young Persons and Children Act.

In addition, employers must comply with statutory provisions governing working hours, leave entitlements, termination benefits, and social security obligations under the Employees' Provident Fund Act and the Employees' Trust Fund Act.

In unionised workplaces or sectors with active trade unions, collective bargaining agreements (CBAs) may supplement statutory protections and apply in parallel with individual contracts. These CBAs, once registered under the Industrial Disputes Act, become

legally binding on both parties. While CBAs can provide better terms than those mandated by statute, they cannot reduce or override statutory protections.

Furthermore, case law plays a significant role in interpreting statutory provisions, especially in areas such as unjust dismissal, constructive termination and employer obligations, although statutory law takes precedence.

### 4.2 Characteristics of Employment Contracts

Employment contracts may be concluded either in writing or verbally, as there is no statutory requirement mandating written contracts. Verbal contracts are legally valid and enforceable, provided the essential elements of a contract – such as offer, acceptance, intention to create legal relations, and consideration – are present.

In practice, labour tribunals regularly uphold employment relationships established through conduct and surrounding circumstances, supported by documentary evidence such as salary slips, attendance records, or letters of appointment. Nevertheless, best practice dictates that employers issue letters of appointment or employment agreements, especially to satisfy evidentiary requirements, and to clarify the terms of engagement including probation, termination, job duties and benefits.

Regardless of whether the contract is written or oral, certain statutory conditions are automatically implied into all employment relationships. These include provisions relating to minimum wages, working hours, weekly rest, leave entitlements, public holidays, termination procedures and retirement benefits, arising from legislation mentioned in **4.1 Nature of Applicable Regulations**.

There is no legal restriction on the duration of employment contracts in Sri Lanka. Both permanent and fixed-term contracts are recognised. However, courts and tribunals are cautious of abuse of fixed-term arrangements. Where fixed-term contracts are renewed repeatedly without a genuine basis, they may be reclassified as permanent contracts, giving rise to the same protections and entitlements as permanent employment, including the need to obtain prior approval under TEWA for termination.

Additionally, Sri Lankan law now prescribes a statutory minimum retirement age of 60 years for all private sector employees, as introduced by the Minimum Retirement Age of Workers Act, No 28 of 2021. Employment contracts that specify a lower retirement age must be adjusted accordingly, unless an exception is provided by regulation. Employers may, however, retain employees beyond age 60 based on mutual agreement.

### 4.3 Working Time

Working time regulations are primarily governed by the Shop and Office Employees (Regulation of Employment and Remuneration) Act, No 19 of 1954, and by the Wages Boards Ordinance for all other trades.

For employees falling under the Shop and Office Employees Act, the standard working time is generally limited to eight hours per day and 45 hours per week, excluding intervals for rest and meals. Overtime work, defined as work performed in excess of the standard daily or weekly limits, must be compensated at a premium rate. The standard rate for overtime is 1.5 times the normal hourly wage, while work performed on public holidays is usually paid at two times the normal rate. The law imposes a cap on overtime, limiting it to a maximum of 12 hours per week.

For sectors covered by the Wages Boards Ordinance, working hours and overtime entitlements are determined by the respective Wages Board constituted for the trade. While the structure of these boards allows for some variation depending on the nature of the industry (eg, manufacturing, plantation, hospitality), the standards generally align with the framework established under the Shop and Office Employees Act. In most cases, Wages Boards also provide for overtime compensation at 1.5 times the regular wage, though specific entitlements and limits may vary slightly across sectors.

Employers are legally obligated to maintain accurate records of working hours and overtime, and failure to compensate overtime in accordance with applicable

law may attract penalties and enforcement action by the Labour Department.

### 4.4 Termination of Employment Contracts

Sri Lanka is not an "employment-at-will" jurisdiction. The termination of individual employment contracts is governed by TEWA, which imposes strict limitations on the unilateral termination of employment by employers.

Under TEWA, an employer cannot lawfully terminate the services of a "workman" other than for misconduct, except with the prior written consent of the employee or the prior written approval of the Commissioner General of Labour. This applies even where the employment contract permits termination on notice. Accordingly, termination without cause or justification, commonly known as "at-will termination", is not legally permissible under Sri Lankan law.

Where approval is sought, the employer must justify the termination on valid grounds, such as redundancy or closure of business operations. The Commissioner General has the discretion to reject the application or to impose conditions, including payment of compensation, based on factors such as the employee's length of service, age, salary and the circumstances of the termination. The amount of compensation is calculated according to the formula prescribed by the Commissioner General. In addition, employees with five or more years of continuous service are entitled to gratuity under the Payment of Gratuity Act, No 12 of 1983, irrespective of the reason for termination, other than for proven misconduct.

Employers who fail to obtain the required consent or approval risk having the termination declared unlawful, which will result in reinstatement of the employee or an order to pay retrospective compensation.

For collective redundancies, the procedure is similarly governed by TEWA. Termination of multiple employees requires prior approval from the Commissioner General of Labour, and the employer must continue to pay salaries and other dues until such approval is obtained. Where a trade union exists, consultation is required, although there is no formal statutory requirement for a negotiated agreement. In practice, employers often seek to implement mutual separation schemes, offering employees ex gratia compensation packages in exchange for resignation, in order to avoid the uncertainty and delay involved in obtaining formal approval for termination.

### 4.5 Employee Representations

Employee representation is primarily facilitated through trade unions and is regulated by the Trade Unions Ordinance. There is no general statutory obligation for employers to consult or inform employees in the ordinary course of business or for routine employment matters. However, employee representation becomes relevant, and in some cases expected or required, where trade unions are recognised or where employment matters escalate into collective disputes, redundancies or collective terminations.

When a trade union represents employees, it is empowered to act on their behalf in collective bargaining, grievance resolution, and dispute settlement processes. In such situations, employers are expected to engage with the union in good faith. While Sri Lankan law does not mandate the formation of works councils or joint consultative bodies, some enterprises – particularly larger or unionised workplaces – voluntarily establish employee relations mechanisms to promote communication and industrial harmony.

In the case of BOI-approved enterprises, the BOI actively promotes co-operation between management and labour and industrial peace through its Industrial Relations Officers. The Manual on Employment Policy and Labour Standards issued by the BOI outlines the labour standards and employment practices that must be observed by BOI-approved companies, both within and outside Export Processing Zones (EPZs). This Manual encourages proactive communication and dispute prevention practices, and reiterates that the national labour laws apply fully to all BOI enterprises. Importantly, the terms and conditions of employment in BOI-approved companies must not be less favourable than those prescribed under applicable Sri Lankan labour laws.

The Ministry of Labour and the Department of Labour are responsible for enforcing labour laws and overseeing industrial relations. These institutions play a

central role in dispute resolution and maintaining compliance across all sectors.

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/ Employers

The taxation of employment income is governed by the Inland Revenue Act, No 24 of 2017, (as amended). Both employees and employers are subject to tax obligations arising from the employment relationship.

Employees are liable to pay income tax through the Advance Personal Income Tax (APIT) system, under which the employer is required to deduct and remit tax at source on employment income. For the 2024/2025 year of assessment, tax applies to annual employment income exceeding LKR1.2 million, and from 1 April 2025 the threshold has increased to LKR1.8 million per annum. Tax is imposed at progressive rates ranging from 6% to 36% based on the employee's chargeable income.

APIT applies to both residents and non-residents who derive income from employment in Sri Lanka. Residency for tax purposes is determined based on physical presence and other criteria under the Inland Revenue Act.

Sri Lanka does not impose any separate social security taxes or national insurance-style contributions beyond the mandatory Employees' Provident Fund (EPF) and Employees' Trust Fund (ETF). Under the EPF scheme, employers are required to contribute 12% of the employee's monthly salary, while employees contribute 8%. In addition, employers must contribute 3% to the ETF. There are no other payroll taxes levied on employers in Sri Lanka.

### 5.2 Taxes Applicable to Businesses

#### Income Tax

Companies are subject to taxation if they are incorporated in Sri Lanka, managed or controlled from Sri Lanka, or derive income from a source within Sri Lanka. The residency test under the Inland Revenue Act, No 24 of 2017 applies to both local and foreign entities, including permanent establishments.

The standard corporate income tax rate is 30% applicable to most companies. However, a higher rate of 45% applies to businesses involved in gaming, betting, liquor and tobacco. Withholding tax (WHT) in Sri Lanka applies to passive and cross-border payments made to non-resident and resident persons. The applicable rates are as follows:

- dividends – 15%;
- interest – 10%; and
- all other payments (excluding dividends) such as royalties, technical service fees, management fees, rent and contract payments – 14%.

These rates may be reduced where a relevant double taxation avoidance agreement (DTAA) applies, provided that the recipient furnishes a valid certificate of residence and other documentation to prove beneficial ownership and eligibility for treaty benefits.

#### VAT and SSCL

Value added tax (VAT) is levied at a standard rate of 18%. The simplified VAT (SVAT) scheme previously available to exporters and BOI companies has been abolished, with effect from October 2025, and VAT-registered entities now rely on a refund mechanism to recover input VAT. With effect from 1 July 2026, the VAT rate on financial services increases from 18% to 20.5%, and VAT applies to digital services supplied by non-resident providers to persons in Sri Lanka through electronic platforms, under the Value Added Tax (Amendment) Act, No 4 of 2025.

A 2.5% Social Security Contribution Levy (SSCL) applies to businesses with quarterly turnover exceeding LKR15 million rupees or annual turnover exceeding LKR60 million, unless exempt. SSCL is calculated on turnover, not profit, and is separate from income tax.

#### Other Taxes

In addition to the foregoing, companies must pay stamp duty on specified instruments and customs and excise duties depending on the nature of the business.

### OECD's Two-Pillar Solution

As of mid-2026, Sri Lanka has not implemented Pillar Two of the OECD's Two-Pillar Solution and has not introduced a Qualified Domestic Minimum Top-Up Tax (QDMTT). The country has not signed the OECD/G20 Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy, and is therefore not expected to qualify for safe harbour treatment under the OECD's transitional rules. Companies operating in Sri Lanka that are part of multinational groups above the EUR750 million threshold should monitor developments, particularly if the parent entity is in a Pillar Two-adopting jurisdiction, as top-up taxes may be triggered at the group level under the Income Inclusion Rule (IIR) or Undertaxed Profits Rule (UTPR).

## 5.3 Available Tax Credits/Incentives

Sri Lanka offers a range of tax incentives and credits aimed at promoting investment, exports, innovation and sectoral development. These incentives are primarily made available under the Inland Revenue Act, No 24 of 2017, the Board of Investment of Sri Lanka Law, No 4 of 1978 (which continues to be applied on a transitional basis pending the operationalisation of the Economic Transformation Act, No 45 of 2024) and the Strategic Development Projects Act, No 14 of 2008.

Under the Inland Revenue Act, eligible businesses may claim enhanced capital allowances for qualifying investments in plant, machinery and infrastructure, particularly in priority sectors such as renewable energy, agriculture and manufacturing.

Enterprises approved by the BOI may benefit from customs duty exemptions and simplified administrative procedures, depending on the scale of investment, export orientation and employment generation. These benefits are typically granted through an agreement entered into with the BOI and are subject to compliance with the policy guidelines.

Projects recognised as Strategic Development Projects (SDPs) under the Strategic Development Projects Act, No 14 of 2008 may be granted significant tax concessions, including:

- tax holidays of up to 25 years;
- exemptions from VAT, customs duty and PAL on imports of project-related goods and services; and
- exemptions from income tax and other levies, subject to meeting prescribed thresholds in relation to capital investment, job creation and national economic importance – approval is granted by the Cabinet of Ministers, based on a recommendation from the Minister of Finance.

In the Colombo Port City Special Economic Zone, businesses that obtain Business of Strategic Importance (BSI) status from the Cabinet of Ministers, based on a recommendation from the Colombo Port City Economic Commission, are eligible for full exemption from all taxes, duties and levies for a period of up to 25 years. This includes income tax, VAT, WHT and stamp duty. The Port City regime is designed to promote international commercial and financial services, and applicants must satisfy criteria related to capital inflow, foreign exchange earnings and global business activity.

## 5.4 Tax Consolidation

Sri Lanka does not permit tax consolidation under the Inland Revenue Act, No 24 of 2017 (as amended). There are no provisions for group relief, intra-group transfer of tax credits, or unified filing status under the law. Each company within a corporate group is treated as a separate legal and taxable entity, and there is no mechanism for filing a consolidated tax return or pooling taxable profits and losses across group companies. Accordingly:

- each company must file its own tax return, compute its tax liability independently, and comply separately with all payment and reporting obligations; and
- losses incurred by one company cannot be transferred or set off against the income of another company within the same group, even if 100% owned.

However, a company may carry forward its own unrelieved tax losses and offset them against future taxable income for up to six consecutive years, subject to continuity of ownership and continuity of business activity requirements.

### 5.5 Thin Capitalisation Rules and Other Limitations

Sri Lanka applies thin capitalisation rules under the Inland Revenue Act, No 24 of 2017 (as amended), which place a cap on the amount of interest expense (financial cost) that a company may deduct for tax purposes. These rules are intended to discourage excessive debt financing and erosion of the tax base through interest deductions.

Under the current regime, companies must ensure that the level of debt is reasonable in relation to their capital structure (ie, company's share capital and reserves). The deductible financial cost is calculated based on:

- the value of the financial instruments that gave rise to the cost; and
- four times the company's issued share capital and reserves at year-end (excluding any revaluation reserves).

If the company's actual financial cost exceeds the amount computed under this rule, the excess is disallowed as a tax deduction for that year. However, the disallowed portion may be carried forward and deducted in subsequent years, subject to the same limitation.

The regime is purpose-built to counter base erosion and profit shifting (BEPS) in line with international best practice. These rules work in tandem with transfer pricing regulations, which require all related-party financing arrangements to reflect arm's length terms and be properly documented.

### 5.6 Transfer Pricing

Sri Lanka has implemented a comprehensive transfer pricing regime under the Inland Revenue Act, No 24 of 2017 (as amended). These provisions require that transactions between associated persons, whether domestic or cross-border, be conducted on an arm's length basis – that is, under terms and conditions comparable to those that would apply between independent parties dealing at arm's length.

Transfer pricing rules are designed to prevent profit shifting and erosion of the tax base, and they apply not only to foreign multinational enterprises but also to domestic groups and BOI-approved entities, where transactions occur between associated persons.

The transfer pricing rules apply to transactions involving:

- the sale or purchase of goods;
- provision of services;
- licensing of intellectual property or other intangible assets;
- financing arrangements; and
- any other transactions that may affect taxable income.

Taxpayers are required to:

- maintain contemporaneous documentation to justify the method used to determine the arm's length price;
- disclose related-party transactions in the prescribed transfer pricing disclosure form, filed together with the annual income tax return; and
- submit a transfer pricing certificate confirming compliance, if the value of transactions exceeds specified thresholds.

The Commissioner General of Inland Revenue is empowered to adjust the taxpayer's income where the actual pricing is not consistent with the arm's length principle. Such adjustments may result in additional tax assessments, interest and penalties.

### 5.7 Anti-Evasion Rules

There is a comprehensive set of anti-evasion and anti-avoidance rules set out in the Inland Revenue Act, No 24 of 2017 (as amended), including:

- Section 35 – empowers the Commissioner General to disregard or recharacterise any arrangement entered into primarily to gain a tax advantage, ensuring that tax outcomes reflect the substance over the form;
- Section 33 – permits the Commissioner General to recalculate income to align related-party transactions with arm's length standards, thus preventing profit shifting through pricing manipulation; and

- Section 34 – enables the Commissioner General to reallocate profits or income among associated persons to prevent artificial income shifting designed to reduce tax liabilities.

These rules empower the tax authorities to counteract artificial arrangements, misstatements and schemes designed to avoid or evade tax liability, whether through deliberate misrepresentation or aggressive tax planning. Together, these rules form a powerful multi-layered system aimed at curbing tax avoidance.

Taxpayers should be aware that every arrangement lacking commercial substance, involving non-arm's-length pricing or resulting in artificial income transfers may be challenged by the Commissioner General under these provisions, with the potential for adjustments, penalties and even criminal proceedings in serious cases.

### 5.8 Tariffs

Sri Lanka applies a range of ad valorem rates depending on the nature of the product, its use and its origin. Raw materials and essential capital goods generally enjoy low or zero tariff rates, while finished consumer goods – especially those competing with local industries – are subject to higher rates. Tariffs on agricultural products, textiles and apparel, and automobiles tend to be among the highest. These duties are designed to offer protection to domestic manufacturing, agriculture and assembly sectors, which are considered sensitive or strategically important to the national economy.

In addition to basic customs duties, imports may attract other levies, such as VAT at 18%, the Port and Airport Development Levy, Excise Duty (on selected goods such as liquor and vehicles) and the Social Security Contribution Levy at 2.5%, depending on the category of goods and importer status.

Tariff preferences are available under various regional and bilateral trade agreements, including the South Asian Free Trade Area (SAFTA), the Indo–Sri Lanka Free Trade Agreement, and the Sri Lanka–Singapore Free Trade Agreement, through which reduced or zero duties may apply on qualifying goods. However, Sri Lanka maintains a sensitive list under these treaties to retain tariff protection for key sectors.

Global trade developments, such as shifting supply chains, currency volatility and rising protectionism in other jurisdictions, have also influenced Sri Lanka's customs and tariff policies. The government periodically reviews rates and trade concessions in response to these external economic factors, as well as to manage foreign exchange outflows and support domestic producers.

In April 2025, the United States imposed a 44% reciprocal tariff on Sri Lankan goods, threatening key export sectors such as apparel and rubber. Following negotiations, the rate was reduced to 30% and then to 20% by the end of July 2025. After the United States Supreme Court struck down the tariffs imposed under the International Emergency Economic Powers Act in February 2026, the United States moved to maintain duties under Section 122 of the Trade Act of 1974, leaving Sri Lankan exports subject to a 10% baseline tariff alongside applicable sector-specific and most-favoured-nation duties; the position remains fluid. In response, Sri Lanka is implementing a National Tariff Policy that rationalises customs import duty into bands of 0%, 10%, 20% and 30% and gradually phases out para-tariffs, aiming to boost competitiveness and align with international trade norms.

## 6. Competition Law

### 6.1 Merger Control Notification

Sri Lanka does not impose any merger control notification thresholds based on revenue, market share or asset value, and there is no mandatory pre-merger notification requirement for private unlisted companies unless otherwise required by a sectoral regulator.

Amalgamations and company mergers are regulated under the Companies Act, No 7 of 2007, which sets out procedural requirements for amalgamations, including court-supervised amalgamations. For listed companies, the SEC has issued the Takeovers and Mergers Code of 1995 (as amended), which requires prior notification to, and approval from, the SEC when an acquirer crosses specified shareholding thresholds

in a listed company. Such transactions must also be disclosed to the Colombo Stock Exchange (CSE) in accordance with its rules.

Separately, entities operating in regulated sectors, such as banking, insurance, finance and telecommunications, must obtain prior approval from the relevant regulator, including the Central Bank of Sri Lanka, the Insurance Regulatory Commission of Sri Lanka, or the Telecommunications Regulatory Commission of Sri Lanka, before completing any merger, acquisition or corporate restructuring within those sectors.

### 6.2 Merger Control Procedure

While there is no unified merger control regime, certain sectors impose mandatory notification and approval requirements that must be complied with prior to the completion of a merger or acquisition.

In the banking and finance sector, approval must be obtained from the Central Bank of Sri Lanka under the applicable financial sector statutes (such as the Banking Act or the Finance Business Act). The parties must submit a formal application with relevant corporate and financial documents, including details of the proposed transaction and its impact on capital adequacy and market concentration. The review period varies but typically takes several weeks to a few months depending on the complexity of the transaction and regulatory queries.

In the telecommunications sector, mergers or acquisitions involving licensed operators must be notified to the Telecommunications Regulatory Commission of Sri Lanka (TRCSL). There is no codified timeline, but the TRCSL assesses such transactions on a case-by-case basis, considering market effects, spectrum allocation and technical capacity. Approval is generally required before completing any change in control.

For listed companies, any acquisition or takeover falling within the scope of the Takeovers and Mergers Code (the "TOM Code") requires prior SEC approval. The Code stipulates that once an offer is announced the entire takeover process must be completed within 60 calendar days, unless an extension is granted by the SEC under special circumstances. The acquirer must disclose the offer and obtain SEC clearance before any shares are acquired above the relevant thresholds.

In all these cases, parties must comply not only with sector-specific procedural steps but also with any disclosure obligations applicable under the Companies Act, the Listing Rules or other relevant laws. There are currently no standardised pre-merger filing procedures or timelines for unregulated sectors.

### 6.3 Cartels

Anti-competitive agreements and concerted practices are primarily regulated under the Consumer Affairs Authority Act, No 9 of 2003. This generally prohibits agreements, decisions or practices that have the effect of substantially lessening competition in any market in Sri Lanka. This would include classic cartel conduct such as price fixing, bid rigging, market allocation, and collusive limitation of supply or production.

The Consumer Affairs Authority (CAA) is the designated enforcement agency empowered to conduct investigations, issue directions and take administrative action against anti-competitive conduct. However, the existing legal framework is limited in both scope and enforcement capacity. It does not clearly distinguish between horizontal and vertical agreements, lacks a formal leniency or whistle-blower mechanism, and does not provide for significant civil or criminal penalties. Moreover, enforcement tends to be reactive and complaint-driven, rather than proactive or systematic.

The Act does not explicitly require that anti-competitive conduct occur within the country's borders; rather, the relevant test is whether the conduct has a substantial effect on competition in Sri Lankan markets. As such, agreements concluded abroad may still fall within the purview of the CAA if they affect domestic trade or consumers.

There have been ongoing discussions and stakeholder consultations on introducing a modern and comprehensive competition law framework to replace or significantly reform the current regime. These reforms are expected to establish a clearer prohibition structure, provide for merger control, introduce investigative and sanctioning powers, and align with international best practices in competition law enforcement.

### 6.4 Abuse of Dominant Position

Under the Consumer Affairs Authority Act, it is prohibited for any enterprise that holds a dominant position in the market to abuse that dominance in a way that prevents, restricts or distorts competition. The Act does not define "dominance" using formal market share thresholds, but in practice the CAA assesses whether an enterprise has the ability to act independently of market forces, competitors and consumers.

Forms of abuse may include:

- unjustified price discrimination;
- imposing unfair purchase or selling prices;
- limiting production or markets; and
- predatory pricing or refusal to deal.

However, the current legal regime does not expressly address economic dependency or exploitative abuses in vertical relationships (such as unjustified termination of long-standing supply arrangements or coercive exclusivity), and there is no standalone provision dealing with essential facility doctrines or dominant platforms.

The effects-based test applies, meaning that even if the conduct takes place outside Sri Lanka it may be caught under the law if it has the effect of distorting or harming competition in the Sri Lankan market.

The CAA has administrative powers to investigate and issue directions but does not have powers to impose substantial penalties, grant injunctive relief or prosecute offenders through a specialised tribunal. As such, enforcement of unilateral conduct cases remains rare and discretionary.

## 7. Intellectual Property

### 7.1 Patents

A patent is a form of intellectual property granted to protect an invention that is novel, involves an inventive step and is industrially applicable. Patent protection is governed by the Intellectual Property Act, No 36 of 2003. A granted patent confers the exclusive right to prevent others from commercially exploiting an invention, such as making, using, selling or importing the patented product or process, without the patent holder's consent.

The term of protection for a patent in Sri Lanka is 20 years from the date of filing the application, subject to the payment of prescribed annual renewal fees.

The registration process begins with filing a patent application at the National Intellectual Property Office of Sri Lanka (NIPO), including a description, claims, drawings (if any) and an abstract. The application undergoes a formal examination, followed by a substantive examination and an international-type search report to determine novelty and patentability. If the examination results are favourable and the invention is not challenged during the publication period, the patent is granted and published in the Gazette.

Patent enforcement mechanisms include both civil and criminal remedies. The patent holder may file a civil action for infringement, seeking remedies such as injunctive relief, damages, account of profits, or destruction of infringing goods. Infringement may also give rise to criminal liability, including fines and imprisonment in aggravated cases. Prosecution must be commenced within three years of the offence or within two years from its discovery by the prosecutor, whichever occurs first. In addition, Sri Lanka Customs is empowered to detain suspected counterfeit goods at the border upon request by the rights-holder.

### 7.2 Trade Marks

A trade mark is a visible sign capable of distinguishing the goods or services of one enterprise from those of another. It may consist of words, names, symbols, logos, shapes or a combination thereof. Trade mark protection is governed by the Intellectual Property Act, No 36 of 2003, and is granted for an initial term of ten years from the date of application, with the possibility of renewal for successive ten-year periods.

The registration process begins with filing an application at NIPO. The application undergoes a formal and substantive examination. If found acceptable, the mark is published in the Government Gazette, triggering a three-month opposition period during which third parties may object to the registration. If no oppo-

sition is filed or if opposition is unsuccessful, the trade mark is registered, and a certificate is issued.

Enforcement of trade marks can be pursued through civil or criminal proceedings. Civil remedies include injunctions, damages, account of profits, and orders for the destruction or forfeiture of infringing goods. In criminal cases, wilful infringement can attract fines or imprisonment. Legal action for infringement must be instituted within three years of the offence or two years from its discovery by the prosecutor, whichever occurs first. Sri Lanka Customs is empowered to detain suspected counterfeit goods at the border.

### 7.3 Industrial Designs

An industrial design is the visual appearance of a product, such as its shape, pattern or combination of colours, that makes it look special or unique. It can be a flat design or a 3D form, and it must be something that can be used as a pattern for making items in industries or by craftsmen and is not dictated solely by function. Industrial designs are protected under the Intellectual Property Act, No 36 of 2003.

Protection is granted for an initial period of five years from the date of application, and may be renewed twice, each time for an additional five years, allowing for a maximum duration of 15 years. To obtain protection, an application must be filed with NIPO, including clear representations or drawings of the design and a description. The application undergoes formal and substantive examination to confirm that the design is new and original. Once approved, the design is registered and published in the Government Gazette, and a certificate of registration is issued.

Enforcement of design rights can be undertaken through civil proceedings, such as for injunctive relief, damages or account of profits. In cases of wilful infringement, criminal sanctions may also be pursued. Legal action for infringement must be instituted within three years of the offence or two years from its discovery by the prosecutor, whichever occurs first.

Sri Lanka Customs can assist by seizing infringing or counterfeit goods at the border upon request by the rights-holder.

### 7.4 Copyright

Copyright is the exclusive legal right granted to the authors and creators of original literary, artistic, musical and dramatic works, as well as software, films, broadcasts and sound recordings. It protects both economic rights (such as reproduction, distribution and public communication) and moral rights (such as the right of attribution and integrity).

In Sri Lanka, it is governed by the Intellectual Property Act, No 36 of 2003. Copyright arises automatically upon the creation and fixation of a work in a tangible form without the need for registration.

The duration of protection depends on the type of work:

- for all copyrightable works (ie, literary, artistic and musical works) – the life of the author plus 70 years after death;
- for cinematographic films and sound recordings – 70 years from the date of publication;
- for applied art – 25 years from the year of creation or publication, whichever is earlier; and
- for anonymous or pseudonymous works – 70 years from the date the work was first made available to the public, unless the identity of the author is revealed earlier.

Enforcement of copyright may be pursued through civil or criminal proceedings. Civil remedies include injunctions, damages and orders for delivery or destruction of infringing copies. In criminal matters, wilful infringement can attract fines or imprisonment. Legal action for infringement must be instituted within three years of the offence or two years from its discovery by the prosecutor, whichever occurs first. Customs authorities may seize pirated or counterfeit goods at the border upon the request of the rights-holder.

### 7.5 Others

The Intellectual Property Act, No 36 of 2003 extends protection to additional categories of intellectual property beyond traditional patents, trade marks and designs.

Geographical indications (GIs) are protected in Sri Lanka under the Intellectual Property Act. A GI is a

sign used on products that have a specific geographical origin and possess qualities, reputation or characteristics essentially attributable to that location, such as "Ceylon Tea" or "Ceylon Cinnamon". Protection arises either through registration with NIPO or under the unfair competition provisions of the Act, even without registration, where misuse is likely to mislead the public.

In addition, software and databases, when they meet the threshold of originality, are protected as literary works under copyright law. This protection arises automatically upon creation and fixation and endures for the lifetime of the author plus 70 years. This includes both source code and object code in the case of software, and original compilations of data in the case of databases.

Trade secrets are protected in Sri Lanka under the concept of "undisclosed information" in the Intellectual Property Act, as well as through principles of unfair competition. This includes confidential business information such as formulas, recipes, customer lists, algorithms, business strategies and methods. These are not subject to registration but are protected through confidentiality obligations, non-disclosure agreements (NDAs) and the general principles of contract and delict (tort). In cases involving wilful misappropriation or breach of trust, criminal sanctions may apply under relevant laws such as the Penal Code or the Computer Crimes Act. Effective protection of these rights depends significantly on the use of internal controls, contractual safeguards and judicial enforcement where necessary.

## 8. Data Protection

### 8.1 Applicable Regulations

Data privacy is governed and regulated by the Personal Data Protection Act, No 9 of 2022 (PDPA), as amended by the Personal Data Protection (Amendment) Act, No 22 of 2025, which provides a comprehensive legal framework for the processing of personal data. The PDPA applies to both public and private sector entities, including foreign entities that process personal data in Sri Lanka or of individuals located in Sri Lanka.

It sets out key principles such as lawfulness, fairness, transparency, purpose limitation, data minimisation and accountability. It grants data subjects specific rights, including the right to access, rectify, erase and object to the processing of their personal data. Data controllers and processors are required to implement appropriate security measures, maintain records of processing activities, and in most cases obtain freely given, specific, informed and unambiguous consent before processing personal data.

In addition to the PDPA, data protection is indirectly supported by:

- the Computer Crimes Act, No 24 of 2007, which criminalises unauthorised access, data theft and related cyber-offences; and
- the Electronic Transactions Act, No 19 of 2006, which recognises the legal validity of electronic records and signatures and facilitates secure data exchange.

Together, these statutes represent a significant advancement in Sri Lanka's data governance landscape, aligning it more closely with international standards such as the EU General Data Protection Regulation (GDPR).

### 8.2 Geographical Scope

The PDPA has extraterritorial application and extends its scope to cover certain activities of foreign entities. Specifically, it applies to any natural or legal person, whether incorporated or operating outside Sri Lanka, who processes the personal data of individuals located in Sri Lanka, in the course of:

- offering goods or services to such individuals; or
- monitoring their behaviour, in so far as that behaviour takes place within Sri Lanka.

This means that foreign companies collecting, analysing or storing the personal data of Sri Lankan residents, whether via websites, apps or other digital platforms, are subject to the same obligations as local data controllers and processors under the PDPA.

Cross-border transfers of personal data are permitted only if the recipient country or foreign entity ensures

an adequate level of data protection, or where appropriate safeguards are in place (such as standard contractual clauses or binding corporate rules). Data controllers must ensure that the rights of data subjects in Sri Lanka are not prejudiced by such transfers.

### 8.3 Role and Authority of the Data Protection Agency

The Data Protection Authority of Sri Lanka is the independent regulatory body tasked with enforcing the country's data protection regime. The Authority has been established and is already active in preparing the regulatory groundwork, and plays a central role in ensuring compliance with the PDPA across both public and private sectors.

Its core functions include:

- monitoring and ensuring compliance with the provisions of the PDPA;
- investigating complaints, either upon receipt or on its own initiative;
- conducting audits and inspections of data controllers and processors;
- issuing binding directions, codes of practice, and guidelines to promote responsible data handling;
- imposing administrative penalties and requiring corrective actions in cases of non-compliance; and
- overseeing data breach notifications, including the assessment of risk and response measures.

The Authority is also empowered to collaborate with international regulatory bodies and issue adequacy decisions or approve cross-border transfer mechanisms. It acts as the primary guardian of personal data rights, ensuring that individuals' privacy is respected and upheld in both the public and private spheres.

While the provisions establishing the Authority are in force, the substantive provisions of the PDPA have been brought into operation on a phased basis. The commencement date originally scheduled for March 2025 was repealed, and, following the Personal Data Protection (Amendment) Act, No 22 of 2025, the remaining provisions (including the principal enforcement powers) are expected to come into full operation during 2026, after which enforcement powers will be exercised in full.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

Sri Lanka is currently undergoing a significant wave of legal and institutional reforms, driven by the government's commitment to economic recovery, fiscal transparency and good governance, particularly in line with its obligations under the International Monetary Fund (IMF) programme. These reforms are designed to strengthen investor confidence, modernise regulatory frameworks, and address structural weaknesses exposed by the recent economic crisis.

Recent legislative initiatives have focused on:

- combating bribery and corruption, with stricter enforcement and disclosure obligations;
- reforming anti-money laundering (AML) laws to align with Financial Action Task Force (FATF) standards;
- enacting new legislation on public financial management, namely the Public Financial Management Act, No 44 of 2024 and the Public Debt Management Act, No 33 of 2024, with public procurement reform to follow;
- modernising revenue administration and strengthening the independence of the Central Bank of Sri Lanka; and
- enacting new laws on proceeds of crime and contract enforcement, including the digitalisation of commercial courts.

In the area of tax law, recent and forthcoming changes include:

- an 18% VAT on digital services supplied by non-resident providers, legislated under the Value Added Tax (Amendment) Act, No 4 of 2025, and taking effect from 1 July 2026; and
- an increase in the VAT rate on financial services from 18% to 20.5%, effective 1 July 2026.

A number of the reforms previously anticipated in these fields have since been enacted, including:

- the Companies (Amendment) Act, No 12 of 2025 (introducing the beneficial ownership regime);

- the Personal Data Protection (Amendment) Act, No 22 of 2025;
- the Microfinance and Credit Regulatory Authority Act, No 9 of 2026; and
- the Rescue, Rehabilitation and Insolvency (Corporate and Personal) Act, No 12 of 2026, which modernises the insolvency regime and repeals the Insolvency Ordinance.

Further reforms remain in prospect, notably a consolidated single employment law to replace the existing patchwork of labour statutes, a Public-Private Partnership Bill, and dedicated legislation on public asset management and public enterprise reform, together with the long-discussed modernisation of the competition law framework. The government's continued engagement with development partners and multilateral agencies is likely to result in further corporate governance reform and liberalisation of foreign investment restrictions, including the eventual operationalisation of the investment framework under the Economic Transformation Act, No 45 of 2024. Additionally, reforms are under way to restructure state-owned enterprises, streamline the public sector and promote public–private partnerships, thereby creating a more competitive and investment-friendly legal environment.

# Trends and Developments

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**Varners** is a full-service law firm renowned for delivering high-quality, results-driven legal solutions to a diverse and distinguished clientele. With a team of highly skilled attorneys and dedicated support professionals, it is uniquely equipped to address complex legal and regulatory challenges across a broad spectrum of industries. The firm is committed to providing advice tailored to the specific needs of each client. It offers expertise across its core practice areas, which include banking and finance, construction and project development, corporate and commercial law, intellectual property, labour and employment, dispute resolution and litigation, as well as real estate and conveyancing. Whether advising on high-stakes transactions, navigating regulatory frameworks or resolving contentious disputes, the firm's approach is practical and solution-oriented. It prides itself on building long-term relationships grounded in trust, responsiveness and a deep understanding of clients' business objectives. More information about the firm can be found at www.varners.law.

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## Sri Lanka: Navigating a New Economic Chapter

### *Introduction*

Sri Lanka is in the midst of a profound economic transition. Following the unprecedented crisis of 2022, the country has embarked on a comprehensive programme of fiscal consolidation, institutional reform and structural adjustment, supported by the International Monetary Fund (IMF). For both foreign and domestic investors, this transformation presents a dynamic mix of opportunity and complexity.

This article provides an updated account of key developments shaping Sri Lanka's current investment and economic climate. While reforms are ongoing, notable progress has been made across multiple sectors, ranging from tax policy and public finance to digital transformation and tourism resurgence.

### Post-Crisis Stabilisation and IMF Support

Under the 48-month IMF Extended Fund Facility (EFF) arrangement, now in its final year, Sri Lanka has continued to meet reform milestones. On 27 May 2026, the IMF Executive Board completed the combined Fifth and Sixth Reviews, providing access to approximately SDR508 million (around USD695 million) and bringing total disbursements under the arrangement to about USD2.4 billion. Programme performance has been assessed as generally strong, with the economy having grown by an estimated 5% in 2025; gross official reserves reached approximately USD7 billion by the end of the first quarter of 2026 and external debt restructuring nears completion, including the conclusion of SriLankan Airlines' debt exchange.

This trajectory has, however, been tested by external shocks. In late November 2025, Cyclone Ditwah caused widespread loss of life and displacement, with direct physical damage estimated by the World Bank at approximately USD4.1 billion (around 4% of GDP). In December 2025, the IMF approved emergency financing of approximately USD206 million under the Rapid Financing Instrument to address the resulting balance-of-payments and fiscal pressures. The cyclone, together with the conflict in the Middle East and the attendant rise in global energy prices, has tempered the near-term outlook, with growth for 2026 now projected to moderate to approximately 3%.

The Central Bank of Sri Lanka has cautiously eased policy rates, having moved in November 2024 to a single policy interest rate mechanism centred on the Overnight Policy Rate (OPR). Following a sustained period of easing, the Monetary Policy Board raised the OPR by 100 basis points to 8.75% in May 2026 (with the linked Standing Deposit Facility Rate and Standing Lending Facility Rate at 8.25% and 9.25%, respectively), responding to the upward pressure on domestic energy prices and headline inflation, which reached 5.4% year-on-year in April 2026. Private sector credit has continued to expand, and revenue collection has exceeded expectations.

The temporary relief granted to small and medium-sized enterprises (SMEs) from parate execution lapsed on 30 June 2025 for loans exceeding LKR50 million. The parate execution enables licensed banks to repossess secured assets without recourse to court proceedings, thereby expediting debt recovery. Its enforcement had previously been suspended, initially for six months by the previous government and subsequently for an additional three months by the present administration. With the expiry of the moratorium, the law has now resumed full effect, potentially triggering a wave of enforcement actions by banks seeking to recover non-performing loans.

### Strong Revenue Performance and Fiscal Discipline

Government revenue continued to strengthen through 2025. The tax-to-GDP ratio, having fallen to approximately 8.2% in 2022, recovered to around 13.5% in 2024, and total government revenue is estimated to have reached approximately 15% of GDP in 2025. Customs collections were buoyed by the resumption of motor vehicle imports following the lifting of the 2020 import ban, which proved one of the principal drivers of the 2025 revenue out-turn.

Fiscal performance also improved significantly, with the primary surplus expanding and the overall budget deficit shrinking. These gains reflect both stronger revenue collection and restraint in current expenditure, despite a rising public sector wage bill. The 2026 Budget, presented to Parliament on 7 November 2025 under the theme "Steady and Strong: Committing to Fiscal Discipline for a Resilient Economy", maintained this revenue-based consolidation, targeting a primary

surplus of 2.5% of GDP, total government revenue of 15.4% of GDP, and an overall fiscal deficit of 5.1% of GDP for 2026.

### Tax Reform and Incentive Rationalisation

Following past criticism for granting ad hoc and non-transparent tax holidays, the government has continued to move towards rules-based, time-bound eligibility criteria for tax incentives, displacing the earlier reliance on official discretion. The Economic Transformation Act, No 45 of 2024 provides the statutory framework for codified, eligibility-driven incentives, and the 2026 Budget advanced a series of base-broadening measures consistent with the IMF structural benchmarks. These include:

- the abolition of the Simplified VAT (SVAT) scheme from October 2025 in favour of a refund-based mechanism;
- the phased introduction of risk-based audit selection; and
- a National Tariff Policy rationalising customs import duty into bands of 0%, 10%, 20% and 30%.

To encourage smaller-scale investment, the minimum investment threshold for enhanced capital allowances was reduced from USD3 million to USD250,000.

### SOE Restructuring Without Privatisation

With the change in administration following the Presidential elections in September 2024, the new government has decisively moved away from privatisation as a policy tool. The previous government's plans for partial or full divestment of major state-owned enterprises (SOEs) have been shelved. Instead, the current administration has expressed its commitment to retaining public ownership of key strategic enterprises while pursuing a programme of internal restructuring and operational reform.

The government's SOE reform agenda focuses on improving efficiency, reducing financial losses, and strengthening governance and accountability mechanisms within SOEs. Key entities under this reform initiative include:

- Ceylon Electricity Board;
- SriLankan Airlines;
- Ceylon Petroleum Corporation;
- Sri Lanka Telecom; and
- Sri Lanka Insurance Corporation.

The goal of the restructuring process is to enhance these entities' financial performance and service delivery without altering ownership structures. Proposed reforms include the introduction of:

- performance benchmarks;
- independent oversight boards;
- debt restructuring; and
- enhanced public reporting requirements.

The emphasis is on preserving strategic national assets while ensuring that they operate on sound commercial and operational principles.

These SOEs have traditionally operated as monopolies or dominant players in strategic sectors but have also been fiscally burdensome. Reforms are expected to improve their operational efficiency, corporate governance and ability to attract investment. Tangible progress has been recorded in the resolution of legacy SOE liabilities, including the completion of SriLankan Airlines' debt exchange in early 2026.

### Labour Market Reform

The Cabinet has approved significant increases to minimum wage levels. Effective April 2025, the national minimum monthly wage was increased by LKR9,500 to LKR27,000, and the minimum daily wage was raised to LKR1,080. A further increase, to LKR30,000 per month and LKR1,200 per day, took effect on 1 January 2026. These changes aim to improve income security amidst rising living costs.

In parallel, the government has reiterated its intention to introduce a consolidated employment law to replace the patchwork of existing employment statutes. The proposed reform, which remains at the draft stage, seeks to harmonise disparate legislation – including the Wages Boards Ordinance, the Shop and Office Employees Act and the Industrial Disputes Act – into a single, modernised legal framework. This new law is expected to address long-standing regulatory inconsistencies, simplify compliance, enhance worker protections, and promote greater formalisation

and flexibility in the labour market, an objective that the IMF has identified as important to reducing labour-market rigidities.

### Tourism Recovery and External Trade Pressures

Tourism rebounded strongly through 2025, recording a historic high of approximately 2.36 million arrivals – surpassing the previous peak of 2.33 million set in 2018 – and generating tourism earnings of around USD3.2 billion, notwithstanding the disruption caused by Cyclone Ditwah late in the year. The authorities have set an ambitious target of three million arrivals for 2026. The country nonetheless continues to face headwinds in external trade. Having initially been assigned a 44% reciprocal tariff by the United States in April 2025, Sri Lanka negotiated successive reductions, to 30% and thereafter to 20% by the end of July 2025. Following the United States Supreme Court's decision in February 2026 striking down the tariffs imposed under the International Emergency Economic Powers Act, the US administration moved to maintain duties under Section 122 of the Trade Act of 1974, leaving Sri Lankan exports subject to a 10% baseline tariff alongside applicable sector-specific and most-favoured-nation duties. The trade environment accordingly remains fluid.

### Legal and Regulatory Modernisation

The government is preparing a Public-Private Partnership (PPP) Bill to support structured, accountable and competitive procurement for infrastructure and service delivery. To support access to credit – particularly for SMEs – the secured transactions regime governing movable asset-based lending was strengthened through the Secured Transactions (Amendment) Act, No 17 of 2024. The microfinance sector has since been placed on a comprehensive statutory footing: the Microfinance and Credit Regulatory Authority Act, No 9 of 2026 establishes the Sri Lanka Microfinance and Credit Regulatory Authority, brings money-lending and microfinance businesses (including online lending) within a single licensing regime, and repeals the Microfinance Act, No 6 of 2016.

Until recently, Sri Lanka's insolvency framework was fragmented and outdated. This has now been addressed by the Rescue, Rehabilitation and Insolvency (Corporate and Personal) Act, No 12 of 2026, which was passed by Parliament in May 2026 and repeals the Insolvency Ordinance (Chapter 97). The Act consolidates and modernises the regime across both corporate and personal insolvency, introducing structured procedures for the rehabilitation of viable but distressed companies, a fresh start for honest individual debtors, and provisions addressing receivership and cross-border insolvency. The emphasis on enabling viable businesses to restructure rather than liquidate aligns Sri Lanka with international best practice and is intended to enhance predictability and confidence in the credit market.

In addition, the government has strengthened the legislative architecture underpinning public financial management. The Public Debt Management Act, No 33 of 2024 and the Public Financial Management Act, No 44 of 2024 have been enacted, marking a significant step forwards in Sri Lanka's fiscal governance. These laws establish comprehensive frameworks for prudent debt management – including, under the former, the establishment of the Public Debt Management Office – and for disciplined public expenditure, enhancing transparency and accountability in fiscal operations.

In parallel, the government is developing the Public Asset Management Bill and the Public Enterprise Reform Bill, which aim to optimise the use of state-owned assets and improve the performance and governance of state-owned enterprises (SOEs). These instruments, together with the forthcoming legislation on public–private partnerships and public procurement, are expected to be brought forward in a manner consistent with the Public Financial Management Act. Once enacted, they are expected to enhance fiscal discipline, improve accountability, and support more efficient allocation of public resources.

### Green Finance and ESG Integration

The Colombo Stock Exchange (CSE) is actively promoting sustainability through ESG-aligned instruments such as green bonds and sustainable finance products. These efforts aim to position Sri Lanka as a responsible and attractive destination for impact investors.

### Investment Climate and Market Access

Despite the reforms, challenges remain. Sri Lanka still ranks low in global ease-of-doing-business metrics, particularly in contract enforcement and construction permits. High borrowing costs and lingering exchange rate risk also weigh on investor sentiment.

However, the establishment of the Colombo Port City Special Economic Zone offers a unique platform. Under a separate legal and regulatory framework governed by the Colombo Port City Economic Commission, this zone offers:

- tax incentives for strategic businesses;
- streamlined registration and licensing; and
- regulatory sandboxing for financial services.

Licensed commercial banks have already received approval to operate within this zone, paving the way for a modern offshore service and financial hub.

### Digitalisation and Starlink Launch

In response to increased digitalisation, the government continues to work towards comprehensive cybersecurity legislation, a long-anticipated measure that has yet to be enacted. Such a framework would complement the existing Personal Data Protection Act and would strengthen safeguards against cybercrime and financial fraud.

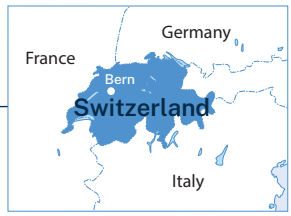
In addition, the digital economy has gained momentum, reinforced by the launch of Starlink in Sri Lanka, which is expected to expand internet access to underserved regions. The 2026 Budget allocated further resources to digitalisation, including the Sri Lanka Unique Digital Identity project and the continued modernisation of the Inland Revenue Department's Revenue Administration Management Information System (RAMIS), alongside the wider digitalisation of investment-facing agencies such as the Inland Revenue Department and the Registrar of Companies, with the objective of streamlining approvals and enhancing transparency.

### Conclusion

Sri Lanka's trajectory remains cautiously optimistic. While risks remain – particularly in debt sustainability, global trade policy and exposure to external shocks, as the impact of Cyclone Ditwah and the conflict in the Middle East has underscored – the country has made visible strides in stabilising its economy, enhancing fiscal discipline, and undertaking long-overdue structural reforms. The completion of the combined Fifth and Sixth IMF reviews, record tourism arrivals, strong revenue performance and renewed investor interest all point towards a slowly improving investment climate, even as growth is expected to moderate in 2026.

Investors should continue to monitor legal and policy developments (especially in the Port City regime, labour law and tax reform) as the country repositions itself as a competitive and rules-based investment destination in South Asia.

# SWITZERLAND




## Law and Practice

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# 1. Legal System

## 1.1 Legal System and Judicial Order

Switzerland has a civil law legal system. The most important source of law is written law. Switzerland's federalist structure has three levels:

- the Confederation (the federal state);
- the cantons (the states); and
- the municipalities (the local areas).

The Federal Constitution ranks first in the order of priority. It allocates certain authorities to the Federal Confederation. Where an area is not allocated to the Federal Confederation, the cantons exercise sovereign rights.

The different forms of written law generally have the following order of priority:

- federal laws prevail over cantonal laws;
- constitutional rules prevail over ordinary statutes; and
- statutes enacted by a legislative body prevail over regulations prepared by a government or administrative body.

# 2. Restrictions on Foreign Investments

## 2.1 Approval of Foreign Investments

A new regime regarding foreign investment control will enter into force in 2027.

Until then, Switzerland has no foreign investment control regime in place. No notification or clearance of a governmental agency is required when a foreign national or a foreign company invests in Switzerland or acquires a Swiss company. However, in specific sectors such as residential real estate, banking, insurance, national defence and electricity, sector-specific restrictions apply.

The new Federal Act on the Screening of Foreign Investments (the "Investment Screening Act", or IPG) is scheduled to enter into force in 2027. It will introduce for the first time a dedicated foreign investment screening regime. The regime remains limited in scope and applies only to acquisitions of Swiss companies by foreign state-controlled investors in certain sensitive sectors. The law distinguishes between sectors that are particularly critical to public order and security, which are subject to a lower turnover threshold, and other sensitive sectors with a higher turnover threshold. In the most critical areas, approval is required if the target company had, on average, at least 50 full-time employees worldwide or achieved at least CHF10 million in annual worldwide turnover in the two financial years preceding the application. These areas include companies that produce goods or transfer intellectual property essential for the operational capability of the Swiss Armed Forces. In other security-sensitive areas, acquisitions are subject to approval only if the target company had an average worldwide annual turnover of at least CHF100 million in the previous two financial years. These areas include hospitals or operators of important transport hubs such as airports or ports.

Switzerland is one of the world's largest recipients of foreign investment. It is also one of the world's largest investors abroad. Being open to inward foreign investment is important for Switzerland as a business centre. The country, therefore, aims to remain attractive for foreign investment by introducing a limited investment screening regime.

## 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

Under the new regime, filings need to be submitted to the State Secretariat for Economic Affairs (SECO) if the intended transaction falls within the scope of the new regulation. SECO must make its decision within three months.

If an acquisition is completed without the required approval, or if approval was obtained on the basis of false information, the Federal Council may order appropriate administrative measures to restore lawful conditions. This may include the divestment of the acquired participation. In addition, administrative sanctions may be imposed: the company resulting from an unapproved or improperly approved transaction can be fined up to 10% of the average worldwide annual turnover generated by the domestic target in the two financial years preceding the acquisition. For

breaches of information obligations, foreign state-controlled investors or domestic companies can also be fined up to CHF100,000. SECO is responsible for investigating and assessing such violations, which are subject to a five-year limitation period from the date of the infringement.

### 2.3 Commitments Required From Foreign Investors

Under the new regime, a foreign state-controlled investor must submit an application to SECO if the intended transaction falls within the scope of the new regulation.

### 2.4 Right to Appeal

Under the new regime, a decision rendered by SECO can generally be challenged in court.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

In Switzerland, there are different ways to engage in commercial activities, either through structures that require capital investment or through personal commitment with associated liabilities. Accordingly, a variety of legal forms are available in Switzerland, including:

- sole proprietorships;
- general partnerships;
- limited partnerships;
- corporations;
- LLCs;
- co-operatives; and
- foundations.

While Switzerland, as a member state of the Hague Trust Convention, recognises foreign trusts, trusts are not available under Swiss law, and comparable functions are served by foundations.

The most frequently used structures for the development of commercial activities are share corporations and limited liability companies (LLCs), both providing substantial flexibility and enabling the accommodation of a broad range of possible governance and operation set-ups.

Share corporations have a mandatory share capital of CHF100,000, split into shares of a nominal value that needs to be higher than zero, which can be issued to one or more shareholders. At incorporation, at least CHF50,000 of the share capital must be paid in cash or by contribution in kind of assets or rights.

LLCs have a mandatory quota capital of CHF20,000, split into quotas of a nominal value of CHF100 or more, which can be issued to one or more quota holders. The entire quota capital must be paid in cash or by contribution in kind of assets or rights.

Shareholders of a share corporation are not disclosed in any publicly available register (except under the disclosure rules for listed companies). In contrast, the commercial register reflects the quota holders of all LLCs.

### 3.2 Incorporation Process

Typically, share corporations and LLCs are incorporated within two weeks, although it is possible to accelerate the process if necessary. The incorporation requires the filing and registration of the following documents in the competent commercial register of the canton of the seat:

- a public deed on the resolutions of the founders' meeting;
- articles of association;
- proof that the share or quota capital has been paid in and/or proof that contributions in kind were made;
- documentation of the appointment and the acceptance thereof of the board of directors/management and the auditors (if any);
- legalised signature specimens for those directors and other representatives with signatory rights; and
- documentation of the company's domicile.

### 3.3 Ongoing Reporting and Disclosure Obligations

#### Corporate Actions

A number of corporate actions and changes need to be registered in the commercial register, including:

- changes in the board/management;
- changes of signatories;

- in the case of an LLC, changes in the quota holder(s); and
- changes to the articles of association, including changes to the company's registered seat, capital, purpose, transfer restrictions, etc.

### Reporting to the Equity Holders and Audit Requirements

The directors/management of a private company need to submit the company's business report, consisting of (i) annual financial statements and, for larger entities, (ii) a management report and (iii) consolidated financial statements to the shareholders/quota holders for approval.

While the financial statements of private companies do not have to be filed in a public register or publicly disclosed, listing regulations require listed entities to publish their financials in line with international standards.

Whether an ordinary or a limited audit of the financial statements needs to be performed depends on a company's size and economic relevance. Smaller companies can, with the unanimous consent of their shareholders/quota holders, waive the audit requirement altogether under certain conditions.

The financial statements of private companies are subject to an ordinary audit requirement where, for two consecutive fiscal years, at least two of the following threshold values are exceeded:

- CHF20 million for the balance sheet total;
- CHF40 million for revenue; and
- 250 full-time employees.

A company must also undergo an ordinary audit if it must consolidate or if shareholders holding at least 10% of the company's shares request an ordinary audit (opting up). An ordinary audit of the annual financial statements can also be required by the company's articles of association or a resolution of a shareholders' meeting.

If the foregoing criteria are not met, a company's financials are subject to a limited audit. A company may limit the audit partially (opting down) or fully (opting out) with the shareholders' unanimous consent if the company does not employ more than ten full-time employees.

### Beneficial Owners

Companies are required to keep a register of the beneficial owners of the shares issued by them, and such beneficial owners must be disclosed to the company by the shareholders when the threshold of 25% (on a standalone basis as well as when acting in concert) of the share/quota capital or votes is reached, within one month following the relevant acquisition.

### Tax Filings

Annual tax returns must be made on an annual basis, while various other taxes are subject to a variety of deadlines.

## 3.4 Management Structures

Share corporations and LLCs, in general, have three bodies, namely:

- the shareholders' meeting/quota holders' meeting;
- the board of directors/management; and
- the auditor (subject to potential opting out).

The shareholders' meeting is the supreme authority of a share corporation, resolving the fundamental organisation of the company, electing the board of directors and taking a (limited) number of key decisions.

The board of directors is the executive body responsible for all matters not reserved for the general meeting, and shall manage the business of the company to the extent it has not delegated such management to individual members or the executive management.

The auditor is a controlling body, with the scope of its tasks depending on whether a limited or ordinary audit is to be conducted.

Despite corporate law thus generally providing for a one-tier model, in practice, the day-to-day management (except for certain reserved matters) is, in many cases, delegated to the executive management, effectively leading to a two-tier structure. Certain companies, including banks and insurance companies, are even legally required to establish such two-tier struc-

ture. The following are non-transferable, inalienable duties that may not be delegated:

- the overall management of the company and the issuing of all necessary directives;
- determination of the company's organisation;
- the organisation of the accounting, financial control and financial planning systems as required for the management of the company;
- the appointment and dismissal of persons entrusted with managing and representing the company;
- overall supervision of the persons entrusted with managing the company, in particular with regard to compliance with the law, articles of association, operational regulations and directives;
- compilation of the annual report, preparation for the general meeting and implementation of its resolutions;
- filing an application for a debt restructuring moratorium and notification of the court in the event that the company is overindebted; and
- in the case of companies whose shares are listed on a stock exchange, the preparation of the remuneration report.

### 3.5 Directors', Officers' and Shareholders' Liability

In general, members of the board of directors and the executive management are personally responsible to the company, its shareholders and creditors for damages caused intentionally or negligently by default of their duties. The liability is, however, excluded if a task was properly delegated and if due care was given in selecting, instructing and supervising the person(s) put in charge of the relevant task. Under the business judgement rule, a business decision taken in a proper, unbiased and reasonably informed manner does not lead to liability, even if, in retrospect, it becomes clear that such decision was materially wrong and to the detriment of the company.

Liability actions can be brought by the company, its shareholders (either directly if they suffered direct damage or on behalf of the company in case of indirect damages, such as by a diminished share value) and, in the event of its bankruptcy only, the company's creditors. However, formal actions against board members are not common in practice.

Once shareholders have fully paid in their shares, they are not personally liable for the company's obligations. Under the "piercing of the corporate veil" concept, shareholders can, in exceptional cases, be held liable if the legal separation between the shareholder and the company has been disregarded and it would be abusive to rely on the legal independence of the company.

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

#### Nature and Hierarchy of the Legal Rules Governing Employment Relationships

There are various sources of law that may be of relevance when it comes to determining the mutual rights and obligations in connection with a particular employment relationship. These are typically the following (listed in hierarchical order):

- mandatory statutory law (including pertinent case law);
- mandatory standard employment contracts – ie, a special kind of legislative decree (as the case may be);
- collective bargaining agreements (as the case may be);
- operating regulations (as the case may be);
- employment contract;
- regulations of the employer (if any);
- non-mandatory standard employment contracts (as the case may be);
- non-mandatory statutory law (including pertinent case law);
- instructions of the employer (if any); and
- judge-made law based on the hypothetical will of reasonable contracting parties (in the absence of any other applicable legal source).

### 4.2 Characteristics of Employment Contracts

#### Principle of Freedom of Form

*Principle*

Swiss employment law is governed by the principle of freedom of form, meaning that there are, as a matter of principle, no formal requirements for the conclusion of an employment contract. Therefore, the conclusion of an employment contract generally only requires

explicitly or impliedly communicated corresponding declarations of intent, pursuant to which:

- the employee undertakes to work in the service of the employer for a limited or unlimited period; and
- the employer undertakes to pay remuneration to the employee.

For the purpose of proof alone, however, it is always advisable to conclude an employment contract in writing.

*Exceptions*

There are also exceptions to the aforementioned principle of freedom of form. First, there are specific employment contracts whose conclusion requires the observation of the written form (eg, apprenticeship contracts). Secondly, there are a number of specific contractual provisions in any employment contract that may only be bindingly agreed upon in writing (eg, post-contractual non-compete restrictions).

### Duration of Employment Contracts

*Permanent versus fixed-term employment contracts*

Swiss employment law provides for two basic types of employment contracts – ie, permanent and fixed-term employment contracts:

- permanent employment contracts are entered into for an indefinite period, and their termination requires a notice of termination (which may, in the sense of temporal protection against terminations, not be given at an inopportune juncture); and
- fixed-term employment contracts simply cease at the end of their fixed term and do not, at least as a matter of principle, provide for a premature ordinary termination option (although this is a possibility the parties may agree on).

*Prohibition of "illegal chain employment contracts"*

To guarantee a minimum temporal protection against terminations for the benefit of the employee, case law has developed the rule that it is not possible to agree on multiple consecutive fixed-term employment contracts without an objective reason for preferring this to a permanent employment contract. In the absence of such an objective reason, the seemingly fixed-term employment contracts are, therefore, simply reinterpreted into one permanent employment contract.

### Maximum Duration of Employment Contracts

After ten years, any fixed-term employment contract concluded for a longer duration (which is extremely unusual) may be terminated by either party by giving six months' notice expiring at the end of a month.

## 4.3 Working Time

### No Minimum Working Time for Salaried Employees

Swiss law does not provide for minimum working times. As a matter of principle, it is up to the parties to agree on a salaried employee's workload.

### Maximum Working Time for Some Salaried Employees

*Maximum weekly and daily working time for a large group of salaried employees*

At least for a large group of employees employed in Switzerland, the Federal Act on Work in Industry, Trade and Commerce (the "Labour Act") provides for weekly and daily maximum working times. These maximum working times pursuant to the Labour Act particularly, but not exhaustively, apply to most so-called blue-collar workers but explicitly not to employees holding a higher executive position, employees performing a scientific activity and employees performing an autonomous artistic activity (to name a few of the exceptions).

*Maximum weekly working time for salaried employees who are subject to the Labour Act*

With regard to employees who are subject to the Labour Act, the maximum weekly working time is generally either 45 hours (roughly simplified: for employees performing predominantly intellectual work in offices or office-like jobs) or 50 hours (roughly simplified: for employees with a predominantly manual field of activity). These limits may still be exceeded in exceptional cases, however.

*Maximum daily working time for salaried employees who are subject to the Labour Act*

With regard to employees who are subject to the Labour Act, there is also a general maximum daily working time of 12.5 or 13 hours (depending on the calculation method) to observe. This follows (indirect-

ly) from the Labour Act's various provisions regarding minimum rest periods (such as mandatory minimum breaks and the general prohibition of work during the night and on Sundays/public holidays).

### Overtime and Extra Hours

#### *Distinction between overtime and extra hours*

There are two main categories of hours worked in excess of the applicable usual weekly working time that need to be distinguished:

- "overtime" means the hours that an employee works in excess of the (usual) weekly working time that has been contractually agreed, is customary or has been defined in an applicable collective bargaining agreement or standard employment contract; and
- "extra hours" means the hours that an employee works in excess of the applicable maximum weekly working time (if any).

In the context of variable working time systems (eg, flexitime systems), there may be an additional important category of hours worked in excess of the applicable usual weekly working time (ie, hours worked based on the employee's "time sovereignty", which are to be distinguished from overtime).

#### *Employee's duty to perform overtime and extra hours*

While the employee is obliged to perform overtime if such overtime is required and to the extent they are able and may reasonably be expected to do so, the performance of extra hours (additionally) requires the existence of exceptional circumstances.

#### *Compensation for overtime and extra hours*

Pursuant to statutory law, overtime and extra hours are principally compensated by corresponding time off (only if the employee consents) or by an additional salary payment including a 25% surcharge (if the employee does not consent to compensation by time off).

However, this statutory compensation rule is only mandatory with regard to extra hours (for some employees, only from the 60th extra hour per calendar year). With regard to mere overtime, any employee compensation claim (ie, compensation in cash or in kind) may be excluded by a written agreement between the parties or by a provision in a collective bargaining agreement or standard employment contract.

## 4.4 Termination of Employment Contracts

### Freedom of Termination

#### *Principle*

Ordinary terminations of employment (ie, terminations observing the applicable notice period) do not require a particular lawful reason, so Switzerland may be described as an "employment at will" jurisdiction. If the other party so requests, the party giving notice must state its reasons for termination in writing.

#### *Limitations to the principle*

However, there are important limitations to the aforementioned principle of freedom of termination, as set out in the following.

- Terminations must principally observe the applicable notice period (during which the employer remains obliged to pay the employee's compensation).
- Terminations may never be issued in bad faith (so-called abusive terminations), whereas such bad faith is specified in a non-exhaustive legislative enumeration of circumstances (eg, bad faith is assumed if a termination is the result of the other party asserting claims under the employment relationship in good faith). While even an abusive termination is valid, it entitles the terminated party to a penalty payment of up to six monthly salaries (provided that said party submits a written objection against the termination before the expiry of the notice period and brings the claim before the competent court within 180 days of the end of the employment relationship).
- Terminations with immediate effect (ie, without observing the applicable notice period or an agreed fixed term) require the existence of good cause. This is only very exceptionally assumed if the terminating party may not reasonably be expected to continue the employment until the expiry of the applicable notice period or the agreed fixed term and acts within just a few days of becoming aware of the good cause. While even terminations without good cause result in immedi-

ate termination of the employment, the (non-)existence of good cause determines the further legal consequences of a termination with immediate effect, such as an additional penalty payment of up to six monthly salaries (in the case of an employer's termination without good cause).

While statutory law does not provide for severance payments, this may, in particular, be provided for in employment contracts or collective bargaining agreements (subject to the respective prohibition for members of the board of directors, the executive board and the advisory board, and persons close to them, of Swiss stock corporations whose shares are listed on a stock exchange).

### Termination Agreements

As a matter of principle, the parties may agree on mutual termination of their employment relationship in a termination agreement. This, however, requires that such termination agreement is not concluded to circumvent statutory provisions protecting the employee's interests (such as mandatory provisions in connection with incapacity for work due to illness or accident) but rather constitutes an actual "settlement". It is against this background that respective termination agreements usually provide for an additional "voluntary" severance payment that shall compensate the employee for fixing an exact termination date (the exclusion of any statutory prolongation of the employment in connection with an employee's incapacity for work) and/or which shall compensate the employee for waiving their potential claim to an additional penalty payment in view of an abusive termination. Non-compliance with the "actual settlement" requirement leads to the entire termination agreement being declared null and void.

### Collective Redundancies

#### *Procedural rules to be followed*

The termination of a certain minimum number of employees (ten at the very least) within 30 days, and for reasons not pertaining personally to the affected employees (ie, collective redundancies), is subject to specific procedural requirements. Most importantly:

- an employer may not decide to carry out collective redundancies before having informed the works council or (in the absence of such a works council) the employees in writing (including a copy sent to the cantonal employment office) and having consulted with them;
- in connection with such consultation, the employer must at least provide the works council or the employees the opportunity to formulate (non-binding) proposals on how to avoid redundancies, limit their number and/or mitigate their consequences within a set deadline of (in standard cases) approximately two weeks (otherwise, any respective termination would qualify as abusive and entitle each affected employee to a penalty claim of up to two monthly salaries);
- the employer must notify the cantonal employment office about the results of the consultation and provide it with further appropriate information in writing (including a copy sent to the works council or the employees); and
- no individual employment relationship eventually terminated in the course of collective redundancies may end until at least 30 days after such notification of the cantonal employment office.

#### *Employer's duty to issue a social plan*

Only employers normally employing at least 250 employees and intending to make at least 30 employees redundant within 30 days for reasons not pertaining personally to the affected employees are obliged to negotiate a social plan (ie, an agreement setting out measures to avoid redundancies, to reduce their number and to mitigate their consequences) with the works council or (in the absence of such a works council) the employees. If the employer fails to reach an agreement with the works council or the employees, the social plan will be issued by an arbitral tribunal.

## 4.5 Employee Representations

### Optional Constitution of a Works Council

According to the Federal Participation Act, employees of a Swiss employer with a head count of at least 50 are entitled (but not obliged) to constitute a works council. At the request of 20% of the employees (or at the request of 100 employees of an employer with a head count of more than 500), an anonymous vote must be held to determine whether the majority of the

employees casting a vote are in favour of the suggested constitution of a works council.

### Participation Rights

According to the Federal Participation Act, the management must provide the works council with all the information necessary to carry out its tasks properly (at least once a year). In addition, the works council has special participation rights (such as specific information rights, consultation rights or even a right of co-decision) in connection with questions relating to occupational safety and employee protection, transfers of undertakings, collective redundancies and selected topics in connection with occupational pension funds. In the absence of a works council, the employees may exercise their rights individually.

### Far-Reaching Consequences of a Violation of Participation Rights

The potential consequences of a violation of the aforementioned participation rights are not uniform but may, depending on the subject, be quite far-reaching (eg, pursuant to case law, the termination of an affiliation contract with an occupational pension fund without the necessary consent of the works council/employees must be considered null and void).

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/Employers

#### Taxes Applicable to Employees

##### *Income tax*

Income tax is levied at the federal, cantonal and municipal levels on:

- the worldwide income from all sources in case of a tax resident employee (so-called unlimited taxation); or
- income earned in Switzerland in case of a non-tax resident employee (limited taxation).

Individuals are considered tax resident if they are:

- a Swiss resident (ie, the centre of vital interests is in Switzerland);
- involved in gainful occupation and staying in Switzerland for at least 30 consecutive days; or
- staying in Switzerland for at least 90 consecutive days (irrespective of any gainful occupation).

Income from enterprises and permanent establishments outside Switzerland is exempt from unlimited taxation. Further exemptions from income tax may apply, for example, with regard to certain types of income (such as income from inheritance, gifts and matrimonial property rights, which may however be subject to gift or inheritance taxes), capital gains from the disposal of privately held movable assets (eg, shares; such movable assets are in principle exempt unless the taxpayer is deemed a professional dealer) and gains from immovable assets (ie, real estate) located in Switzerland.

Swiss income tax rates are progressive, with the marginal income tax rates varying between approximately 20% and 41%. Reduced taxation applies for certain non-occupational income (such as dividend income in case of qualified participation of at least 10% of the nominal share capital). The applicable tax rates are determined based on the worldwide income, irrespective of whether unlimited or limited taxation applies.

Swiss domestic tax law and the aforementioned principles of Swiss income tax may be overruled if, in an international context, a double taxation treaty (DTT) applies. DTTs have been concluded by Switzerland with over 100 countries.

##### *Wealth tax*

Levied on a cantonal and municipal level only, the distinction between unlimited and limited taxation also applies.

In case of unlimited taxation, wealth tax will be levied on the worldwide wealth, excluding assets attributable to business operations, permanent establishments or real estate outside Switzerland (these assets are, however, considered in determining the applicable tax rate). Wealth tax rates vary significantly depending on the canton and municipality of residence, with top marginal wealth tax rates varying between approximately 0.1% and 1.0% above a certain threshold, which is usually tax-free.

Levied on the gross income, the "state pension" covers old-age and survivors' insurance, disability insurance, and loss of earnings compensation in case of (military or similar) service, maternity, parenthood, caring for a seriously ill child and adoption. Social security contributions are split 50:50 between employee and employer, with the employee's portion amounting to 5.3% of the gross salary and being deducted and directly paid by the employer.

*Occupational pension contributions*

Contributions to the occupational pension scheme(s), to be established or acceded to by the employer for its employees, are determined by the specific pension scheme based on individual factors (such as age and insured salary) and are usually split 50:50 between employee and employer (the employee's portion may in any case not exceed 50% of the total contributions).

Employees earning above a certain annual threshold (CHF22,680 from 2025) are required to join the employer's pension scheme. Mandatory pension schemes are limited to a maximum annual salary (CHF90,720 from 2025), above which the employer may establish or accede to a voluntary pension scheme.

*Unemployment insurance contributions*

Providing certain compensation for a limited period in case of unemployment, weather-induced loss of working hours, short-time work and non-payment in case of the employer's insolvency, the contributions amount to 2.2% of the gross salary not exceeding CHF148,200 and are split 50:50 between employer and employee. No contributions are due for a gross salary above CHF148,200.

*Non-occupational accident insurance contributions*

Employees working at least eight hours per week are mandatorily insured against non-occupational accidents. The contributions depend on the individual insurance contract and are usually borne entirely by the employee, deducted from the employee's gross salary and directly paid to the insurance by the employer.

*Daily sickness benefits insurance contributions*

For a limited period, the employer is obligated to continue paying the salary if an employee is prevented from working due to illness. The employer may take out insurance to cover this risk and agree with the employee to bear up to 50% of the contributions, subject to the individual insurance contract.

*Social health insurance premiums*

Though mandatory for all Swiss residents, social health insurance is a private matter for each employee unrelated to the employment relationship. The employer is not obligated to contribute, nor is it customary that the employer contributes, to its employees' social health insurance premiums.

### Taxes Applicable to the Employer

With regard to general taxation, please see **5.2 Taxes Applicable to Businesses**. In addition, a wage source tax in the amount of the income tax owed is levied and withheld by the employer from the salary of employees who are:

- non-tax residents (in Switzerland); or
- neither Swiss citizens nor holders of a permanent residency permit nor married to a Swiss citizen.

*Social security contributions*

The employer's portion of 5.3% is to be paid directly by the employer in addition to the gross salary (from which the employee's portion of an additional 5.3% is deducted and directly paid to the social security authority by the employer).

*Occupational pension contributions*

As with employees, these contributions are usually split 50:50, with at least 50% being borne by the employer.

*Unemployment insurance contributions*

As with employees, these contributions are usually split 50:50, with at least 50% being borne by the employer.

*Occupational and non-occupational accident insurance contributions*

Occupational accident insurance is mandatory for all employees working in Switzerland and must be borne

by the employer. Contributions depend on the individual insurance contract. With regard to non-occupational accident insurance, the situation is the same as for employees, as described in the foregoing.

*Daily sickness benefits insurance contributions*

As with employees, these contributions are usually split 50:50, with at least 50% being borne by the employer.

*Family allowance contributions*

Family allowances (child and education allowances as well as, depending on the canton, birth and adoption allowances) are paid by the employer to entitled employees, for which the employer is reimbursed by the competent compensation office. Family allowance contributions are mainly borne by the employer based on a percentage of the salary and depend on the canton, economic sector and relevant family allowance section at the competent compensation office (usually between 0.7% and 3.5% of the annual gross salary).

## 5.2 Taxes Applicable to Businesses

### Corporate Income Tax

As is the case for individuals, corporate income tax is levied at the federal, cantonal and municipal levels:

- on worldwide net income from all sources in Switzerland in case of a tax resident legal entity, including companies, co-operatives, associations and foundations (so-called unlimited taxation); or
- on net income earned in Switzerland in case of a non-tax resident legal entity (limited taxation).

A legal entity is considered a tax resident if (i) its statutory seat or (ii) its place of effective management is located in Switzerland.

Income from enterprises and permanent establishments or real estate outside Switzerland is exempt from unlimited (corporate) taxation. Effective corporate income tax rates depend on the canton and the municipality and vary from approximately 12% to 21%.

Tax losses may be carried forward and offset against income for the following seven years.

Dividends are subject to participation relief in case of participation of at least 10% of the nominal share capital or reserves or a fair market value of the participation of at least CHF1 million. This also applies to capital gains derived from the disposal of a qualifying participation (at least 10%), provided that the minimum holding period of one year is met. In the case of such income from qualified participations, the corporate income tax will be reduced by the ratio between the net income from the participation and the aggregate taxable income of the legal entity concerned.

Further deductions may be available, such as IP box, R&D super deduction or notional interest deduction.

### Capital Tax

Tax resident and non-tax resident legal entities in Switzerland are subject to an annual capital tax at the cantonal and municipal levels. Levied on the tax-adjusted net equity, the applicable tax rates range between approximately 0.001% and 0.53%. The capital tax is creditable to the corporate income tax in some cantons.

### Stamp Duty

A one-time capital duty of 1% is levied on any issuance of new shares by a tax resident company exceeding the amount of CHF1 million (nominal value and share premium, with any issuance up to such amount being tax-free), and on contributions made by the direct shareholder to such company. In both cases, certain reliefs are available for, inter alia, recapitalisation, restructuring and migration.

A security transfer tax of 0.15% for Swiss securities and 0.3% for foreign securities applies to any transfer of taxable securities:

- that are transferred against consideration;
- where at least one of the parties or intermediaries involved in the transfer qualifies as a Swiss securities dealer; and
- where none of the available exemptions applies.

Stamp duty is further levied in certain special legal cases (eg, on insurance premiums).

### Value Added Tax (VAT)

VAT is levied at a federal level on taxable supplies and services made in Switzerland, as well as on the import of goods. Taxable services from abroad are subject to the reverse charge mechanism.

The standard tax rate is 8.1%. A special tax rate of 3.8% applies to accommodation services (eg, hotels), and a reduced tax rate of 2.6% applies to the charge (and import) of certain elementary supplies such as food, water and medication.

Individuals and legal entities providing taxable supplies and services are subject to VAT if such supplies and services exceed CHF100,000 per annum (in certain special cases such as sports associations, the threshold amount is CHF150,000).

### Withholding Tax (WHT)

Dividends in cash or in kind in excess of the nominal share capital plus confirmed capital contribution reserves from a tax resident company are subject to WHT at a rate of 35%, to be withheld by the company and paid to the Swiss Federal Tax Authorities. The WHT is refundable or creditable, in full, to any shareholder who has recognised the distribution in the income statement; or reported it in the income tax return based on a DTT or, under certain circumstances, the agreement with the EU regarding international automatic exchange of information. A notification procedure is available (instead of paying the tax and claiming the refund) under certain conditions.

Interest payments of tax resident legal entities are subject to WHT if:

- made for customer deposits with Swiss banks; or
- based on collective debt fundraising (ie, debt raised from more than ten creditors under identical conditions or 20 creditors under deviating conditions, and where the aggregate debt concerned amounts to at least CHF500,000).

Royalties paid by tax resident legal entities are not subject to WHT as long as they meet at arm's length terms.

### OECD/G20 Minimum Tax Rate

The Federal Council implemented the minimum tax rate of 15% for large multinational companies with an annual turnover of at least EUR750 million, as agreed by the OECD and G20 member states by means of a constitutional amendment accepted by popular vote on 18 June 2023. The qualified domestic minimum top-up tax (QDMTT), which entered into force on 1 January 2024 based on a temporary ordinance, has been granted safe harbour status on the OECD's central record. The tax law will be enacted subsequently in the ordinary manner. The minimum tax rate has been implemented in Switzerland by means of a national supplementary tax.

On 4 September 2024, the Federal Council decided to also enact the international supplementary tax-related Income Inclusion Rule (IIR) from 1 January 2025.

## 5.3 Available Tax Credits/Incentives

Further tax credits and incentives – such as IP box, R&D super deduction and notional interest deduction – may be available; however, this depends on the cantonal implementation (if any) and is therefore subject to the tax domicile.

## 5.4 Tax Consolidation

Tax consolidation is available for VAT purposes. Legal entities, including permanent establishments, under common control may form a VAT group, through which intra-group supplies are excluded from VAT.

## 5.5 Thin Capitalisation Rules and Other Limitations

The minimum equity of a tax resident company is calculated according to the asset base – ie, the maximum indebtedness permissible for tax purposes for each category of assets, with such permissible maximum indebtedness ranging between 0% and 100%. A company is considered thinly capitalised if the aggregate debt owed to related parties exceeds the calculated permissible maximum indebtedness.

Such qualification has the effect that:

- related party debt exceeding the calculated permissible maximum indebtedness will be deemed

hidden equity for capital tax purposes (ie, increasing the basis of the capital tax); and
- interest payments on such excess-related party debt will not be tax deductible and will be deemed a (hidden) dividend, resulting in respective taxes being applicable, in particular a 35% WHT.

### 5.6 Transfer Pricing

As a principle, Switzerland has no statutory transfer pricing rules other than the requirement that intercompany charges are on arm's length terms. Therefore, Swiss tax authorities accept, in principle, the transfer pricing methods described by the OECD guidelines.

Special rules apply with regard to interest rates on loans granted from or to shareholders and other related parties. The Swiss Federal Tax Authorities publish, on an annual basis, safe-haven interest rates. Higher or lower interest rates may be applied if it can be proved that they are on arm's length terms.

### 5.7 Anti-Evasion Rules

Swiss law does not provide for specific anti-evasion rules. Based on Swiss law and decisions by the Swiss Federal Supreme Court, the following two rules have been developed.

- Legal entities are taxable at the registered seat or the place of effective management.
- Arrangements may be disregarded if:
  (a) the taxpayer's legal form appears unusual or unsuitable for its economic goal;
  (b) the legal form appears to have been chosen arbitrarily and only to achieve tax savings; and
  (c) the legal form leads to tax savings.

### 5.8 Tariffs

Switzerland maintains a relatively liberal trade regime, characterised by very low average tariffs on industrial goods but comparatively higher protection for specific sectors – most notably agriculture. As a member of the European Free Trade Association (EFTA), Switzerland participates in numerous free trade agreements, which significantly reduce or eliminate tariffs with partner countries.

On 1 January 2024, Switzerland abolished tariffs on nearly all industrial goods, regardless of country of origin. This reform applies to products classified under chapters 25–97 of Annex 1 to the Swiss Customs Tariff Act, including machinery, electronics, automobiles and parts, pharmaceuticals and consumer goods such as clothing, furniture and sports equipment. The removal of tariffs on industrial goods was introduced to reduce costs for businesses and consumers, simplify customs procedures, and support Switzerland's export-driven economy. It positions Switzerland among the world's most open markets for industrial imports.

In contrast, and as in most European countries, tariffs remain comparatively high on agricultural goods. These measures are intended to shield domestic farmers and support broader policy objectives such as food security, the preservation of the rural landscape and the continuation of traditional farming practices. Many agricultural tariffs are accompanied by tariff rate quotas, allowing limited imports at reduced rates while imposing higher duties on quantities exceeding the quota.

Switzerland has bilateral agreements – particularly with the European Union – that eliminate most tariffs on industrial goods, though agricultural trade is typically excluded or only partially liberalised. In addition, Switzerland has concluded free trade agreements via EFTA with over 40 countries, including Canada, South Korea and Indonesia, offering preferential tariff treatment on a wide range of products.

In addition to tariffs, imports into Switzerland are subject to VAT. See **5.2 Taxes Applicable to Businesses** for the applicable VAT rates.

International pressure, especially within WTO negotiations and in trade talks with partners like Mercosur, has intensified calls for Switzerland to further liberalise its agricultural market. Domestically, there is also growing political debate about aligning tariff preferences with environmental and labour standards, reflecting evolving societal priorities around sustainability. Although recent US tariff increases have added external pressure – particularly affecting high-value sectors such as watches and pharmaceuticals – the Swiss government remains committed to a rules-based global trade system and continues to pursue diplomatic solutions to safeguard its economic interests.

## 6. Competition Law

### 6.1 Merger Control Notification

Mergers and acquisitions must be notified if certain turnover thresholds are reached. Planned concentrations of undertakings such as mergers, acquisitions of sole or joint control over a previously independent undertaking, as well as the setting up of full-function joint ventures (concentrations) must be notified to the Competition Commission (COMCO) before their implementation if the following turnover thresholds are reached in the financial year preceding the concentration:

- the undertakings concerned together reported a turnover of at least CHF2 billion, or a turnover in Switzerland of at least CHF500 million; and
- at least two of the undertakings concerned each reported a turnover in Switzerland of at least CHF100 million.

Regardless of whether the turnover thresholds described in the foregoing are reached, a concentration must be notified if one of the undertakings concerned has been held (in a binding decision) to be dominant in a market in Switzerland, and the concentration concerns either the same market or an adjacent, upstream or downstream market.

### 6.2 Merger Control Procedure

The merger control procedure can include two phases: COMCO has one month for a preliminary assessment of a notified transaction (Phase I). Then, the concentration may be implemented, unless COMCO opens a Phase II investigation. The Phase II investigation must be completed within an additional four months. Before Phase I and, if relevant, Phase II is completed, concentrations must not be implemented.

COMCO assesses whether the notified concentration leads to the creation or strengthening of a dominant market position likely to eliminate effective competition. The threshold for intervention seems comparatively rather high. Also, COMCO can only clear concentrations under certain conditions and obligations.

### 6.3 Cartels

Agreements that significantly restrict competition in a market for specific goods or services and are not justified on the grounds of economic efficiency, and all agreements that eliminate effective competition are unlawful.

Agreements and concerted practices between competitors (horizontal agreements) related to prices or elements thereof (such as rebates), quantities or the allocation of territories or customers are presumed to eliminate effective competition (so-called hardcore restrictions). Such hardcore restrictions can hardly ever be justified on the grounds of economic efficiency.

Agreements between undertakings at different levels of the production and distribution chain (vertical agreements) regarding fixed or minimum prices are presumed to eliminate effective competition and thus qualify as hardcore restrictions, irrespective of whether the agreement has actual effects on the relevant market. The same is true for agreements on absolute territorial protection. Absolute territorial protection clauses prohibit passive sales – ie, they prohibit the fulfilment of unsolicited customer orders.

### 6.4 Abuse of Dominant Position

Dominant undertakings and undertakings with relative market power behave unlawfully if, by abusing their position in the market, they hinder other undertakings from starting or continuing to compete (eg, by pricing below cost) or disadvantage trading partners (eg, by imposing excessive prices or unfair trading terms).

Undertakings are considered dominant in a specific market if they are able, as suppliers or consumers, to behave to an appreciable extent independently of the other participants (competitors, suppliers or consumers) in the market. A dominant position is generally presumed for a company with a market share of 50% or more. However, under certain circumstances, a lower market share of approximately 40% is sufficient to qualify as a dominant market position.

An undertaking has relative market power if other undertakings are dependent on it for the supply of or the demand for goods or services in such a way that

there are no adequate and reasonable opportunities for switching to other undertakings.

The Swiss Cartel Act lists certain behaviours of dominant undertakings and undertakings with relative market power that are considered unlawful (non-exclusive):

- any refusal to deal (eg, refusal to supply or to purchase goods);
- any discrimination between trading partners in relation to prices or other conditions of trade;
- any imposition of unfair prices or other unfair conditions of trade;
- any undercutting of prices or other conditions directed against a specific competitor;
- any limitation of production, supply or technical development;
- any conclusion of contracts on the condition that the other contracting party agrees to accept or deliver additional goods or services; and
- restriction of the opportunity for buyers to purchase goods or services offered both in Switzerland and abroad at the market prices and conditions customary in the industry in the foreign country concerned.

The abuse of a dominant market position by a dominant company (but not the abuse of relative market power) is subject to a fine of up to 10% of the turnover of such company in Switzerland in the preceding three financial years.

## 7. Intellectual Property

### 7.1 Patents

#### Definition

An invention or process can be patented if it is:

- new and does not form part of the state of the art – ie, all knowledge that has been made publicly available anywhere in the world prior to the patent application;
- inventive, which means that it must not be obvious to a person skilled in the art; and
- industrially applicable and practicable, with the possibility of replicating its implementation.

Under the current Swiss patent regime, novelty and inventive step are generally not substantively examined prior to grant. However, revised Swiss patent legislation entering into force on 1 January 2027 will introduce a mandatory prior-art search for all applications and an optional full examination of novelty and inventive step.

The following cannot be patented:

- abstract ideas without specific technical solutions, discoveries of natural processes or phenomena, scientific theories and mathematical methods;
- game rules and teaching methods;
- diagnostic, therapeutic and surgical procedures used on humans or animals;
- plant varieties, animal breeds and other biological procedures for breeding plants or animals (however, biotechnological inventions – such as the extraction of human insulin from yeast cells – can be patented); and
- inventions whose use would be contrary to public policy, explicitly forbidden or immoral.

#### Application

Swiss patent applications must be filed with the Swiss Federal Institute of Intellectual Property.

The following need to be submitted over the course of the filing process:

- information on the applicant;
- a description of the invention;
- at least one patent claim to define the invention;
- technical drawings of reproducible quality;
- a declaration regarding international priority rights claimed (if any); and
- the names of the individual inventors.

#### Enforcement and Remedies

Any valid patent can be challenged before the Swiss Federal Patent Court. Patents (or parts thereof) can be cancelled if:

- the invention was not new or innovative at the time of filing; or
- the invention is not described sufficiently clearly and precisely for it to be realised by a person

skilled in the art. This is referred to as insufficient disclosure. The plaintiff can also argue that important elements or steps relating to the invention are not mentioned or obvious in the patent specification.

Patent infringements can be prosecuted through both civil actions and criminal proceedings.

### Length of Protection

Patents are protected for 20 years from the date of filing. This period is generally not extendable. However, for certain products (eg, medicinal products) a supplementary protection certificate may be requested that extends patent protection for up to five years.

## 7.2 Trade Marks

### Definition

A trade mark is a protected sign that distinguishes a company's products or services from those of other companies.

The following categories of trade marks are available:

- individual trade marks, being the most common category, typically used by companies to identify and market their products and services;
- collective trade marks, used for the identification and marketing of products and services by associations and their members;
- guarantee trade marks, guaranteeing that goods and services possess specific characteristics (eg, regarding quality or geographical origin); and
- geographical trade marks, requiring the existence of a prior registration, a foreign (controlled) designation of origin recognised by Switzerland, a geographical indication, the existence of a Federal Council ordinance or an equivalent foreign regulation.

Amongst others, the following types of trade marks are available:

- word marks;
- figurative marks (optionally with a colour claim); and
- combined word and figurative marks (optionally with a colour claim).

The trade mark owner has the exclusive but transferable and licensable right to use the trade mark for goods or services for which it is registered and can prohibit third parties from using it.

### Application

Swiss trade mark applications must be filed with the Swiss Federal Institute of Intellectual Property.

### Enforcement and Remedies

Any trade mark can be challenged by means of an opposition if it could be confused with one or more other trade marks. The opposition must be filed with the Swiss Federal Institute of Intellectual Property within three months upon registration of the trade mark. Trade marks can be challenged at any time after the expiration of the opposition period before ordinary civil courts.

Trade mark infringements can be prosecuted through both civil actions and criminal proceedings.

The cancellation of a trade mark can be requested after a non-interrupted period of non-use of five years; it should be noted that the use of a trade mark either by the trade mark owner or by a third party with the consent of the trade mark owner is sufficient to prevent successful cancellation requests.

### Length of Protection

Trade marks are protected for an initial period of ten years from the date of filing and can be renewed for an unlimited number of additional ten-year periods.

## 7.3 Industrial Designs

### Definition

The design of products or parts of products is characterised in particular by the arrangement of lines, surfaces, contours or colours, or by the materials used.

Designs can be protected if they are:

- new (ie, they have not been made publicly available prior to the date of application or priority); and
- sufficiently distinctive from existing designs in terms of key features.

They must also not be:

- otherwise unlawful;
- contrary to public policy, explicitly forbidden or immoral; or
- only comprised of features dictated solely by the technical function of the product.

The owner of a design has the exclusive right to its use and can prevent third parties from using it for commercial purposes. Protection covers the external appearance and visual impression of a product. The production, utility, intended use and technical effects of a design are not protected.

Animated creations are not covered by design protection in Switzerland.

### Application
Swiss design applications are to be filed with the Swiss Federal Institute of Intellectual Property. Publication can be deferred for up to 30 months.

### Enforcement and Remedies
Design infringements can be prosecuted through both civil actions and criminal proceedings.

### Length of Protection
Designs are protected for an initial period of five years from the date of filing and can be renewed for an additional five years, for a total duration of up to 25 years.

## 7.4 Copyright
### Definition
Intellectual creations (including visual and audiovisual works, music, works of architecture, computer software and scientific works) with an individual character are copyright-protected works. Software is an explicitly recognised work category. Further, photographs are protected even if they do not have an individual character.

Copyright does not protect, for example, ideas, achievements, products of nature or coincidence, concepts or instructions, or laws and regulations. Patent specifications and published patent applications are not protected.

The copyright owner has the exclusive right to determine how and when the copyright-protected work is used. This includes:

- the right to reproduce;
- the right to distribute;
- the right to make a work available to the public;
- the right to perform and present; and
- the right to adapt.

### Protection
Protection arises automatically upon the creation of the work, with no registration required. Under Swiss law, it is not necessary to add "©" or "Copyright" for protection to apply.

As there is no register for copyrights, in case of a dispute the copyright owner needs to demonstrate authorship or having been assigned (by operation of law or contractually) ownership. Aside from other means of proof (witnesses, drafts, etc), the Swiss Copyright Act provides for a presumption of authorship, meaning that, unless proven otherwise, the author is deemed to be the person whose name or pseudonym appears on the copies of the work published.

### Enforcement and Remedies
Copyright infringements can be prosecuted through both civil actions and criminal proceedings. Remuneration claims for certain types of works are only enforceable by societies for the collective management of copyrights.

### Length of Protection
Protection lasts for the life of the author, plus:

- 50 years for computer software and photographs; and
- 70 years for all other copyrights.

## 7.5 Others
Switzerland does not have an act dealing specifically with trade secrets. Instead, trade secrets are protected under various provisions, as set out in the following.

- Criminal law prohibits persons legally committed to keeping a secret from exploiting or revealing it. It also prohibits industrial espionage. Furthermore,

a number of secrecy obligations are enforced with criminal sanctions in various industrial sectors and professions, such as the secrecy obligations applicable to lawyers, physicians, banking, etc.
- Under Swiss competition law, unfair business practices regarding the unlawful procurement, misappropriation or exploitation of information are prohibited. Violation of these rules may lead to civil liability and criminal sanctions.
- Corporate law prohibits the bodies and top management of companies from disclosing or otherwise utilising secret information other than according to the scope of their mandates.
- Employment law prohibits an employee from exploiting confidential information acquired in the course of work.
- Agency and procurement law forbids an agent from making use of the trade secrets of the principal it has been entrusted with.

Furthermore, Switzerland is a party to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

## 8. Data Protection

### 8.1 Applicable Regulations

Data protection in Switzerland is mainly regulated by the Federal Act on Data Protection (FADP) and its ordinances, particularly the Federal Ordinance on Protection Act. However, sector-specific or overarching data protection legislation may provide for a broader scope of application. The new FADP, which entered into force on 1 September 2023, aligned Swiss data protection with the European legislation to a significant extent and has, amongst other things, implemented:

- the principle of data protection by design and by default;
- the obligation to perform an impact assessment under certain circumstances; and
- the obligation to notify the Federal Data Protection and Information Commissioner (FDPIC) or data subjects of data breaches unless an exception applies.

Given that Switzerland is not a member state of the EU, the EU General Data Protection Regulation only applies under certain circumstances – eg, if a Swiss-based company offers goods or services to individuals in the EU or monitors the behaviour of such individuals.

### 8.2 Geographical Scope

The FADP is applicable to the processing of personal data that has an effect in Switzerland, even if it was collected abroad. Therefore, if personal data concerning natural persons in Switzerland is processed abroad, the controller or processor abroad must comply with applicable Swiss law. In addition, private controllers domiciled or resident abroad must appoint a representative in Switzerland if they process the personal data of persons in Switzerland.

The FADP establishes certain principles, which must be observed by controllers as well as – for most principles – processors.

- Lawfulness – personal data must be processed lawfully, meaning that processing must not violate another norm of Swiss law directly or indirectly aimed at protecting the personality.
- Good faith – data shall be processed in good faith, meaning that the processing shall be evident to the data subject.
- Transparency and purpose limitation – the collection and usage of personal data must be apparent to the data subject, and use shall be limited to the specified purpose.
- Proportionality – processing must be proportionate to the purpose (data minimisation) and must be “destroyed or anonymised” as soon as it is no longer needed with regard to the purpose of the processing.
- Accuracy – reasonable measures are to be taken to ensure that the personal data is up to date, and that it is possible to correct incorrect data.
- Privacy by design and security – controllers must set up technical and organisational measures in order to meet the data protection requirements (privacy by design) and, in particular, to ensure a level of data security appropriate to the risks (data security).

- Privacy by default – unless the data subject instructs otherwise, the controller is required to limit the processing to the required minimum through pre-defined settings.

The transfer of personal data to countries that do not provide a level of data protection considered adequate by Swiss law is not permitted unless the protection of the personal data is ensured by other measures (eg, by using the standard contractual clauses of the EU with certain Swiss-specific amendments). In certain cases, the transfer mechanism requires prior approval by or notification to the FDPIC, the Swiss data protection authority.

### 8.3 Role and Authority of the Data Protection Agency

The FDPIC is an independent body tasked with supervising private persons and federal bodies with respect to data protection compliance. To this end, the FDPIC has published several non-binding guidelines.

The FDPIC may investigate cases either on its own initiative or at the request of a third party. If such an investigation reveals that data protection regulations are being breached, the FDPIC may issue binding orders (eg, that the processing is fully or partially adjusted, suspended or terminated). The individual or entity subject to such order (but not the data subject) may initiate proceedings against it before the competent court. The FDPIC may also inform the public of its findings and its decisions in cases of general interest, which may lead to negative publicity. Moreover, the FDPIC is subject to the Freedom of Information Act and may be required, upon request, to release information to the public or the media.

The FDPIC does not have the authority to issue any fines. However, law enforcement agencies may issue fines of up to CHF250,000 for certain data protection breaches. These fines may be imposed on the individuals responsible for a breach, including, if applicable, on directors and officers and employees with independent decision-making power, provided these breaches have been committed wilfully (see Article 12, Criminal Code) and on the condition that a subject makes a complaint.

In addition, data subjects may directly take legal action in case of violation of their rights under the FADP and related Swiss data protection legislation.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

#### Revised Patent Act

On 1 January 2027, the revised Swiss Patent Act will enter into force together with the revised Swiss Patent Ordinance. The main changes are as follows.

- Patent applicants will be able to request that the Swiss Federal Institute of Intellectual Property examine their patent application for all patentability requirements. The fully examined national patent will offer medium-sized enterprises and individual inventors, in particular, an equivalent, convenient and lower-cost alternative to the European patent. If no such request is made, the partially examined patent will continue to be an inexpensive and easily obtainable IP right.
- The Swiss Federal Institute of Intellectual Property will have to establish the state of the prior art in the field of the invention. The search results will be published, which will allow all interested parties to determine whether the invention is eligible for patent protection. Overall, this will increase the value of the Swiss national patent.
- The well-versed Federal Patent Court, instead of the Federal Administrative Court, will judge appeals against decisions of the Swiss Federal Institute of Intellectual Property.

#### Foreign Investment Control

The new Swiss Federal Act on the Screening of Foreign Investments (IPG) is scheduled to enter into force in 2027. So far, Switzerland does not have any foreign investment control regime. It will introduce a dedicated foreign investment screening regime targeting acquisitions of Swiss companies by foreign state-controlled investors in certain sensitive sectors. The law distinguishes between sectors that are particularly critical to public order and security (eg, defence industry, water supply, energy, and security-related IT systems), which are subject to a lower turnover threshold, and other sensitive sectors (eg, important hospitals or

operators of important transport hubs such as airports or ports). See **2. Restrictions on Foreign Investments** for further details.

### Possible Revision of the Swiss Labour Act

At the political level, a relaxation of some provisions of the Labour Act is currently being discussed with regard to employees who work remotely (eg, exemptions from the prohibition of work on Sunday). However, it is not yet possible to say whether – and, if so, when – such changes will come into effect.

# UAE

## Law and Practice




**Contributed by:**
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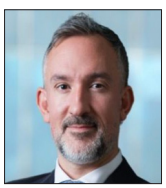
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**Habib Al Mulla & Partners** was founded in 1984 and is a market-leading law firm headquartered in Dubai, with offices in Abu Dhabi, Istanbul, Moscow, Baghdad, Cairo and New Delhi. The firm brings together a team of 80+ lawyers who provide tailored legal advice across over 14 areas of practice and serve clients in industries ranging from finance and construction to energy and technology. Renowned for its strength in dispute resolution, regulatory work, and cross-border transactions, the firm is consistently highly ranked, affirming its position among the region's top-tier firms. Dr Habib Al Mulla, the firm's founder, is one of the UAE's most prominent legal figures and was instrumental in shaping major legislative reforms. His vision helped establish the Dubai International Financial Centre (DIFC) – the UAE's first financial free zone – solidifying the firm's legacy as a pioneer in legal and regulatory advancement in the Middle East.

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# 1. Legal System

## 1.1 Legal System and Judicial Order

### Civil Law Foundations

The UAE operates a civil law system, rooted primarily in codified legislation that draws significantly from Egyptian civil law (itself derived from French civil law principles) alongside an overlay of Islamic (Sharia) principles, particularly in areas of personal status, inheritance and certain aspects of commercial law. The primary codified instruments include the Civil Transactions Law (Federal Decree Law No 5 of 1985, as comprehensively amended by Federal Decree Law No 25 of 2025 coming into force on 1 June 2026) and the Commercial Transactions Law (Federal Law No 18 of 1993). There is no doctrine of binding judicial precedent as understood in common law systems, although courts give significant weight to decisions of higher courts, particularly the Federal Supreme Court.

### Federal and Emirate Court Structure

The UAE constitution establishes a dual court structure comprising a federal judiciary and independent emirate-level judiciaries. The federal court system consists of the Federal Supreme Court (the apex court, sitting in Abu Dhabi), Federal Courts of Appeal and Federal Courts of First Instance. However, the emirates of Abu Dhabi, Dubai and Ras Al Khaimah have each exercised their constitutional right to maintain independent local court systems, with their own courts of first instance, courts of appeal and courts of cassation. In practice, the majority of commercial litigation is conducted before the Dubai and Abu Dhabi local courts.

### Financial Free Zone Courts

The Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM) each maintain separate common law court systems operating in English, with jurisdiction over civil and commercial matters arising within those zones. The DIFC courts apply common law principles as developed in England and Wales and are widely regarded as a sophisticated dispute resolution forum. Both the DIFC courts and the ADGM courts regularly enforce each other's judgments and have entered into recognition arrangements with various international courts, adding significantly to their utility in cross-border disputes.

# 2. Restrictions on Foreign Investments

## 2.1 Approval of Foreign Investments

### General Framework

Foreign investment in the UAE mainland is governed by the Commercial Companies Law (Federal Decree Law No 32 of 2021 as amended by Federal Decree Law No 20 of 2025) with implementing Cabinet decisions. The current framework permits 100% foreign ownership across the majority of commercial activities on the mainland. The limitation on foreign ownership is defined by reference to a "List of Activities with Strategic Impact" established by Cabinet decision (No 55 of 2021), which identifies the activities reserved for UAE national ownership or UAE national-majority ownership; all activities not appearing on the Negative List may be conducted through a wholly foreign-owned entity.

### The Negative List

The Negative List encompasses activities considered to be of strategic national significance, including certain defence and security activities, oil exploration concessions, specific money exchange and financial services segments, and other designated sectors. For activities on the Negative List, Emirati ownership requirements remain in place, and the degree of permissible foreign participation (if any) is specified by the relevant Cabinet decision. Foreign investors should verify the current status of their intended activity against the Negative List at the time of application, as the list is subject to periodic revision by the Cabinet.

### Sector-Specific Regulatory Approvals

For regulated industries, including banking and financial services, insurance, securities and investment, telecommunications, healthcare and education, a licence from the relevant sector regulator is required in addition to the standard licence from the emirate's licensing authority. Each regulator applies its own criteria, including fit-and-proper assessments, minimum capital requirements, governance standards and local substance conditions. Sector regulatory approval must generally be obtained before or in parallel with the main commercial licence application. Free zones, by contrast, permit 100% foreign ownership as a baseline, with no nationality restrictions, though free zone entities are generally limited to conducting business within the free zone or internationally.

## 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

The standard procedures generally applicable to all investors establishing a mainland presence in the UAE are as follows.

### The Licensing Process

An investor wishing to establish a mainland presence must apply to the relevant emirate's Department of Economic Development (DED) or equivalent authority. The principal steps are:

- reserving a trade name;
- obtaining initial activity approval;
- preparing and notarising a memorandum of association (MOA) before a UAE notary;
- submitting shareholder identification documentation; and
- paying the prescribed fees.

Where the activity requires a third-party approval, such as from the Central Bank or the Securities and Commodities Authority (SCA), that pre-approval must be obtained alongside the DED application. A standard limited liability company (LLC) can typically be established within two to four weeks; regulated activities may take considerably longer depending on the regulating authority.

### Post-Licensing Obligations

Once the trade licence is granted, the company must register with the Federal Tax Authority for corporate tax purposes and, where applicable, for VAT. Employers must also register with the Ministry of Human Resources and Emiratisation (MOHRE) before hiring employees and must comply with beneficial ownership filing obligations by registering ultimate beneficial owner (UBO) information with the licensing authority within prescribed timeframes.

### Consequences of Operating Without Approval/Licence

Conducting commercial activity without a valid trade licence or the necessary regulatory approval is a criminal offence under applicable federal and emirate legislation. Penalties include administrative fines, mandatory cessation of operations, asset seizure and, in serious cases, criminal prosecution of responsible individuals, which may result in imprisonment. In regulated sectors, unlicensed activity may additionally attract regulatory fines, disgorgement of profits and public censure. Contracts entered into in the course of unlicensed operations may be challenged as void or unenforceable before the UAE courts.

## 2.3 Commitments Required From Foreign Investors

The standard procedures generally applicable to all investors establishing a mainland presence are as follows.

### Standard Licensing Conditions

The relevant licensing authority retains discretion to impose conditions on the grant of a licence. In prac-

tice, common conditions include minimum paid-up capital thresholds (which vary by activity type and emirate), the appointment of a general manager and the maintenance of an address within the licensed emirate. The company's licence must at all times accurately reflect its permitted activities, address and organisational details.

### Emiratisation Obligations

All employers with sufficient workforce size and operating in applicable sectors are subject to Emiratisation requirements, which mandate the hiring of UAE nationals at prescribed ratios or minimum numerical targets. These obligations are administered by MOHRE and enforced through financial contributions including the Emiratisation Development Contribution for each unfilled quota position. Emiratisation targets have been progressively expanding in scope and depth, and compliance is a significant operational consideration for any business employing staff in the UAE.

### Regulated Sector and Project Commitments

In regulated sectors, the regulating authority may impose additional binding conditions as part of the authorisation process, such as maintaining qualified management and operational functions within the UAE, ongoing capital adequacy compliance and periodic regulatory reporting. Investors participating in government concessions or public-private partnership projects may also be required to agree to local content, technology transfer and workforce training and development commitments as part of the concession or project agreement.

## 2.4 Right to Appeal

### Administrative Court Challenge

Decisions refusing a licence or investment approval are subject to challenge before the UAE administrative courts. At the federal level, the Federal Administrative Court has jurisdiction to review administrative decisions on grounds of illegality, procedural irregularity and disproportionality. In Dubai, the Dubai Administrative Court hears challenges against decisions of local government authorities and licensing bodies.

The time limit for commencing an administrative challenge is generally 60 days from the date of publication, notification of the decision to the investor or the date on which the investor is deemed to have had certain knowledge of it. This deadline may be interrupted by filing a formal grievance with the relevant administrative authority; if no decision on the grievance is issued within 60 days, it is deemed rejected, and the litigation period begins to run. Given these strict deadlines, specialist legal advice should be sought promptly.

### Internal Reconsideration and Free Zone Appeals

Most licensing and regulatory authorities provide an internal reconsideration or administrative appeal mechanism, and investors are generally expected – and in some cases, required – to exhaust these internal remedies before approaching the courts. Within the DIFC and ADGM, administrative and regulatory decisions are subject to their own internal appeal procedures, with review before the relevant free zone bodies. The scope of judicial oversight of regulatory decisions is generally confined to questions of lawfulness and procedural compliance rather than a full examination of the underlying merits of the decision.

# 3. Corporate Vehicles

## 3.1 Most Common Forms of Legal Entity

### Limited Liability Company (LLC)

The LLC is the most widely used corporate structure for mainland commercial activity and is governed by the Commercial Companies Law. An LLC may have between one and 50 shareholders, with each shareholder's liability limited to their capital contribution. There is no prescribed minimum share capital at the federal level, though specific activity types may attract minimum capital requirements under sector regulation. The LLC is suited to the broadest range of commercial purposes – trading, services, manufacturing, joint ventures and general market entry – and is the standard vehicle of choice for foreign investors establishing a wholly owned or jointly owned mainland presence.

### Public Joint Stock Company (PJSC)

A PJSC is a company whose shares may be offered to the public and listed on the Abu Dhabi Securities Exchange (ADX) or the Dubai Financial Market (DFM). It requires a minimum of five founding shareholders

and a minimum share capital of AED30 million for listed companies, with higher thresholds applicable in certain regulated sectors. PJSCs are subject to comprehensive corporate governance requirements under the SCA's Corporate Governance Code and are the appropriate vehicle for businesses seeking access to public equity capital markets or looking to raise capital from a broad investor base.

### Private Joint Stock Company (PrJSC)

A PrJSC has a similar structure to a PJSC but its shares are not offered to the public and may not be listed on any exchange. It requires a minimum of two shareholders and a minimum share capital of AED5 million. This vehicle is typically used by larger private enterprises and family-owned business groups, and as a holding structure or a transitional vehicle for companies contemplating a future public listing.

### Branch of a Foreign Company

A foreign company may establish a branch on the UAE mainland. A branch is not a separate legal entity; the parent company is directly and fully liable for all obligations incurred by the branch. In general, foreign branches are no longer required to appoint a local service agent (LSA). However, certain regulated or restricted activities may still require the appointment of an LSA, who must be either a UAE national individual or a company wholly owned by UAE nationals. The LSA's role is limited to administrative and governmental liaison functions, and the LSA does not hold any ownership interest in the branch or entitlement to its profits.

A branch is most suited to foreign companies undertaking a defined project or specific activity in the UAE without establishing a locally incorporated entity. A branch may also be established as a representative office, in which case its activities are limited to marketing and promotional functions and facilitating the parent company's business relationships and contracts within the UAE.

### Free Zone Entities

Each UAE free zone offers its own categories of legal entity, most commonly a free zone establishment (FZE, with a single shareholder) and a free zone company (FZCO, with multiple shareholders). These entities benefit from 100% foreign ownership, full repatriation of profits and capital, and potential tax advantages. However, free zone entities are generally restricted from conducting direct commercial activities with mainland UAE customers and must work through a separately licensed mainland entity or appointed distributor to do so.

## 3.2 Incorporation Process

### Key Steps

Establishing an LLC involves the following principal steps.

- The applicant must first reserve a trade name with the relevant DED. The proposed trade name must comply with applicable naming regulations and must not contravene public morals, imply affiliation with a government authority or otherwise mislead the public.
- A follow-up receipt in respect of the proposed activities, shareholder(s) and general manager must then be obtained. This confirms that the proposed activities are permissible and, where applicable, identifies any additional approvals or pre-approvals required from the relevant sector regulator.
- The MOA, setting out the company's name, objects, share capital, shareholders and management arrangements, must be drafted, executed by all shareholders and notarised by a UAE notary.
- The company must secure premises suitable for its licensed activities. Depending on the nature of the activity and the relevant DED requirements, this may consist of a physical office, virtual office or flexi-desk arrangement. The lease agreement must be registered through the applicable Ejari system or equivalent tenancy registration platform in the relevant emirate.
- The notarised MOA, shareholder and manager identification documents, Ejari certificate, UBO details and any additional supporting documents must then be submitted to the relevant DED to obtain the payment voucher for licence issuance.
- Where any approval or pre-approval from a relevant sector regulator is required, such approval must be obtained prior to submission of the licensing documents to the DED for issuance of the payment voucher.

- Upon payment of the relevant DED fees, the DED issues the licence for the LLC.

### Registration, Licensing and Post-Incorporation Obligations

Following issuance of the licence, the LLC must register with the Federal Tax Authority for corporate tax purposes and, where applicable, VAT purposes. The LLC must also register with MOHRE prior to employing any staff and initiate the process for opening a corporate bank account in the UAE.

The overall incorporation timeline for a standard LLC that does not require additional regulatory approvals is typically between two and four weeks.

## 3.3 Ongoing Reporting and Disclosure Obligations

### Licence Renewal and Change Notifications

UAE mainland companies must renew their licence annually with the relevant DED, which involves fee payment and confirmation that the company's registered particulars remain accurate. A valid Ejari certificate, or equivalent tenancy registration document in the relevant emirate, is required in order to complete the licence renewal process.

Any amendments to the company's constitutional documents, including the MOA, must be duly notarised before a UAE notary public and filed with the relevant DED without delay. Any changes in the MOA notarised by the notary must also be filed with the relevant DED without delay.

Failure to maintain a valid and accurate trade licence or to update the company's registered information may constitute a regulatory violation and may result in administrative fines, suspension of the company's activities and practical difficulties in dealing with banks, government authorities and third parties.

### UBO Filing Requirements

Companies must maintain an internal partners and shareholders register and a separate UBO register identifying all individuals who ultimately own or control 25% or more of the share capital or voting rights, or who otherwise exercise effective control. This information must be filed with the relevant licensing authority and updated within 15 days of any change. Non-compliance with the UBO regulations attracts administrative penalties and can affect the company's ability to renew its licence or conduct activities.

### Financial Reporting

Companies must maintain accounting records in compliance with applicable standards. Under the corporate tax regime, all taxable persons must prepare financial statements in accordance with the International Financial Reporting Standards (IFRS) or the IFRS for SMEs and file an annual corporate tax return with the Federal Tax Authority. PJSCs and PrJSCs are subject to more extensive disclosure obligations under the Companies Law, including preparation of annual audited financial statements and their presentation to the annual general meeting of shareholders.

## 3.4 Management Structures

### LLC Management

An LLC is managed by one or more managers appointed by the shareholders, who may be shareholders themselves or third parties. The manager has authority to bind the company in day-to-day business within the scope of authority defined in the MOA and/or any shareholders' resolutions. The LLC does not require a mandatory two-tier governance structure; the default is a single-tier arrangement in which the manager or board of managers exercises both executive and supervisory functions.

In practice, shareholders may also appoint a board of directors for internal governance purposes. However, unlike a general manager, directors are not registered with the relevant DED as authorised representatives of the LLC. The names and details of such directors may instead be recorded in the MOA or in a separate shareholders' resolution.

The general assembly of shareholders retains ultimate authority over reserved matters, including approval of the company's financial statements, declaration and distribution of profits, appointment or removal of managers and amendments to the MOA. The general assembly must convene at least once annually.

### PJSC Governance

A PJSC must have a board of directors comprising no fewer than three, and no more than 11, members elected by the general assembly, unless otherwise approved by the SCA.

The board is responsible for the overall management, strategic direction, and supervision of the company and must satisfy the independence and governance requirements prescribed under the applicable SCA Corporate Governance Rules and Standards. The board typically appoints a chief executive officer or managing director to oversee the company's day-to-day operations and executive management. While this creates a practical distinction between oversight and executive functions, the UAE PJSC governance framework does not adopt a formal two-tier board structure in the continental European sense.

Listed PJSCs are additionally required to establish specialised board committees, including an audit committee and a nomination and remuneration committee, in accordance with the applicable SCA governance regulations.

## 3.5 Directors', Officers' and Shareholders' Liability

### Directors' and Managers' Duties and Liability

Under the Commercial Companies Law, managers of an LLC and directors of a PJSC owe duties of care, loyalty and good faith to the company and its shareholders. Personal liability may arise for losses caused by fraud, undisclosed or improperly approved conflicts of interest, wilful mismanagement or conduct in excess of the authority conferred by the company's constitutional documents.

Claims for breach of duty may be brought by the company itself, by qualifying shareholders meeting prescribed thresholds or in insolvency proceedings by a court-appointed liquidator. Criminal liability may arise where a director or manager has engaged in fraudulent conduct, misappropriation of company assets or other criminal acts in connection with the management of the company.

### Shareholders' Limited Liability and Piercing the Corporate Veil

Shareholders of an LLC, PrJSC or PJSC are not personally liable for the company's obligations beyond their capital contributions; the principle of limited liability is fundamental to UAE corporate law.

In exceptional circumstances, however, UAE courts may disregard the company's separate legal personality and impose personal liability on shareholders where the corporate structure has been used to perpetrate fraud, evade legal obligations or conceal improper conduct. This may arise, for example, where there has been substantial commingling of personal and company assets or affairs.

The legal basis for this principle derives from broader doctrines of good faith, abuse of rights and prohibition of fraud under UAE law, including the Civil Transactions Law, as amended by Federal Decree Law No 25 of 2025. which comes into force on 1 June 2026. The application of this doctrine by the UAE courts remains limited and strictly fact-specific.

# 4. Employment Law

## 4.1 Nature of Applicable Regulations

The primary legislation governing employment in the UAE mainland private sector is Federal Decree-Law No 33 of 2021 on the Regulation of Labour Relations (the "Labour Law"), which came into effect on 2 February 2022. Since its enforcement, the Labour Law has been amended three times, with the most recent amendment in 2024.

The Labour Law is supplemented by Cabinet and ministerial decisions issued by MOHRE, which also oversees registration, compliance and dispute resolution. There is no system of collective bargaining or statutory trade union recognition in the UAE mainland; in practice, the employment relationship is governed by the Labour Law and the individual employment contract. The DIFC and the ADGM each maintain their own separate employment legislation,

### 4.2 Characteristics of Employment Contracts

All employment contracts in the UAE must be concluded in writing and registered with MOHRE using the prescribed standard form. Under the Labour Law, all contracts must be fixed-term, and the previous distinction between limited and unlimited-term contracts has been abolished; the original statutory maximum term of three years has been removed, and the parties may now agree a fixed term of any duration, with contracts being renewable upon expiry for equivalent or shorter periods. Where a contract is executed in more than one language and a dispute arises as to its interpretation, the Arabic version prevails unless the parties have expressly agreed otherwise.

### 4.3 Working Time

The standard maximum working time is eight hours per day and 48 hours per week. During the holy month of Ramadan, working hours are reduced to six hours per day and 36 hours per week, subject to limited exceptions. Overtime work is generally permitted up to two additional hours per day and is compensated at the basic wage plus a premium of at least 25%, rising to at least 50% for overtime performed between 9 pm and 4 am. Employees are entitled to a minimum of one rest day per week and to annual leave of a minimum of 30 calendar days per year following the first year of service.

### 4.4 Termination of Employment Contracts

The UAE does not operate an "employment at will" system. An employment contract may be terminated by either party by serving the contractually agreed notice period, which must be no less than 30 days and no more than 90 days. If either party terminates without serving the agreed notice, it is required to compensate the other party with an amount equal to the employee's remuneration for the full notice period or the remaining part of it.

Termination will be considered unlawful in the specific cases set out in Article 47 of the Labour Law, including where the reason for dismissal is that the employee has filed a serious complaint with MOHRE or has brought a successful claim against the employer; in such circumstances, the court may award compensation of up to three months' wage in addition to any other entitlements.

All employees are entitled to an end-of-service gratuity upon termination, except where dismissal occurs on grounds of gross misconduct as specifically enumerated in the Labour Law. Gratuity is calculated on the basis of the last basic salary as follows: 21 days' basic salary for each completed year of the first five years of service and 30 days' basic salary for each subsequent completed year.

Total gratuity is capped at two years' total remuneration. There is no formal collective redundancy procedure under UAE federal law; however, employers proposing significant workforce reductions are expected to notify MOHRE in advance and must, in all cases, comply with the notice and end-of-service gratuity entitlements applicable to each individual employee.

### 4.5 Employee Representations

There is no statutory requirement for employee representation, works councils or trade union recognition in the UAE mainland private sector. Employees may bring individual labour complaints before MOHRE, which operates a mandatory conciliation process prior to referral to the labour courts.

Employers with 50 or more employees are required to implement internal employment policies, including a grievance procedure, and in practice typically maintain a dedicated human resources or employee relations function to handle workplace disputes. There are no obligations to inform or consult any representative body in the context of restructurings, redundancies or changes to terms and conditions of employment.

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/ Employers

The UAE does not impose personal income tax on employees, regardless of nationality or residency. Expatriate employees, who constitute the substantial majority of the UAE private sector workforce, are not subject to any social security or pension contributions. UAE national and Gulf Cooperation Council (GCC) national employees in the private sector are subject to pension and social security contributions administered at federal and emirate level, including

through the General Pension and Social Security Authority (GPSSA): employers contribute 12.5% of insurable salary (15% in the Emirate of Abu Dhabi), and employees contribute 5%. There are no other payroll taxes or levies applicable to the employment relationship.

## 5.2 Taxes Applicable to Businesses

### Corporate Tax

The UAE introduced a federal corporate tax regime under Federal Decree-Law No 47 of 2022 on the Taxation of Corporations and Businesses, applicable to financial years commencing on or after 1 June 2023. The standard rate is 9% on taxable income exceeding AED375,000; income up to that threshold is taxed at 0%, providing effective relief for smaller businesses. Businesses qualifying as "Qualifying Free Zone Persons" may benefit from a 0% rate on "Qualifying Income" derived from activities conducted within or between free zones, subject to substance requirements, a de minimis threshold for non-qualifying revenue and other prescribed conditions. Extractive businesses and non-extractive natural resource businesses remain subject to emirate-level taxation and fall outside the federal corporate tax regime.

### VAT and Excise Tax

VAT applies at a standard rate of 5% under Federal Decree-Law No 8 of 2017 on VAT. An excise tax applies to tobacco products and energy drinks at 100%, and to carbonated beverages at 50%. There is no withholding tax on dividends, interest or royalties paid to non-residents, and no standalone capital gains tax, although capital gains form part of taxable income under the corporate tax regime.

### Pillar Two - QDMTT

The UAE enacted a qualifying domestic minimum top-up tax (QDMTT) by Cabinet Decision No 142 of 2024, effective for financial years commencing on or after 1 January 2025. The QDMTT applies to large multinational enterprise groups with consolidated global revenues of EUR750 million or more and ensures that such entities are subject to a minimum effective tax rate of 15% in the UAE. The UAE's QDMTT has been granted safe harbour status on the OECD's central record, meaning that in-scope groups satisfying the QDMTT will not be exposed to a top-up tax in other jurisdictions in respect of their UAE profits.

## 5.3 Available Tax Credits/Incentives

One of the principal tax incentives available in the UAE is the 0% corporate tax rate for qualifying free zone persons on qualifying income, where the statutory conditions are satisfied. More than 40 free zones operate across the UAE, each offering varying benefits including 100% foreign ownership, full repatriation of profits and capital, customs duty exemptions and, where the qualifying conditions are met, the 0% corporate tax rate.

Small business relief is available to businesses with annual revenues not exceeding AED3 million, allowing eligible taxpayers to elect to be treated as having no taxable income for corporate tax purposes for a specified period. Certain sectors and activities also benefit from specific exemptions or reduced-rate treatment under the corporate tax law and its implementing decisions.

## 5.4 Tax Consolidation

Tax grouping is available under the corporate tax regime. A UAE resident parent company and one or more UAE resident subsidiaries may elect to form a tax group, provided the parent holds at least 95% of the share capital and voting rights of each subsidiary, directly or indirectly, and all members apply the same financial year and accounting standards. A tax group is treated as a single taxable entity, enabling profits and losses to be consolidated and offset across group members, and the group must apply to the Federal Tax Authority for approval to form or modify a tax group.

## 5.5 Thin Capitalisation Rules and Other Limitations

The UAE corporate tax regime adopts an interest limitation rule rather than a traditional thin capitalisation test. Net interest expenditure is deductible up to the higher of 30% of earnings before interest, tax, depreciation and amortisation (EBITDA), or AED12 million per tax period. Interest expenditure disallowed in a given period may be carried forward and deducted in up to ten subsequent tax periods, subject to the same limitation. Specific exemptions apply to banks, insur-

ance companies and certain other regulated financial entities.

### 5.6 Transfer Pricing

Transfer pricing rules apply under the corporate tax regime, and all transactions between related parties and connected persons must be conducted on an arm's-length basis in accordance with the OECD Transfer Pricing Guidelines. Taxpayers meeting prescribed thresholds are required to maintain transfer pricing documentation at the master file and local file level, and to disclose related-party transactions in their annual tax returns.

Country-by-country reporting obligations apply to UAE-headquartered multinational enterprise groups with consolidated global revenues of AED3.15 billion or more.

### 5.7 Anti-Evasion Rules

The corporate tax law contains a general anti-avoidance rule (GAAR), which empowers the Federal Tax Authority to disregard or recharacterise arrangements that lack genuine commercial substance and are entered into with the principal purpose of obtaining a tax advantage that is contrary to the object and purpose of the law.

Additionally, the UAE's Economic Substance Regulations require entities conducting certain "relevant activities", including banking, insurance, investment fund management, finance and leasing, and holding company activities, to demonstrate genuine economic substance in the UAE by reference to management and control, qualified employees and operating expenditure, with non-compliance attracting penalties and possible disclosure to foreign competent authorities.

### 5.8 Tariffs

The UAE is a member of the GCC Customs Union and applies the GCC Common External Tariff, which sets a standard rate of 5% on most imported goods. Certain categories attract a 0% rate, including basic foodstuffs, medicines and agricultural inputs, while tobacco and tobacco products are subject to a customs duty of 100% and alcoholic beverages to 50%.

The UAE has concluded a number of bilateral free trade agreements in recent years, most notably with India (effective May 2022) and Israel (effective April 2023), providing preferential tariff treatment for qualifying goods originating from those countries; further agreements are under active negotiation. The UAE's tariff environment has also been affected by US tariff measures introduced from early 2025, and the UAE government has engaged with the US administration with a view to exploring a bilateral trade agreement that could provide greater certainty for businesses operating across both markets.

## 6. Competition Law

### 6.1 Merger Control Notification

#### Legislative Framework

Merger control in the UAE is governed by Federal Decree Law No 36 of 2023 on the Regulation of Competition (the "Competition Law"), supplemented by Cabinet Decision No 3 of 2025 concerning thresholds for economic concentration filings and its subsequent executive and implementing regulations clarifying notification procedures and merger filing requirements.

The Ministry of Economy is the competent authority for merger control review on the UAE mainland. Certain regulated sectors including banking, financial services, insurance and telecommunications fall outside the scope of the general Competition Law and are instead subject to the merger review frameworks, if any, maintained by their sector regulators. Economic activities conducted within UAE free zones are generally also excluded from scope.

#### Notification Thresholds

Cabinet Decision No 3 of 2025 introduced two alternative triggering thresholds for mandatory pre-closing notification:

- a turnover threshold, where the combined turnover of the parties to the concentration equals or exceeds AED300 million in the relevant UAE market; and
- a market share threshold, where the combined market share of the parties equals or exceeds 40% of the relevant market in the UAE.

A mandatory notification obligation arises where either threshold is met. Full-function joint ventures, those performing all the functions of an autonomous economic entity on a lasting basis, are treated as concentrations subject to notification where the applicable thresholds are satisfied. Parties should assess both thresholds at the time of transaction planning, as satisfaction of either is sufficient to trigger the filing obligation regardless of whether the other threshold is met.

## 6.2 Merger Control Procedure

### Filing, Standstill and Review

Notification must be filed with the Ministry of Economy before completion of the transaction. The implementing regulations issued pursuant to Cabinet Decision No 59 of 2026 (expected to take effect on the 30 July 2026) clarify the notification procedures and the information and documentation required to accompany a complete filing, including details of the parties and transaction structure, relevant market definitions, market share and turnover data, and financial information.

The Ministry has ninety (90) calendar days from receipt of a complete notification to issue its decision, extendable by a further forty-five (45) calendar days; during this standstill period the parties may not complete the transaction. Note that if no decision is issued within the applicable period, the transaction is deemed rejected. The Ministry may request supplementary information during the review, which may extend the timeline, and parties are encouraged to engage with the Ministry proactively and at an early stage where there is any uncertainty about whether either threshold is satisfied.

### Decision and Consequences of Non-Compliance

The Ministry may approve the transaction unconditionally, approve it subject to conditions which may include structural remedies such as divestitures or behavioural commitments, or prohibit it outright on competition grounds. Completing a notifiable transaction without notification or in breach of the standstill obligation may result in significant administrative penalties and, in serious cases, the unwinding of the completed transaction.

## 6.3 Cartels

### Prohibition

The Competition Law prohibits agreements, concerted practices and decisions of associations of undertakings that have as their object or effect the prevention, restriction or distortion of competition in the UAE market. The prohibition applies to both horizontal arrangements between competitors and vertical arrangements between suppliers and distributors.

Hard-core horizontal restrictions including price-fixing, market allocation, bid rigging and output limitation are treated as the most serious category of infringement and attract maximum penalties regardless of actual market effect. Vertical arrangements incorporating hard-core restraints, such as resale price maintenance or absolute territorial protection, are similarly prohibited.

### Enforcement and Extra-Territorial Reach

The Ministry has broad investigative powers, including the ability to request documents, conduct on-site inspections and interview employees. The Competition Law applies on an effects basis: anti-competitive conduct carried out entirely outside the UAE falls within scope where it has actual or potential effects on competition within the UAE market. Administrative fines for prohibited agreements may reach up to 10% of the violating entity's total UAE revenues during the period of the infringement, with higher penalties applicable in cases of repeat violation.

## 6.4 Abuse of Dominant Position

### Dominance and Prohibited Conduct

This refers to the abuse by one or more undertakings of a dominant position in the UAE market or a substantial part thereof. Pursuant to Cabinet Resolution No 3 of 2025, a company is generally presumed to hold (whether solely or in conjunction with other establishments) a dominant position where its market share equals or exceeds 40% of the relevant market, although dominance may also be established based on broader indicators of market power and the ability to act independently of competitors, customers or consumers.

Prohibited abusive conduct includes imposing unfair purchase or selling prices, limiting production or mar-

ket supply to the detriment of consumers, applying dissimilar conditions to equivalent transactions so as to disadvantage trading parties, tying or bundling unrelated products or services, and predatory pricing or margin squeeze.

### Enforcement and Extraterritorial Application

The Ministry is responsible for enforcing the abuse of dominance provisions and may exercise the same investigative and enforcement powers applicable to anti-competitive agreements and cartel conduct. The Competition Law and its Implementing Regulations applies on an effects basis and may extend to conduct occurring outside the UAE where such conduct produces anti-competitive effects within the UAE market.

Administrative fines for established abuses may reach up to 10% of total UAE revenues during the period of the infringement, and the Ministry may also order the cessation of the abusive practice and impose structural or behavioural remedies.

As with the cartel prohibition, regulated sectors including banking, financial services, insurance and telecommunications remain subject to their own sector-specific regulatory frameworks and are excluded from the general Competition Law.

## 7. Intellectual Property

### 7.1 Patents

Patent protection in the UAE is governed by Federal Decree-Law No 11 of 2021 on the Regulation and Protection of Industrial Property. To be patentable, an invention must be novel, involve an inventive step and be capable of industrial application; certain categories, including discoveries, scientific theories, mathematical methods and methods of medical treatment, are excluded from patentability.

A patent confers protection for 20 years from the filing date, with no possibility of renewal beyond that term, and applications are filed with the Industrial Property Department of the Ministry of Economy, which conducts substantive examination. The UAE is also a member of the GCC Patent Office, which offers a single regional application providing protection across all six GCC member states, although the role of the GCC Patent Office is in the process of being re-evaluated by member states. Enforcement is available through both the civil courts (injunctions, damages and delivery up) and the criminal courts (fines and imprisonment for wilful infringement).

### 7.2 Trade Marks

Trade marks are protected under Federal Decree-Law No 36 of 2021 on Trade Marks. A registered trade mark confers exclusive rights for ten years from the date of registration and is indefinitely renewable for further ten-year periods upon payment of the prescribed renewal fees.

Applications are filed with the Ministry of Economy's Trade Mark Registry, and the UAE follows the Nice Classification system for the classification of goods and services. Well-known marks enjoy protection in the UAE even without local registration, consistent with the UAE's obligations under the Paris Convention and the Agreement on Trade-Related Aspects of Intellectual Property Rights (the "TRIPS Agreement"), and civil remedies include injunctions, damages and an account of profits, while criminal liability may arise for wilful infringement.

### 7.3 Industrial Designs

Industrial designs, the ornamental or aesthetic features of a product, are protected under Federal Decree-Law No 11 of 2021 on the Regulation and Protection of Industrial Property. Registration is with the Ministry of Economy and confers an initial protection period of ten years, renewable for two further five-year periods, providing a maximum protection period of 20 years. Unregistered designs do not receive equivalent statutory protection, and rights-holders are accordingly advised to register prior to commercialisation or public disclosure, with enforcement mechanisms mirroring those available for patent infringement, including civil and criminal remedies.

### 7.4 Copyright

Copyright in the UAE is governed by Federal Decree-Law No 38 of 2021 on Copyrights and Neighbouring Rights. Protection arises automatically upon the creation of an original work, without any requirement

for registration; however, voluntary registration with the Ministry of Economy is available and is recommended as a means of establishing a public record of ownership.

The law protects a broad range of works, including literary, artistic, musical, dramatic, audiovisual, architectural and applied art works. The duration of protection is the lifetime of the author plus 50 years for most categories; works of legal entities and audiovisual works are protected for 50 years from publication, and both civil remedies (injunctions, damages and seizure of infringing copies) and criminal enforcement are available, with the UAE Customs Authority empowered to detain suspected infringing goods at the border.

### 7.5 Others

#### Software and Databases

Computer software is protected as a literary work under the Copyright Law and benefits from the same term and enforcement framework. Databases that involve a sufficient degree of creative selection or arrangement are similarly protected; there is no separate sui generis database right in the UAE, and protection is contingent on meeting the originality threshold under the Copyright Law.

#### Trade Secrets

Trade secrets are protected under Federal Decree-Law No 26 of 2020 on Trade Secrets. Protection applies to commercially valuable confidential information that the rights-holder has taken reasonable steps to maintain as secret; there is no registration requirement, and misappropriation gives rise to civil liability in damages, with criminal liability potentially arising under the Cybercrime Law (Federal Decree-Law No 34 of 2021) where the misappropriation involves the use of electronic systems or networks.

#### Domain Names

Registration and dispute resolution in respect of the. ae country code top-level domain are regulated by the Telecommunications and Digital Government Regulatory Authority (TDRA), which operates a dispute resolution policy based on the Uniform Domain Name Dispute Resolution Policy (UDRP) model and provides a cost-effective mechanism for recovering domain names registered in bad faith.

## 8. Data Protection

### 8.1 Applicable Regulations

The primary federal data protection legislation is Federal Decree-Law No 45 of 2021 on the Protection of Personal Data (PDPL), which came into effect on 2 January 2022. It is worth mentioning that the Implementing Regulations of this Law have not yet been issued.

The PDPL establishes a principles-based framework for the processing of personal data, incorporating requirements relating to lawful basis, transparency, purpose limitation, data minimisation, accuracy, storage limitation and security. Sector-specific rules apply in a number of areas: the Central Bank of the UAE has issued data protection and cloud computing regulations applicable to licensed financial institutions, and the health sector is subject to supplementary requirements under Ministry of Health and Prevention guidance. The DIFC and ADGM operate distinct and more comprehensive data protection regimes, the DIFC Data Protection Law 2020 and the ADGM Data Protection Regulations 2021, respectively, which are broadly modelled on the GDPR and apply exclusively within those financial free zones.

### 8.2 Geographical Scope

The PDPL applies to the processing of personal data of individuals located in the UAE, and to data controllers and processors established in the UAE. The law also has extraterritorial reach: it applies to the processing of personal data of UAE residents by entities located outside the UAE where that processing relates to the offering of goods or services to residents or the monitoring of their behaviour within the UAE.

Cross-border transfers of personal data outside the UAE are permitted only to countries, territories or international organisations that ensure an adequate level of protection, as determined by the UAE Data Office, or where the data controller has implemented appropriate safeguards such as standard contractual clauses or binding corporate rules. Transfers may also be made on the basis of enumerated derogations, including the explicit consent of the data subject or necessity for the performance of a contract to which the data subject is a party.

### 8.3 Role and Authority of the Data Protection Agency

The UAE Data Office was established as the competent supervisory authority under the PDPL and is responsible for enforcing the law, issuing binding decisions and guidance, and administering the data protection register. The UAE Data Office has the power to investigate complaints from data subjects, conduct audits of data controllers and processors, issue compliance notices and impose administrative penalties, including significant fines for breaches of the PDPL. Within the DIFC, the Commissioner of Data Protection exercises equivalent supervisory and enforcement functions; within the ADGM, those functions are performed by the Office of Data Protection.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

#### Civil Transactions Law

The most significant near-term legislative development across the UAE's general legal landscape is Federal Decree-Law No 25 of 2025, which comprehensively revises the UAE Civil Transactions Law, the principal statute governing contract, tort and obligations law in the UAE, and which comes into force on 1 June 2026. The new law makes material amendments to core provisions, including those governing force majeure, hardship, contractual liability and the general theory of obligations, and businesses with existing long-term contracts governed by UAE law should review their agreements in light of these changes, particularly provisions addressing supervening events, price adjustment mechanisms and remedies for breach.

#### Corporate Tax

The UAE's corporate tax regime remains in a period of active development. The Federal Tax Authority continues to issue guidance on the application of key provisions, including the free zone qualifying income rules, transfer pricing documentation requirements and the QDMTT, and further implementing decisions and clarifications are anticipated, particularly in relation to cross-border transactions, the interaction between the corporate tax regime and the UAE's expanding network of double tax treaties, and the treatment of specific industry sectors.

#### Artificial Intelligence Regulation

The UAE is actively developing a regulatory framework for artificial intelligence (AI), consistent with its National AI Strategy 2031. Sector-specific AI guidance has been issued in certain regulated industries, including financial services and healthcare, and broader horizontal AI legislation is anticipated in the near term, with businesses deploying AI systems in the UAE, particularly in areas involving automated decision-making, employment or the processing of personal data, encouraged to monitor legislative and regulatory developments closely.

#### AML/CFT and Beneficial Ownership Transparency

The UAE has undertaken substantial reform of its anti-money laundering and counter-terrorism financing framework in recent years, and continued refinement is expected. Enhanced beneficial ownership transparency requirements applicable to both onshore and free zone entities are already in force; further alignment with Financial Action Task Force (FATF) recommendations and active enforcement by the supervisory authorities, including the Central Bank, the SCA and the Ministry of Economy, is anticipated.

#### Competition Law

Federal Decree-Law No 36 of 2023 significantly updated the UAE's competition regime, expanding the scope of merger control notification obligations and enhancing the Ministry of Economy's investigative and sanctioning powers. The full implementation of the 2023 law – particularly after the issuance of its implementing regulations in 2026 – including enforcement guidance, is ongoing, and businesses considering mergers, acquisitions or commercial arrangements that may affect competition in UAE markets should take careful account of the updated thresholds and procedural requirements.

# Trends and Developments

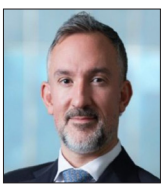
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**Habib Al Mulla & Partners**

**Habib Al Mulla & Partners** was founded in 1984 and is a market-leading law firm headquartered in Dubai, with offices in Abu Dhabi, Istanbul, Moscow, Baghdad, Cairo and New Delhi. The firm brings together a team of 80+ lawyers who provide tailored legal advice across over 14 areas of practice and serve clients in industries ranging from finance and construction to energy and technology. Renowned for its strength in dispute resolution, regulatory work, and cross-border transactions, the firm is consistently highly ranked, affirming its position among the region's top-tier firms. Dr Habib Al Mulla, the firm's founder, is one of the UAE's most prominent legal figures and was instrumental in shaping major legislative reforms. His vision helped establish the Dubai International Financial Centre (DIFC) – the UAE's first financial free zone – solidifying the firm's legacy as a pioneer in legal and regulatory advancement in the Middle East.

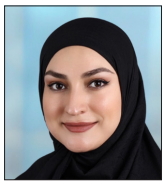
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## Navigating Uncertainty: Force Majeure, Hardship and the UAE Civil Transactions Law

The UAE continues to develop the legal infrastructure governing commercial relationships, and that framework is now being tested by current conditions. The region is experiencing geopolitical pressures that have resulted in active conflict. Although the UAE is not a party to that conflict, it has experienced consequences within its territory and for its assets.

Against that backdrop, how UAE law responds to disruption, whether arising from geopolitical conflict, global pandemics, supply chain shocks or climate-related events, is a question of direct practical relevance for businesses of all sizes operating in, or transacting with counterparties from, the UAE market.

This chapter examines three interconnected themes that are currently reshaping contracting practice in the UAE:

- the doctrine of force majeure;
- the concept of hardship and judicial price revision; and
- the Civil Transactions Law framework

Both Federal Law No 5 of 1985 (the "Old CTL") and the new Federal Decree-Law No 25 of 2025 (the "New CTL"), which came into force on 1 June 2026, are examined. Together, these themes define the boundaries of contractual obligation in times of stress; understanding them is essential for any business seeking to do business in, or with counterparties from, the UAE.

### *Force majeure under UAE Law: what it means in practice*

Under UAE Law, force majeure is the principle where a party is excused from performing its contractual obligations when performance becomes impossible due to an event beyond its control. It operates differently from the way it is understood in common law jurisdictions.

#### *The statutory basis*

Force majeure in the UAE has a statutory basis in both the Old CTL and the New CTL. Under Article 273 of the Old CTL (Federal Law No 5 of 1985), if performance of an obligation became impossible due to a foreign cause not attributable to the obligor, the corresponding obligation was extinguished and the contract terminated by operation of law. The New CTL, under Article 236, preserves this core principle but modernises its expression: in bilateral contracts, a force majeure event making performance impossible causes the reciprocal obligations to lapse and the contract to dissolve ipso jure.

This is a significant provision in both iterations of the law. Unlike many common law systems where force majeure only applies if expressly included in the contract, UAE law has always provided a baseline statutory right to rely on impossibility as a ground for discharge. The New CTL introduces two notable refinements:

- first, on partial impossibility, either party may now insist on lapse of the corresponding obligation or petition for rescission (compared to the Old CTL, which simply extinguished the impossible part); and
- second, in continuing contracts subject to temporary impossibility, Article 236 (3) of the New CTL expressly empowers either party to seek modification of the contract, a remedy not available under the Old CTL.

The key requirements for successfully invoking force majeure under Article 273 of the Old CTL and Article 236 of the New CTL are as follows:

- the event must have rendered performance impossible, not merely more difficult or more expensive;
- the event must be unforeseeable at the time of contracting;
- the event must be irresistible, meaning the party could not have avoided or overcome it by reasonable means; and
- the event must not be attributable to the fault or negligence of the party seeking to rely on it.

#### *Total versus partial impossibility*

UAE law draws an important distinction between total and partial impossibility. Where performance is entirely impossible, the contract is terminated in its entirety, and both parties are released from their obligations. Where performance is only partially impossible, the contract survives but is reduced to the extent of what

remains possible, and the counterparty has the right to terminate if the partial performance would be of no value to it.

### *The notification requirement*

A frequently overlooked but practically important requirement is that the party seeking to rely on force majeure must notify its counterparty promptly. Failure to give timely notice may result in the loss of the right to rely on the excuse or may give rise to a damages claim for losses caused by the delay in notification. Contracts governed by UAE law should therefore always include a clearly drafted notification clause that specifies the form, timing and recipient of force majeure notices.

### *Contractual force majeure clauses*

The existence of a statutory regime does not make contractual force majeure clauses redundant. On the contrary, a well-drafted contractual clause can expand, restrict or clarify the scope of the statutory right in ways that provide greater certainty for both parties. Contractual clauses can, for instance:

- specify events that will or will not constitute force majeure (such as geopolitical conflict, pandemics, sanctions or cyberattacks);
- prescribe the consequences of a force majeure event (suspension of obligations, extension of time or termination after a specified period);
- allocate the risk of partially impossible performance differently from the default statutory position; and
- establish the procedure and timing for invoking the clause.

Where a contract contains a force majeure clause, UAE courts will give effect to it to the extent that it does not violate mandatory provisions of law or public policy. The interaction between the contractual clause and the statutory default must therefore be carefully mapped in any contract governed by UAE law.

## *The hardship doctrine: when performance becomes excessively burdensome*

Force majeure addresses situations where performance is impossible. When performance remains technically possible, but has become significantly more burdensome due to a material change in circumstances, such that it would be unfair to hold the obligor to the original terms, it becomes the domain of the hardship doctrine. The hardship doctrine is one of the most distinctive and practically important features of the UAE's civil law framework.

### *Article 249 of the Old CTL and Article 224 of the New CTL*

The hardship doctrine in the UAE is principally grounded in Article 249 of the Old CTL and Article 224 of the New CTL. Under the Old CTL, a court could, having regard to the interests of both parties, reduce the onerous obligation to a reasonable level. The New CTL preserves this power but adds a significant new remedy: Article 224 expressly empowers the court to order rescission of the contract in addition to, or instead of, reduction of the obligation. This expansion gives courts greater flexibility to achieve a just outcome where reduction alone would be inadequate.

This is a notable provision by comparative standards, and has been so since its introduction in 1985. Both the Old CTL and the New CTL give UAE judges the power to revise contractual obligations where supervening circumstances have fundamentally altered the original economic balance of the agreement. The New CTL reinforces and extends this by also expressly permitting rescission, reflecting an acknowledgment that in some cases revision is insufficient to restore fairness between the parties.

The key requirements are as follows:

- the circumstances must be exceptional, that is, not within the ordinary range of commercial risk;
- they must be unforeseeable at the time the contract was concluded;
- they must make performance excessively burdensome, not merely inconvenient or less profitable; and
- the threat of serious loss must be ongoing, not historical.

### *Judicial price revision in practice*

Article 249 of the Old CTL continues to be actively invoked before the UAE courts in respect of contracts entered into during the period of its operation. Article 224 of the New CTL now governs contracts entered

into after the New CTL came into force. The body of case law applying Article 249 has grown substantially, and in 2026 remains a live tool in disputes across the real estate, construction, hospitality and long-term services sectors, where shifts in market conditions, regulatory changes or external shocks have altered the economic balance of contracts.

UAE courts, and particularly the Dubai courts and the Abu Dhabi courts, have issued a substantial body of jurisprudence on Article 249 of the Old CTL, and that case law will inform the interpretation of Article 224 of the New CTL. The threshold for judicial intervention remains high under both provisions. Courts have consistently emphasised that the hardship remedy is one of last resort. Parties are expected to negotiate in good faith before seeking judicial intervention, and a party that has not made genuine efforts to renegotiate may find that a court is reluctant to exercise its revisionary or rescissionary powers.

This reinforces the practical importance of including hardship renegotiation clauses in commercial contracts provisions that require the parties to enter into good-faith negotiations when specified triggering conditions are met, before either party may resort to litigation.

### *The relationship between hardship and force majeure*

Force majeure and hardship are distinct but related doctrines, and they are not mutually exclusive. A single event, such as a global pandemic, a war or a sudden regulatory change, or a sanctions measure, may simultaneously:

- render certain specific obligations impossible (engaging force majeure); and
- make the overall performance of the contract excessively burdensome without rendering it impossible (engaging hardship).

Careful contract drafting should address both doctrines separately, referencing both the force majeure and hardship provisions by their applicable article numbers (Article 273/Article 236 for force majeure; Article 249/Article 224 for hardship, depending on when the contract was entered into), and parties in litigation should consider whether both grounds are available on the facts of their dispute.

### *The Civil Transactions Law: Old and New*

Federal Law No 5 of 1985 on Civil Transactions (the Old CTL) governed civil obligations in the UAE for four decades. Federal Decree-Law No 25 of 2025 (the New CTL) came into force in 2025 and now governs contracts entered into after its commencement date. Both laws share the same doctrinal architecture for force majeure and hardship, but the New CTL introduces important refinements that parties to current and future contracts must understand.

#### *Good faith and interpretation*

Both the Old CTL and the New CTL require contracts to be performed in good faith. The New CTL under Article 221 expressly reinforces this, stating that a contract must be performed in accordance with its contents and in a manner consistent with the requirements of good faith, and that a contract is not limited to its express terms but extends to requirements arising from law, custom and the nature of the obligation. The New CTL also expands the rules of contractual interpretation under Article 218, including a new requirement that contracts be interpreted in a manner that achieves justice and good faith between the parties.

This has practical implications for how force majeure and hardship situations must be handled under both the Old CTL and the New CTL. A party that invokes force majeure or hardship in bad faith, for instance by manufacturing a triggering event or by refusing to negotiate a reasonable adjustment, risks not only losing the protection of the doctrine but also being exposed to liability for acting contrary to the good faith obligation that both laws embed in the contractual relationship.

#### *Adhesion contracts and unfair terms*

A noteworthy addition in the New CTL is Article 223, which empowers courts to modify or exempt a party from arbitrary or unfair clauses in contracts concluded by adhesion. This provision has direct relevance to force majeure and hardship analysis: a limitation of liability clause, a force majeure carve-out or a clause excluding the right to seek revision that appears in a standard-form contract of adhesion may be subject to judicial

modification if it operates unfairly against the adhering party. The Old CTL contained no direct equivalent.

For businesses operating under standard-form contracts, this is a significant development that may affect the enforceability of contractual provisions that purport to limit or exclude the statutory protections available under the force majeure and hardship provisions.

*Pre-contractual obligations and disclosure*

The New CTL introduces express pre-contractual obligations that did not exist in the Old CTL, including a duty of good faith in negotiations (Article 121) and a duty to disclose material information (Article 122). These provisions affect the force majeure and hardship analysis: where a party was aware at the time of contracting of circumstances that would give rise to a future hardship or force majeure event and failed to disclose them, it may find that this undermines its ability to rely on those doctrines after the event materialises.

*Transitional considerations*

Contracts entered into before the New CTL came into force will generally remain governed by the Old CTL, meaning that Articles 249 and 273 of the Old CTL will continue to apply to existing long-term agreements for many years to come. Parties renegotiating, novating or extending such contracts should carefully consider whether the parties intend the New CTL to apply going forward, and should address this expressly in any amendment agreement.

For new contracts, Articles 224 and 236 of the New CTL will apply, and the expanded court powers under those provisions, particularly the right to order rescission in hardship cases, should be reflected in the drafting of any hardship renegotiation clause.

### *Practical considerations for businesses operating in the UAE*

*Review your existing contracts*

Contracts entered into before the New CTL came into force should be reviewed to identify which version of the law applies and whether the force majeure and hardship provisions are adequate for the current risk environment, including risks such as geopolitical conflict, trade sanctions, energy price volatility and AI-driven supply chain disruption. Contracts entered into after the New CTL took effect should be reviewed for consistency with its new provisions, including the expanded judicial powers under Articles 224 and 236.

*Draft for the UAE legal environment*

Force majeure and hardship clauses drafted for common law jurisdictions do not translate seamlessly into UAE-governed contracts. Key differences to address include:

- the threshold of impossibility (not mere difficulty) required for statutory force majeure;
- the court's power under Article 249 of the Old CTL (and Article 224 of the New CTL) to revise or rescind onerous obligations, going beyond what is available in most common law systems;
- the notification requirements and the consequences of failing to notify; and
- the good faith obligations that govern conduct before, during and after a disruption event.

*Include a hardship renegotiation mechanism*

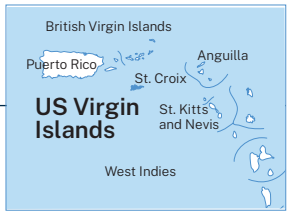
Best practice for UAE-governed commercial contracts is to include a bespoke hardship clause that specifies the triggering conditions, the renegotiation process, the timeframe for negotiation and the consequences if negotiation fails (which may include referral to an expert, mediation or litigation). This provides a structured pathway for managing disruption without immediate recourse to the courts.

*Consider the choice of law and forum*

Businesses operating in the UAE have a meaningful choice between the onshore civil law system and the common law regimes of the Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM).

Force majeure and hardship operate differently in each system: the DIFC and ADGM courts apply English common law principles, under which force majeure is a creature of contract (there is no general common law doctrine of force majeure equivalent to Article 273 of the Old CTL or Article 236 of the New CTL), and hardship as a ground for judicial price revision or rescission does not exist in the same form. The choice of governing law and dispute resolution forum is therefore a substantive commercial decision, not merely an administrative one.

# US VIRGIN ISLANDS




## Law and Practice

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**Marjorie Rawls Roberts PC** has decades of experience in representing companies and individuals in business, securities, tax, trusts and estates, and real estate matters in the USVI. The firm's clients are based in the USVI, the US mainland, other US territories and international locations. The firm also provides comprehensive estate planning services and advice regarding the requirements for bona fide USVI residency. It represents clients before the USVI Economic Development Authority, the University of the Virgin Islands Research and Technology Park, and other government agencies as they seek economic incentives.

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## 1. Legal System

### 1.1 Legal System and Judicial Order

The legal system of the United States Virgin Islands (USVI) is, in most respects, similar to the legal systems of the 50 states of the United States of America. Federal sources of law, such as the Constitution of the United States, statutes enacted by the US Congress, regulations promulgated by US administrative agencies, and executive orders issued by the President of the United States, are generally applicable in the USVI. However, because the USVI is an unincorporated territory of the United States, Congress may vary the applicability of most federal laws in the USVI in a way that deviates from the 50 states. For example, the USVI constitutes a separate customs zone with different tariff rates from the rest of the United States (based on the Danish customs law in effect when the United States purchased the USVI from Denmark in 1917), and Congress has authorised unique variations in the federal income tax laws in the USVI that differ from the uniform federal income tax laws in the 50 states. However, overall, the USVI operates under a mirror tax code with the US Internal Revenue Service (IRS), meaning that the USVI has adopted the Internal Revenue Code of 1986, as amended, and the applicable Treasury Regulations, as its own code pursuant to the Naval Services Appropriation Act of 1922, 48 U.S.C. 1397 (the "Code"). Section 1397 specifically provides that taxes will be paid to the USVI. This is further expanded in other statutes and regulations, including Section 932 (c), which specifies that bona fide residents of the USVI pay income taxes on their worldwide income to the USVI Bureau of Internal Revenue (BIR).

Congress has, through the Revised Organic Act of 1954, as amended, and its predecessor Organic Acts, also established a territorial government for the USVI that includes a locally elected Governor, a locally elected unicameral legislature and locally created administrative agencies – as well as a judicial system, discussed below. The USVI Legislature may enact general statutory laws for the territory (subject to the veto of the Governor) to the extent they do not conflict with federal law. The Legislature may also grant rule-making authority to the local executive agencies, and the Governor has the power to issue executive orders.

The judicial system in the USVI comprises both federal and local courts (previously referred to as "territorial courts"). The jurisdiction of the federal District Court of the Virgin Islands is substantially similar to that of the federal district courts in the 50 states. However, because Congress established the District Court of the Virgin Islands pursuant to its authority under Article IV of the US Constitution rather than Article III, there are some important differences. For example, the District Court has exclusive jurisdiction over questions of income tax in the USVI and may preside over some criminal cases based on local law. Decisions of the District Court are appealable to the US Court of Appeals for the Third Circuit (headquartered in Philadelphia, Pennsylvania) and, ultimately, to the Supreme Court of the United States, similar to cases arising from Delaware, Pennsylvania and New Jersey.

In parallel with the federal District Court, there is a two-tier territorial judiciary. The Superior Court of the Virgin Islands is the trial court of general jurisdiction that presides over both criminal and civil cases, as well as appeals from territorial administrative agencies, and has a specialised division for family cases, including juvenile matters. The Superior Court also has a magistrate division that presides over probate matters, landlord–tenant disputes, small claims, traffic violations and certain misdemeanours. Decisions of the Superior Court are appealable to the Supreme Court of the Virgin Islands. The Supreme Court was established in 2004 by the Legislature and began exercising its authority in 2007. Decisions of the Supreme Court are appealable to the Supreme Court of the United States. Like most of the 50 states, the USVI follows the common-law tradition in which judge-made case law informs legal decision-making. The USVI previously followed the Restatements of the Law published by the American Law Institute. However, since the USVI Supreme Court case *Banks v International Rental & Leasing Corp*., 55 V.I. 967 (V.I. 2011), the common-law principles are now established through a legal analysis by the court as outlined in *Banks*, and the legal analysis may still determine that the Restatement of the Law is the best rule.

## 2. Restrictions on Foreign Investments

### 2.1 Approval of Foreign Investments

The USVI is part of the United States, so federal statutes governing foreign investment in the United States, such as the Foreign Investment Risk Review Modernization Act of 2018 and the regulations promulgated thereunder, apply in the USVI.

Additionally, the USVI is included within the definition of "United States" in the United States' extensive network of Treaties of Friendship, Treaties of Commerce, and Navigation and Bilateral Investment Treaties, officially known as Treaties Concerning the Encouragement and Reciprocal Protection of Investment. These treaties provide a number of important benefits, most notably protection in the case of expropriation. As a note, the US International Trade Administration lists the Bilateral Investment Treaties currently in force between the United States and other countries. In contrast, the USVI is not included in the United States' network of income tax treaties (nor are other US territories) and is not able to enter into its own tax treaties. However, the USVI has agreements with the United States for the exchange of information relating to taxes, namely, the Tax Implementation Agreement Between the United States of America and the Virgin Islands, dated 24 February 1987, and IRS Notice 2007-31, which includes the Working Arrangement.

### Legislating Foreign Investment and Growth in Particular Sectors

The USVI does not have separate legislation or other rules limiting foreign investment in the USVI. Foreign businesses, like other businesses, must register to do business with the Office of the Lieutenant Governor and obtain the appropriate approvals and licences for their business. The USVI as an unincorporated territory is also subject to the federal review process for any merger, acquisition or real estate transaction that involves critical infrastructure, sensitive personal data, or proximity to a military or government site (a "CFIUS review"). The USVI has local laws that address mergers and acquisitions as well.

Not only does the USVI have few prior-approval or criteria requirements for foreign investment, the USVI has enacted a number of economic incentive programmes to attract US and foreign investors to work and invest in the USVI. These programmes are generally, but not always, managed by the Virgin Islands Economic Development Authority (EDA), which actively seeks investment in certain USVI sectors. Examples of incentive programmes in the USVI include the Economic Development Commission (EDC), the University of the Virgin Islands Research and Technology Park ("RTPark") and the South Shore Trade Zone (SSTZ) programmes.

Eligible EDC beneficiary industries are outlined in 29 V.I.C. § 708 and include multiple categories:

- "Legacy Virgin Islands Industries" – such as rum distilling, watch and jewellery manufacturing, and milk/dairy production;
- "Product Assembly, Manufacturing, Repair and Maintenance and/or Export Operations";

- "Facilities, Tourism and Communications Developments – including Hotels/Guesthouses, Health Care, Recreation and Retirement Facilities, Transportation, Utilities (including Alternative Energy Industry), and Telecommunication";
- "Designated Services Businesses", as defined in 29 V.I.C. § 703 (g), which includes, among other listed businesses, investment managers, trading services, financial services, medical services, and other businesses serving clients outside the USVI as deemed appropriate by the EDC; and
- "International Financial Service Entities". Under 29 V.I.C. § 708 (t), applicants in this category are exempt from most of the regulations governing other EDC entities but must comply with provisions of the International Banking Center Regulatory Act.

The SSTZ Program provides incentives for investment in the industries of production, warehousing, trading, transportation and forwarding, fairs and expositions (hotels, training and conference facilities), financial and credit services, think tanks, etc, within a designated area along the south shore of St. Croix. The RTPark Program provides investment incentives for companies with a focus on technology, research and science, or fields that are extensively "knowledge or skills based".

While these programmes do not limit foreign investment generally, they each have their own rules and regulations, and application and approval processes, to qualify for admittance into the programmes and subsequent benefits. The EDC and SSTZ Programs require that applicants be approved by the EDA, a USVI government entity, and the RTPark Program requires approval of the RTPark Board, a quasi-government entity. Both the EDA and RTPark Programs have continuing compliance commitments related to ownership structure, legal documentation and financial reporting.

Lastly, foreign investors in USVI real estate are subject to the Foreign Investment in Real Property Tax Act of 1980, which is codified in Sections 897 and 1445 of the Code.

## 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

There are no specific steps for foreign investors to follow in order to obtain approval before investing, although investors in real estate may be subject to the withholding percentage of real-estate purchase price. The businesses themselves may be subject to CFIUS review if involved in the sectors mentioned in **2.1 Approval of Foreign Investments**. If a business is a banking (including a foreign bank), insurance or financial services entity, then it is subject to licensing and regulation by the Virgin Islands Division of Banking, Insurance & Financial Regulation, which is administered by the Office of the Lieutenant Governor and/or the Virgin Islands Banking Board, of which the Lieutenant Governor serves as the Chairman, but this is not necessarily specific to foreign investors.

For investors that want to invest with the benefits of a tax incentive programme, eg, the EDC or RTPark Program, applicants must apply for benefits and be approved through those respective programmes.

## 2.3 Commitments Required From Foreign Investors

Foreign investment itself is not conditioned upon certain commitments, although those seeking to benefit from one of the USVI incentive programmes have certain commitments relating to local employees, using local businesses, charitable contributions, etc, which are generally statutory and apply to all applicants.

All USVI exempt companies (as described in **3.1 Most Common Forms of Legal Entity**) must still file a specific annual report and annual franchise tax report prescribed by the Lieutenant Governor for exempt companies and pay an annual franchise tax of USD1,000. See 13 V.I.C. § 860.

## 2.4 Right to Appeal

USVI companies have access to the US court system for dispute resolution. The District Court of the Virgin Islands operates no differently from the district courts in the 50 states, and it is in the Third Circuit – the same as Delaware. Moreover, cases can be heard in the Superior Court of the Virgin Islands.

Beneficiaries under the EDC Program can request modifications, extensions, renewals or waivers under the Program. See, eg, 29 V.I.C. § 715. Additionally, applicants and beneficiaries of the Program can appeal any actions of the EDC in the Superior Court of the Virgin Islands. See 29 V.I.C. § 724.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

Like the United States, the USVI primarily uses corporations, limited liability companies (LLCs), general partnerships, limited liability partnerships (LLPs) and limited liability limited partnerships (LLLPs).

Under 13 V.I.C. § 62, corporations must have at least three directors (unless the corporation has fewer than three shareholders), and under § 69 any two offices (but not more than two) other than those of president and secretary may be held by the same person. LLCs may be formed by one member, while LLPs require at least two partners. In our experience, most entities are LLCs or LLPs, which limit the liability of their members or partners. Some persons may prefer LLPs depending on their initial capital, as under 13 V.I.C. § 531 every USVI or foreign corporation doing business in the USVI must pay an annual franchise tax of USD1.50 for each USD1,000 in "stock, capital, and paid in capital stock used in conducting business in the [USVI]". However, an LLP pays a flat annual franchise tax of USD150.

LLCs are the most common entities and are well-suited for a wide range of business activities while providing their members with flexibility in governance. For example, LLCs do not require mandatory annual meetings or the appointment of directors or officers, and, other than certain statutory fiduciary duties (duty of loyalty, duty of care, the obligation of good faith and fair dealing, and access to books and records), an LLC's operating agreement may differ from the provisions found in the LLC Act.

The V.I. Code specifically provides for foreign corporations, foreign LLCs and foreign limited partnerships doing business in the USVI. See 13 V.I.C. §§ 401–407; 13 V.I.C. §§ 2001–2009; 26 V.I.C. §§ 521–528.

On 8 December 1986, the Legislature enacted the exempt companies' legislation, which subsequently went into effect on 24 February 1987, upon the signing of the Tax Implementation Agreement Between the United States of America and the Virgin Islands. On 17 August 1993, then-USVI Governor Alexander Farrelly signed into law the Exempt Company Amendments Act of 1993, which made significant changes to the USVI exempt companies' legislation to enhance the use of exempt companies by foreign investors.

USVI exempt companies offer many of the benefits of other offshore jurisdictions' international business companies but with the added advantages of US flag protection, access to US courts, non-coverage of the Common Reporting Standard, and the ability to obtain an "N" registration number from the US Federal Aviation Administration for foreign-owned aircraft.

The V.I. Code (13 V.I.C. §§ 850–863) provides for exempt companies. According to § 855, most exempt companies are treated as "a foreign corporation which does not earn United States Virgin Islands source income and which is not engaged in trade or business within the United States Virgin Islands". However, an exempt insurer, exempt mutual fund or exempt international banking facility has additional provisions that relate to its exempt status. A USVI exempt company offers foreign investors substantial tax benefits. An exempt company is effectively exempt from tax on all income except for income derived from US sources and effectively connected with a US trade or business. A USVI exempt company is exempt on interest income received on deposits with banks or savings institutions located in the USVI or abroad, as well as on amounts held by an insurance company under an agreement to pay interest on the amounts. USVI exempt companies are also exempt from tax on dividends and interest received from another exempt company and on gains or losses from the sale, exchange or other disposition of the stock of another exempt company. They are also exempt from all local USVI taxes, shareholders of a USVI exempt company are not subject to any withholding tax, and stock held by a non-resident alien individual in a USVI exempt company is not subject to federal estate tax or to USVI inheritance tax, so use of a USVI exempt company can be an important estate planning tool for foreign individuals. Such individuals

can place their worldwide assets in a USVI exempt company to obtain the many benefits such an entity provides without subjecting those assets to any estate tax liability.

Moreover, most exempt companies are exempt from licensing unless certain circumstances are met, except that exempt insurers and exempt international banking facilities must be licensed. Exempt companies can request to enter into a contract signed by the Lieutenant Governor providing for the tax exemption benefits for 20 years, provided the exempt company remains in compliance with all USVI laws, regulations and rules and current with any USVI taxes and fee payments.

Standard corporations, LLCs and exempt companies must have a minimum amount of USD1,000 in capital to commence business. See, eg, 13 V.I.C. § 2; 13 V.I.C. § 1203.

### 3.2 Incorporation Process

The Office of the Lieutenant Governor, Division of Corporations & Trademarks, serves as the registry for all corporate filings in the USVI. To incorporate, companies must generally provide the name of the corporation; verify whether their intended name is currently in use or not; describe the nature of the business; provide a physical and mailing address and a registered agent address; name the partners, members or directors along with their titles and physical and mailing addresses; list the amount of capital of the company and the Par Value of the company; list the amount of shareholders; provide copies of government IDs; and indicate whether the application is to be expedited or not expedited.

Effective in 2018, the Division of Corporations & Trademarks implemented an electronic filing system for entity formations and registrations. With the exception of exempt LLCs, which require paper filings, all entity formations, registrations and annual reporting requirements must be submitted to the Division using the Division's online system, Catalyst. Applications are submitted through the Catalyst online portal. It generally takes one to three days to determine name availability. Checking name availability with the United States Patent and Trademark Office (USPTO) and the local Division of Corporations & Trademarks takes only about 20 minutes. Expediting filings take one to three days for registration and formation. Regular registration and formation takes about seven to 20 days. It takes six to eight weeks for business licence approval.

### 3.3 Ongoing Reporting and Disclosure Obligations

Each USVI (and foreign) corporation, including LLCs, must file an "Annual Report on Domestic or Foreign Corporations" and a "Report of Corporation Franchise Tax Due" with the Office of the Lieutenant Governor, Division of Corporations & Trademarks. The Annual Report is due by 30 June of each year. The annual franchise tax due is based on the type of entity created under USVI law. For example, LLCs pay a minimum of USD300 annually, based on their capital.

Moreover, the different domestic and foreign entities in the USVI, eg, corporations, LLCs, limited partnerships, etc, have various requirements for filing changes with the USVI.

### 3.4 Management Structures

Corporations can either be one-tiered or two-tiered. Generally this comes down to the purpose, size and scope of the company and whether it is a foreign entity registering to do business in the USVI or a new company. The most common framework is a one-tier structure with founders, executives and management board members also running the day-to-day operations. Within the most common entity, an LLC, there is generally at least one member, and an LLC may be either member-managed or manager-managed.

### 3.5 Directors', Officers' and Shareholders' Liability

Directors and officers have protection from personal liability so long as they are acting in good faith. The USVI does have a "wilful misconduct" exception codified in 13 V.I.C. § 809 in which directors and officers may be responsible for losses that were occasioned by their wilful misconduct. Further, corporate limited liability does not extend to situations of fraud or failure to maintain a corporation's separate legal identity (eg, commingling of corporate funds with the personal funds of shareholders), or consistent failure to follow corporate formalities (eg, failure to hold annual

meetings of shareholders and directors and failure to appoint officers on a consistent basis). In such situations, courts in the USVI do allow a suit against a corporation's stockholders if doing so prevents fraud or gross injustice to third parties.

USVI courts have adopted the equitable remedy of "piercing the corporate veil", with the seminal case for the current remedy being *Donastorg v Daily News Publishing Co., Inc.*, 63 V.I. 196 (2015). However, USVI courts view it as an extraordinary remedy that must be proved by the injured party by clear and convincing evidence and only when the case involves fraud, would promote injustice and/or involved an unlawful act that directly harmed the plaintiff.

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

Statutory law governing employment and employer–employee relations is the basis of the employment relationship. The USVI laws governing the employment relationship are derived from US federal laws, such as the Fair Labor Standards Act, and territorial statutes, rules and regulations governing occupational health and safety, labour relations and employment discrimination. Case law further provides particular guidelines in the way of equitable remedies or in situations where statutory language is silent or ambiguous, such as in non-compete clauses. In 2019, the Superior Court of the Virgin Islands held in *Arvidson v Buchar*, 71 V.I. 277 (V.I. Super. Ct. 2019), that a covenant not to compete was invalid and unenforceable when not only did it fail to make clear what legitimate business interests it was created to protect, it did so without giving a durational restriction, a territorial restriction and a manner restriction, and it could not be equitably reformed, as supplying the time, place and manner terms would equate to the court supplying the essential terms of the covenant.

The USVI protects collective bargaining by employees, as found by statute in 24 V.I.C. § 64, as well as protecting employees through safety, labour relations and employment anti-discrimination laws. The Virgin Islands Department of Labor (DOL) and the Virgin Islands Public Employees Relations Board are two territorial agencies that oversee non-union employer–employee relations in the USVI. Oversight of union relations is provided by the federal National Labor Relations Board, Region 12.

In addition to collective bargaining and employee protection laws, employment may be limited by other laws to protect employees, such as the USVI Labor Relations Act, the USVI Plant Closing Act and, as discussed in **4.4 Termination of Employment Contracts**, the USVI Wrongful Discharge Act. Additionally, some labour laws in the USVI provide for preferential hiring of qualified residents of the USVI before hiring qualified non-residents.

Lastly, any arbitration agreement must not limit the remedies that an employee would have available in court. Pre-dispute waivers of remedies or substantive protections written into an arbitration agreement by the employer are not enforceable and are against public policy. Employees retain the right to elect arbitration at the time a dispute arises, or for a reasonable time thereafter. There can be nothing in the agreement to unfairly limit the employees' access to arbitration due to economic reasons. If an employee cannot afford arbitration, the employer must absorb the expense, if both parties agree to arbitration.

Lastly, the DOL is mandated to assist resident workers in the USVI to obtain, safeguard and protect their preference to be employed in occupations and industries in the USVI. One way the DOL does this is by requiring employers in the USVI to submit job openings on the Virgin Islands Electronic Workforce System (VIeWS).

### 4.2 Characteristics of Employment Contracts

Employment contracts can be written, verbal or implied, so long as there is an offer, an acceptance and consideration. Contracts may be implied or expressed, and each party has a duty of good faith and fair dealing in performance and enforcement. Employment contracts usually state terms relating to the date of commencement of employment and date of termination of employment or terms of renewal of the contract, wages to be paid, benefits to be provided by the employer to the employee, circumstances in which the employment contract may be terminated, avenues of resolution of contract dispute, language

relating to confidentiality, non-compete and other terms specific to the employer's business.

The DOL regulates employment contracts along with payment of required minimum wages and tipped wages, meal and rest period requirements for certain circumstances, employment discrimination, sexual harassment and child labour laws.

### 4.3 Working Time

Working time is governed by the USVI Fair Labor Standards Act, 24 V.I.C. § 20, which mandates generally a 40-hour work week, no more than five consecutive work days, and no longer than eight-hour workdays, unless overtime hours are paid as calculated at a rate of no less than 1.5 times the regular rate at which the employee is employed. The USVI recognises exemptions to these rules for restaurant or tourist industry workers. Some salaried workers are exempt from minimum or maximum working time, including executives and certain professional workers whose work requires advanced knowledge or skill.

Additionally, other workers may not be included as "employees" for the purpose of working time requirements such as: an individual employed in domestic service in a private home; an individual employed by the United States, or by the USVI Government or any instrumentality thereof; an individual engaged in the activities of an educational, charitable, religious or non-profit organisation where the employer–employee relationship does not, in fact, exist or where the services rendered to such organisation are on a voluntary basis; or an individual employed as a seaman or engaged in the catching, taking or selling of any fresh fish, shellfish or crustacea.

### 4.4 Termination of Employment Contracts

The USVI has adopted the Wrongful Discharge Act detailed in 24 V.I.C. § 76, which provides nine grounds for appropriate discharge, for example, performing work in a negligent manner, advancing the interests of a competitor, or incompetence. Moreover, the law does not prevent termination of an employee due to cessation of business or general cutback because of economic hardship. If wrongfully terminated, the employee can timely appeal their termination to the Commissioner of Labor, who can conduct an investigation, hold hearings and, if the employee was wrongfully terminated, order they be reinstated with back pay. These orders can then be taken to the Superior Court of the Virgin Islands, which can enforce, modify or set aside the order of the Commissioner.

Additionally, under the USVI Plant Closing Act, an employer with fewer than 1,000 employees that is closing a facility, planning a relocation or any other action resulting in an employment loss is required to provide a 90-day advance written notification to the DOL and to the affected employees, and their union, as applicable. For an employer with more than 1,000 employees, 180 days' advance notification must be given.

In case of a mass layoff that will not result in a plant closing, the employer must give at least 30 days' advance notification of the mass layoff to any affected employees and their respective labour unions, and at least ten days' advance notification to the DOL. An employer is not required to provide notice of a mass layoff, relocation or employment loss if it results from a physical calamity or an act of terrorism or war. Severance pay to the affected employees must equal one week's pay for every year of service with the employer in addition to any final wage payment owed to the employee.

### 4.5 Employee Representations

There is no requirement that an employee be represented. Union employees may be represented by their union representative, and union representatives designated or selected by a majority of employees for collective bargaining are the exclusive representatives of all employees in the union for negotiations on employment contracts.

Employers must follow federal labour laws when it comes to informing employees, such as National Labor Relation Acts Postings and Occupational Safety and Health Act Postings.

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/ Employers

As previously touched on, the Code applies in the USVI as the USVI tax code through the use of a substitution scheme known as the "mirror" system. Pursuant to the mirror system, the words "Virgin Islands" are substituted for the words "United States" wherever they appear in the mirror Code. Also under the mirror Code, "any changes to, interpretations of, regulations and revenue rulings on and court interpretations of the substantive tax provisions of the Internal Revenue Code are applicable to Virgin Islands tax cases as long as the particular provision at issue is not manifestly inapplicable or incompatible with a separate territorial income tax..."

The Code contains several sections – notably Sections 932, 934 and 937 – that deal specifically with the USVI and, more particularly, govern the extent to which the USVI can grant tax incentives and how USVI residents and persons with USVI source income file their income tax returns. Guidance contained in IRS Publication 570 (Tax Guide for Individuals with Income from US Territories) discusses the filing requirements of USVI residents and US citizens and residents with USVI source income, and is updated annually.

Individuals who perform work in the USVI but are not bona fide residents of the USVI are required to file Form 1040 with the IRS and with the BIR and, on the return filed with the BIR, include IRS Form 8689 (Allocation of Individual Income Tax to the U.S. Virgin Islands) to allocate taxes for income earned in the USVI to the BIR. Often, this allocation is made based on the time spent working in the USVI. Taxes on USVI income are then paid to the BIR and other taxes are paid to the IRS with a credit given on the return filed with the IRS for income taxes paid to the BIR.

Individuals who are bona fide residents of the USVI during the entire taxable year pay the full amount of their tax liability on their worldwide income to the USVI tax authorities (the BIR). An employee who performs above a minimum threshold of work in the USVI that qualifies as USVI source income is subject to taxation. Guidance for filing by USVI residents and non-residents of the USVI with USVI source income is provided in IRS Publication 570, "Tax Guide for Individuals With Income from U.S. Territories".

Employers that have USVI employees must pay Federal Insurance Contributions Act (FICA) taxes, which are also referred to as Social Security and Medicare taxes, to the IRS. Starting in 2024, employers pay FICA taxes using Form 941 (Employer's Quarterly Federal Tax Return), but do not answer questions regarding US income tax withholding – unless they have an employee who is subject to such withholding – because income taxes for USVI employees are paid to the BIR on Form 941 V.I. (Employer's Quarterly Virgin Islands Tax Return).

Additionally, employers must pay USVI and US unemployment insurance taxes as well as USVI workers' compensation insurance.

### 5.2 Taxes Applicable to Businesses

Income tax is withheld from the pay of most employees. An individual's pay includes their regular pay, bonuses, commissions and vacation allowances. It also includes reimbursements and other expense allowances paid under a non-accountable plan.

If an individual's income is low enough, such individual will not have to pay income tax for the year and may be exempt from withholding. Each individual has the responsibility of requesting their employer to withhold income tax from non-cash wages and other wages not subject to withholding. If such employer does not agree to withhold tax, or if an insufficient amount of tax is withheld, the individual may have to pay an estimated tax to the BIR.

In addition, FICA is made applicable by specifically defining "United States" to include the USVI for purposes of the Old Age, Survivors and Disability Insurance (OASDI, also known as Social Security) and hospital insurance taxes ("Medicare"). Also, FICA taxes on self-employment income apply. These taxes are paid to the IRS and not the BIR because they are not "mirrored" to the USVI. The IRS has specific authority to administer and collect these taxes in the USVI.

The FICA taxes are imposed in equal percentages on both the employer and the employee. The employer collects the employee's percentage via withholding. The Social Security tax rate is 6.2% on annual wages up to a maximum of USD184,500 for 2025. The Medicare tax rate is 1.45% on all wages without limit. Self-employed individuals are required to pay the employer's percentage of FICA tax in addition to their own. Additionally, individuals who make over a certain amount (based on filing status) pay an additional 0.9% in Medicare tax. There is no employer match for this additional Medicare tax, but the employer is responsible for withholding the 0.9% once an employee's wages exceed USD200,000 in a year (regardless of filing status).

In the case of an individual who is not a bona fide resident of the USVI, the taxation depends on whether the person is a US citizen or US resident or a resident of a foreign country.

In the case of a resident of the United States (US citizen, resident alien, or a person meeting the physical presence test set out for aliens who do not have a green card in the United States) deriving USVI source income, or income effectively connected with a USVI trade or business, the person must file a return with the IRS and the BIR, and a credit is granted against the US tax liability for taxes paid to the BIR. The person must sign each return and must attach Form 8689 (Allocation of Individual Income Tax to the U.S. Virgin Islands), which is used to allocate income and tax liability between the United States and the USVI.

A non-resident of both the USVI and the United States who is engaged in a trade or business in the USVI must pay tax on the income effectively connected with that USVI trade or business. The person must file a return with and pay tax on that income to the BIR. A non-resident of both the USVI and the United States who is not engaged in a trade or business in the USVI but who has USVI source income is generally subject to a 10% withholding tax, which is to be paid to the BIR by the USVI payor of the income. However, if the income is interest on a loan secured by USVI real property with a value equal to or greater than the loan, then no withholding tax is due.

The determination of whether someone is a resident alien or non-resident alien of the USVI is made under the same principles under Code Section 7701 (b) as in the United States, but as mirrored to the USVI. An alien (whether resident or non-resident) is an individual who is not a US citizen. For the purposes of determining whether a person is a resident alien or a non-resident alien under the mirrored Code Section 7701 (b) definition of resident alien and non-resident alien, presence in the United States (meaning the 50 states and the District of Columbia) does not count as residency in the USVI, even though entry to the USVI falls under the immigration laws of the United States (that is, the USVI does not have its own immigration procedures, and US law treats the USVI as part of the United States for all purposes).

### Exemptions

Cash or property received as employment compensation by a non-resident of the USVI will not be USVI source income under mirrored Code Section 861 (a)(3) if:

- the compensation is earned while the individual is temporarily present in the USVI;
- the taxpayer is not present in the USVI for more than 90 days during the taxable year;
- the compensation does not exceed USD3,000; and
- the employer is either:
  - (a) a foreign person not engaged in a business in the USVI; or
  - (b) a foreign office of a USVI person.

If income meets these four requirements, it is exempted from USVI taxation.

If income does not meet these four requirements, it is subject to USVI withholding tax at a rate of 10%.

### Investment Income

Investment income consisting of interest and dividends is, under Code principles as mirrored to the USVI, generally sourced to the situs of the payor. Rents and royalties are generally sourced to the location where the property giving rise to the rents and royalties is located.

Such income from the USVI would be USVI source income not effectively connected with a USVI trade or business (assuming it is not related to a USVI trade or business) and taxed under Code Section 871 (a). The tax imposed by Code Section 871 (a)(1) and its attendant withholding under Code Section 1441 are reduced to 10% by the USVI with regard to non-resident aliens.

The 3.8% Net Investment Income Tax found in Section 1411 of the Internal Revenue Code is not applicable to bona fide residents of the USVI per Treasury Regulation Section 1.1411-2 (a)(2)(vi)(A).

### Capital Gains Income

Capital gains income is, under Code principles as mirrored to the USVI, generally sourced to the situs of the owner of the capital asset and recipient of the gain. Thus, capital gains income received from the sale of a USVI-situs capital asset by a non-resident is not subject to USVI tax, other than a gain from the sale of USVI real estate, as property is considered sourced from where it is located. Code Section 865 also contains a number of exceptions to the general rule that the source of income from the sale of personal property is based on the residence of the seller.

Exceptions exist for sales of inventory property, gain from the sale of depreciable personal property, intangibles, and sales of stock in an affiliate that is located in a foreign country. See Code Sections 865 (b)–(f).

In addition, Treasury Regulation Section 1.937-2 (f) provides special rules for gains from certain dispositions of property by former US residents. Specifically, if an asset is transferred to the USVI by a US resident who then moves to the USVI, any gain on the sale of the asset is all US source for ten years, or if an election is made, the gain must be allocated based either on the value of the asset as of the date of the individual's change in residency (if publicly traded), or on a formula of USVI days over total days in the holding period (if not publicly traded).

## 5.3 Available Tax Credits/Incentives

The USVI offers a variety of tax incentive programmes under either the EDA or the RTPark in the industries that were indicated in **2.1 Approval of Foreign Investments**. While there are a variety of programmes, such as the SSTZ, the Enterprise Zone Act, and the Sustainable Tourism through Arts-based Revenue Streams (STARS) Act programmes, the primary tax incentive programmes for FDI are the EDC Program and the RTPark Program. Each programme has general requirements consistent with their applications requiring notification to relevant agencies such as the Department of Labor, background checks, board approvals, compliance obligations and charitable contribution obligations.

### EDC Tax Benefits

Under the USVI economic development laws, qualifying businesses (corporations, partnerships, limited liability companies, trusts and sole proprietorships) receive tax benefits if they meet certain investment criteria. The tax benefits are granted by the territory's seven-member EDC. As of June 2020, approximately 105 businesses received tax benefits under the EDC Program, including hotels and other tourism-related businesses, goods-producing businesses, and businesses serving customers outside the territory.

In order to meet the minimum qualifications for tax benefits, an applicant must invest at least USD100,000 (exclusive of inventory) in an eligible business, and employ a certain amount of USVI residents depending on the business category. The minimum investment and employment numbers may be reduced by the EDC in specified circumstances. Beneficiaries are also required to purchase from local vendors meeting certain requirements imposed by the EDC.

The EDC grants tax benefits for 20 years for investments on the islands of St. Thomas and St. John, and for 30 years on St. Croix. In addition, beneficiaries that invest more than USD10 million are eligible to receive an additional ten years of benefits, and beneficiaries that invest between USD1 million and USD10 million are eligible for an additional five-year term of benefits. Benefits packages may be extended upon proper application and review.

However, benefits packages may not be extended for more than ten years at 100% of benefits. Historically, the Governor of the USVI had to approve all beneficiaries. However, in December 2017, the Legislature

removed the Governor from the approval process for new applicants.

### Income Tax Benefits

An EDC Program beneficiary receives a substantial reduction in, or exemption from, all taxes imposed on businesses operating in the USVI. A beneficiary under the EDC Program receives a 90% tax credit against its income tax liability on income from the business for which benefits are granted. Such income must be sourced or effectively connected with the conduct of a USVI trade or business under Code Sections 934 (b)(1) and 937 and the Treasury Regulations promulgated thereunder. The reduction results in an effective tax rate of approximately 2.31% on income from the business. Tax benefits also extend to passive income from certain qualifying investments, such as USVI government obligations.

The 90% income tax reduction also extends to dividends received by a corporate beneficiary's USVI bona fide resident shareholders, and to distributions or allocations to the USVI bona fide resident shareholders or partners of a subchapter "S" corporation or partnership, respectively, that have been granted benefits by the EDC.

Beneficiaries of the EDC Program are exempt from withholding tax on interest payments and are subject to a reduced withholding tax rate of 4% on dividends. Other forms of passive income payments (such as royalties) are subject to withholding tax at a 10% rate (or 11% if a corporation). However, no withholding tax is imposed on payments to US entities.

### Other Tax Benefits

#### *Exemptions*

Beneficiaries receive an exemption from the USVI gross receipts tax on their receipts from their approved activities, which is otherwise imposed at a 5% rate on the gross receipts of a business, with no deductions. USVI entities engaged in business activities that are not covered by their grant of EDC benefits must pay gross receipts tax on the gross receipts from such business activities. Although exempt from gross receipts tax for business activities covered by a beneficiary's grant of benefits, the BIR requires that each beneficiary report its gross receipts (on a monthly basis, assuming annual gross receipts of more than USD225,000), and indicate that the beneficiary is exempt from payment of the tax pursuant to the EDC Program.

Beneficiaries receive an exemption from USVI excise tax on building materials and machinery used in the construction of their facilities and on raw materials brought into the USVI to produce articles. Otherwise, a tax ranging from 2% to 25% applies to the fair market value of many items. A number of excise tax exemptions exist, including exemptions for steel, concrete and lumber.

Beneficiaries receive an exemption from the USVI property tax. However, the personal homes of the owners of a beneficiary do not receive the property tax exemption, even if the respective owner maintains a home office. Moreover, if a beneficiary rents an office, the property tax exemption does not pass through to the beneficiary's landlord.

#### *Customs*

Because the USVI is outside the US customs zone, it has enacted its own customs law, imposing a 6% duty on items that are not manufactured in the United States. An EDC Program beneficiary's customs duties are reduced from 6% to 1% on raw materials and component parts imported from outside the USVI. Materials made in the United States are exempt from any customs duty. In addition, as with the excise tax, there are a number of customs duty exemptions.

Although the foregoing exemptions and reductions are imposed at the entity level, as mentioned above, a beneficiary's owners receive the income tax benefit on dividends and/or distributions if the owners are bona fide USVI residents.

### The University of the Virgin Islands Research and Technology Park Protected Cell Corporation

As an alternative to the tax benefits provided under the EDC Program, businesses in the USVI can qualify for tax benefits under the University of the Virgin Islands (UVI) Research and Technology Park Protected Cell Corporation Act. The UVI Research and Technology Park Corporation and its subsidiary, the UVI Research and Technology Park Protected Cell Corporation

(RTPark), are structured as public corporations and autonomous instrumentalities of the USVI government. The purposes of the RTPark include developing a technology sector in the USVI in order to promote the growth, development and diversification of the USVI economy and, more broadly, to promote a sector focused on developing knowledge-based businesses.

Further, the RTPark exists to broaden the capabilities of UVI by training students and creating a supportive research environment that combines the resources of UVI with those of the public sector and private industry. Oversight of the RTPark Program is vested with the seven-member RTPark board of directors (the "Board"). The Board has the authority to approve or disapprove applications by potential beneficiaries, referred to under the RTPark Program as "Protected Cells".

*Income tax benefits*

The income tax benefits granted to beneficiaries of the RTPark Program are substantially similar to those received by beneficiaries of the EDC Program. A beneficiary under the RTPark Program receives a 90% tax credit against its income tax liability on income from the business for which benefits are granted. Such income must be sourced from or effectively connected with the conduct of a USVI trade or business under Code Sections 934 (b)(1) and 937 and the Treasury Regulations promulgated thereunder.

The reduction results in an effective tax rate of approximately 2.31% on income from the business. If the beneficiary's owners are bona fide residents of the USVI, they receive the reduction on dividends and/or distributions. Salaries and other forms of compensation such as guaranteed payments, however, are fully taxable.

With respect to income tax benefits, the main difference between the RTPark Program and the EDC Program concerns the duration of benefits granted to each programme's beneficiaries. RTPark Program beneficiaries receive an initial 15-year term of benefits, with an initial renewal period of ten years at full benefits, and subsequent renewal periods of five years at full benefits.

*Other tax benefits*

The other tax benefits granted to beneficiaries of the RTPark Program are also essentially the same as those received by beneficiaries of the EDC Program. The one exception is that royalties under the RTPark Program receive the reduced withholding tax rate that is only applicable to dividends paid under the EDC Program.

## 5.4 Tax Consolidation

The US tax system allows eligible corporate groups to elect to file consolidated returns for federal income tax purposes in lieu of separate returns. As the USVI follows the mirror system, corporations organised in the USVI are also eligible to elect to file consolidated returns for USVI income tax purposes with the BIR in lieu of filing separate tax returns. However, USVI corporations that elect to file a consolidated return may not include corporations organised in the United States and vice versa.

A "consolidated group" is an affiliated group that files a taxable year consolidated return. An affiliated group is a group of "includible corporations", which are connected through stock ownership with a common parent that is an includible corporation. Generally, all corporations are includible corporations, except those that are specifically excluded.

Such excluded entities that may not file consolidated returns include:

- tax-exempt corporations;
- life insurance corporations;
- foreign corporations (which includes corporations formed in the United States);
- regulated investment companies;
- real estate investment trusts;
- domestic international sales corporations; and
- "S" corporations.

## 5.5 Thin Capitalisation Rules and Other Limitations

While many foreign jurisdictions combat perceived thin capitalisation abuse by mandating specific debt-to-equity ratios and by disallowing interest expense deductions on excess indebtedness, the United States (and thereby the USVI through the adoption

of the mirror Code) has adopted a somewhat different approach. It must be determined in each case whether a purported loan is in fact indebtedness or whether the loan represents an equity investment in the corporation.

Concerning the classification of an investment in a corporation as either debt or equity, Code Section 385 sets out five factors that are to be considered, namely:

- whether there is a written unconditional promise to pay on demand or on a specified date a sum certain of money in return for an adequate consideration in money or money's worth, and to pay a fixed rate of interest;
- whether there is subordination to or preference over any indebtedness of the corporation;
- the ratio of debt to equity of the corporation;
- whether there is convertibility into the stock of the corporation; and
- the relationship between holdings of stock in the corporation and holdings of the interest in question, ie, whether or not such holdings are proportional.

The United States does not have a debt-to-equity ratio that can be used as a safe harbour to ensure debt treatment. Instead, the debt-to-equity ratio is merely one factor taken into account by the IRS and the courts, although it is generally believed that the IRS will not challenge a ratio of 3:1 or less on debt instruments that do not have equity features.

IRS Notice 94-47 provides a list of the factors that it will consider in deciding the debt or equity character of an instrument. The characterisation of an instrument for federal income tax purposes depends on the terms of the instrument and all surrounding facts and circumstances. Among the factors that may be considered in making this determination are:

- whether there is an unconditional promise on the part of the issuer to pay a sum certain on demand or at a fixed maturity date that is in the reasonably foreseeable future;
- whether holders of the instruments possess the right to enforce the payment of principal and interest;
- whether the rights of the holders of the instruments are subordinate to the rights of general creditors;
- whether the instrument gives the holders the right to participate in the management of the issuer;
- whether the issuer is thinly capitalised;
- whether there is an identity between the holders of the instruments and stockholders of the issuer;
- the label placed upon the instruments by the parties; and
- whether the instruments are intended to be treated as debt or equity for non-tax purposes.

No particular factor is conclusive in making the determination of whether an instrument constitutes debt or equity. The weight given to any factor depends upon all the facts and circumstances, and the overall effect of an instrument's debt and equity features must be taken into account.

The IRS stated that certain categories of instruments will be closely examined on audit to determine whether debt treatment is appropriate. This includes financial instruments that are treated as equity for regulatory, rating agency or financial accounting purposes, but sought to be treated as debt for income tax purposes; instruments with unreasonably long maturities; and instruments with provision for payment of principal using stock of the issuer.

### 5.6 Transfer Pricing

The US transfer pricing regime of Code Section 482 applies to the USVI by virtue of the mirror system. Code Section 482 provides that gross income, deductions, credits and other allowances may be allocated among two or more organisations, trades or businesses under common ownership or control whenever it is determined that such action is necessary to prevent the evasion of taxes or to clearly reflect the income of the parties.

True taxable income is determined by evaluating transactions between commonly controlled taxpayers against the standard of comparable transactions between unrelated persons dealing at arm's length. If a taxpayer's results differ from its true taxable income, the taxpayer may be subject to a reallocation of income, deductions, credits or any other item or element affecting taxable income. The permissible

methods for determining an arm's length price depend on the type of transaction and are fully set out in the Treasury Regulations issued under Code Section 482.

### 5.7 Anti-Evasion Rules

The US tax law and regulations as applicable in the USVI contain numerous anti-abuse rules that are intended to prevent taxpayers from claiming inappropriate tax benefits. USVI taxpayers are also subject to numerous reporting requirements, including with respect to interests in foreign assets and certain transactions that have the potential for tax avoidance or evasion.

### 5.8 Tariffs

While a part of the United States, the USVI is outside the tariff zone of the United States. The USVI imposes its own flat 6% duty rate on imported items. Further, goods imported into the USVI that have undergone "substantial transformation" are able to then be shipped into the United States free of mainland tariffs. Thus, the USVI, given its proximity to the mainland United States, is a prime location for FDI for those seeking to work in the importation and exportation of goods with minimal impact from tumultuous developments in the current US tariff regime.

## 6. Competition Law

### 6.1 Merger Control Notification

The USVI has laws regarding merger and consolidation under the General Corporation Law in 13 V.I.C. §§ 251–256, regarding conversions and mergers under the Uniform Limited Liability Company Act in 13 V.I.C. §§ 1901–1907 and regarding conversions and mergers under the Uniform Partnership Act in 26 V.I.C. §§ 191–198. The statutes require some sort of plan or agreement, and may also require a vote, and a filing or notification made with the Lieutenant Governor. Additionally, corporations also require a filing with the district courts where the merging entities are located. Mergers can occur with domestic USVI entities or certain other entities, including foreign entities.

### 6.2 Merger Control Procedure

See **6.1 Merger Control Notification**.

### 6.3 Cartels

The Virgin Islands Antimonopoly Law forbids agreements in restraint of trade between competitors. Forbidden agreements include agreements to fix prices, fix levels of production or distribution, or allocate territories and customers. The law is construed similarly to federal antitrust law.

### 6.4 Abuse of Dominant Position

The Virgin Islands Antimonopoly Law forbids the use of monopoly power for the purpose of excluding competition or manipulating prices. The law is construed similarly to federal antitrust law.

## 7. Intellectual Property

### 7.1 Patents

The laws of the United States relating to patents, trade marks and copyrights, and the enforcement of rights arising thereunder, have the same force and effect in the USVI as in the continental United States. The District Court of the Virgin Islands has the same jurisdiction in causes arising under such law as is exercised by United States district courts.

Inventions are patented to grant the inventor the right to exclude others from making, using, offering for sale or selling the invention in the United States or importing the invention into the United States. Patents are issued by the USPTO. The three types of patents are utility, design and plant patents.

Filing for a non-provisional patent requires patent law expertise, scientific knowledge, and extensive attention to detail and time. An inventor may apply for a provisional patent before a non-provisional patent, providing the means to establish an early effective filing date and permit the use of the term "Patent pending" before filing a non-provisional patent application. The term of a provisional patent is 12 months.

The term of a non-provisional, new patent is generally 20 years from the date on which the application for the patent was filed in the United States or from the date an earlier related application was filed in special cases, subject to the payment of maintenance fees.

US patent grants are effective only within the United States, US territories and US possessions.

To apply for a provisional or a non-provisional patent, an inventor may file a paper or online application. Once a patent is issued, the patentee must enforce the patent without aid of the USPTO.

### 7.2 Trade Marks

A trade mark is a device, name, symbol or word used with goods to designate the source of the goods and to distinguish them from goods of others. A service mark identifies and distinguishes the source of a service rather than goods. The purpose of applying and obtaining trade mark or service mark rights is to prevent others from using a confusingly similar trade mark or service mark. It does not prevent others from making the same goods or from selling the same goods or services under a different trade mark or service mark. Trade mark registrations can be filed by paper or online.

A registered trade mark requires regular maintenance. Six years after the registration date, a Declaration of Use or Excusable Non-Use must be filed with applicable fees and evidence showing that the trade mark is in use. If this declaration is not filed, the registration is cancelled.

The Madrid Protocol is a filing treaty to ensure protection for trade marks in multiple countries through filing one application. It is the right of each country whether or not trade mark protection is granted. If granted, the trade mark is protected in that country.

### 7.3 Industrial Designs

Industrial design is a combination of applied art and science to improve a product in its function, aesthetics, usability and ergonomics. The Hague Agreement is an international registration system which offers the possibility of obtaining protection for up to 100 industrial designs in designated member countries and intergovernmental organisations (referred to as "Contracting Parties") by filing a single international application in a single language either directly with the International Bureau of the World Intellectual Property Organization or indirectly through the office of applicant's Contracting Party.

Applicants can file international design applications through the USPTO as an office of indirect filing. Industrial design patents have a 15-year term from issuance.

### 7.4 Copyright

Copyright is a form of protection provided to the authors of "original works of authorship" including literary, dramatic, musical, artistic and certain other intellectual works, both published and unpublished. The 1976 Copyright Act generally gives the owner of copyright the exclusive right to reproduce the copyrighted work, to prepare derivative works, to distribute copies or phonorecords of the copyrighted work, to perform the copyrighted work publicly, and to display the copyrighted work publicly.

The copyright protects the form of expression rather than the subject matter of the writing. For example, a description of a machine could be copyrighted, but this would only prevent others from copying the description; it would not prevent others from writing a description of their own or from making and using the machine. Copyrights are registered by the Copyright Office of the Library of Congress, and applicants may file paper or online applications. For works created after 1 January 1978, a copyright is good for 70 years after the death of the author.

### 7.5 Others

A person, association or entity doing business in the USVI under any name other than its own, whether they are a resident or non-resident, must have their tradename approved, file an application for the tradename, and pay a USD50 fee to the Office of the Lieutenant Governor of the USVI, Division of Corporations & Trademarks. The application should set forth the name or style under which said business will be known, the location of the business, a brief description of the kind of business to be transacted under the tradename, and the real name or names of the party or parties conducting or intending to conduct business and the addresses of the party or parties. The application must be notarised before an officer authorised by the laws of the USVI to authenticate signatures.

A certificate of tradename is issued for a period of two years and is renewable. If the party or parties fail to

renew the tradename within six months of the expiration date, the tradename becomes available to anyone who files for the tradename and pays the required fee.

If a person, association or entity doing business in the USVI fails to or refuses to obtain a tradename certificate, the USVI Attorney General may institute an action in the District Court of the Virgin Islands to enjoin the conduct of the business. Further, the violating entity may not commence or maintain any court action in the USVI.

When the party or parties cease to conduct business in the USVI, notice of the date of cessation, sworn to by a person, partner, corporate officer, member, executor or administrator, must be filed within ten days after the business ceases.

## 8. Data Protection

### 8.1 Applicable Regulations

Contract, common law, federal regulations and USVI statutory law govern data protection requirements. The most applicable local statute is 14 V.I.C. § 2209, which deals with the crime of identity theft. This statute outlines the requirements for companies or persons that conduct business in the USVI regarding notifications of any breach of digital security and leaking of personal information such as social security numbers and driver's licence numbers.

### 8.2 Geographical Scope

Any business that targets or does business in the USVI must follow both territorial and federal laws regarding data protection and notification in case of breach.

### 8.3 Role and Authority of the Data Protection Agency

The USVI has also established a Bureau of Information Technology, which includes in its mandate the development of the policies and standards to be followed in providing for the confidentiality of information; ensuring the security of the USVI's informational and physical assets; providing for the preservation of the USVI information processing capability; and coordinating research and identifying problems affecting information security and their solutions.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

While there are no specific legal reforms expected that will affect foreign investment in the USVI, please see the Trends and Developments article for a deeper discussion of trends and developments in this field, particularly with regard to the economic incentive programmes.

# Trends and Developments

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**Marjorie Rawls Roberts PC** has decades of experience in representing companies and individuals in business, securities, tax, trusts and estates, and real estate matters in the USVI. The firm's clients are based in the USVI, the US mainland, other US territories and international locations. The firm also provides comprehensive estate planning services and advice regarding the requirements for bona fide USVI residency. It represents clients before the USVI Economic Development Authority, the University of the Virgin Islands Research and Technology Park, and other government agencies as they seek economic incentives.

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## Doing Business in the US Virgin Islands: An Introduction

### *Background*

The US Virgin Islands (USVI) is an unincorporated territory of the United States of America (USA) located approximately 1,100 miles south-east of Miami, Florida. Acquired from Denmark in 1917, the USVI is made up of the islands of St. Croix, St. John, St. Thomas and Water Island, plus numerous uninhabited cays, with a total population of approximately 85,000. The USVI uses US currency, and no exchange controls exist.

The USVI's prime natural resources include pristine beaches, crystal-clear seas, a mild year-round climate, the natural harbour on St. Thomas, the Virgin Islands National Park on St. John, and the rainforest on St. Croix. These assets, combined with the investment security of a US jurisdiction and a variety of federal and local incentives, have cemented the territory as a stable place to do business, with tourism as the major local economic activity.

Beyond tourism, the USVI attracts a growing number of consulting businesses and technology businesses owned by US citizens who have moved to the USVI to take advantage of its specialised economic incentive programmes for entrepreneurs who want to live and work in paradise. In 2020, the USVI completed a long-term economic strategy and action plan (Vision 2040), with goals that include diversifying the territory's economic base through growth in target industries, including professional and technical services, renewable energy, agribusiness, coastal/ocean resources and health sciences.

The USVI is particularly well suited to attract and utilise all types of renewable energy, and is actively working with investors on a significant solar power expansion and implementation of wind power.

The USVI also offers banks that are insured by the Federal Deposit Insurance Corporation and are covered by the USA's extensive network of bilateral investment treaties (but not tax treaties). The USVI has two federal judges and is part of the Third Circuit Court of Appeals. Moreover, the USVI has a local court, the Superior Court of the Virgin Islands (which includes a Magistrate Division), and its own local highest court, the Supreme Court of the Virgin Islands.

With respect to transportation, the Virgin Islands Port Authority recently embarked on a public-private partnership with the goal of redeveloping and modernising the territory's two airports: the Henry E. Rohlsen Airport on St. Croix, and the Cyril E. King Airport on St. Thomas. Among other goals, the project is intended to stimulate economic growth in the USVI by increasing the efficiency and safety of airport operations, expanding airport capacity and attracting private investment to the territory. The USVI has direct flights to many mainland cities and also attracts many yachts seeking a secure, well-located and attractive home base.

### *Tax system overview*

The Internal Revenue Code of 1986, as amended (the "Code"), applies in the USVI under a "mirror" system whereby "USVI" is effectively substituted for "United States" wherever the latter appears. This mirror system was created pursuant to the Naval Services Appropriation Act of 1922, 48 U.S.C. 1397, which stated: "The income-tax laws in force in the United States of America and those which may hereafter be enacted shall be held to be likewise in force in the Virgin Islands of the United States, except that the proceeds of such taxes shall be paid into the treasuries of said islands." Practically speaking, this means that bona fide USVI residents should pay income taxes on their worldwide income to the U.S. Virgin Islands Bureau of Internal Revenue (BIR) only, and not to the Internal Revenue Service (IRS). The income tax provisions of the Code, the Treasury Regulations promulgated thereunder, and revenue rulings and revenue procedures issued by the IRS are included in what is generally applicable in the USVI, with certain limitations.

As a US territory, the USVI occupies a unique status: although it is part of the USA, it has been granted authority by the US Congress to enact special tax laws to encourage investment in business operations. See, for example, 26 U.S.C. Section 934 (b)(1). The USVI therefore offers many opportunities for investors, and especially entrepreneurs who seek a politically stable jurisdiction with targeted economic incentives, legitimate protection of their assets from taxes, and an enticing location with excellent telecommunica-

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tions. While some programmes, such as the Sustainable Tourism through Arts-based Revenue Streams (STARS) Act, remain underutilised, other major incentive programmes have proven a boon for entrepreneurs, investors and the territory alike. The major USVI incentive programmes available to entrepreneurs are as follows.

*Economic Development Commission Program*

The infrastructure to support hotels and tourism businesses (among others) in the USVI has largely been in place for more than 63 years through the Economic Development Authority (EDA) and its various investment programmes and their predecessors. The Economic Development Commission (EDC) Program, administered by the EDA, offers exemptions and reductions to entities qualified as EDC Program beneficiaries, and reductions to direct and indirect owners of entities qualified as EDC Program beneficiaries if the owners are bona fide residents of the USVI (see discussion below). The EDC Program is available to a wide array of businesses – for example, public relations services, international banking and insurance, business and management consulting, call centres, investment managers and advisers, family offices, technological businesses, medical services, and manufacturing and production businesses. See 29 V.I.C. Sections 703, 708. Moreover, in 2016, an International Financial Service Entity (IFSE) category was added to the list of businesses eligible for benefits. An IFSE must also be licensed as a bank pursuant to the International Financial Services Center Regulatory Act administered by the Division of Banking, Insurance and Financial Regulation in the Office of the Lieutenant Governor.

Benefits under the EDC Program include the following:

- A credit equal to 90% of the otherwise applicable income tax, which applies to the income from the benefited business as distributed to bona fide USVI resident owners on their allocations or dividends. A USVI corporation pays an effective tax rate of approximately 23.1% on its eligible income; with the 90% tax credit, the effective rate is 2.31%. (However, salaries and other forms of compensation, such as guaranteed payments, remain fully taxable.)
- Beneficiaries are exempt from the territory's 5% tax on gross receipts on revenue received from approved business activities.
- Beneficiaries are exempt from USVI property tax for the property occupied by the beneficiary for its approved business activities.
- Beneficiaries receive an exemption from USVI excise tax on building materials and machinery used in the construction of their business facilities and on raw materials brought into the USVI to produce goods.
- A beneficiary's customs duties are reduced from 6% to 1% on raw materials and component parts imported from outside the USA. No local customs duties are imposed on US-made products.

No withholding tax is imposed on payments to US corporations or US-resident individuals. Beneficiary companies with foreign owners are exempt from withholding tax on interest payments, and are subject to a reduced withholding tax rate of 4.4% on dividend payments made overseas to corporate owners. Similarly, no income tax is withheld on interest paid to non-resident alien individuals, and the tax rate on dividends paid to non-resident individual owners is 4%.

To be eligible for EDC Program benefits, the income must satisfy applicable federal source and effectively connected income regulations, as set out in Section 937 (b) of the Code and Sections 1.937-2 and 1.937-3 of the Treasury Regulations promulgated thereunder, and the income must be sourced from or effectively connected to the USVI.

To qualify under the EDC Program, an applicant in a qualifying business must generally make a minimum capital investment of USD100,000 (exclusive of inventory) and meet certain minimum employment requirements. Typically, a business must employ at least ten full-time employees, but "designated service businesses" – which are typically financial or consulting firms exclusively serving clients outside the USVI – are only required to employ five full-time employees, and the EDA has the authority to lower the five-employee minimum or permit a business to have several years to meet the five-employee minimum upon a showing

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of good cause. A full-time employee is someone who works at least 32 hours a week. A beneficiary must post all positions with the USVI Department of Labor (DOL) and notify the DOL when positions are filled, among other reporting requirements.

At least 80% of the beneficiary's employees must be USVI residents, unless a waiver is granted. Beneficiaries must purchase goods and services locally when available, make certain contributions to scholarships and public education, and provide a plan for civic participation. Beneficiaries must also provide employee benefits and enact a management training programme.

The application process requires a detailed application, including details of the beneficiary's ownership, financial information, and a background check for beneficial owners with more than a 5% interest. Submission of the application is followed by the application's presentation at a public hearing before the EDC commissioners and a review of the application by the EDC commissioners. Since 2020, the public hearings have been held virtually and the EDC has not yet indicated when, if ever, public hearings will return to being in person.

Upon approval by the EDC, benefits are available for initial periods of 20 years for investments on the islands of St. Thomas and St. John, and for 30 years on St. Croix. Beneficiaries that make an additional investment in the beneficiary business in infrastructure, new construction or refurbishment during the term of their existing certificates may be entitled to extensions of their benefits upon the expiration of their certificates. Separately, a beneficiary may seek an extension of 100% of benefits for an additional ten years on the same terms.

In recent years, new hotel applicants under the EDC Program have committed to constructing low-density developments, including "glamping"-style accommodation designed to promote environmental sustainability and low-impact construction. Other hotel beneficiaries have restored historic structures in the USVI to showcase local culture and traditions.

### *Hotel Development Act Program*

The Hotel Development Act (HDA) Program is also administered by the EDA, and was initially passed in 2011 to provide a means for financing new hotel development projects (and hotels seeking substantial upgrades) in the USVI. In 2019, the HDA Program was amended to provide for the development, construction, reconstruction and renovation of commercial facilities and other hotel facilities. The hotel room occupancy tax (HROT) can now be 100% utilised by developers of new hotels, or up to 50% of the HROT for existing hotels where at least 70% of the units were previously damaged – by hurricanes, for example – for the development, construction, reconstruction and renovation of the facility.

The 2019 amendment also provides for the imposition of an economic recovery fee (ERF) to finance, fund or cover the costs incurred in the renovation, reconstruction, construction, improvement and development of hotel properties and related facilities or infrastructure. The amount of the ERF is the difference between the percentage rate of HROT applicable at the time of the application (currently set at 12.5%) and a percentage rate over such tax, not to exceed 7.5%, which is determined by the applicant and subject to implementation protocols. The ERF can be collected and deposited into an ERF trust account for a period of 30 years, and is only available to applicants applying before 31 December 2028. Any funds remaining after completion of the approved project can be used by the developer for other expenditures for improving or enhancing the ERF project.

### *Enterprise Zone Commission Program*

Businesses seeking to invest in historic preservation have additional opportunities available through the Enterprise Zone Commission (EZC) Program administered by the EDA, which offers tax incentives to businesses investing in designated historic and commercial districts. The mandate of the EZC Program is to facilitate the investment of private resources in productive business enterprises located in severely distressed Enterprise and Commercial Zone areas on St. Croix and St. Thomas, and to provide jobs for the residents of these areas. Governor Albert Bryan Jr. expanded the areas that qualify for EZC Program benefits by Executive Order No. 542 to include additional

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areas in Charlotte Amalie on St Thomas, along with adding Cruz Bay on St John, encompassing the area surrounding the Cruz Bay Creek, Frangipani Lane and Gallows Point.

The benefits available to beneficiaries under the EZC Program are an income tax credit of 90%, a gross receipts tax exemption of 100% and a property tax benefit of 100%. Applicants must have businesses/activities that are in accordance with the incentivised activities for the zone in which the applicant is applying. For example, applicants in the Garden Street area of downtown Charlotte Amalie, St. Thomas, must be engaged in "live work", sports and entertainment, good community, experiential tourism, the arts or restaurants.

To qualify under the EZC Program, an applicant must (among other things) make a minimum capital investment of USD10,000 and employ a minimum of two full-time USVI resident employees, either directly or through a contractor. The application process requires the submission of a description of the history and current condition of the property within the Enterprise and Commercial Zone and details of the construction or rehabilitation efforts to be undertaken. Applications are considered by the EZC commissioners. Upon approval, benefits are available for five years.

*Research and Technology Park Program*

The Research and Technology Park Program ("RTPark") seeks to support the USVI's expanding technology and knowledge-based sectors to promote the growth, development and diversification of the USVI economy. Examples of knowledge-based businesses found in 17 V.I.C. Section 482 (i) include e-commerce, electronics, information technology and research businesses. In addition, the RTPark works to broaden the capabilities of the University of the Virgin Islands (UVI) by providing it with financial support and training opportunities for UVI students, and by creating a research environment that combines the resources of UVI with those of the public sector and private industry. The RTPark has begun promoting enrichment programmes for USVI students K-12 through Science, Technology, Engineering and Mathematics (STEM) afterschool enrichment programmes and summer camps to strengthen the local pool of talent in STEM fields long-term.

Beneficiaries of the RTPark currently operate in the areas of data analytics, web content development, interactive media management, e-commerce, software development and licensing, technology-based management and business process services, internet advertising, telecommunications and information technology, application development, financial technology and medical device technology. Oversight of the RTPark Program is vested in the seven-member RTPark board of directors (the "Board"), which includes the chairperson of the UVI board of trustees and the president of UVI.

In most cases, an applicant, through a legal representative, negotiates the terms of a tenancy with the RTPark's executive director. Negotiations include:

- the amount of the one-time entry fee paid by the applicant (typically at least USD50,000 and up to USD100,000, depending on the size of the applicant);
- the applicant's obligation to pay annual management fees to the RTPark (typically between 1.5% and 3% of the applicant's gross income);
- the structuring of a charitable donation to UVI that can include scholarships, internships, faculty support, funds for specific programmes and in-kind contributions of time, typically starting at a total of USD35,000 annually; and
- the percentage of equity interest to be awarded to the RTPark (often a 1% non-voting, no distribution "Class B" interest).

Once negotiations have been finalised, a term sheet is entered into between the applicant and the RTPark, providing the basis for the formal application that covers the applicant and its owners. The final terms are memorialised in the Protected Cell's Park Tenant Agreement, which serves as the operative document defining the relationship between the Protected Cell, ie, an approved applicant, and the RTPark. Each RTPark application requires payment of a USD2,500 application fee.

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Benefits under the RTPark Program are initially available for 15 years and can be renewed for an initial period of ten years, followed by subsequent renewal periods of five years, subject to Board approval. As with the benefits under the EDC Program, the RTPark offers numerous tax exemptions and reductions, the most notable of which is a 90% reduction on tax liability for the business and also for owners of beneficiaries if the owners are bona fide residents of the USVI. Specifically, a Protected Cell in the RTPark receives a 90% tax credit against its income tax liability on income from the business for which benefits are granted. For a corporate Protected Cell, the reduction results in an effective tax rate of approximately 2.31% on eligible income. If the beneficiary's owners are individual residents of the USVI, they will receive a reduction on their dividends or allocations. Salaries, however, remain fully taxable. To be eligible for the reduction, such income must be sourced from or effectively connected to conducting a trade or business in the USVI in accordance with Sections 934 (b)(1) and 937 of the Code (and the relevant Treasury Regulations promulgated thereunder).

No withholding tax is imposed on payments to US corporations or individual residents. Furthermore, beneficiaries of the RTPark with foreign corporate owners are exempt from withholding tax on interest payments and enjoy a reduced withholding rate of 4.4% on dividend payments overseas (while the withholding rate on non-resident individuals is 4%). The tax withholdings on royalties paid to non-resident individuals or foreign corporations are 4% and 4.4%, respectively. The withholding tax is paid by the withholding agent (typically the RTPark beneficiary) to the BIR on Form 8109 and then reconciled annually on Form 1042.

As with the EDC Program, beneficiaries receive an exemption from USVI gross receipts tax, otherwise imposed at 5% on the gross receipts of a business, with no deductions. The BIR requires each beneficiary to report its gross receipts (monthly, assuming annual gross receipts of more than USD225,000) on Form 720 VI and to indicate that the beneficiary is exempt from payment of the tax pursuant to its status as an RTPark beneficiary. This exemption does not apply to gross receipts from business activities that are not covered by a beneficiary's grant of RTPark benefits, including income that is not sourced from or effectively connected to a trade or business in the USVI.

Beneficiaries receive an exemption from USVI excise tax on building materials and machinery used in the construction of their facilities, and on raw materials brought into the USVI to produce articles. Otherwise, a tax ranging from 2% to 25% applies to the fair market value of many items. In addition, several other statutory exemptions from excise tax apply, regardless of beneficiary status.

Beneficiaries receive an exemption from the USVI property tax, although the personal homes of beneficiary owners do not receive the property tax exemption, even if the respective owners maintain home offices. Moreover, if a beneficiary rents an office, the property tax exemption does not pass through to the landlord.

Because the USVI is outside the US customs zone, it has enacted its own customs law, imposing a 6% duty on items not manufactured in the USA. An RTPark beneficiary's customs duties are reduced from 6% to 1% on raw materials and component parts imported from outside the USVI. Materials made in the USA are exempt from any customs duty. As with the excise tax, several statutory exemptions from customs duties apply, regardless of beneficiary status.

### *Manufacturing and agriculture as growth sectors*

The USVI legislature has provided for a number of tax benefits and economic incentives to encourage agriculture, including the Farmers, Fishermen and Consumers Assistance Act, which gives certain tax exemptions to the farming and fishing industry, including an exemption from gross receipts tax on sales of products derived from the agricultural business.

Additionally, the EDC Program includes agriculture, food processing, product assembly and manufacturing as eligible activities. Moreover, the USVI Economic Development Bank, administered by the EDA, provides low-interest loans and micro-credit for USVI farmers and fishers, and farmers can qualify for property tax exemptions on agricultural land.

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### *South Shore Trade Zone Act*

In 2020, the USVI legislature enacted the Virgin Islands South Shore Trade Zone (SSTZ) Act, designating 3,000 acres on the south shore of St. Croix, which features a deep-water port and is a short distance from the Henry E. Rohlsen Airport, as an Enterprise Zone. The SSTZ Act entitles approved applicants to a credit equal to 90% of the otherwise applicable income tax, in addition to 100% exemption from the gross receipts tax, property tax, excise taxes and customs duties for up to 20 years.

The goal of the SSTZ, administered by the EDA, is to designate an area that eliminates traditional barriers to commercial trade and investment in support of light manufacturing, trans-shipment, the agricultural sector, micro-manufacturing, industrial development and the territory's green and blue economy sectors. Among other requirements, an applicant in a qualifying business must make a minimum capital investment of USD100,000 (exclusive of inventory) and employ a minimum of ten full-time employees and one paid apprentice. Additionally, applicants must comply with all local and federal laws and notify the DOL of any job openings or subcontracting openings. On 22 May 2026, the 36th Legislature of the USVI held an Economic Development Program Summit with a particular focus on highlighting opportunities in the SSTZ.

### *Opportunity Zones – federal benefits for USVI investments*

Several US programmes are also available for investors in the USVI. The Tax Cuts and Jobs Act, passed in December 2017, established the Opportunity Zone Program, which provides immediate and long-term tax advantages to US investors in Opportunity Zones. Investors can defer capital gains taxes on earnings from many types of investments up to 2027, can reduce taxes on the capital gain invested into an Opportunity Fund by 10% or 15%, depending on whether the qualifying investment is held for five years or seven years, and can gain permanent exclusion from capital gains taxation on Opportunity Fund investments held for at least ten years. The USVI has 14 designated Opportunity Zones.

Other tax credits are also available in the USVI, such as the 20% income tax credit for preserving historic properties and tax credits for owners of certain newly constructed or substantially rehabilitated low-income rental housing projects.

### *Choice of entity*

The USVI provides many options when choosing to form a legal entity within the jurisdiction, including corporations, limited liability companies and partnerships, such as:

- general partnerships;
- limited partnerships;
- limited liability limited partnerships;
- limited liability partnerships; and
- trusts.

The USVI has adopted the Uniform Limited Liability Company Act, and the formation and governance of an LLC is similar to that imposed in the 50 states and the District of Columbia.

Except for general partnerships (which are formed by the agreement of the partners) and trusts, all entities are formed through filings with the Office of the Lieutenant Governor of the USVI, Division of Corporations and Trademarks. Federal law applies in the USVI, including the Securities Act of 1933 and the Securities Exchange Act of 1934. In addition, the USVI has adopted the Uniform Securities Act for territorial-level securities regulations. The USVI imposes an annual franchise tax on LLCs and corporations, based on the capital used in the USVI trade or business, with the minimum franchise tax being USD300 annually. Partnerships pay a set annual fee of USD150.

### *Residency requirements*

Many USVI economic incentives and related programmes provide personal tax benefits for bona fide USVI residents on their allocations or dividends. To be a bona fide USVI resident, a person must meet one of five alternative physical presence tests each year, have a closer connection to the USVI than to any other location, and have a USVI tax home.

The most-used "physical presence" test involves being in the USVI for all or part of 183 days in a given year; however, individuals who travel frequently can satisfy the physical presence test by spending no

more than 90 days in the USA each year or by not having a significant connection to the USA at any time during the year (which is usually satisfied by not having a home, voter's registration, or spouse or minor child located in the USA).

The establishment of a "closer connection" to the USVI involves such factors as having an individual's main home in the USVI, filing returns in the USVI as a USVI resident, obtaining a USVI driver's licence, registering to vote and voting in the USVI, having a USVI bank account, etc, although no single factor is determinative. A "tax home" is the location of an individual's principal place of business.

In most cases, the individual must be a bona fide resident of the USVI for the entire year to get benefits on their income from a benefited business, although there is a "year of move" rule permitting individuals to be bona fide residents if they move to the USVI in the first half of a year and remain USVI residents for the next three years, among other requirements.

### *Applicability of the net investment income tax*

Finally, Section 1411 of the Code imposes a Medicare contribution on unearned income, and specifically imposes a tax equal to 3.8% of an individual's net investment income for a taxable year. The Treasury Regulations promulgated under Section 1411 of the Code provide that bona fide residents of US territories are subject to the tax only if they have a US income tax filing requirement. However, bona fide residents of the USVI have no income tax obligation (or related return filing requirement) with the USA, provided that they properly report income and pay income tax to the BIR. Therefore, the tax imposed by Section 1411 does not apply to bona fide residents of the USVI.

# USA




## Trends and Developments

**Contributed by:**
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**Rosen Karol Salis, PLLC**

**Rosen Karol Salis, PLLC** and its predecessors have been providing legal services in the franchise and real estate fields since 1970. The firm represents franchisors, franchisees and real estate entrepreneurs in all business and legal areas worldwide. Senior partner Richard L Rosen has over 40 years' experience as a franchise lawyer, business attorney and real estate developer. Richard and Rosen Karol Salis PLLC have won dozens of franchise awards and authored many articles on franchising and real estate.

## Authors



**Richard L. Rosen** is the founding member of Rosen Karol Salis, PLLC, and has been actively engaged in franchise and real estate law for over 40 years. Mr Rosen was Chairman of the American Association of Franchisees and Dealer's Fair Franchising Standards Committee; received the AAFD's Total Quality Franchising Lifetime Achievement Award in 2008 for his contributions to the field of franchising, and the Lifetime Achievement Award from Who's Who in America in 2019; is a founding member and past Chairman of the Franchise Law Committee of the New York State Bar Association; and is a member of the Steering Committee of the National Franchise Mediation Program. Richard has frequently lectured on franchise and real estate topics before many groups and organisations, and is widely published.



**Leonard S. Salis** is a Brooklyn Law School graduate with over 28 years of legal experience, and has been a partner in Rosen Karol Salis, PLLC since 2010. Leonard has become an experienced business lawyer with extensive knowledge of franchise law and franchise-related matters, as well as contracts, business transactions, corporate law, real estate and dispute resolution. Leonard has also co-authored several franchise and real estate-related articles. In 2022–2024, Leonard was recognised with the award for Franchise Lawyer of the Year in the USA by ACQ5 Gamechangers TM Global Awards. In 2022, The Lawyer Network awarded Leonard with its Annual Awards Winner in three categories. Leonard also featured in Marquis Who's Who Top Lawyers 2020–2021.

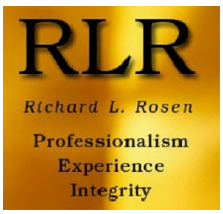


**Dennison D. Marzocco** is a real estate and transactional associate at Rosen Karol Salis, PLLC, and is engaged in a wide range of business transactions. He specialises in all aspects of commercial real estate, including complex leasing transactions, acquisitions and the sale of real property, real estate financing transactions, franchise matters, contracts and intellectual property matters. Dennison received his JD from Syracuse University and his BA from Washington and Lee University, where he was a member of the Sigma Nu Fraternity. He is admitted to practice in the federal and state courts of New York and New Jersey, and is a New York State-licensed real estate broker.

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### What Every Prospective Franchisee and Franchisor Should Know

Investing in a franchise business is a major financial and personal commitment for the franchisee. Unlike starting a business from scratch, franchise ownership means stepping into someone else's brand, system and rules, which are governed by the franchise agreement. Likewise, the franchisor must take seriously the fact that it is entering into a long-term business relationship, often measured in decades, with a third party that will engage in business under the auspices of the franchisor's brand; thus, obviously, choosing the "right" franchise is crucial for any prospective franchisee. This article is a survey of various key aspects of the franchisee–franchisor relationship from both sides, as well as related real estate issues that will impact many, if not most, franchise businesses.

### Negotiating the Franchise Agreement

Prospective franchisees too often treat the franchise agreement as a "take it or leave it" document. While franchisors are, understandably, less willing to negotiate certain core provisions such as royalty and marketing fund fee rates, there are other key provisions which reasonable franchisors should be willing to negotiate. Franchisees should be wary of franchisors who regard their franchise agreements as non-negotiable – unfortunately, things sometimes go wrong during the franchise relationship, and both parties will be in a better position to resolve their issues if they begin their relationship as "team players" rather than adversaries. The following is a non-exhaustive list of issues that should be addressed when negotiating a franchise agreement.

#### *Territory and buffer zones*

In addition to ensuring that each franchise location includes a "protected territory", it is also important to negotiate a defined "buffer zone" surrounding each franchise territory. Seek to provide for a "right of first refusal" or "right of first purchase" if the franchisee is seeking, directly or by another franchisee, to open within the buffer zone. This will protect the business against competition from other franchisees and the franchisor, if either seeks to open a location outside but close to the protected territory which, in the absence of a buffer zone, would still compete in your market – which is, of course, within your protected territory.

#### *Fees and caps*

While franchisors are usually hesitant to negotiate royalty and other fee rates, it is important for franchisees to seek to limit potential increases over the life of the franchise relationship, and it is reasonable to seek a "cap" or limit on the franchisor's ability to raise its fees unreasonably.

#### *Term length and renewal rights*

"Evergreen", or perpetual, franchise terms are ideal, but not necessarily typical. Generally, longer initial terms and the right to multiple renewal options provide the franchisee with the ability and time to build substantial equity in the franchised business. Franchisees should also look to negotiate certain provisions in the franchise agreement to incorporate key negotiated provisions, such as royalty and marketing fund rates, renewal and transfer provisions, and the territory renewal agreements (if possible), rather

than being required to sign the franchisor's then-current and potentially less favourable form of franchise agreement on renewal.

### *Personal guarantees*

A full guaranty of every obligation under the agreement – sometimes required from both the franchise owner and, often, a non-owner spouse – should if possible be negotiated to a limited guaranty, tied only to the ongoing financial obligations of the franchise and post-termination covenants.

### *Transfer rights*

Franchise agreements typically include "rights of first refusal" on a sale, which can discourage third-party buyers, as they risk losing the deal at the last minute after investing time and money. A "right of first purchase", where the deal is presented to the franchisor before it is marketed, is more favourable to a seller. For succession (and estate planning) purposes, the franchisee should also seek an exception from typical franchisor consent requirements (and rights of first refusal) when the franchisee's principal desires to transfer its interests in the franchise to spouses, family members or trusts in favour of family members.

### *Default, termination and cross defaults*

Franchisees should carefully negotiate these provisions, including:

- an exception to standard cure periods for breaches of a nature that genuinely cannot be fixed within the stated window, so long as the franchisee is "diligently" working towards a resolution; and
- a reasonable requirement with respect to how frequently a non-compliance issue must occur, or how material non-compliance must be to trigger the ultimate remedy of termination.

For developers of multi-unit locations, franchisees/developers should seek a limit on the cross-default rights of the franchisor (where a default at one unit may jeopardise all units) to certain, egregious conduct.

### *The right to close the business in the event of sustained losses*

Franchise agreements often do not provide the franchisee with an exit strategy if the business fails. It is worth seeking to negotiate a contractual right to close a business in the event of losses, but, understandably, this should be subject to certain limitations (eg, losses in the form of calendar quarters in excess of "x" per quarter or, cumulatively, losses in the form of consecutive calendar quarters in excess of "x" per quarter).

### *Restrictive covenants*

The length and geographic scope of non-competition and non-solicitation clauses should be reasonably drawn to reflect the actual market size. For example, a city-wide or multi-mile restriction makes less sense in a dense urban territory than in a rural one, and a shorter, narrower restrictive period is a reasonable counterproposal to an exceedingly long one.

### *Dispute resolution*

Generally, arbitration is the favoured method of dispute resolution in franchise agreements. Notwithstanding this norm, it is beneficial for both parties to first use negotiation and then mediation to resolve their disputes, as these forms of alternate dispute resolution will be cost-saving and give the parties opportunities to resolve their dispute(s) before diving into costly and time-consuming arbitration or litigation. Franchisees should also make sure that a mutual "fee shifting" provision is in the franchise agreement, as this incentivises each of the parties to seek to resolve their dispute rather than to engage in a costly fight.

### *Structuring multi-unit deals*

A franchisee developing more than one location should consider negotiating a single form of addendum with consistent, favourable terms applied across all of the individual franchise agreements, rather than being bound contractually by the franchisor's "then-current form of franchise agreement" and negotiating each one separately.

While these requests are reasonable, a franchisor's willingness to engage in negotiation varies by brand and market.

## What Can Go Wrong as a Franchise Owner?

Even well run, reputable franchise systems carry real risk for the individual owner, as is the case with any business. Common problem areas include the following.

### *Pre-sale misrepresentations*

Under the Federal Trade Commission (FTC) Franchise Rule, as well as various state laws, franchisors must give prospective franchisees a Franchise Disclosure Document (FDD) covering 23 "Items" relating to the system's history, litigation record, development costs (Item 7), fees, and, if the franchisor chooses to provide it, financial performance data in Item 19. A mature system that does not share any performance information can be sending a warning sign, particularly if the franchisor's franchisees make unflattering comments to prospective franchisees, 12 to 15 of whom should be reached out to before they commit to the franchise. Misrepresentations made in the FDD, or informally by a sales representative or broker, are frequently the basis of costly legal claims against franchisors when the franchised business does not perform as promised.

### *Runaway fees*

Royalties, marketing fund contributions, technology charges, and required purchases from approved suppliers can add up well beyond the franchisee's expectation at the outset, particularly as franchisors pass along rising costs from inflation, tariffs or supply disruptions. Franchisees should carefully read Item 6 when reviewing an FDD and negotiate appropriate caps, if possible.

### *Escalating operational requirements*

Mandatory suppliers, point-of-sale systems, and brand standards can become more financially demanding over time.

### *Personal guaranty and lease exposure*

Many franchisors require a full personal guaranty from franchisee principals and, often, their spouses, covering every obligation under the franchise agreement.

### *Liquidated damages*

Many franchise agreements provide for liquidated damages provisions that are triggered in the event of the termination of the franchise agreement. This could cause the franchisee to be on the hook for specific damages calculated by a formula, which is typically a multiple of royalties and marketing fund fees over a defined period of time.

Many of these risks can be reduced through the kinds of negotiated terms described above, and negotiating territory, fee and guaranty protections before signing is far easier than trying to fix them after the business is operating.

## What If I Have a Problem and the Franchisor Will Not Help?

Under many state laws, franchise agreements generally include an implied duty of good faith and fair dealing. This means that a franchisor cannot use its contractual discretion to unfairly deny the franchisee the benefit of the deal. That duty has real limits, though, because the covenant does not override clear, express terms of the franchise agreement. What the agreement actually says, and what it does not say, matters when a dispute arises. When a franchisor is unresponsive to a legitimate problem, franchisees have several options, although none will necessarily guarantee a quick resolution or apply to every situation.

### *Alternate dispute resolution*

As discussed above, a well-negotiated agreement channels disputes through negotiation and mediation before arbitration. Even when a franchisor is simply unresponsive, it is usually worth formally invoking that process rather than escalating straight to a demand letter or lawsuit. Mediation is confidential and non-binding, and costs to engage are typically not excessive, while preserving every right to escalate if it does not work.

### *State franchise laws with private rights of action*

15 states, including California and New York, require franchisors to register their disclosure documents and provide franchisees with the right to sue over violations of those laws. California's Franchise Investment Law and New York's Franchise Sales Act (NYFSA) both allow a franchisee harmed by a registration or disclosure violation to recover damages, and where the violation was wilful (and material, in the case of the NYFSA) to offer rescission and reasonable attor-

ney's fees as well. These state-specific remedies can give a franchisee more leverage than the federal rule alone, as the FTC's Franchise Rule does not allow an individual franchisee to sue directly.

### *State relationship laws*

About half of US states regulate aspects of the franchisor–franchisee relationship directly, including rights regarding termination, encroachment and fair dealing, regardless of what the agreement says, and many give franchisees a private right to sue.

### *State unfair trade practices statutes*

Many states have their own Little FTC Acts allowing franchisees to sue directly, sometimes for enhanced damages and attorney's fees.

### *Franchisee associations*

Many relationship laws protect a franchisee's right to join or form an independent association without retaliation, and collective leverage can sometimes accomplish what an individual franchisee cannot, as the relative bargaining power between individual franchisees and franchisors often puts individual franchisees at a disadvantage.

## What Happens If My Franchise Fails?

Franchise failure through underperformance, default or closure sets off a series of contractual and legal consequences worth reviewing and understanding before financial distress hits.

### *Termination and cure periods*

For a default, often but not always relating to the nonpayment of fees, most agreements and many state relationship laws require written notice and a chance to cure – often 60 days or more, except for serious or incurable defaults such as health and safety violations, trade mark and IP-related violations, or abandonment of the franchise, which can permit faster termination.

### *The franchisor's step-in and repurchase (buy-back) rights*

Most agreements provide the franchisor with a right to take over operations temporarily by managing the location for a fee, or after termination, particularly where a franchisee is failing financially or has abandoned the business or committed a serious default of its franchise agreement. Termination often, but not always, comes with a franchisor option (not an obligation) to purchase a part or all of the business's assets, frequently using a formula well below fair going-concern value. Some state relationship laws improve on this – for example, requiring the repurchase of assets, inventory or goodwill at fair market value – but available protection varies considerably from state to state.

### *Bankruptcy*

A struggling franchisee's bankruptcy filing generally triggers an automatic stay that halts the franchisor's enforcement efforts. In a Chapter 11 reorganisation, a franchisee that was not in default at filing may be able to keep, or assume, its franchise agreement and lease, while one that was in default faces a harder path, typically needing to cure and demonstrate that it can perform going forward.

### *Personal exposure*

Personal guaranties typically survive the underlying business, so closing or losing a struggling location does not necessarily end an owner's personal liability for its debts. Guaranties should be carefully negotiated and limited.

## Can I Run My Franchise "My Own Way"?

Franchise systems exist because of the need to have consistency across a franchise brand. While franchisees are owned and operated independently, franchise ownership inherently involves the franchisee surrendering some independence with respect to how they operate their businesses. The following are several examples of how a franchisee is limited in how it can operate independently.

### *Mandatory brand standards*

Franchisees cannot alter the design, signage or store layout without franchisor permission, which is not easily obtained.

### *Pricing and suppliers*

Minimum resale pricing and required supplier provisions can limit commercial flexibility, subject to antitrust and state law limits.

### *Marketing*
Franchisees are almost always required to contribute to a national marketing fund and typically cannot conduct local marketing without franchisor review and approval.

### *Technology and software*
Franchisees are typically required to utilise franchisor-mandated technology and software, including, for example, specific point-of-sale and inventory management systems.

### *Restrictive covenants*
Franchise agreements impose certain in-term and post-term restrictive covenants and non-solicitation provisions, limiting the franchisee's ability to compete with the franchisor.

## The Franchisor's Obligation Regarding Registration and Disclosure
Franchising in the USA is regulated by a patchwork of federal and state franchising laws. In 1978, the FTC promulgated 16 CFR Part 436, which was subsequently amended in 2007 (the "FTC Franchise Rule") to regulate the offer and sale of franchises in the USA. While many states have franchise-related laws, surprisingly there is no uniform legal definition of a "franchise". The FTC Franchise Rule imposes a pre-sale disclosure requirement on franchisors that applies to the offer or sale of all franchises throughout the USA, obligating franchisors to furnish prospective franchisees with information and data regarding the material terms of the franchise relationship prior to negotiating with prospective franchisees or consummating the sale or offering of a franchise. This "disclosure" takes the form of an offering prospectus commonly referred to as the Franchise Disclosure Document (FDD).

15 states have state registration and/or disclosure franchise statutes that require the franchisor to register the franchise with the appropriate state agency before the franchisor is permitted to offer and sale franchises in that state, and to provide an updated FDD to prospective franchisee before any fees are paid or any agreement is entered into. 25 states have Business Opportunity Laws which require franchise sellers to register their business opportunity – ie, filing a form with the appropriate state agency that discloses certain limited information to prospective consumers who purchase business opportunities, including franchises.

## Selecting the Franchisee
There is an old joke in franchising.

- Question: "What does a franchisor look for in a prospective franchisee?"
- Answer: "Anyone with a pulse and a checkbook".

This joke reflects the fact that many franchisors are desperate to achieve growth and sometimes are not discerning as to which franchisees they select for their franchise system. Franchisors are well served when they select their franchisees after a screening process known as franchise due diligence, which evaluates, for example, a candidate's financial stability, operational readiness, reputation, character and compatibility with the system before awarding a franchise.

## Expansion
Franchisors have different ways to accomplish their goals of franchise expansion. In addition to selling single-unit franchises under a franchise agreement, many franchisors also offer multi-unit (or area) development deals to well-financed franchisees, under a multi-unit development agreement. Under this arrangement, the area developer pays a development fee to the franchisor and contracts to open and operate a set number of franchise locations within a specific geographic territory, over a defined timeframe and in accordance with a defined development schedule.

Alternatively, franchisors, especially international franchisors seeking to expand their franchise system into another country (such as the USA), contract with a "master franchisee" which functions as a "sub-franchisor" for a large territory (often a large state or entire country). Under this arrangement, the master franchisee (sub-franchisor) recruits, trains and supports the sub-franchisees within its territory on behalf of the master franchisor (the franchisor), and the master franchisee pays the franchisor a percentage of the royalties and initial franchisees paid by the sub-franchisees.

### Lease Protection

In the event that a franchisee defaults on its lease for the franchised premises, the franchisor wants to ensure that it does not "lose the location" as part of its franchise system. To prevent this from happening, franchisors seek to contract their right to assume (take over) a franchisee's lease under these circumstances. Franchisors achieve this by requiring their franchisees, and their landlords for the anticipated demised premises, to enter into the franchisor's form of "Collateral Lease Assignment" and "Lease Rider". Counsel for the franchisee may seek to negotiate certain terms of these agreements. Typical provisions include:

- providing the franchisor with "step-in rights" to allow it to "take over", even temporarily, the operations of the franchisee's location;
- a pre-agreed landlord's consent to a lease assignment to the franchisor or its affiliate; or
- the right for the franchisor to cure any defaults under the lease by the franchisee.

### Dispute Resolution

All franchise agreements need to have procedures in place to resolve disputes with franchisees. Many franchise agreements provide that, before the franchisor or franchisee can commence a court litigation or arbitration proceeding, the parties must engage in good faith negotiations and, if they do not resolve the dispute, non-binding mediation where a neutral attorney with experience in franchise law seeks to facilitate a settlement. Some franchise agreements require that disputes be determined by a judge in a public court litigation (which typically permits the parties to engage in a significant amount of "discovery"), while others require that disputes be determined by an arbitrator (usually a franchise attorney or former judge) in a private and confidential arbitration process (which usually permits more limited "discovery" by the parties), and where the parties may be required to pay the arbitrator's fees in advance for the time that the arbitrator spends handling the case; the successful party in the case is reimbursed for its attorney's fees by the unsuccessful party.

### Brand Protection

In order to expand its franchise system, a franchisor must be able to protect its brand. A franchisor accomplishes this by requiring its franchisees to sign various agreements, including confidentiality and non-disclosure agreements, together with non-competition and non-solicitation agreements. Successful franchisors remain vigilant in protecting their confidential and proprietary information – including, for example, IP (trade marks), operations manuals, customer lists and related information – from unauthorised use or disclosure by their franchisees.

### Choice of Location

A franchisee's choice of the retail location from which it will operate is a critically important decision. While a franchisee's success will ultimately depend on many factors, the selection of a quality location is close to the top of the list. Franchisors typically require their franchisees to submit site selection information to the franchisor, and the franchisee is required to obtain the franchisor's approval with respect to the selected location prior to moving forward and negotiating a lease.

### Lease Negotiation

Commercial leases are drafted by landlord's counsel and are typically drafted to strongly benefit the landlord. Franchisees are well served by retaining knowledgeable real estate counsel to review the proposed lease and seeking to negotiate a variety of key provisions, including, without limitation:

- what, if any, lease guaranty will be required;
- the term of the lease and options to renew the lease, along with insuring co-ordination of the timing between the expiry of the lease and the franchise agreement; and
- transfer and assignment-related provisions.

### Lease Guaranties

When a franchisee seeks to purchase a franchise and enter into a commercial lease for the location from which it will operate the franchised business, the principal(s) typically form(s) a new single purpose entity, sometimes with minimal assets, which will enter into both the franchise agreement and lease. Accordingly, most landlords require a franchisee/prospective tenant to provide a lease guaranty, most often (but not always) from a principal of the tenant, as an inducement for the landlord to enter into the lease. From

a franchisee's/tenant's perspective, providing the landlord with a "good guy" guaranty of the entity's principal is significantly more preferable than providing a "full" individual personal guaranty for all of the obligations under the lease. A good guy guaranty is a conditional limited personal guaranty which limits the guarantor's financial liability (provided that the tenant vacates the leased premises, often in "broom clean" condition, and with defined advance notice, for all rent and additional rent through the agreed-upon surrender date).

### Rights of Transfer and Assignment

From a franchisee's/tenant's perspective, the ability to negotiate assignment and transfer-related provisions is very important. When landlords prepare commercial leases, they often seek to require a great deal of control over when, and under what circumstances, the tenant is permitted to assign or transfer the lease. However, the franchisee/tenant will always seek to maximise the value of the franchised business, and therefore will want to negotiate the assignment/transfer-related provisions in such a way as to provide it with as much flexibility as possible. For example, franchisee counsel should seek to negotiate a provision that will permit the tenant to assign the lease to the franchisor or any of its affiliates, or to any "approved" existing or new franchisee of the franchisor, without having to obtain the "consent" of the landlord.

Franchisee counsel should also seek to negotiate a provision that if the new tenant (assignee) provides the landlord with a good guy guaranty (in the same form provided by the existing guarantor) with the guarantor having a net worth that is at least as much as the existing guarantor, the landlord will then release the existing guarantor from liability following the effective date of the lease assignment. In any of the above circumstances, the existing franchisee/tenant should be released from liability under the lease (and franchise agreement) as well.

### Lease Term, Options and Renewals

From a franchisee's/tenant's perspective, the expiry date of the initial lease term and all renewals should "match" exactly with the expiry date of the initial franchise agreement. As the franchisee/tenant should seek to maximise the value of the franchised business, it should negotiate a potential, total lease term, including lease options to renew the lease, which cumulatively is at least 20 years. For example, if the term of the initial franchise agreement is ten years and the franchisee has, at a minimum, either one ten-year option or two five-year options to renew the franchise agreement, the franchisee/tenant should negotiate a lease term that mirrors the initial term and renewal term(s) of the franchise agreement, and the expiry of the lease term(s) should always match the expiry dates of the franchise agreement term(s).

# USA – CALIFORNIA




## Trends and Developments

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**Sanford Heisler Sharp McKnight** is a nationally recognised plaintiffs' civil rights and employment law firm with more than 50 attorneys across six US offices, including in San Diego and Palo Alto, CA. The California team is particularly known for representing employees, executives and classes in complex employment litigation involving discrimination, harassment, retaliation, wrongful termination, wage and hour violations, whistle-blower claims, and equal pay matters under California and federal law. The firm's employment practice is closely integrated with its nationally recognised whistle-blower and qui tam, civil rights, ERISA, executive representation and trial practices, enabling it to handle high-stakes matters through trial and appeal. In California, the firm recently secured final approval of a USD4.9 million class action settlement in Song and Ji v Weee!, on behalf of approximately 1,400 delivery drivers who alleged wage theft, worker misclassification, unlawful tip practices, meal-break violations and workplace safety violations. The firm has pending cases representing employees and executives in cutting-edge workplace matters involving the technology sector, AI and emerging employment issues.

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## California's Pay Equity Laws for 2026, and What It Means for Business

Two California statutes that took effect on 1 January 2026, SB 642 and SB 464, changed how pay is measured, how far back employees can recover, and what employers have to disclose regarding pay. If you have ever wondered whether you are paid fairly, the law now gives you more room to find out.

The wage gap is not an abstraction. It has persisted over decades and imposed distinct disadvantages on working women and their families, resulting in substantial pay shortfalls that compound over an individual's work life. According to certain published figures, white women in the United States are paid roughly 81 cents for every dollar paid to white men; for black women the figure is about 64 cents, and for Latinas about 55. Disparities based on race and ethnicity can be just as striking and detrimental – especially considering long-standing wealth disparities.

Numbers like the foregoing are the reason that California has spent a decade building one of the country's strongest equal pay regimes, embodied in laws such as Labor Code Section 1197.5, and the reason that it strengthened that regime again this year, at the very moment that federal enforcement was receding. For an employee, the practical question is narrower and more personal: what do these new and expanded provisions actually give you? The short answer is more time to bring claims, a fuller measure of what counts as pay recoverable in a lawsuit, and better information to work with.

### What Actually Changed

California passed two key bills in relation to pay equity in 2025, and both took effect on 1 January 2026. SB 642, the Pay Equity Enforcement Act, amended the state's Equal Pay Act, Labor Code Section 1197.5 and its pay transparency and salary history law, Labor Code Section 432.3.

SB 642 makes four important changes worth knowing as a California employee, as follows.

It extends the time to bring an equal-pay claim from two years to three after the last date that the cause of action occurs. It also defines when a cause of action occurs in a broad, employee-friendly manner. This includes when any of the following occur:

- an alleged unlawful compensation decision or other practice is adopted;
- an individual becomes subject to an alleged unlawful compensation decision or other practice; or
- an individual is affected by application of an alleged unlawful compensation decision or other practice, including each time wages, benefits or other compensation are paid, resulting in whole or in part from the decision or other practice.

Further, as long as you bring the claim within three years of the last date that a cause of action occurs, such as the last time you receive a discriminatory paycheck or other form of compensation, you can now obtain relief for lost compensation going back *six years*.

SB 642 also redefines "wages" to include "all forms of pay, including, but not limited to, salary, overtime pay, bonuses, stock, stock options, profit sharing and bonus plans, life insurance, vacation and holiday pay, cleaning or gasoline allowances, hotel accommodations, reimbursement for travel expenses, and benefits". This means that a sex/gender-based, race-based or ethnicity-based differential in any one of these areas can potentially give rise to a claim.

Furthermore, SB 642 replaces "opposite sex" with "another sex", ensuring that the law's protections apply to non-binary workers and to gender identity and expression. Likewise, it incorporates by reference the definition of "sex" from Cal Govt Code 12926 (r), which encompasses gender identity and expression as well as pregnancy, childbirth, breastfeeding and related medical conditions.

Moreover, SB 642 refines and strengthens the requirement for employers to post a good-faith pay range for a position, by now requiring "a good-faith estimate" of the range that the employer expects to pay upon hire.

SB 464 amends Cal Govt 12999 as of 1 January 2026, and then repeals and replaces Govt Code 12999 as of 1 January 2027. The bill is aimed at employers, but it matters to employees' compensation by enhancing

existing pay reporting requirements designed to foster greater pay equity. It turns the annual pay-data report into a tool that the state's Civil Rights Department uses to find pay disparities, and it makes the penalties for failing to file mandatory rather than optional. The information that your employer reports does not sit in a drawer; it goes to the same division that investigates discrimination and enforces equal-pay law.

### You Can Now Recover Lost Wages Going Back Six Years

SB 642 lets you recover for the entire period that an unequal-pay violation persisted, up to six years, and it treats every discriminatory paycheck as a fresh violation.

That distinction is the heart of the change. Under prior formulations, a pay decision made years ago could be out of reach even though the employee continues to experience unequal pay. Under the bill, each paycheck issued under a discriminatory policy or practice restarts the clock, so a gap that has quietly persisted does not become untouchable in a lawsuit simply because it began long ago. The clock does not run out on your claims until three years after:

- your employer ends the discriminatory practice and begins paying you fairly; or
- you leave your employment.

It is worth looking at an example of how this could play out in practice. Suppose that two employees of different genders do substantially similar work under similar working conditions, and one is paid USD15,000 a year less than the other for reasons that have nothing to do with seniority, merit or any lawful non-discriminatory factor. Over six years, that amounts to USD90,000 in unpaid wages, before the law's provisions for liquidated (double) damages, interest and other relief are even considered.

This example illustrates the scale and impact of the law, not an automatic result: the disparity has to be proven, and the employer's defences still apply. However, it explains why a difference that looks small on a single paycheck is not small over time – and this is the case for an individual worker. If the employer adopts a similar discriminatory practice towards a large number of employees, when multiplied out, the losses and potential recoveries can reach many millions of dollars.

### Your Bonus and Your Equity Count, Not Just Your Salary

For equal-pay claims, SB 642 now defines "wages" to reach nearly all compensation: bonuses, profit-sharing, stock, stock options and restricted stock units, allowances and most benefits – not base salary alone.

This closes a gap that has long hidden real disparities. Two employees can carry nearly identical salaries while a discretionary bonus or an equity grant stacked in favour of members of one gender opens a six-figure compensation difference between them. A comparison that looks only at base pay would show a false parity that does not exist. The point often lands hardest in the technology sector, where so much compensation arrives in the form of stock. This should not give employers licence, for example, to bestow sweetheart compensation deals on white men while withholding them from similarly situated members of other groups.

The authors' own work in the sector, including a USD19.5 million settlement with Qualcomm on behalf of roughly 3,300 women in STEM, turned on exactly this principle: pay has to be compared in full.

### Pay Must Be Based on Non-Discriminatory Factors That Cannot Include Prior Salary or Salary History

For several years, California has barred employers from setting your starting pay based on your salary history. See Cal Labor Code Sections 1197.5 (a)(4) and 432.3 (a). Indeed, to ensure compliance, employers are prohibited from even seeking salary history information from applicants. See Cal Labor Code Section 432.3 (b). These provisions are based on the long-standing recognition that reliance on compensation history can often serve to incorporate and perpetuate past disparities. If your current pay was built on what you earned at a prior job, that history may be carrying an old disparity forward into your present salary. Instead, your pay must be based on your qualifications, experience and what you actually do in your job.

This is the primary theory at issue in *Jong v Apple*, an ongoing class action which alleges that, even after it

became illegal to do so, Apple continued to enquire about applicants' prior pay under the guise of their compensation expectations; it then used this information to set starting salaries. This practice allegedly perpetuated past pay disparities and resulted in lower pay rates for women than for men who performed substantially similar work. In January 2025, a court largely allowed the claims to proceed.

### Two More Changes

SB 642 extends equal-pay protection to non-binary workers, and it requires employers to be honest in what they post.

The law used to speak of the "opposite sex", a framing that left gender-diverse workers in an uncertain position. It now reaches pay disparities measured against "another sex", and against gender identity and expression.

Separately, the salary range that an employer lists in a job posting must be a genuine good-faith estimate of what it expects to pay *upon hire*. A range so wide that it discloses almost nothing, such as the familiar "USD90,000 to USD250,000" posting, no longer satisfies the law. It is not sufficient to post a broad range generally associated with a position as opposed to the projected starting pay.

### The Honest Part: A Pay Gap Alone Is Not Proof

A difference in pay, standing by itself, is not unlawful. The law asks whether that difference can be explained by common non-discriminatory factors.

This is the caveat that no responsible discussion should omit. If an employee proves that they suffer from a pay gap as compared to a similarly situated employee of a different sex/gender, race or ethnicity, an employer is still entitled to justify that pay difference as being the result of legitimate non-discriminatory factors. It can do show by showing that the difference stems from a bona fide seniority system, a merit system, a system that measures the quantity or quality of work, or another genuine factor other than sex/gender, race or ethnicity – such as education, training or experience – that is job-related and consistent with business necessity. SB 642 did not abolish those defences; thus, a pay differential does not, by itself, establish a case. It is a reason to look closely, with advice specific to your situation, as to whether the other employee is performing substantially similar work to you under similar conditions and whether there is some other legally acceptable justification for the difference. No worker should assume that a disparity is unlawful, or lawful, without an individualised legal analysis.

### What to Do If You Think You Are Underpaid

If you suspect that your pay does not reflect equal work, a few concrete steps protect your position.

#### *Identify your comparators*

Note your colleagues doing substantially similar work, measured by the skill, effort and responsibility the job requires, under similar conditions.

#### *Account for all of your pay*

Compare total compensation, salary, bonus, equity and benefits, not base salary alone.

#### *Gather what you can*

Relevant evidence includes offer letters, pay stubs, bonus and equity statements, performance reviews, and job postings with their stated ranges. However, you should generally only assemble documents that are publicly available or that are provided to you in the ordinary course of applying for over-performing your job.

The law protects you from retaliation for disclosing your own wages to your employer or to other employees, discussing the wages of others, enquiring about another employee's wages, or aiding or encouraging any other employee to exercise their rights under California's Equal Pay Act. If you are fired, discriminated against, or otherwise retaliated against for exercising these rights, you may have a claim for retaliation regardless of whether or not you have a valid claim for unequal pay. See Labor Code Section 1197.5 (k).

#### *Mind the clock*

The limitations period is three years from the last violation, with potential recoveries going back up to six years. Waiting narrows your options.

*Get individualised advice*
An equal-pay analysis is fact-specific, and much of it is best done under the protection of the attorney-client relationship.

## Frequently Asked Questions

*How do I know whether I am being underpaid under California law?*
Employees should compare their total compensation to that of colleagues of a different sex/gender, race or ethnicity doing substantially similar work, then ask whether any difference rests on a lawful factor such as seniority, merit or experience. A gap that cannot be explained that way may support a claim for discriminatory pay.

*How far back can I recover for unequal pay in California?*
SB 642 allows recovery for the entire period that a violation persisted, up to six years. The deadline to file is three years from the date of the last violation.

*Do stock options and bonuses count when comparing pay?*
For claims under Labor Code Section 1197.5, "wages" do now include bonuses, stock, stock options and Restricted Stock Units (RSUs), profit-sharing, allowances and most other benefits – not salary alone.

*Is a pay gap by itself illegal?*
A pay gap by itself is not illegal. The law permits pay differences that rest on a bona fide seniority, merit or production system, or a genuine factor other than sex. A disparity is unlawful only when no such justification accounts for it.

*What if my employer set my pay using my prior salary?*
California bars employers from relying on salary history to set pay. A starting salary built on lower past earnings can carry an old disparity forward, which is one of the practices the new law and recent litigation are testing.

*Am I protected from retaliation?*
Labor Code Section 1197.5 (k) protects employees from retaliation for actions that they take in support of enforcement of the Equal Pay Act. This would include complaints about unequal pay, disclosures or discussions about pay, enquiring about other employees' pay, and aiding or encouraging other employees with potential equal pay claims. Other provisions of the Labor Code, anti-discrimination laws and labour relations law may also protect employees from retaliation for making complaints or reports of pay discrimination, or for discussing pay.

# USA – DISTRICT OF COLUMBIA

## Trends and Developments

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**Sanford Heisler Sharp McKnight** is a nationally recognised plaintiffs' civil rights and employment law firm with more than 50 attorneys across six US offices, including in San Diego and Palo Alto, CA. The California team is particularly known for representing employees, executives and classes in complex employment litigation involving discrimination, harassment, retaliation, wrongful termination, wage and hour violations, whistle-blower claims, and equal pay matters under California and federal law. The firm's employment practice is closely integrated with its nationally recognised whistle-blower and qui tam, civil rights, ERISA, executive representation and trial practices, enabling it to handle high-stakes matters through trial and appeal. In California, the firm recently secured final approval of a USD4.9 million class action settlement in Song and Ji v Weee!, on behalf of approximately 1,400 delivery drivers who alleged wage theft, worker misclassification, unlawful tip practices, meal-break violations and workplace safety violations. The firm has pending cases representing employees and executives in cutting-edge workplace matters involving the technology sector, AI and emerging employment issues.

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### Beyond a Checklist: Understanding a Prudent Fiduciary Process Under the Department of Labor (DOL)'s Six Proposed "Safe Harbour" Factors

The Employee Retirement Income Security Act of 1974 (ERISA) governs employer-sponsored 401 (k) plans and the fiduciaries tasked with administering and overseeing those plans. In the 50 years since ERISA's enactment, the landscape has shifted from one primarily characterised by defined benefit pension plans to one dominated by defined contribution 401 (k) plans.

401 (k) plan fiduciaries are charged with overseeing and monitoring the investment options and service providers made available to plan participants. Often referred to as the "highest duties known to law", ERISA holds plan fiduciaries to the utmost standards of prudence and loyalty. On prudence, ERISA Section 404 (a)(1)(B) states that fiduciaries must discharge duties "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims". ERISA does not, however, articulate what, precisely, plan fiduciaries must do to satisfy this "prudent expert" standard. However, for over 30 years the DOL has maintained that fiduciaries should evaluate whether the investment would be expected to provide a plan with a lower rate of return than available alternative investments with commensurate degrees of risk or riskier than alternative available investments with commensurate rates of return. If so, the investment will not be prudent. See Department of Labor Interpretive Bulletin 94-1 (23 June 1994).

The DOL's recently proposed "safe harbour" regulation addressing ERISA's fiduciary duties in selecting investment alternatives represents a significant development in defined contribution plan governance. The proposal seeks to establish a process-based safe harbour for fiduciaries selecting investments for participant-directed plans, including investments containing alternative assets such as private equity, private credit, real estate, infrastructure, commodities and potentially cryptocurrency.

Unlike mutual funds, these types of alternative investments are not subject to the same registration requirement or the regulatory regime of the federal securities laws. Because of that, these investments historically have been available only to sophisticated investors who can properly assess and understand the risks and have sufficient assets to bear the risk of financial loss.

The DOL's proposal could dramatically alter this longtime dynamic, marking the first time these alternative investments could be offered entirely to a market of investors. Instead of limiting sophisticated and risky investments only to sophisticated investors able to bear the risk, plan fiduciaries could make these alternative investments available to every participant in the 401 (k) plan. The amount of money at stake is staggering, and, if passed, plan fiduciaries should expect an onslaught of pressure from those who stand to benefit financially.

At first glance, the proposal appears to offer fiduciaries a more navigable roadmap for satisfying ERISA's prudence obligations. The DOL identifies six non-exclusive factors that fiduciaries must evaluate in order to obtain a presumption of prudence under ERISA Section 404 (a)(1)(B). However, fiduciaries should resist the temptation to view the proposal as a simplified compliance exercise or litigation shield that can be achieved through a superficial checklist approach.

In practice, the proposed framework sets the floor for fiduciary process. Each factor requires nuanced judgement, detailed market analysis and ongoing monitoring that many committees may underestimate. It effectively acknowledges what ERISA litigators and courts have emphasised for decades: prudence is not simply checking boxes off a list – rather, it is the product of a rigorous, well-informed and diligent fiduciary process.

The DOL's proposal does not lower fiduciary risk. Instead, it formalises expectations for a robust governance framework around investment selection and monitoring.

## The Changing Retirement Plan Market Landscape

The proposed regulation arrives at a time when the retirement marketplace is facing the potential for significant change in retirement plan investments. As private market sponsors continue searching for access to defined contribution capital, there has been a rise in managed accounts, private equity, annuities and so-called "personalised" retirement solutions being pitched as alternative investment options for plan participants.

The DOL's proposal should not be read as a signal that fiduciaries should embrace such alternatives casually. Indeed, many fiduciary committees already struggle to maintain consistent monitoring procedures for traditional fund line-ups on a plan. Sometimes, these committees attach too much importance to blindly going through the motions, repeatedly checking the same boxes. Many are under the illusion that being wedded to habit, rather than devotion to a prudent fiduciary process, satisfies their duty. However, under the DOL's proposal, many fiduciaries evaluating more complex strategies will need enhanced governance structures, deeper investment expertise, outside consultants, revised investment policy statements, more sophisticated monitoring metrics, and substantially expanded documentation practices.

The DOL's proposal repeatedly emphasises analytical rigour, comparison against similar alternatives, independent valuation methodologies, liquidity risk assessment and meaningful benchmark construction. Analysing each proposed factor individually, and certainly taken together as a whole, the burden associated with satisfying the proposed safe harbour is considerably greater than some may appreciate.

## Assessing Performance

"The fiduciary must appropriately consider a reasonable number of similar investment alternatives and determine that the risk-adjusted expected returns of the designated investment alternative, over an appropriate time horizon and net of anticipated fees and expenses, furthers the purposes of the plan by enabling participants and beneficiaries to maximise risk-adjusted return on investment, net of those fees and expenses."

The first factor requires fiduciaries to decide how much risk and volatility they want to expose their employees to. The lower the risk, the lower potential for return; the higher the risk, the higher potential for return. Therefore, fiduciaries should evaluate an investment's risk-adjusted performance net of fees as compared to a reasonable number of similar investment alternatives. This emphasises the critical role that performance plays when evaluating plan investment options. The purpose of a 401 (k) plan, after all, should be to grow investments into a retirement nest egg for employees while sparing them the stress of extreme up-and-down volatility.

The key here will be diligent fiduciary rigour in evaluating a number of undefined metrics. While the specific metrics will vary from plan-to-plan and investment-to-investment, a few in particular stand out.

- First, creating objective metrics through which fiduciaries can determine which investment alternatives are "similar" to the one under consideration.
- Second, determining which method of calculating risk-adjusted returns applies best to the given investment type.
- Third, determining the appropriate time horizons by which the fiduciaries will evaluate performance. The DOL currently requires plan fiduciaries to disclose investment returns for one-, five- and ten-year periods in annual participant disclosures. See 29 CFR Section 2550-404a-5 (d)(1)(ii)(A). Presumably, this would be a minimum expectation for the time horizons by which fiduciaries evaluate historic performance, though it may make sense to include additional performance periods depending on the investment type.

Within each of these three illustrative examples there are myriad considerations that fiduciaries must consider. Fiduciaries therefore must establish and document their process and the rationale for *why* a selected investment's expected risk-adjusted return profile is superior relative to available alternatives.

Furthermore, the values of certain asset classes, such as commodities, options and cryptocurrencies, can change in the blink of an eye, and wipe out an entire portfolio without warning. Unless plan fiduci-

aries build adequate guardrails to deal with extreme volatility, participants exposed to that risk could find themselves on the wrong end of market swings.

This obligation will likely require many fiduciary committees to engage deeply with conflict-free investment professionals with specialised expertise when evaluating non-traditional products. Ultimately, though, the DOL makes clear that fiduciaries cannot disregard red flags in performance simply because a strategy is marketed as innovative or diversified.

### Fee Analysis

"The fiduciary must consider a reasonable number of similar alternatives and determine that the fees and expenses of the designated investment alternative are appropriate, taking into account its risk-adjusted expected returns, and any other value the alternative brings to furthering the purposes of the plan. For this purpose, 'value' includes any benefits, features, or services other than risk-adjusted returns net of fees."

The DOL's proposed safe harbour reiterates that fiduciaries must consider the fees and expenses of investments in the plan line-up. While not obligated to select the cheapest available investment, fiduciaries must be able to articulate and justify what additional "value proposition" the higher-cost investment alternative provides.

For example, if an actively managed strategy charges more than a passive alternative, the committee must evaluate what extra benefits warrant the extra costs. This may require investigating issues such as:

- whether historical alpha generation is sustainable;
- whether diversification characteristics improve participant outcomes;
- whether the manager's process has remained consistent; and
- whether historic performance is actual or the result of hypothetical modelling.

Similarly, the proposal's discussion of share classes underscores that fiduciaries cannot get so in the weeds that they overlook common sense. The DOL is clear that selecting a more expensive share class when an identical lower-cost option exists "demonstrates imprudence".

Most alternative investment products charge two types of fees: an investment advisory fee as a percentage of a fund's net assets and a performance fee based on a percentage of the fund's profits. This structure is typically referred to as "2 and 20", a 2% investment advisory fee and a 20% performance fee. Historically, performance fees could only be assessed against investors with substantial assets. Most participants would not qualify.

Fiduciaries will need to embrace a new set of issues that performance fees pose. Will participants understand how performance fees work? How are they calculated? Is the fee based on all gains or just gains above a threshold/benchmark? Is there a high watermark – ie, must the fund recoup past losses before it can begin calculating performance fees? Participants may not understand these concepts or how they work. Disclosure that the average person can understand will be critical to addressing these issues.

The proposal ultimately *increases*, not decreases, expectations regarding the process that fiduciaries use to evaluate fees and the rationale used to justify any additional expenses. Fiduciaries who cannot clearly explain the basis for an investment's total economic cost structure should not feel "safe" within the proposed "safe harbour" framework.

### Liquidity Analysis

"The fiduciary must appropriately consider and determine that the designated investment alternative will have sufficient liquidity to meet the plan's anticipated needs at both the plan and individual levels."

Liquidity may emerge as one of the most operationally challenging aspects of the proposed rule. Many alternative investment funds own non-public investments that cannot be readily disposed of like a stock traded on an exchange. Such funds hold an abundance of cash on hand, and therefore lack the liquidity that many plan participants have come to expect with publicly traded mutual funds.

A participant's access to their retirement savings may be limited by the fund's redemption policies. Redemption policies for these funds may permit monthly, quarterly or annual redemptions. Others may allow redemptions only when the fund's manager, in their sole discretion, allows it. Often, alternative investment funds may honour redemptions not with cash but with the securities in the portfolio which, themselves, may be illiquid. Under this backdrop, fiduciaries must give consideration to the liquidity needs of participants who experience a financial crisis, retire or change employment, and to beneficiaries of a participant who passes away.

It remains unclear whether illiquid investment alternatives will be asked to prepare liquidity risk management programmes that mirror those of registered funds, or whether fiduciaries will instead draw on bargaining power to negotiate certain key provisions from Rule 22e-4 of the Investment Company Act of 1940, such as limiting investment in illiquid assets to 15% or less, or to enter into separate agreements with a fund's manager (also known as side letters) that allow plan participants special redemption rights.

This requirement creates a substantial practical challenge for many committees. Liquidity risk management involves highly technical concepts that many fiduciaries lack the expertise to evaluate. As a result, one anticipated outcome of the proposal is greater fiduciary reliance on outside investment professionals with specialised expertise. Even then, fiduciaries retain oversight obligations and must document both the process and rationale for their conclusion.

### Valuation Risk Creates Significant Exposure

"The fiduciary must appropriately consider and determine that the designated investment alternative has adopted adequate measures to ensure that the designated investment alternative is capable of being timely and accurately valued in accordance with the needs of the plan."

Defined contribution plan fiduciaries should expect regular account valuation, daily transactions and transparent, conflict-free pricing. Because real estate funds, hedge funds and private equity funds hold hard-to-price assets, plan fiduciaries will need to familiarise themselves with and periodically monitor a fund's valuation process to ensure a timely and fair valuation of the portfolio.

The DOL's proposal reflects growing regulatory concern regarding conflicts in private market valuation practices. Fiduciaries, then, must engage in rigorous scrutiny to ensure an independent, conflict-free valuation process. How does a plan assign a fair value to an asset that is not traded on a recognised exchange or whose trading has been suspended? How does a plan assign a fair value to a bond that is in default? What steps are the plan's fiduciaries taking to ensure that the private fund manager has adequate procedures in place that fairly value the assets in the fund? Fiduciaries must be able to answer these, and more, questions regarding the valuation of plan investments.

Failure to do so evidences an imprudent fiduciary process. For example, under the DOL's proposal, funds managed by an entity that can purchase private assets from an affiliate using proprietary valuation methods would not meet the requirements of the proposed "safe harbour". A fiduciary committee that cannot explain how illiquid assets are valued may struggle to defend the prudence of selecting those investments.

### Performance Benchmarking

"The fiduciary must appropriately consider and determine that each designated investment alternative has a meaningful benchmark and compare the risk-adjusted expected returns, net of fees, of the designated investment alternative to the meaningful benchmark. The proposal defines 'meaningful benchmark' for this purpose as 'an investment, strategy, index, or other comparator that has similar mandates, strategies, objectives, and risks to the designated investment alternative.'"

The investment adviser of an investment fund charges an investment advisory fee on the premise that it will beat an identified benchmark (eg, S&P 500, FTSE Narieit, LIBOR). If a plan intends to pay these fees, fiduciaries should select and retain an asset that beats its benchmark; otherwise, the plan is not getting value for its money. Prudent selection and evaluation of investment benchmarks are critical to evaluating fund

performance. Poorly chosen benchmarks can obscure underperformance or exaggerate success.

The DOL's proposal comes just as the Supreme Court gears up to weigh in on the much-debated "meaningful benchmark" standard in *Anderson v Intel Corp Investment Policy Committee*.

In *Anderson*, the Ninth Circuit held that to plead fiduciary imprudence "based on a fiduciary's decision to make one investment rather than an alternative" plaintiffs must provide a "sound basis for comparison" – ie, a "meaningful benchmark". See *Anderson*, 137 F4th 1015, 1022 (9th Cir 2025), cert granted, 223 L Ed 2d 553 (16 January 2026). The Ninth Circuit went on to explain that meaningful benchmarks are those that have similar aims, risks and potential rewards. Id 1023. This is consistent with DOL guidance that requires fiduciaries to "tak[e] into consideration the risk of loss and the opportunity for gain... compared to the opportunity for gain... associated with reasonably available alternatives with similar risks". See 29 CFR Section 2550.404a-1 (b)(2)(i).

The Supreme Court will now take up the case to determine whether pleading a "meaningful benchmark" is required in fiduciary prudence claims. See *Anderson*, *Petition for Writ of Cert*, *Anderson*, 2025 WL 2993964, at *i (US 20 October 2025) (No 25-498).

Regardless of the outcome in *Anderson*, one thing is clear. Plan fiduciaries can no longer treat benchmarking as a routine reporting exercise. Benchmarking must be treated with the same rigour and scrutiny as any other central component of fiduciary prudence analysis. Accordingly, fiduciaries should expect to thoroughly evaluate benchmarks and document their rationale for selecting appropriate investment benchmarks.

### Complexity

"The fiduciary must appropriately consider the designated investment alternative's complexity and determine that she has the skills, knowledge, experience, and capacity to comprehend the designated investment alternative sufficiently to discharge her obligations under ERISA and the governing plan documents or whether she must seek assistance from a qualified investment advice fiduciary, investment manager, or other individual in evaluating the designated investment alternative."

The final factor – complexity – arguably underlies every part of a prudent fiduciary process. Many alternative investment products pursue highly complex investment programmes. Terms such as "long/short", "market neutral", "risk arbitrage" and "leveraged portfolio" become part of the lexicon.

Fiduciaries are expected to evaluate plan investments with the same skill and expertise that industry professionals "familiar with such matters" would use when overseeing "an enterprise of a like character and with like aims". See 29 USC Section 1104 (a)(1)(B). For many retirement plans, this means the skill and expertise expected of an investment professional tasked with overseeing several billion dollars in assets under management.

With alternative investments pushing to gain access to retirement plan dollars, scrutiny of fiduciary knowledge and expertise becomes even more critical. The DOL aptly recognises that some investments may exceed the practical competence of typical plan fiduciaries, especially where fiduciary committees are comprised of internal employees whose primary responsibilities are unrelated to sophisticated investment analysis.

The proposal's managed account example is particularly instructive. The DOL concludes that fiduciaries act imprudently when they fail to understand how a complex service operates and therefore cannot provide the information necessary for participants to receive its intended benefits.

However, the foregoing principle extends well beyond managed accounts. Plan fiduciaries cannot rely on superficial familiarity with investment terminology. Under the DOL's proposal, fiduciaries must understand the mechanics of analysing:

- investment objectives and how the manager intends to pursue them;
- whether the fund concentrates its investments in a particular asset;
- how much leverage the fund intends to use;

- how volatility can affect performance;
- the level of risk associated with the product and the maximum risk of loss; and
- other considerations, including risk-adjusted investment performance, fee structures that may include performance fees, liquidity constraints, valuation methodologies and benchmark construction.

Introducing complex alternative investments such as cryptocurrency exposure, multi-layered option and futures strategies, or private equity structures pushes most plan fiduciaries far beyond the limits of their expertise. Accordingly, plan fiduciaries should think carefully about whether they have the ability to prudently manage a plan including such investments in the line-up.

### The Impact of the DOL Proposal in a Post-Chevron Deference Era

The ultimate impact of the DOL's proposal, if adopted, remains unclear. The proposal arrives during a period of major administrative law uncertainty following the Supreme Court's decision in *Loper Bright Enterprises v Raimondo*, 603 US 369, 412 (2024).

Historically, courts often afforded considerable deference to agency interpretations, such as the DOL's interpretations of ERISA fiduciary obligations. In *Loper Bright*, however, the Supreme Court overruled the long-standing *Chevron* doctrine of deference to agency interpretations. Id at 412. This decision significantly alters the regulatory landscape for federal agencies, including the DOL.

Here, the reduction in agency deference makes it difficult to predict the ultimate impact of the DOL's proposal. Different courts may reach different conclusions regarding how, or whether, to utilise the DOL's proposed "safe harbour" framework when evaluating fiduciary conduct. Moreover, administrations change, and a future administration may de-emphasise the DOL's proposal, materially amend it or scrap it all together.

### Conclusion

The DOL's proposed fiduciary safe harbour marks a significant development in ERISA fiduciary governance. While the proposal provides a structured framework for evaluating plan investment options, it does not create a one-size-fits-all fiduciary "checklist". On the contrary, the DOL's proposal emphasises that fiduciary prudence requires diligent, thorough, rigorous and ongoing investment analysis across multiple dimensions.

Defined contribution plans are increasingly becoming the central retirement savings vehicle for American workers. Simultaneously, investment products are becoming more complex and more difficult for typical plan participants to evaluate on their own. This makes fiduciary prudence in the selection and ongoing monitoring of plan investment options more important than ever.

Against this backdrop, ERISA fiduciaries should approach the DOL's proposed framework as one that clarifies the need for sophisticated oversight of increasingly sophisticated investment options. Otherwise, plan fiduciaries may find themselves well outside the safety of the proposed "safe harbour".

# USA – GEORGIA




## Trends and Developments

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**Cohan & Levy** is a premier Atlanta-based litigation firm led by seasoned trial lawyers Louis R Cohan and J Bertram Levy ("Bert"). The firm focuses on high-stakes commercial litigation, intellectual property and private wealth disputes. Its lawyers have advised local, regional and national clients through a wide range of contract and business tort disputes, internal ownership conflicts, property ownership and management matters, and trade secrets and restrictive covenant litigation. Growing practice areas include business disputes arising from high net worth divorces, fiduciary litigation, and prodding reluctant insurance carriers to indemnify commercial insureds facing consumer class actions.

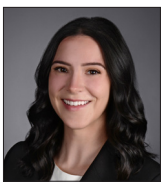
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## Market and Legal Trends for Doing Business in Georgia 2026

### *Introduction*

The interests of consumers and businesses are often at odds. Alarmed by its lead position on a Judicial Hellholes® report, Georgia recently took significant steps to prioritise business interests in litigation. As a result of the newly enacted tort reform measures, Georgia no longer appears on the list. But, as is also often true, the proverbial pendulum has a tendency to swing wide in either direction before settling somewhere in between the extremes.

Specifically, significant tort reform changes – including allowing parties to split trials into liability and damages phases, limitations on damages, and heightened requirements for negligent security claims – benefit both businesses and property owners by theoretically decreasing the risk of large jury verdicts. Similarly, changes to the Georgia corporate code have increased protections for directors and officers through a broader exculpation statute, expanded the jurisdiction of the State-wide Business Court ("Business Court"), and increased ownership requirements for certain shareholder derivative lawsuits. On the other hand, meaningful reform of the Property Owners' Association Act to benefit homeowners is also afoot. New laws seek to safeguard residential property owners by increasing transparency, accountability and due process. Other developments targeting consumer protection include potential liability for negligent data breach claims and requiring businesses to comply with AI guidelines. Below, we dive deeper.

### *Georgia Tort Reform Act of 2025: where are we?*

Georgia tort reform seeks to reduce litigation costs, deter litigation abuse and decrease so-called nuclear jury verdicts. The promised benefit from the litigation is the stabilisation of insurance costs. Whether the changes will deliver on the promise will depend on how the courts explore, test and interpret the new laws.

- Adjustments to medical damages: one of many insurance-friendly aspects of the tort reform is that it significantly limits special damages for medical and healthcare expenses. It is now up to the jury to determine the "reasonable value" of necessary care, treatment or services, based on the actual amount charged and the amount necessary to satisfy such charges with the plaintiff's health insurance, regardless of whether the policy will be used and, apparently, without regard to the carriers' subrogation rights against their insureds. This is a substantial departure from Georgia's past implementation of the collateral source rule, which permitted plaintiffs to submit their entire medical bill as evidence, but barred defendants from introducing evidence of payments or benefits the plaintiff received from third parties, such as insurance companies. Now, the jury will be able to assess the plaintiff's actual out-of-pocket expenses, increasing transparency and, thus, likely limiting the award for damages. The premise, which may or may not be true, is that insurance companies raised premiums because of big verdicts.
- Limitations on non-economic damages: Georgia Senate Bill 68 limits the scope and timing of

arguments to the jury, and allowable evidence, regarding certain damages, commonly known as pain and suffering. Section 9-10-184 of the Official Code of Georgia Annotated (O.C.G.A.) defines non-economic damages as those recoverable in tort for bodily injury or wrongful death, and for physical or emotional pain and suffering, loss of enjoyment of life, loss of consortium, and injury to reputation. Now, neither party has the opportunity to argue the worth or value of non-economic damages prior to the close of evidence. With this, attorneys entitled to opening and concluding arguments, pursuant to O.C.G.A. Section 9-10-186, face an additional limitation. Specifically, they must argue the same worth or monetary value of non-economic damages in both arguments. Furthermore, this argument must be "rationally related" to the evidence of non-economic damages. However, nowhere in the statue is "rationally related" defined, making it difficult for attorneys to know what evidence they are permitted to reference. This is a corporate (insurance) friendly statute intending to prevent anchoring tactics that encourage a jury to determine the monetary value of pain and suffering by referring to the value of famous works of art, athletes' salaries or other factors far removed from the claim.

- Trial bifurcation: the statute permits any party to a wrongful death or bodily injury case to elect, via a written demand prior to the entry of the pretrial order, to have the fault of each defendant determined before considering the damages to be awarded. Bifurcation is mandatory unless the other party objects and the court determines that the amount in controversy is less than USD150,000, or where the claimant, in very limited circumstances, would be likely to suffer distress by having to testify twice. In a bifurcated trial, if one or more defendants are determined to be at fault, the trial recommences for a determination of compensatory damages. If compensatory damages are awarded, the trial may recommence for a determination of punitive damages or liability for an amount of attorney fees or other litigation expenses. Bifurcation is thought to be business-friendly because the defendant's liability is determined before the jury hears more emotional testimony. Bifurcation also makes litigation more expensive for the plaintiff because the trial is longer. And juries do not want to stay for additional litigation. It is too early to see the impact in Georgia. Studies elsewhere have shown that defence verdicts are more likely, but that juries that have already determined liability may tend to award higher damages against the remaining defendants.
- Third-party litigation funding: a consumer-friendly change caused by the tort reform governs third-party litigation funding. Third parties providing litigation funding are bound by new guidelines, all of which are geared toward consumer protection. Third parties must register as litigation financiers with the Georgia Department of Banking and Finance, which will oversee the new process. One qualification for these litigation financiers is that the individual or entity cannot be associated with a hostile foreign adversary. Litigation financiers must utilise litigation financing agreements going forward. Numerous requirements were created for these agreements – namely, a pre-drafted set of disclosures that identifies a consumer's right to cancellation, the maximum amount the litigation financier may receive, the litigation financier's inability to make decisions related to the litigation, and the consumer's right to change legal representation. A violation of any of these new rules regarding litigation funding agreements renders the agreement void and unenforceable.
- Negligent security claims: in reaction to the growing number and size of jury verdicts against property owners and occupiers, and several appellate decisions that decreased the likelihood of summary judgment, Georgia enacted legislation to make it much harder to hold an owner or occupier accountable for injuries sustained on their premises as a result of wrongful conduct by a third party. Plaintiffs now face heightened foreseeability and prior knowledge requirements, as well as other limitations on bringing such a claim. A person may not bring a negligent security claim if they were trespassing, or intended to or were committing a crime, if they were injured on a single-family residence, or if they were injured by either a tenant or the guest of a tenant and eviction proceedings had been initiated against such tenant. Furthermore, owners and occupiers are protected by a rebuttable presumption that an apportionment of fault is unreasonable if they are assigned a greater per-

centage of fault than the third party. They also have a defence from liability if reasonable efforts were made to contact law enforcement, alerting them of the imminent wrongful conduct. The sweeping changes brought by this new law should dramatically curtail negligent security claims in Georgia.

### *Attracting businesses to Georgia through Corporate Code changes*

On 1 July 2026, numerous changes took effect regarding corporate internal governance and shareholder litigation. Each of these changes will add to the protections Georgia law provides for corporations and their directors and officers.

- Director and officer exculpation: previously, Georgia's exculpation statute allowed companies to protect directors but not officers from certain legal and financial liability. Following the trend of other states and the Model Business Corporation Act, Georgia extended this statute to enable companies to provide for both director and officer exculpation.
- Expansion of the Business Court: the Business Court, which is often preferred by companies for its expertise and expediency, may see an increase in cases on its docket after these changes take effect, as the subject matter jurisdiction of the Business Court has been expanded to include internal entity claims. In addition, companies can now mandate, via a forum selection clause in their by-laws or Articles of Incorporation, that certain claims be heard in the Business Court.
- Derivative standing: certain publicly traded companies can now require shareholders to meet an ownership threshold of up to 1% of outstanding shares to have derivative standing.
- Disclosure-only claims: these are no longer considered a substantial benefit to the corporation for purposes of awarding attorney fees to plaintiffs in derivative proceedings. This change removes the economic incentives previously associated with supplemental disclosure cases.
- Books and records requests: the definition of a proper purpose was restricted to exclude books and records requests made by shareholders involved in derivative proceedings or other civil litigation against the corporation. Relatedly, if there is a finding that the corporation denied a shareholder's inspection request in good faith, courts now have discretion to grant or deny a successful shareholder's request for attorney fees.

### *Striking a balance between HOA accountability and liability*

The boards of homeowners associations (HOAs) generally avoided judicial scrutiny so long as they exercised their authority in a "procedurally fair and reasonable" manner and if their substantive decisions were "made in good faith, and [were] reasonable and not arbitrary and capricious". However, after hearing of abuses of power, the Georgia legislature recently engaged in significant HOA reform. Given this trend, developers of planned communities, HOAs and property management firms should consider the cumulative impact of HB 220 (2024), the Georgia Property Owners' Bill of Rights Act (SB 406) and the Georgia HOA Accountability and Community Empowerment Act (HB 62).

- HB 220 (2024): HB 220 went into effect on 1 July 2024 and introduced immediate changes, including a mandatory ten-day written notice before fines or liens can be imposed for violations, retained voting rights for homeowners who are delinquent only in fines (not assessments), and mandatory annual HOA meetings with financial disclosures. Also, when seeking injunctive relief, HOAs need not utilise or exhaust any other available remedies once the ten-day notice period expires.
- SB 406: Georgia legislators had three goals in mind when drafting SB 406, all geared towards providing safeguards for homeowners: transparency, accountability and due process. SB 406 will increase transparency when it goes into effect on 1 January 2027, because HOAs looking to collect fines or fees from homeowners will be required to register annually with the Georgia Secretary of State ("Secretary") and submit their governing documents. Furthermore, SB 406 creates an administrative process in an attempt to simplify the settlement of disputes between HOAs and homeowners. Instead of hiring an attorney and filing suit, a homeowner may file a complaint directly with the Secretary within 180 days of the HOA's alleged misconduct. Filing the complaint stops the HOA from collecting disputed fines or fees from

the homeowner. A hearing officer will be appointed and will have the discretion to order a hearing with appropriate notice. The hearing officer will issue their findings and conclusions, and the homeowner and the HOA will have 15 days to comply. Appeals may be made to the magistrate court if the claim is within the jurisdictional amount, or to the superior court in all other cases. Finally, SB 406 strengthens due process by increasing the notice requirement for foreclosure liens from 30 days to 60 days and doubling the minimum delinquency amount to USD4,000, consisting only of unpaid assessments. Because filing the complaint stays collection of fines and fees, and the non-prevailing party is only required to pay USD100 to the Secretary, there is a clear potential to abuse the system. Even so, these new laws are expected to curb longstanding abuses of power.

- HB 62: Georgia's proposed HB 62 focuses on the management aspects of HOAs and highlights the importance of fairness, transparency and accountability. HB 62 increases election oversight by requiring, at a minimum, annual board elections whereby the results are filed with and certified by the Secretary. Furthermore, HB 62 promotes board accountability by requiring board members to be a resident of the community, meaning that they own a unit and list that unit address on their government-issued ID.

### *Data breaches: could your business now be liable?*

A landmark decision from 2025 will surely impact the future of Georgia data breach litigation; see *Bland v Urology of Greater Atlanta, LLC*, 377 Ga. App. 177 (2025). For the first time, a Georgia appellate court applied a common law duty of care requiring businesses to protect their customers' personally identifiable information against foreseeable cybersecurity risks. At the motion to dismiss stage, the court permitted the plaintiffs in this putative class action to proceed on their claims – namely, those for negligence and breach of an implied contract to implement data security adequate to protect the privacy of the plaintiffs' personal information.

Although this case arose in the healthcare industry, the common law duty will apply to any business facing foreseeable risk of data breaches. With data breach crime increasing globally, it will be easy for a plaintiff to plead that a business defendant knew of the importance of the private information and the consequences of a breach. Accordingly, companies should assess cybersecurity risks and implement sufficient safeguards, examine cybersecurity insurance coverages, and consider whether they can disclaim or otherwise limit liability.

### *Georgia's first swing at regulating artificial intelligence*

As of 1 July 2027, artificial intelligence (AI) operators must comply with the unprecedented SB 540 regarding AI companion chatbots ("AI companions"). There are numerous requirements aimed at protecting all consumers, such as requiring operators to disclose to users that they are interacting with an AI companion, rather than a natural person. In addition, an AI companion may not represent that it is qualified to provide professional services unless its operator is lawfully authorised to provide such services.

There are also a large number of requirements specifically protecting minors. For example, operators must take reasonable measures to prevent AI companions from discussing a list of topics that legislators identified as sensitive. To identify minor users, operators must implement and maintain age assurance methods. While employing age assurance methods, companies must minimise the collection of personal information, keep retention periods short, and refrain from selling any data collected in the process. Once a minor account is identified, there are additional account settings that must be made available to the minor and their parents, such as tools for managing screen time. The Attorney General will enforce these requirements and may do so by bringing civil actions against violators.

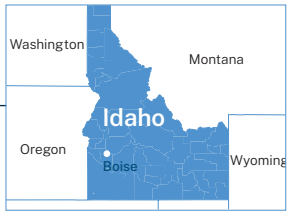
Similar to the Protecting Georgia's Children on Social Media Act (2024), SB 540 may face challenges when it comes to age assurance methods and potential cybersecurity risks. Regardless of the short retention periods, the onus will be on the businesses creating the AI companions to implement sufficient data security measures to protect the personally identifiable information.

### *Conclusion*

As these laws continue to go into effect, the interpretation and enforcement processes will make potential difficulties with compliance clearer and show just how far-reaching the advantages will be for both consumers and businesses in Georgia. The legislature is actively reshaping policy for the future, with an apparent goal of balancing these interests.

A final thought: business likes predictability. Changes in the law – good or bad – create unpredictability. The old adage may prove true, at least in the short term. Be careful what you wish for.

# USA – IDAHO




## Trends and Developments

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**Hawley Troxell**

**Hawley Troxell** is a premier full-service business and litigation law firm with one of the largest and most experienced teams in Idaho and the inland Northwest. With over 85 attorneys and 24 practice areas, its portfolio has an expansive industry and regional reach. Hawley Troxell offers the pinnacle of sophisticated legal services with a proud tradition of excellence. With locations in Coeur d'Alene, Idaho Falls, Pocatello, Reno (NV) and Yakima (WA), Hawley Troxell's headquarters is located at 877 W Main Street in Boise, Idaho. Hawley Troxell is also the exclusive member firm in Idaho for Lex Mundi, the world's leading network of independent law firms with in-depth experience in 100+ countries worldwide. For additional information about Hawley Troxell, visit www.hawleytroxell.com. For additional information about Lex Mundi, visit www.lexmundi.com.

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### Non-Compete and Non-Solicitation Agreements in Idaho

In 2024, the Federal Trade Commission (FTC) issued a nationwide rule that banned non-compete agreements. The rule was challenged and was blocked by federal courts later in 2024. In January 2026, the FTC clarified that it would no longer pursue a categorical national ban on non-competes and officially removed the rule from the Code of Federal Regulations. Since the nationwide ban is officially dead, non-compete agreements are governed entirely by state laws. Some states such as California, North Dakota and Minnesota have outright bans on employment non-competes. Other states, such as Colorado, Oregon and Washington (which has enacted a law for a near-total ban that becomes effective 30 June 2027 and that will also be retroactive to existing agreements), ban non-competes for workers earning below a certain state-mandated compensation level.

In Idaho, restrictive covenants, such as non-competes and non-solicitation, generally are enforceable but are "disfavoured" and must be "narrowly tailored" under Idaho law. See *Pinehaven Planning Bd v Brooks*, 138 Idaho 826, 831, 70 P3d 664, 669 (2002). A majority of the Idaho case authorities addressing restrictive covenants have dealt with them in the context of employment agreements. Historically, courts have balanced an employer's legitimate business interests and an individual's right and ability to pursue gainful employment. Restrictive covenants must be reasonable in scope and cannot be broader than necessary to protect the employer's legitimate business interests. See also Idaho Code (IC) Section 44-2701.

Idaho statutes also govern non-compete agreements. See IC Section 44-2704; this statute provides "rebuttable presumptions" that favour the enforceability of non-compete agreements involving "key employees" and "key independent contractors". A "key employee" is one that is among the highest-paid 5% of the employer's workforce. To rebut this presumption, the employee must show that they lack the ability to adversely affect the employer's legitimate business interests, such as customer relationships, confidential information, goodwill or trade secrets. For example, an employee that lacks information or knowledge about the practice, trade secrets or marketing of a business is likely not to be a key employee. In practical terms, courts are more likely to find a manager or an executive as a key employee but not a "regular" employee.

Further, a non-compete lasting no longer than 18 months after termination is presumed reasonable as to duration. Restrictions longer than 18 months generally require additional consideration beyond mere employment or continued employment. Further, a non-compete is reasonable as to geographic area if it is restricted to areas where the employee provided services or had a significant presence or influence on behalf of the employer. This means that there should be a specific mileage radius boundary from the employer's business for the new employment, or other geographic limitation. Nationwide prohibitions are not likely to be enforced, even if an employee does business throughout the country. Similarly, a restriction is presumed reasonable if it limits the employee only from engaging in the same type of employment or line of business that the employer performed while working for the employer.

The Idaho Supreme Court has not directly interpreted the rebuttable presumptions in IC Section 44-2704. However, it is clear that courts must analyse the Idaho statutes. See *Blaskiewicz v Spine Institute of Idaho, PA*, 171 Idaho 201, 519 P3d 1141 (2022). In *Blaskiewicz*, the lower court had only analysed the case under prior decisions governing non-compete agreements in granting summary judgment to the employee, finding a non-compete agreement unenforceable. The Supreme Court concluded it was "clear error" for the lower court to not address the statutes. The Court in *Blaskiewicz* concluded that there were genuine issues of material fact as to whether the non-compete agreement was void as a matter of public policy or otherwise enforceable.

No Idaho appellate court to date has issued an opinion explaining or detailing what evidence is sufficient to rebut the presumptions of enforceability. Therefore, it is a factual enquiry for a court to decide on in evaluating the evidence. What is clear, however, is that a non-compete agreement should meet the rebuttal presumptions if it is to be enforceable. The statutes also allow a court to "blue-pencil" a non-compete agreement; that is, if a restrictive covenant

is unreasonable in some respect, a court may modify the covenant to make it reasonable rather than invalidate it. However, courts will not rewrite an agreement by adding essential terms. In practice, courts are not inclined to blue-pencil an agreement.

The rebuttal presumptions in Idaho statutes technically only apply to non-compete agreements. No Idaho appellate court has analysed the statutes in the context of non-solicitation agreements related to employment. Still, a non-solicitation agreement must be narrowly tailored and limited in duration. An agreement that prohibits a former employee from soliciting all customers of a company, including those the employee did not know or work with, is subject to challenge and likely unenforceable. See *Frieburger v J-UB Engineers*, *Inc*, 141 Idaho 415, 111 P3d 100 (2005).

In the context of other types of agreements (eg, purchase and sale agreements containing non-solicitation clauses), public policy regarding the freedom to contract may be more applicable. "Freedom of contract is a fundamental concept underlying the law of contracts and is an essential element of the free enterprise system". See *Morrison v Nw Nazarene Univ*, 152 Idaho 660, 661, 273 P3d 1253, 1254 (2012).

The Idaho Supreme Court recently issued an opinion regarding how courts are to interpret what is – and what is not – "solicitation" for purposes of enforcing non-solicitation agreements. See *Insure Idaho LLC v Horn*, 572 P3d 183 (2025). Until the *Horn* decision came out, passively accepting business could be considered "solicitation". In *Horn*, the Idaho Supreme Court held that "the plain meaning of solicitation requires some overt act initiated by one party, seeking something in return from a second party". The Court went on to hold that "[t]o be clear, the mere acceptance of business, without more, does not fall within the plain meaning of solicitation; nor can a court infer solicitation from the simple communication between parties alone". Moreover, the Court held that it is unreasonable to infer solicitation from the sole fact that one accepted the business of another.

The *Horn* case is recent enough that no clarifying authority exists regarding evidence required to prove "solicitation" under the new standard. Yet, based on the Court's holding in *Horn*, a party seeking to enforce a contractual non-solicitation clause likely would have to put forth evidence (most likely, either testimony by former clients or communications between the offending party and those clients) showing, as the Court in *Horn* put it, "affirmative action that entreats, implores, pleads, or petitions for the business at issue" by the offending party. In the litigation context, the party seeking to enforce a contractual non-solicitation clause could subpoena communications and depose the former clients in an attempt to obtain such evidence (assuming it exists).

Careful consideration should be given to the likelihood of obtaining evidence consistent with the Court's holding in *Horn* – prior to filing suit. If that evidence does not exist (or it cannot be obtained despite all efforts to do so), a court could dismiss the suit and award fees to the offending party (as happened in the *Horn* case).

### Idaho Supreme Court Attorney Fees

IC Section 12-121 allows for the court, in any civil action, to "award reasonable attorney's fees to the prevailing party or parties when the judge finds that the case was brought, pursued or defended frivolously, unreasonably or without foundation". An analysis of recent Idaho Supreme Court decisions awarding attorney's fees shows the potentially expansive application of IC Section 12-121, which appellants should factor into their decision when considering filing an appeal.

*Hyde v Oxarango* concerned an appeal from the district court regarding a dispute over a family farm and the district court's order dismissing the ensuing complaint. Rochelle Oxarango, Gretchen Hyde and Dinah Reaney are sisters and owners of a family farming and ranching business that is managed in a limited partnership. Oxarango and her husband, Robert Oxarango, are general partners along with the sisters' father, James Little. Hyde and Reaney are limited partners. Hyde and Reaney sued the Oxarangos, asserting derivative and direct claims relating to breach of fiduciary duty and sought expulsion of the Oxarangos as general partners. See *Hyde v Oxarango*, Docket No 51625, 2026 WL 478542, *1 (20 February 2026).

The Idaho Supreme Court upheld the district court's decision, finding that:

- the limited partners did not plead with particularity why demand on all general partners would be futile, and thus lacked standing to bring derivative claims;
- the limited partners did not suffer any injury distinct from injuries allegedly suffered by the partnership, and thus lacked standing to bring direct action;
- the limited partners did not suffer any injury distinct from injuries allegedly suffered by the partnership, and thus lacked standing to seek expulsion; and
- appeal by the limited partners was brought frivolously, unreasonably and without foundation, and thus general partners were entitled to attorney fees and costs under statute.

In responding to the plaintiffs' appeal from the district court's grant of a motion to dismiss for failure to state a claim for relief under Rule 12 (b)(6), the Oxarangos sought attorney's fees under IC Section 12-121, asserting that "Hyde/Reaney pursued this appeal frivolously, unreasonably and without foundation". See *Hyde*2026 WL 478542, at *10. The Court set forth the standard by which it considered a ruling under IC Section 12-121:

"An award of attorney fees under Idaho Code Section 12-121 will be awarded to the prevailing party on appeal only when this Court is left with the abiding belief that the entire appeal was brought, pursued, or defended frivolously, unreasonably, or without foundation" (see *Edwards v Lane* […] 578 P3d 525, 531–32 (2025) (quoting *Severinsen v Tueller*, 174 Idaho 669, 681, 559 P.3d 771, 783 (2024)). "[W]hen a party pursues an action which contains fairly debatable issues, the action is not considered to be frivolous and without foundation" (see *Garner v Povey*, 151 Idaho 462, 468, 259 P3d 608, 614 (2011) (quoting *C & G, Inc v Rule*, 135 Idaho 763, 769, 25 P3d 76, 82 (2001)). "An award of fees under Section 12-121 is within this Court's discretion" (see *Aizpitarte v Minear*, 170 Idaho 186, 203, 508 P3d 1260, 1277 (2022) (citing *Owen v Smith*, 168 Idaho 633, 648, 485 P.3d 129, 144 (2021)). Id.

In finding that an award of fees and costs was appropriate under IC Section 12-121, the Court noted that Hyde and Reaney's arguments were poorly reasoned, and that "Hyde/Reaney failed to comply with [the] pleading requirement, and their appeal merely invites this Court to second-guess the district court's decision… as a result, we conclude that the appeal was brought frivolously, unreasonably, and without foundation". Id.

The Idaho Supreme Court used almost identical language in *Bickerstaff v Bickerstaff* in support of their decision to award attorney fees under IC Section 12-121, noting that "[a] prevailing party is also entitled to attorney fees under the statute 'if the appeal merely invites the appellate court to second-guess the trial court on the weight of evidence'" (citing *Crowley v Critchfield*, 145 Idaho 509, 514, 181 P3d 435, 440 (2007)) and that the "arguments on appeal simply asked us to reweigh evidence and second-guess the magistrate court's findings". See *Bickerstaff v Bickerstaff*, No 53588, 2026 WL 1261279, *24 (8 May 2026).

In *Spears v Antelope Mountain Resort, LLC*, family members of a deceased employee brought action for wrongful death, intentional infliction of emotional distress (IIED), and negligent infliction of emotional distress (NIED) against the employer and employer's limited liability company, following the murder of an employee by the employer's grandson who resided on the employer's property; the district court ultimately granted summary judgment in favour of the defendants, and the plaintiffs appealed. See *Spears v Antelope Mountain Resort, LLC*, 585 P3d 314 (2026). On appeal, the Idaho Supreme Court found in favour of the respondents, and held that:

- the employment relationship did not reflect the degree of custody and control quintessential to the special relationship from which a duty to aid or protect could arise, thus precluding wrongful-death claims;
- the defendants did not voluntarily assume the duty to aid or protect the employee, thus precluding wrongful-death claims;
- the defendants' purported failure to warn or otherwise protect the employee did not amount to

extreme and outrageous conduct required for IIED claims;
- there was no evidence that the defendants intended to cause family members emotional distress, precluding IIED claims;
- the defendants did not owe a duty to family members, precluding NIED claims; and
- the family members' appeal of summary judgment on IIED and NIED claims was frivolous, and thus the defendants were entitled to partial attorney fees.

In ruling on the respondents' request for attorney fees under IC Section 12-121, the Court used slightly different language in detailing the analysis that the Court undertakes in considering an award under IC Section 12-121. The Court may award reasonable attorney fees to the prevailing party upon finding that "the case was brought, pursued or defended frivolously, unreasonably or without foundation". See IC Section 12-121. In evaluating such a request, the Court considers "[t]he entire course of the litigation". See *Telford Lands LLC v Cain*, 154 Idaho 981, 993, 303 P3d 1237, 1249 (2013). "Apportionment of attorney fees is appropriate for those elements of the case that were frivolous, unreasonable, and without foundation". See *Idaho Mil Hist Soc'y*, *Inc v Maslen*, 156 Idaho 624, 632, 329 P3d 1072, 1080 (2014).

See also *Spears*, 585 P3d at 329. The Court, while acknowledging that "awarding attorney fees against a tort plaintiff carries the risk of disincentivizing victims and their heirs from vindicating their compensatory rights, deterring future negligence, and punishing tortfeasors", still found that the respondents were entitled to a partial award of attorney fees. Id. The Court noted that the "NIED and IIED claims lacked a sound legal basis", and that the Court did not believe "the district court's grant of summary judgment to Mary Russel on those claims is fairly debatable". Id. However, the Court did find "the Flaget heirs' arguments on appeal concerning the district court's treatment of the special-relationship and assumed-duty theories to be more plausible, even if unartfully presented in the briefs and at oral argument" and did not award attorney's fees for that specific portion of the appeal. Id.

In light of the decisions in *Hyde*, *Spears* and *Bickerstaff*, potential appellants should consider whether their appeals raise legitimate questions of law in disputing the decision of a lower court; otherwise, they may face significant fees under IC Section 12-121 for essentially asking the Idaho Supreme Court for a second opinion. More recently, the Idaho Court of Appeals awarded attorney's fees under IC Section 12-121 against a pro se litigant serving a unified life prison sentence for first-degree murder. See *Randall v Miller et al*, Docket No 63670, Slip Op (13 May 2026). Randall, the plaintiff, sued his former attorney, who handled a majority of the criminal defence for legal malpractice. The defence moved for summary judgment and received a favourable ruling from the district court, which was upheld on appeal.

In awarding attorney's fees, the Idaho Court of Appeals recited the language referenced above, including the statement that appellate courts do not second-guess decisions of the trial court. It is significant that the Idaho Court of Appeals is awarding fees under 12-121, and particularly more significant that it issued an award against a pro se plaintiff serving a life prison sentence. If your clients are thinking that taking up an appeal to get a second opinion is in their best interest, reasonable attorneys should have a discussion about the fee risks associated with that strategy.

# USA – ILLINOIS




## Trends and Developments

**Contributed by:**
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**Forde & O'Meara LLP**

**Forde & O'Meara LLP** is a Chambers-recognised litigation boutique focused on complex commercial disputes. Founded by former partners of global law firms, the team has extensive experience in handling contract claims, partnership and shareholder disputes, business torts, government procurement matters, class actions, consumer protection claims, and constitutional and administrative law issues. Clients include major companies in Chicago and across the United States, as well as organisations such as the Federal Judges Association, the Illinois Judges Association, and former Chicago Mayor Rahm Emanuel. The firm has particular experience in the real estate, technology, finance, hospitality and legal industries. It regularly serves as co-counsel to leading global and national law firms, and litigates matters in state and federal courts throughout the country. The litigation practice is complemented by boutique real estate transactions and government affairs practices.

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### Practising in Illinois State Courts: What You Need to Know

In many states, civil procedure in state courts closely resembles that in federal courts. Illinois is not one of those states. Lawyers at global and national law firms that do not have Illinois offices but act as co-counsel with local firms frequently remark on the stark differences between practising in federal court and Illinois state courts. This article will lay out some of the more unusual aspects of practising in state courts in Illinois, particularly in Cook County.

#### *Substitution of judge*

New actions filed in Illinois' circuit courts are randomly assigned to a judge who will preside over the entirety of the case or, in some cases, the initial stages of the case. Illinois law, however, provides parties to a civil case with a statutory right to ask the court to assign a new, randomly selected judge, either "as of right" (meaning the party does not need to identify a reason for asking for a new judge) or "for cause" (meaning there is a reason why the case should be reassigned to a new judge).

The first method – substitution as of right – is the most common. Each party to a case may file a motion asserting its right to have the case reassigned to a new judge one time. This is true for each party (plaintiff or defendant) named in the original complaint, and also for parties that are subsequently added to the case. And it is true regardless of any affiliation among the parties. So, for example, if a parent company and three subsidiaries are named as defendants, each has a separate right to substitution of judge – collectively, four in total.

The ability to file a motion for substitution as of right vests once a party has filed an appearance in the case. In most situations, a judge has no discretion and must grant a motion to substitute judge as of right, with certain limitations:

- a party that previously moved for and was granted a substitution of judge as right cannot do so again;
- the motion must be presented at the beginning of a trial or hearing, and should not be made during the hearing or trial; and
- the judge to be substituted must not have made a ruling on a "substantial issue" in the case; see generally 735 ILCS 5/2-1001 (a)(2).

The statute does not define "substantial issue", but case law provides some limited guidance. Generally, a judge's rulings on matters that relate to the merits of the case (such as rulings on requests for injunctions, motions to dismiss or motions for summary judgment) are considered rulings on substantial issues, while orders that are more administrative in nature (such as setting dates for filing responsive pleadings or extending deadlines) are not. A significant caveat to the "substantial ruling" limitation is that a party that files its appearance in the case after a judge's "substantial ruling" – either because the moving party was not yet part of the case or had not yet filed its appearance (and not been found to be in default) – may still file a motion to substitute that judge as of right, and the judge must grant the motion.

It is important to note that other limitations may arise in fringe situations. The Illinois Supreme Court has not foreclosed circuit court judges from denying motions for substitution of judge as of right where doing so is necessary to protect the integrity of the court and prevent abuse or manipulation of the system, such as to prevent judge-shopping, though the precise nature of that limitation is vague. Nevertheless, circuit court judges are generally wary of denying motions for substitution of judge as right because, if it is later determined by a court of review that a circuit court judge erroneously denied such a motion, all proceedings that occurred after the denial are void, and all of the proceedings must then be re-done.

The second method of substitution of judge is "for cause". This is a less common method with a much higher standard, and is reserved for situations where a judge demonstrates actual prejudice against a party through prejudicial trial conduct or personal bias. It is not enough that a judge makes unfavourable rulings: the judge must be engaged in conduct that prevents a fair judgment in the case; see generally 735 ILCS 5/2-1001 (a)(1).

### *Scope of the attorney-client privilege*

Illinois courts apply a more restrictive test in determining whether communications in the corporate context are protected by the attorney-client privilege. In federal court, communications between all corporate employees, regardless of their role or responsibilities, and the company's counsel are protected by the attorney-client privilege as long as they are made at the direction of corporate superiors in order to secure legal advice, and the communications concerned matters within the scope of the employee's corporate duties; see *Upjohn Co. v United States*, 449 U.S. 383, 394 (1981). In Illinois, the *Upjohn* standard does not apply. Instead, courts apply the much narrower "control group" test; see *Consolidation Coal Co. v Bucyrus-Erie Co.*, 89 Ill. 2d 103, 119-120 (1982).

Under the control group test, only communications between the company's counsel and those in its control group are protected from disclosure. There are two tiers of employees who qualify as members of the control group:"(*1*) *top management who have the ability to make a final decision*; *and* (*2*) *employees who advise top management in a particular area such that a decision would not normally be made without their advice or opinion*, *and whose opinion forms the basis of any final decision made by those with actual authority*. *With respect to the second tier*, [*there is*] *a distinction between opinion and information*. *Thus*, *while employees whose opinion forms the basis of a decision are part of the control group*, *individuals upon whom* [*top management*] *may rely for supplying information are not members of the control group*" (*Doe v Twp. High Sch. Dist. 211*, 2015 IL App (1st) 140857, para 105). Furthermore, the distribution of otherwise privileged material to individuals outside of the control group destroys the privilege.

Because Illinois' control group test is much narrower, corporate clients should be advised to limit any attorney-client communications to those within the control group when there is, or might be, litigation in Illinois courts.

### *Motions to dismiss*

Illinois law provides for two types of motions to involuntarily dismiss a pleading:

- motions to dismiss under Section 2-615 of the Illinois Code of Civil Procedure ("2-615 motion") for failure to state a claim under which relief may be granted; and
- motions under Section 2-619 ("2-619 motion") to dismiss based on certain specified defects or defences.

Unlike federal court, which only requires notice pleading, Illinois is a fact-pleading jurisdiction, meaning the pleader must allege sufficient facts to support a claim or defence. A pleading does not need to rely on or cite evidence, but instead needs only to allege the facts that support a claim or defence, although the factual allegations must consist of more than mere conclusions.

A 2-615 motion tests the legal sufficiency of the pleading and asks the question: "if all the well-pleaded facts in the pleading are proved, would the pleader be entitled to a judgment in their favour?" As with federal rule 12 (b)(6), a 2-615 motion must be confined to the pleading to which it is directed and cannot rely

on or raise factual matters outside of the pleading. A court faced with a 2-615 motion construes the allegations liberally and will only grant a 2-615 motion where the pleader cannot prove any set of facts that would entitle them to a judgment. If a pleader can replead their claims with additional facts, they will generally be given a chance to do so, but courts have the discretion to allow successive amendments to defective pleadings; see generally 735 ILCS 5/2-615.

A 2-619 motion, on the other hand, raises defects or defences outside of the pleading that defeat or avoid the pleader's claims. There are several types of defects or defences that may be asserted in a 2-619 motion, including that:

- the court lacks subject matter jurisdiction;
- a party lacks capacity to sue or be sued;
- the claims raised in a pleading are being litigated by the same parties in another action;
- the claims raised in the pleading have already been adjudicated;
- the claims were not brought within the statute of limitations;
- the claims have been released, satisfied or discharged in bankruptcy;
- the claims are unenforceable under the Statute of Frauds;
- the claims cannot be brought against the moving party because they are a minor or are otherwise disabled; or
- some other affirmative matter avoids or defeats the claim, such as laches, waiver or immunity.

A 2-619 motion accepts the factual and legal sufficiency of the pleading and must show that even if the pleader is entitled to a judgment, the moving party cannot be held liable for all or a portion of the judgment. A party moving to dismiss a pleading under Section 2-619 is not confined to the allegations in the pleading and may raise factual matters outside of the pleading, provided those facts are supported by an affidavit or other evidence, and provided that the moving party is not simply contesting the factual allegations in the pleading; see generally 735 ILCS 5/2-619.

### *Deposition categories and limits*

Illinois discovery rules contain a number of relatively unusual provisions governing depositions. First, unlike the federal system, Illinois distinguishes between discovery depositions and evidence depositions. When serving a notice for deposition, the notice must identify, inter alia, "whether the deposition is for purposes of discovery or for use in evidence" (S. Ct. Rule 206 (a)).

By rule, discovery depositions are limited to three hours (as opposed to seven hours under the federal rules). However, the rule also states that a court can extend that time limit "upon showing that good cause warrants a lengthier examination" (S. Ct. Rule 206 (d)). As a general matter, courts view the three-hour limit as being geared towards personal injury cases, and will often grant additional time in complex commercial litigation.

There is no time limit for evidence depositions. Parties typically take an evidence deposition to preserve testimony for trial when the witness will be unable to attend the trial. Therefore, an evidence deposition is treated as trial testimony, and objections must be made during the deposition, or they are waived.

### *Expert reports and discovery*

Illinois generally allows broader discovery from testifying expert witnesses than the federal rules do. These differences might be a reason to be cautious in communicating with experts even in federal cases, if there is a chance of related litigation in Illinois state courts. The requirements for expert disclosures are also different. Three examples of this are as follows.

- First, under the federal rules, draft expert reports are not discoverable; see Fed. R. Civ. P. 26 (b)(4)(B); Fed. R. Civ. P. 26, Committee Notes. The Illinois rules contain no such bar to discovery of draft reports, and the broad scope of discovery allowed generally suggests that draft reports are discoverable. Often, for their mutual convenience, parties in Illinois cases will nevertheless agree that the federal rule against disclosure of draft expert reports applies.
- Second, under the federal rules, communications between an expert witness and a party's attorneys are generally not discoverable; see Fed. R. Civ. P.

26 (b)(4)(C); Fed. R. Civ. P. 26, Committee Notes. By contrast, under Illinois law, communications between attorneys and their experts are discoverable. In many cases, attorneys for the competing parties still agree to follow the federal practice.

- Third, the form of expert reports/disclosures differs between federal and Illinois practice. In the federal system, Rule 26 (a)(2)(B) contains very detailed requirements: an expert must issue a report that includes "a complete statement of all opinions the witness will express and the basis and reasons for them", "the facts or data considered by the witness in forming them", "any exhibits that will be used to summarise or support them", "the witness's qualifications, including a list of all publications authored in the previous 10 years", "a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition", and "a statement of the compensation to be paid for the study and testimony in the case". The Illinois rule is much narrower. Supreme Court Rule 213 (f)(3) says that "upon written interrogatory", for retained experts, the party (not the expert) must identify "(i) the subject matter on which the witness will testify; (ii) the conclusions and opinions of the witness and the bases therefor; (iii) the qualifications of the witness; and (iv) any reports prepared by the witness about the case". Unlike the federal rule, there is no requirement to identify the basis and reasons for the expert's opinions, the facts or data considered by the witness, the exhibits that the expert will use, the expert's prior publications and testimony, or the witness's compensation. Thus, the expert disclosure required in Illinois has much less detail than under the federal rule – often just a few paragraphs. Nevertheless, for tactical reasons, parties sometimes choose to create reports that go beyond the Illinois rule's requirements and more closely resemble that of the federal disclosure practice.

### *Divisions of the Cook County Circuit Court*

The Cook County Circuit Court is divided into divisions, which in turn are divided into sections. These divisions and sections differ in their jurisdictions, though there is significant overlap among the divisions. Civil lawsuits of any consequence will be filed in either the General Chancery Section of the Chancery Division, or the Law Division. The jurisdiction of each is set forth in Cook County General Order No. 1.2, 2.1.

The General Chancery Section hears cases falling into a broad set of categories, including "*class actions*, *arbitration*, *injunctions*, *temporary restraining orders*... *mandamus*, *quo warranto*, *declaratory judgments*, *interpleader*, *ne exeat*, *specific performance*, *rescission and reformation of contracts*, *creditors' rights*, *complaints for contribution*, *actions to quiet title and the setting aside of deeds*, *partition*, *equitable liens*, *redemption rights*, *declarations concerning the constructions of trust and wills* (*other than during the period of an estate administration*), *the appointment of trustees*, *successor trustees and the removal of trustees* (*other than during the period of an estate administration*), *receiverships*, *accounting cases*, *dissolution of partnerships and corporations*, *or other proceedings under the Corporations and Partnership Acts*... *statutory review*, *certiorari*... *and all administrative review* (*except tax matters*, *matters under the Unemployment Insurance Act* (*820 ILCS 405/1100*)) " (Cook County General Order 1.2, 2.1 (b)(1)).

The Law Division hears, inter alia, "civil actions at law" in which the plaintiff seeks in excess of USD100,000 (Cook County General Order 1.2, 2.1 (a)). The nature of the action does not matter: if a case is an "action at law" (as opposed to equity), and the damages claimed exceed USD100,000, it falls within the jurisdiction of the Law Division. This obviously includes claims for breach of contract, torts, nuisance, and statutory claims.

The jurisdictions of the Chancery Division and the Law Division are obviously not mutually exclusive – a lawsuit might include, for instance, claims for dissolution of a partnership (Chancery) and for money damages for breach of the partnership agreement (Law), or claims that seek both a declaratory judgment (Chancery) and monetary damages (Law).

Thus, one obvious question is which division hears a case that falls within the purview of both divisions. The answer is two-fold. First, the plaintiff decides in which division to file the case. They can file in either Law or Chancery, but there is an important caveat: the assigned judge has the authority – either on the

defendant's motion or sua sponte – to transfer the case from one division to the other (see Cook County General Order 1.3 (c)). Such cases generally go to Chancery – there is no written rule that says so, but the general practice is that if a case could have been filed in Chancery, it belongs in Chancery.

Judge assignments in the Chancery Division operate very much as in federal court. Upon filing in the Chancery Division (or transfer into the Chancery Division), a case is randomly assigned to one of the "calendars" (judges) in Chancery. The judge oversees the case for its entirety.

In the Law Division, how a case proceeds depends on the section within the Law Division in which the case is pending. When a case is filed, the plaintiff files a "Law Division Cover Sheet" with the complaint, in which they identify "the appropriate case type which best characterises your action" from among a number of lists. The most commonly used categories are:

- "Commercial Litigation", with subcategories including Breach of Contract, Professional Malpractice (other than legal or medical), Fraud (other than legal or medical), Consumer Fraud, Breach of Warranty, Statutory Action, Other Commercial Litigation, and Retaliatory Discharge; and
- "Personal Injury/Wrongful Death", with subcategories including Medical Malpractice, Asbestos, Product Liability, Other Personal Injury/Wrongful Death, Intentional Tort, and Premises Liability.

If the cover sheet identifies a case as "Commercial Litigation", the case will almost certainly be assigned to the Law Division's Commercial Calendar Section. If the cover sheet identifies it as "Personal Injury/Wrongful Death", the case will almost certainly be assigned to the Law Division's Motion Section. It is important to note that the cover sheet is not dispositive on the question of the section to which a case is assigned – if the assigned judge deems the case better suited for another section, that judge has the discretion to transfer it to that section; see Cook County General Order 1.3 (c).

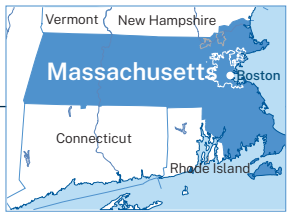
This distinction between the Commercial Calendar Section and the Motion Section is important because of the way cases proceed from there. Cases in the Commercial Calendar Section are assigned to a judge who oversees the case from start to finish, as in the Chancery Division, but cases assigned to the Motion Section proceed on a very different path. The case is randomly assigned to a motion judge, who oversees all pretrial matters in the case – discovery motions, dispositive motions, and the like. When all discovery is complete and all motions decided, the motion judge then enters a Trial Certification Order, designating the case as ready for trial. Shortly thereafter, the parties receive a notice of their trial assignment date. The lawyers go to the courtroom of the Presiding Judge or his designee and get assigned a trial date and to a judge from the Trial Section, who will then preside over the trial on that date. This is subject to the possibility that a party exercises its right to a substitution of judge, in which case the parties go back to the Presiding Judge for a new trial date and judge; see generally Law Division G.A.O. 16-2.

The possibility of multiple parties using their substitution of judge, and the scheduling uncertainty that can result, gave rise to a separate trial assignment process available to litigants in the Motion Section. Given "the difficulty of scheduling witnesses, especially expert witnesses, in complex cases and the importance of trials starting on a date certain", the Law Division has a process for "advanced random assignment of complex cases for trial" (Law Division G.A.O. 24-1). The process, which requires the agreement of all parties, allows the parties to agree on five possible trial judges for the case, and to waive their right to take a substitution of judge. The parties then present an agreed motion (including the list of five judges) to the Presiding Judge, who assigns the case to one of those five judges for trial; see generally Law Division G.A.O. 24-1.

### *Conclusion*

Navigating a case through the Illinois state court system can often seem daunting and counterintuitive to those who do not frequently practise here. The authors hope that this primer provides readers with a better understanding of the nuances of practising in Illinois state courts.

# USA – MASSACHUSETTS




## Trends and Developments

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**Wiggin and Dana LLP** is a full-service law firm of highly talented, creative and experienced lawyers dedicated to exceeding their clients' expectations. With offices in Boston, Connecticut, New York, Philadelphia, Washington, DC, and Florida, the firm represents clients throughout the United States and globally on a wide range of sophisticated and complex matters. From defending a Fortune 500 institution in "bet-the-company" litigation, to helping the next generation of inventors bring a new technology to market, to preserving the wealth that a family business has worked so hard to create, Wiggin and Dana offers value-driven solutions and results.

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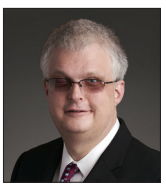
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Artificial intelligence (AI) is rapidly transforming the legal, regulatory and commercial landscape, driving fundamental changes in how organisations develop, deploy and contract for technology-enabled services. State laws in the United States remain fragmented and continue to evolve. At the same time, divergent global approaches are emerging, with the European Union (EU) adopting a comprehensive, risk-based regulatory regime and United States' federal authorities pursuing a combination of regulatory guidance, judicial action and policy initiatives. This dynamic and multi-layered regulatory environment has created growing complexity and uncertainty for companies operating across jurisdictions and industries.

Against this backdrop, AI is reshaping traditional legal frameworks, challenging long-standing assumptions, and requiring a reimagination of well-established contractual norms. At the same time, the rapid growth of AI-driven businesses – particularly in innovation hubs such as Boston – has fuelled significant venture capital activity, reflecting the increasing strategic importance of AI across every sector of the economy. As AI adoption continues to accelerate, organisations must actively adapt both their legal strategies and commercial practices to address emerging risks, allocate responsibility effectively, and maintain a competitive advantage in an increasingly AI-driven world.

## Regulatory Environment

### *Massachusetts*

While Massachusetts has not yet enacted any specific statute comprehensively regulating the development or use of AI, Attorney General Andrea Joy Campbell issued an advisory in April 2024 clarifying that the Commonwealth's consumer protection, anti-discrimination and data privacy laws apply to AI developers, suppliers and users just as they would in any other context. The advisory identified a non-exhaustive list of practices that may constitute unfair or deceptive acts under the Massachusetts Consumer Protection Act, including:

- falsely advertising the quality or usability of AI systems;
- supplying AI technology that is defective or impractical for the advertised purpose;
- misrepresenting an AI system's reliability, safety, condition or manner of performance;
- offering for sale AI systems that are not fit for the ordinary purpose for which such systems are used;
- deploying deepfakes or voice cloning to perpetrate fraud; and
- using AI systems that produce discriminatory results in violation of the state's civil rights laws.

It also clarified that Massachusetts'data security and incident response rules generally apply to AI systems that touch personal information, imposing prescriptive, technology-neutral security obligations on any person or entity that owns or licenses personal information about a Commonwealth resident. Similarly, Massachusetts' anti-discrimination laws prohibiting discrimination on the basis of protected characteristics apply to developers, suppliers and users of AI systems, including technologies for hiring, tracking, evaluating or terminating employees.

Massachusetts has also adopted certain sector-specific rules related to automated recognition technologies, and the legislature is currently considering new

legislation explicitly focused on AI issues. The proposals under consideration include:

- AI disclosure requirements;
- restrictions on AI-based employee monitoring;
- a bill targeting algorithmic discrimination that would impose strict liability and a private right of action;
- a bill establishing comprehensive data controller obligations regarding AI-related data processing; and
- legislation addressing the use of AI in healthcare settings, including a prohibition on AI making independent therapeutic decisions in behavioural health.

### *State regulation generally*

Looking beyond Massachusetts, more than half of US state legislatures have enacted statutes that meaningfully regulate some aspect of AI. In general, these laws have aimed to:

- establish AI governance bodies (task forces, commissions and executive offices to guide AI policy and oversee government use of AI systems);
- mandate transparency (disclosing AI's role in decision-making);
- prevent bias (algorithmic discrimination by AI systems in high-stakes decisions); and
- limit or prohibit "deepfakes" (realistic, artificial images, videos and audio generated by AI and used for malicious or deceptive purposes such as non-consensual pornography and election disinformation).

### *Federal regulation*

At the federal level, the Trump administration released an AI action plan last July that emphasised federal deregulation, the acceleration of AI infrastructure, the promotion of open models, the securing of US hegemony and the removal of what the plan characterised as ideological biases. The plan followed President Trump's January revocation of the Biden administration's prior Executive Orders and priorities regarding AI. Among other recommendations, the plan called for:

- the identification and removal of federal regulations that hinder the development of AI technologies;
- the revision of environmental standards, permitting processes and procurement priorities to accelerate infrastructure development;
- the use of discretionary federal spending to challenge and dissuade state regulatory requirements;
- promoting access to large-scale computing resources and private-sector adoption of open source models; and
- directing the Department of Commerce to facilitate the exportation of US-developed "full-stack AI packages" and the global adoption of AI technologies that meet US technical and security standards.

In March 2026, the administration released an AI legislative framework further emphasising the goals above, calling on Congress to implement the administration's policy objectives, and introducing additional priorities related to children, fair use, free speech and workforce education.

### *EU AI Act*

By contrast, Europe has gone in a different direction, adopting comprehensive regulations in 2024, with phased implementation during 2025 and 2026. The EU AI Act contains five core principles, requiring uses of AI to be safe, transparent, traceable, non-discriminatory and environmentally friendly. Applications of AI technology are classified as posing unacceptable risk, high risk or limited risk. Deployment of AI technology classified as presenting unacceptable risk is prohibited, while high- and limited-risk AI uses are regulated, albeit at different levels. High-risk technologies, for example, require mandatory assessments of their potential impact on fundamental rights.

Limited-risk systems trigger less stringent obligations, including informing users when they are viewing AI-generated content. In all cases, AI tools must be overseen by humans, rather than by technology. European regulators also required measures to protect copyrights, certain mandatory disclosures and detailed technical documentation. Penalties for violations can be severe, and the Act applies to entities providing or deploying AI systems that are either used in the EU

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or that produce effects in the EU, wherever the entity may be based.

### IP Strategy

In 2025, Boston was ranked as a state with one of the highest AI ecosystems throughout the continental United States (see here). As companies across every sector accelerate their adoption of AI tools, long-standing assumptions about patentability and inventorship are being tested. This shift is prompting organisations to rethink traditional intellectual property (IP) strategies and adapt them to a world where human and machine contributions increasingly intertwine.

A foundational principle of US patent law is that only a natural person can be named as an inventor. The US Patent and Trademark Office (USPTO)'s recent Inventorship Guidance for AI-Assisted Inventions reaffirms this requirement, even as AI systems play a growing role in generating inventive concepts. US copyright law follows a similar rule: human authorship is required.

For patent applicants, inventions that incorporate AI-generated inputs or outputs raise new questions about obviousness, enablement and disclosure at the USPTO. Inventors must now determine how much detail to provide about their AI models, such as training data and model parameters, to demonstrate human conception and reduction to practice. The line between human insight and machine-generated output is becoming more complex to document.

AI systems also rely heavily on large, often sensitive datasets, including genomic sequences, compound libraries, biomarker repositories and user-generated information. As AI models are increasingly trained on combinations of proprietary, licensed and open-source data, companies must confront difficult questions about data ownership, rights to AI-derived insights, public disclosure of sensitive information into open source models, and how to protect valuable datasets themselves. These issues are especially pressing in life sciences, where data assets can be as valuable as the inventions they enable.

The rapid integration of AI into research and development is creating a heightened need for cross-functional collaboration. Legal, scientific and technical teams must work together to document human contributions to AI-assisted inventions, negotiate licensing agreements that address data and model usage, and ensure compliance with evolving global standards.

While AI is accelerating innovation at an unprecedented pace, it is also destabilising traditional IP structures. Companies that wish to safeguard their competitive advantage must proactively adapt their IP strategies to the realities of AI-enabled discovery and development.

### Sourcing and Technology Transactions

The exponential proliferation of AI and deep machine learning across nearly every category of sourcing, technology and managed services is rapidly reshaping legal and operational approaches to deal making. AI-driven technologies are a material component of nearly every services transaction today. This new paradigm has necessitated a rethinking of market norms and established approaches to key contractual terms, including IP ownership, service level agreements, performance warranties, indemnification provisions, and limitations on the parties' liability to one another.

#### *IP ownership*

Under most legal systems, including US copyright law, a work must be authored by a human to qualify for copyright protection. When a provider uses generative AI to produce code, designs, reports or other deliverables, the protectability of those outputs and who owns them becomes legally uncertain. As a result, customers increasingly demand explicit contractual terms that address AI-generated outputs separately from human-authored work. These terms often take a "belt-and-suspenders" approach: a work-for-hire designation where possible, a broad assignment of rights (including a waiver of moral rights where permitted), and a fallback perpetual licence in case neither of those is effective.

Providers frequently rely on proprietary or third-party AI systems, including large language models and machine learning, to improve productivity and efficiency. This creates several negotiation pressure points. Providers typically argue that their models, training data, algorithms and fine-tuned configurations are

pre-existing IP that must be excluded from any customer IP assignment. Customers, however, worry that deliverables are so intertwined with the AI tools that these carve-outs effectively strip them of meaningful ownership.

Many providers depend on third-party AI platforms whose terms of service may impose conditions on ownership or use of outputs. Customers increasingly require providers to disclose which platforms they use and to warrant that applicable third-party terms do not conflict with the customer's IP rights.

In all cases, the rapid adoption of AI tools in sourcing arrangements has fundamentally complicated negotiations around the ownership of IP. Parties must now address new questions about authorship, protectability, training-data rights, patentability, third-party platform terms, and regulatory compliance. In this new environment, both customers and providers benefit from creating detailed, AI-specific IP ownership provisions rather than relying on legacy frameworks that never contemplated AI-generated works.

### *Service level agreements*

Historically, service level agreements (SLAs) in sourcing contracts have been built around human-driven performance benchmarks, response times, resolution rates, processing volumes, and error rates calibrated to the capabilities of human teams. However, the rise of AI has introduced significant new considerations and challenges for both customers and providers. When a provider deploys AI-driven automation (eg, robotic process automation, AI-based customer service, or intelligent document processing), the parties must negotiate SLAs that address the unique characteristics of AI-delivered services. Negotiating these metrics is more complex than traditional SLAs because AI performance may make bright-line pass/fail thresholds more difficult to set. Where AI tools are used to deliver or monitor services, questions arise about liability for AI-driven failures, the adequacy of service credits as a remedy, and the circumstances under which AI-related performance failures should excuse or mitigate a provider's responsibility for such failures.

Service providers are often hesitant to offer service levels for AI tools, citing difficulties around accuracy rates, error tolerances, bias monitoring, explainability requirements, and the inability to control inaccurate or harmful outputs. When an AI system fails or produces an incorrect output, determining fault is far more complex than with human error. AI tool performance is heavily dependent on the quality, completeness and timeliness of input data. Providers frequently seek to carve out SLA liability where poor performance is attributable to data supplied or controlled by a customer. Customers increasingly demand that SLA targets reflect AI-enhanced capabilities, faster response times, near-zero error rates, and continuous availability, since AI tools can operate continuously without fatigue. Accordingly, the integration of AI into sourcing contracts has led to a shift in negotiating SLA provisions, requiring tailored approaches to address the unique characteristics and risks of AI technology while balancing the potential benefits of automation and innovation.

### *Performance warranties*

Traditionally, sourcing performance warranties have focused on human-delivered services and throughput tied to defined processes. As providers integrate AI tools to deliver or augment those services, the parties must reconsider how to define satisfactory performance. When an AI system produces inaccurate or substandard output, customers increasingly seek warranties that place responsibility on the provider regardless of whether the issue stems from the model, training data or human oversight. Providers, by contrast, often aim to limit liability for outcomes that are inherently probabilistic.

Customers may also demand transparency warranties requiring the provider to explain how an AI system generated a particular result, while providers resist such obligations, citing trade-secret concerns or technical limitations.

The widespread use of third-party AI models further complicates negotiations: customers want the provider to stand behind all outputs, whereas providers often seek carve-outs for failures attributable to AI platforms.

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AI adoption has also created new categories of performance warranties absent from traditional sourcing. Customers increasingly require assurances that AI tools will not produce biased, discriminatory or otherwise unlawful outputs, particularly in HR, financial services and healthcare. Customers also seek enhanced warranties around system security and protection of input data, due to security risks introduced by AI systems, and they want assurances that AI-generated outputs do not infringe third-party IP rights, a contentious issue amidst ongoing generative-AI litigation.

Negotiating performance warranties has become much more complicated and the appropriate warranty terms for any sourcing arrangement will necessarily depend on the services involved, the AI tools used, the regulatory environment and each party's risk tolerance.

### *Indemnification provisions*

The rise of AI tools in sourcing arrangements has significantly reshaped how indemnity provisions are negotiated. Customers increasingly seek broader infringement indemnities that expressly cover claims arising from the provider's use of AI tools, while providers push to limit liability for risks they view as inherent to AI systems and outside their control.

AI tools require access to substantial datasets, often including customer confidential information or personal data. This has intensified negotiations over data breach and privacy indemnities. Customers worry that inputting their data into third-party or cloud-based AI platforms could lead to unauthorised disclosure, data leakage, loss of trade-secret protections or regulatory violations. Customers extend indemnity clauses to cover losses stemming from AI-driven data processing, but providers seek to limit these obligations to instances of their own negligence or breach rather than accepting strict liability for failures of underlying AI platforms.

Where providers use AI to support professional or advisory services, such as legal research, financial analysis or technical recommendations, customers increasingly request indemnities for losses caused by inaccurate or "hallucinated" AI outputs. This differs from traditional sourcing indemnities, which contemplated human error rather than systemic algorithmic errors. Negotiations often focus on the provider's duty to maintain human oversight and quality controls, with indemnity scope turning on whether the provider can demonstrate adequate review processes for AI-assisted work.

Many providers rely on third-party AI platforms rather than proprietary models and thus argue for a layered risk structure. Customers typically argue that providers should bear full responsibility for the tools they choose, including third-party AI, and should offer "flow-down" indemnities regardless of whether they can recover from the AI vendor. Providers contend that certain risks, such as fundamental flaws in widely used AI models, should be treated as force majeure or excluded from indemnity obligations altogether.

In sum, the integration of AI tools into sourcing arrangements has expanded both the scope and complexity of indemnity negotiations, driving the development of new indemnity categories and intensifying disputes over allocation of third-party risk.

### *Liability limits*

The growing use of AI tools by service providers has reshaped negotiations around limitation-of-liability clauses. Historically, these provisions focused on service failures, data breaches and IP infringement. However, AI introduces a broader set of risks. When providers rely on AI to deliver services, such as analytics, automated decision-making or AI-assisted coding, the possibility of inaccurate, biased or irrational outputs creates new liability exposure. Customers often argue that these risks should fall outside standard caps or be treated as carve-outs. If AI produces discriminatory outcomes in areas such as HR outsourcing or claims processing, customers may face regulatory scrutiny and reputational harm, prompting demands for uncapped liability or higher super-caps.

AI-driven training on customer data adds further concerns around data protection, confidentiality and IP ownership, all of which influence liability discussions. Customers often contend that the potential scale of harm – regulatory fines, reputational damage and third-party claims – can far exceed contract value, increasing pressure on providers to accept higher

caps for AI-related losses, especially where customers lack visibility into the AI systems used. Providers, in turn, argue that uncapped exposure is commercially unsustainable and seek to maintain aggregate caps while offering narrowly tailored, capped indemnities for defined AI failures.

Unfortunately, the market has not yet converged on a standard approach. Outcomes vary widely based on bargaining power, the criticality of the outsourced function, the nature of the AI tools involved, and the applicable regulatory environment.

### Venture Capital

The rapid growth of the AI industry across the Boston innovation ecosystem has been fuelled, in large part, by the venture capital community. The technology companies developing foundational AI models – as well as the significant infrastructure, talent, data and energy demands required to support them – remain heavily dependent on venture financing to scale.

According to PitchBook's 2025 NVCA Venture Monitor, at the end of 2025, approximately USD3.3 trillion in private company market value was tied to AI. AI-focused investments accounted for an estimated 65.4% of total venture deal value in 2025, representing roughly 39.4% of completed transactions. Boston-area companies continue to play a leading role in this growth, particularly at the intersection of AI, life sciences, healthcare and enterprise software.

### Private Equity and M&A Activity

AI is rapidly transforming private equity transactions across the entire deal life cycle, from sourcing and diligence through exit. While adoption levels vary across the industry, one principle is increasingly clear: when implemented effectively, AI creates a meaningful competitive advantage in processes where speed, precision and data analysis are critical. This is equally true for funds and law firms helping to execute on deals.

At its core, AI is another tool in the efficiency toolbox. AI-powered tools enable private equity firms and their advisers, including legal, financial and accounting professionals, to process significantly larger volumes of structured and unstructured data in far less time. These tools can extract insights from extensive document sets at a scale that would be impractical through traditional methods.

One of the most immediate effects of AI adoption is the compression of transaction timelines. Tasks such as financial and legal diligence that traditionally required weeks of manual work can now be completed in a fraction of the time. While human judgement remains essential to ensure the integrity of the dataset and resulting analysis, AI significantly reduces the time required to conduct that analysis. This has important implications for competitive processes. In auction settings, where speed can determine access and success, buyers must now be able to evaluate opportunities and respond with high-quality bid materials on accelerated timelines. Firms that cannot keep pace risk losing competitive positioning early in the process.

At the same time, this compression of timelines can benefit smaller or more targeted investment platforms. Because AI reduces reliance on large teams for data processing, firms that were previously disadvantaged by slower manual workflows can now respond more quickly and compete effectively in fast-moving processes. These tools can enable deal teams to spend less time on data collection and processing and more time on higher-value strategic analysis.

This shift is particularly impactful for mid-sized and boutique private equity firms and their advisers. Historically, larger firms held a distinct advantage in transaction execution by deploying larger teams to manage labour-intensive processes such as diligence, modelling and analysis. By automating data-intensive tasks, AI allows smaller, highly sophisticated teams to achieve levels of output previously reserved for organisations with significantly greater headcount. Lower-leverage teams can compete on more equal footing with larger firms in data-driven aspects of transactions.

Ultimately, for smaller and mid-sized private equity firms, the rise of AI is an encouraging development. As these technologies become more accessible and easier to implement, they reduce many of the historical advantages associated with sheer size and manpower. Firms that are agile, focused and thoughtful

in adopting AI tools are well positioned to narrow the gap with larger competitors and, in some cases, outperform them.

## Conclusion

Boston stands at the forefront of AI-driven innovation. As regulatory regimes continue to develop and market practices mature, organisations operating in this space must remain agile – continuously reassessing their compliance frameworks, contractual structures and investment strategies. Those that align legal risk management with technological advancement will be best positioned to capitalise on AI's transformative potential and navigate its inherent uncertainties.

# USA – NEW YORK

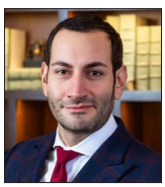



## Trends and Developments

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**IX Legal**

**IX Legal** is a full-service Wall Street law firm founded by Michael Iakovou. The firm focuses on litigation, real estate, corporate, employment, personal injury, trusts and estates, and tax, servicing clients in commercial and residential real estate, hospitality, construction, lending, investment funds, and asset management. IX Legal provides proactive yet practical guidance to clients, assisting in day-to-day legal issues while providing planning solutions for long-term growth and exit strategies. The firm's flagship office is in New York City, and it also has offices in Jersey City, Miami and Long Island, while featuring a multilingual team dedicated to client service. The IX Legal team leverages strong interdepartmental collaboration and a disciplined work ethic to deliver a strategic integrated approach that maximises solutions for clients.

## Authors



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## Forced Buyout Provisions as a Risk-Reducing Tool for New York Entities

Three partners sat in the IX Legal main conference room with our clients, the two largest interest holders in a New York family-run real estate group with a significant portfolio. Although the two relatives maintained a good rapport and managed to resolve disagreements in a practical manner, they sensed tensions brewing within the rising generation set to replace them. One of the clients recently concluded an acrimonious divorce proceeding in which the client's spouse claimed a right to interest in the family's real estate holding company. That experience, combined with horror stories from business partners and acquaintances, understandably left the clients on high alert.

Although the clients' goals remained straightforward and achievable, they required systemic collaboration between the firm's litigation, corporate and real estate departments. The clients sought to implement an amendment to the decades-old operating agreement they inherited to provide for a fair and objective buyout mechanism while simultaneously keeping any potential family scuffles out of the public eye and away from the press. Both individuals remained pensive and concerned about the effect of drawn-out litigation on their family's legacy. This was the firm's first example in a growing trend of clients seeking to amend agreements for the purpose of including forced buyout provisions.

### *Litigating forced buyouts*

Shareholders of New York corporations with at least 20% interest have statutory tools at their disposal to force the remaining shareholders of the corporation to purchase the interest of the aggrieved shareholders; see NY BCL Section 1104-a. Upon a showing of illegal, fraudulent or oppressive actions towards the petitioning shareholders by those in control, or that the directors, officers or those in control are looting, wasting or diverting the assets of the corporation for improper purposes, the court may order dissolution of the corporation.

Built into the same Article of the Business Corporation Law (BCL) is the right of election available to the remaining shareholders or corporation within 90 days of the petition to purchase the petitioners' shares at "their fair value" (NY BCL Section 1118). Upon such election and subsequent application of the purchaser, the court stays the petition to determine the value of the petitioners' shares, effectively converting the nature of the action from one of shareholder oppression or wrongdoing to a valuation hearing. In the context of a shareholder dispute, this shift serves as a stop-gap measure to prevent further damaging details of wrongdoing or dissention from leaking.

While the Section 1118 election effectively gags the public squabbles of most closely held corporations, for many the damage of a detailed pleading of the inner squabbles provides sufficient harm to image and reputation. Outside of Section 1104-a petitions, shareholders cannot force a buyout, nor can a court "convert over a petitioner's objection, a dissolution petition that does not afford a buyout option for non-petitioning shareholders" (*Fedele v Seybert*, 250 A.D.2d 519, 523 (1st Dept. 1998)). The Limited Liability Company Law lacks the equivalent mechanism of a

BCL Section 1118, and "does not expressly authorize a buyout in a dissolution proceeding", although a court may permit an equitable buyout of interests to avoid dissolution, in the appropriate circumstance (*Mizrahi v Cohen*, 104 A.D.3d 917, 920 (2d Dept. 2013) (internal citations omitted); see also *Lyons v Salamone*, 32 A.D.3d 757 (1st Dept. 2006), noting the lack of LLC law authorising a buyout but noting that the court may find an equitable method of liquidation or the other party is to purchase the interest in lieu of dissolution).

Assuming a court will save their business from dissolution is a desperate if not foolhardy strategy for an entity's controlling interest holders. A more prudent course of conduct is to prevent the risk of dissolution altogether by creating a forced buyout provision in the context of a shareholder agreement or operating agreement, or by amending the existing agreement to guarantee its compliance with the framework of relevant court analyses.

### *Buyouts in agreements*

Courts must enforce agreements when they are set down in "a clear, complete document" (*W.W.W. Assocs. v Gianconteri*, 77 N.Y.2d 157, 162 (1990). In the context of a buyout provision, the same guidelines prevail (*Rosiny v Schmidt*, 185 A.D.2d 727 (1st Dept. 1992)). Indeed, in *Rosiny*, the First Department reversed a trial decision preventing a forced sale of defendants' shares pursuant to the terms of the shareholders' agreement. The *Rosiny* shareholder agreement contained a post-mortem buyout for the defendant shareholders at a value of the greater of the book value as of the month preceding the operative date or USD200 per share, and the *Rosiny* court rejected defendants' contentions of unconscionability in plaintiff's interpretation of the buyout provision.

There are limits to what courts tolerate, however, and the First Department has rejected a draconian USD1 buyback clause in an operating agreement for any breach of the agreement (*Atlantis Mgt. Group II v Nabe*, 216 A.D.3d 526 (1st Dept. 2023)). Similarly, the Second Department has rejected a buyout provision with a blank space for purchase price and no mechanism for valuation (*Stein v McDowell*, 74 A.D.3d 1323 (2d Dept. 2010)). The *Stein* court found that "[t]he omission of the price from the buyout provision meant that the shareholders' agreement contained no buyout provision".

Moreover, a court will nullify a buyout provision when it is not timely exercised; see *Urban Archeology Ltd. v Dencorp Invs. Inc.*, 12 A.D.3d 96 (1st Dept. 2004) (finding that the failure to exercise the buyback within 90 days as contemplated expressly in the parties' agreement constituted a fatal waiver that the trial court lacked authority to reinstate). To the extent parties modify buyout provisions, courts review the modifications under the same rubric as the original terms (*Milgrim v Backroads*, Inc., 91 Fed.Appx. 702 (2d Cir. 2002)). Parties negotiating and drafting buyouts must give thought to their application, and to how courts will weigh the fairness of the methodology therein. The opportunity to craft a buyout provision presents a chance to also determine the venue of any challenge and thus the ability to shift disputes from the courts to arbitration.

### *Arbitration with clauses in the context of a buyout*

Article 75 of the Civil Practice Law and Rules (CPLR) establishes the enforceability of a "written agreement to submit any controversy … to arbitration" (CPLR Section 7501; see also 9 U.S.C. Section 1 et seq for the Federal Arbitration Act). Indeed, a "party will not be compelled to arbitrate … absent evidence which affirmatively establishes that the parties expressly agreed to arbitrate their disputes" (*Waldron v Goddess*, 61 N.Y.2d 181, 183 (1984)). In the context of a dispute among interest holders, the same analysis applies and the court is bound to review the agreement arbitration and ensure that it is "clear, explicit and unequivocal and must not depend upon implication or subtlety" (*Sutphin Retail One, LLC v Sutphin Airtrain Realty, LLC*, 143 A.D.3d 972, 973 (2d Dept. 2016), citing *Waldron* at 183–84).

Assuming the applicability of an arbitration provision, a party "aggrieved by the failure of another to arbitrate may apply for an order" under CPLR Article 75 (CPLR Section 7503). Although a motion to compel arbitration succeeds in the appropriate circumstances, it stays rather than dismisses any underlying pending action; see *In re Princeton Info, Ltd.*, 235 A.D.2d 234 (1st Dept. 1997), reversing the dismissal with prejudice of a BCL Section 1104 action to reinstate the proceeding

but stay the action pending arbitration since judicial action may be required after the arbitration). Critically, the *Princeton* matter concerned the applicability of a buyout provision in a shareholders' agreement. The right to arbitrate is not absolute, however, and may be "modified, waived, or abandoned" (*Stark v Molod Spitz DeSantis & Stark, P.C.*, 9 N.Y.3d 59, 66 (2007)).

The courts will examine the totality of a party's conduct to determine whether it waived its rights to arbitrate when that party's "use of the courts is clearly inconsistent with [its] later claim that the parties were obligated to settle their differences by arbitration" (*Cusimano v Schnurr*, 26 N.Y.3d 391, 400 (2015), internal citations omitted). A party that chooses to "fully participate in litigation for more than 16 months" before moving to compel arbitration clearly waived its rights to arbitrate the underlying claims (*Flores v Lower E. Side Serv. Ctr.*, 4 N.Y.3d 363 (2005)). In deciding on how much time constitutes waiver, the First Department and Second Department held that four months of active litigation suffice (*Hyde v Jewish Home Lifecare*, 149 A.D.3d 674 (1st Dept. 2017);*Byrnes v Castaldi*, 72 A.D.3d 718 (2d Dept. 2010)).

From the court's perspective, such behaviour of active engagement in litigation followed by a reversal and application to compel arbitration contains indications of "blatant forum-shopping" (*Cuisamano* at 401). Critically, waiver is fact-specific, and a party that merely moves to dismiss prior to compelling arbitration does not waive its right to arbitrate unless the opposing party demonstrates prejudice (*Stark* at 67).

While a party may still file an action in court, a valid arbitration cause ensures that the action is promptly stayed and then moved to the appropriate private forum. This prevents the public from further engaging in review of the latest filings on the docket and speculating as to the nature of the parties' spat. However, there is nothing preventing a vindictive aggrieved interest holder from filing in the first instance in the courts, even with a valid arbitration provision. Parties must consider that even a brief attempt to litigate rather than promptly move to compel may jeopardise the ability to compel arbitration.

### *Learning from prior buyout litigation*

We recently settled a matter involving a dispute between members of a limited liability company that owned valuable real estate in Astoria, Queens (*Imian P.V. Member LLC v Vlacich LLC*, No. 654719/2024 (Sup. Ct. N.Y. Co.);*Vlacich LLC v Imian P.V. Member LLC et. al.*, No. 721125/2024 (Sup. Ct. Queens Co.)). In that situation, the operating agreement contained a buyout provision providing a mechanism for dispute resolution that permitted the aggrieved party to value the company and, in his valuation, simultaneously submit his interest for sale within a period of time after serving notice on the other member. The caveat remained that the other member possessed the right, within the same period, to elect to purchase the initiating member's interest at the same valuation. If the non-triggering member did not elect to purchase within the timeframe, the triggering member's notice served as his purchase price for the other member. The concept gave the triggering member a dilemma with balance: select a price too low and the receiving member turns the tables to purchase your interest at a discount. Alternatively, the triggering party risked paying a premium for overvaluing the company, as the agreement forced the triggering party to purchase at the same rate where the other member did not elect to purchase under his valuation. A conceptually straightforward summary judgment motion became muddied when the other member disputed our client's standing as a member after the court dismissed its counterclaim. However, the parties came to terms before the dust settled following a motion to reargue the summary judgment motion.

Conversely, in a shareholder dispute highlighted by a breakdown of trust between the two 50% interest holding principals with only a voluntary (rather than a forced) buyout or mechanism in place to address potential misappropriation of corporate assets, the sole logical remedy remained a BCL Section 1104 dissolution (*Matter of Markopoulos*, No. 718319/2025 (Sup. Ct. Queens Co.)). As the election remedy of BCL Section 1118 remains unavailable in a dissolution under Section 1104, the petitioner filed without the fear that his shareholder partner could use his petition to purchase his interest in the business. Here, cooler heads prevailed and the respondent's selection of competent counsel led to a swift settlement of

the action. The outcome in this matter, while optimal under the circumstances, stood to benefit from an enforceable forced buyout provision. If the shareholder agreement presented the client with the opportunity to buy out his partner upon certain conditions outlined in the petition for dissolution, with a binding arbitration provision, the company could avoid the risk that its clients would learn of the upheaval at the top.

### *Executing an enforceable buyout*

Working hand in hand across the relevant departments, the firm finalised the family's amendment to ensure the group and its portfolio's continued survival in the face of any anticipated adversity. Our team crafted a fair vehicle, with objective valuations and a triggering mechanism to avoid the pitfalls learned from experience and through research. The amended operating agreement contained express binding arbitration language, ensuring the parties' option to keep their issues outside of the courts. After explaining the new system in detail, the clients expressed relief that their vigilance guaranteed the survival of their grandparents' efforts. The potential issues of the next generation must take place within a new framework designed to continue the legacy of the original generation, give fair value to any aggrieved members, ensure leadership remains with the most capable, and keep drama out of the public eye. While predicting the cost savings for these particular clients requires omniscience, we can confidently report that the cost to prepare and execute the amendment to the operating agreement remained less than 1% of a hotly contested litigation and from that time forward all parties to the agreement and their successors maintain a better understanding of their rights and responsibilities vis-à-vis the buyout clause.

# USA – NORTH CAROLINA




## Trends and Developments

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**Jesson & Rains, PLLC** is a regional trusts, estates and business law firm with offices in Charlotte, North Carolina and Fort Mill, South Carolina, and attorneys licensed in North Carolina, South Carolina, Florida, Wisconsin and Illinois. The firm's approach goes well beyond document drafting. For example, in one recent engagement, the firm co-ordinated transfer documents for approximately 70 assets across four businesses, multiple real estate parcels and various financial accounts, with all documents executed on the same day as the estate plan. For families with minor children, the firm prepares supplemental documents, ensuring a child is never left in the care of social services during an emergency. Its Legacy Circle annual membership keeps clients' plans current and their families prepared. Jesson & Rains has been ranked by Chambers and Partners in the USA: Spotlight Guide for North Carolina Trusts & Estates in 2025 and 2026.

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## Estate Planning in a Shifting North Carolina Landscape: Trends, Technology and the Case for Relationship-Centred Practice

### *Introduction*

The estate planning landscape in North Carolina is undergoing a meaningful evolution. Modern technology at the state court level, changes in federal tax laws, a landmark Supreme Court decision affecting business succession planning, and the increasing number of new residents who call this great state home are collectively reshaping the priorities of thoughtful estate planning.

At the same time, the commoditisation of legal documents through technology and AI has fundamentally shifted client expectations. Sophisticated clients today understand that documents can be produced by rapidly advancing technology, so in order for them to invest in legal counsel, they must receive thoughtful opinions, proactive consultation and ongoing relationships from their human lawyer.

For practitioners, these developments underscore a fundamental truth: technically proficient document drafting, while necessary, is no longer sufficient. The legal and market environments now reward firms that invest in ongoing client relationships and have deep familiarity with clients' personal, business and financial circumstances. This article examines the trends driving that shift and explains how our firm has structured its practice to respond accordingly.

### *The new priority is probate avoidance, and that requires an ongoing relationship*

#### *The erosion of probate privacy in North Carolina*

One of the most significant recent developments for North Carolina estate planning practitioners is the state's transition to an online probate court system. While probate court records were never "private", a person wanting to view a probate court file before 2025 would have to physically go down to the county courthouse, pull the file, and pay a fee to make physical copies on the county's copy machine in the file room. Now, North Carolina probate files are publicly accessible to anyone with internet access; wills admitted to probate, inventories of estate assets, including values, and the identities of beneficiaries, including whether they are over the age of 18, are now available for viewing via a simple search query. The only sensitive information that is redacted are dates of birth, social security numbers and bank account numbers. Not even addresses are safe.

While this firm has not yet seen any instances of fraud, it is just a matter of time. Whenever we record a deed for a client, form a business for a client or submit a trade mark application (all of which are online and publicly available for viewing), our clients receive spam mail from companies pretending to be the government, claiming that they need to pay a fee in order to get an official record (as an example). It is just a matter of time before some bad actor realises that it can scan the court filings and figure out what deceased person left a grieving surviving spouse with a large life insurance policy and start spamming them with mail or, worse, calling them or preying on their minor children.

This development has material implications for clients who previously relied on wills as their primary testamentary instrument. That might have accomplished that client's goals in the past, but if the client now has a goal of privacy (especially after being educated about the change in state court process), the will by itself will not do the trick. However, a properly drafted and funded revocable trust will achieve the client's privacy goal. The trust instrument itself is not filed with the court, and any assets titled in the name of the trust are not listed on any court inventory. Therefore, if the trust is fully funded, there may be no need for court-supervised probate at all.

#### *A changed federal tax environment*

In the recent past, sophisticated estate planning was organised around minimising federal estate tax exposure. It was not that long ago that the federal estate tax exemption was USD5.6 million (2017). Think about how many clients would be affected by this if the law were still in place, even adjusted for inflation. Now, with the federal estate tax exemption "permanently" at USD15 million per individual (since there is no sunset provision in the new law), plus adjustments for inflation, most clients no longer face federal estate tax exposure.

This shift has reoriented the goals of estate planning for many clients, including business owners and high net worth individuals who once required complex tax-driven structures. Where the primary concern

was once tax minimisation, it is now increasingly probate avoidance. Clients across a broader range of net worths are now well-served by trust-based structures, and the rationale for those structures no longer depends on tax savings alone.

One of the quiet failures of transactional estate planning is the assumption that a client's net worth determines what kind of plan they need. Many traditional estate planning attorneys are guilty of this thought process, sticking clients into a will-based plan or a trust-based plan based on net worth. However, these traditional lawyers could be doing their clients a great disservice.

A client's net worth is not a proxy for their planning goals; it is simply a data point. The decision of how much to invest in an estate plan, and what that plan should accomplish, belongs to the client. A firm should educate every client on the practical realities of probate, fiduciary administration and asset transfers, and then empower them to make informed decisions about how they want to proceed.

### *A trust that is partially funded does not avoid probate*

All practitioners know that the existence of the trust document alone will not achieve the goal of probate avoidance. The funding process – transferring titled assets into the trust, aligning beneficiary designations with the overall plan design, and ensuring that newly acquired assets are properly titled going forward – is where the plan becomes operational. Yet, many of us lawyers give the client a "to do" list and send them out the door after the trust is executed, never to be seen or heard from again. Those of us who do put in extra work and help the client get their existing assets transferred to the trust post-signing leave it up to the client to notify the lawyer of any life changes in the future.

True probate avoidance, as a planning goal, cannot be achieved through a transactional relationship. Assets change. Property is bought and sold. Financial accounts are opened and closed. A client who executes and fully funds their trust today may find, years later, that the bulk of their estate passes through probate anyway, not because the plan was poorly drafted, but because it was never properly maintained. Our firm addresses this directly through a structured funding meeting conducted after plan documents are executed, and through ongoing annual reviews that assess whether the asset picture has changed and whether the plan remains properly implemented. The goal of probate avoidance is only achievable if someone is paying attention over time. That requires an ongoing relationship, not a one-time transaction.

## *Business owner clients require deeper analysis*

### *The operational realities of a business owner's death*

Estate planning attorneys who work with business owners are, in effect, planning for two transitions simultaneously: the transfer of personal wealth and the continuity or orderly wind-down of a business enterprise. These two objectives are intertwined in ways that document-focused planning frequently fails to address.

One of the most immediate and under-appreciated practical challenges is the gap in fiduciary authority that arises at death. When a business owner dies with a will-based plan, an executor must be formally appointed by a probate court before that individual has legal authority to act on behalf of the estate (and thus the business). In North Carolina, in some of the busier counties, that appointment can take weeks or even months. However, a successor trustee has authority to act immediately upon the owner's death (although they must often wait approximately a week for a death certificate before dealing with third parties). For a business with employees to pay, vendors to manage, contracts to honour and banking relationships to maintain, the difference between days and weeks of fiduciary paralysis is not just inconvenient but can be materially damaging to the value of the very asset the plan is designed to transfer.

The operational challenges do not end there. In many cases, the existing business documents, such as operating agreements, banking resolutions and signature authority designations, do not contemplate the death of an owner and do not provide the successor with clear authorisation to act. Thoughtful estate planning anticipates these gaps and addresses them before they become crises.

### *SBA loans, personal guarantees and hidden liabilities*

Business owners frequently carry obligations that are not immediately visible in a review of their personal balance sheet but that can have significant consequences for their estates and their families. SBA loans, and other obligations that might be personally guaranteed, are a common example. Upon the owner's death, that personal guarantee becomes a claim against the estate. If the estate lacks sufficient liquid assets to satisfy the obligation, estate assets may need to be liquidated to address it, potentially disrupting the very inheritance the owner intended to leave behind.

The implications extend further. Many business owners pledge personal assets as collateral for business loans without fully appreciating the estate planning consequences of that structure. Sometimes, business owners will use assets titled in the name of the business for quasi-personal use (such as their daily vehicles) without thought as to the consequences their families must deal with at their death. This is precisely the kind of information that a transactional estate planning engagement is unlikely to expose. The ongoing client relationship is what creates the opportunity to ask those questions on a regular basis.

### *Connelly v United States and the life insurance question*

Against this backdrop of operational and liability complexity, the Supreme Court's 2024 decision in *Connelly v United States*, 602 U.S. 257 (2024), adds a layer of tax planning urgency that practitioners cannot afford to overlook. In brief, the Court held that life insurance proceeds received by a corporation to redeem a deceased shareholder's stock are an asset of the corporation includable in the company's date-of-death value. The practical effect of this ruling is that the estate tax value of a deceased owner's interest in the business may be valued much more than the pre-death fair market value, potentially increasing estate taxes and even North Carolina court fees if the business interest passes through probate (here, the court bases its fees on the value of the personal property passing through probate, and business interests are personal property).

Before *Connelly*, estate planners did not have to think much about life insurance owned by the business. Now, attorneys working with business owner clients must determine who owns the life insurance on each owner's life and assess whether the existing ownership structure creates a valuation problem. For higher net worth clients, the tax savings available through restructuring can be substantial. For business owner clients, the failure to ask these questions at all is no longer defensible.

### *What this means for practitioners*

Taken together, the operational vulnerabilities at death, the hidden liabilities in business financing and titling structures, and the valuation consequences created by *Connelly* make one point unmistakable: business owner clients require a fundamentally different level of engagement than the established standard of just drafting estate planning documents. They require an adviser who understands the business, stays current with their circumstances and brings a level of proactive analysis that a transactional model simply cannot support.

This is another area where the ongoing client relationship yields concrete, measurable value. A client who is in regular contact with their estate planning attorney is far more likely to mention a new business venture, a new insurance policy, a change in ownership structure or the addition of a business partner (not to mention, the attorney being more proactive about asking the questions). Otherwise, attorneys leave it up to the client to reach out, and the client does not know that these are triggering events that might affect their estate plan. This level of analysis is not a one-time exercise.

## *Planning for North Carolina families with minor children and the relationships that grow from it*

### *Documents that require ongoing attention*

Most estate plans just name a guardian for a minor child in a will, but this provision only kicks in when a guardian needs to be formally appointed by a court due to death or permanent incapacity. This leaves massive gaps that keep parents awake at night: what if the parent suffers a medical emergency while with their child? What if there is an emergency with the child while the parent is out of town? In addition to the core estate planning documents, it is advisable to draft medical powers of attorney for minors, to

carry emergency contact cards, to issue instructions to permanent guardians and to implement short-term guardian designations, so that, if there is an emergency, a child never has to be placed in the custody of social services until the permanent guardian arrives.

In the greater Charlotte region of North Carolina, this additional planning has great value. According to Census data released earlier this year, Charlotte added more people over the past year than any other US city. Many of these new residents are naming permanent guardians for their minor children who live many states away. In the event of an emergency, it may take their permanent guardian hours to reach their minor children. Naming a short-term local guardian who can take care of children until the permanent guardian arrives and is appointed, instead of children being placed in the care of social services, is critical.

With these additional documents comes the increased need for routine maintenance. The people named in the documents may need to change due to relocation, a relationship shifting, or maybe a named decision-maker is no longer the right person for the role. Keeping these designations current requires the same kind of ongoing attention that trust funding and beneficiary designations demand, and is another reason why the transactional model of estate planning serves families with young children poorly.

### *The relationships that grow naturally from good planning*

The ongoing client relationship does more than keep a plan current: it creates the conditions under which problems are identified and solved before they become irreversible issues. When clients are in regular contact with their estate planning attorney, the natural rhythm of those conversations uncovers planning needs that might otherwise go unaddressed.

A child turning 18 is one of the most common examples. In a transactional model, that milestone may pass without notice. In an ongoing relationship, it comes up, either because the attorney asks or notices, or because the parents know to raise it, having been educated on its significance. A young adult leaving for college or entering the workforce for the first time has no powers of attorney, no healthcare directive and no ability to authorise a parent to act on their behalf in a medical emergency. That gap can be closed quickly and inexpensively when the relationship exists to surface it.

The same dynamic applies to aging parents. Clients who are engaged in their own planning often arrive at a point where they recognise that their parents have not done the same work, or that plans made years ago no longer reflect current circumstances. Because the relationship is already there, that conversation happens naturally. The attorney who already knows the family is well positioned to help identify what needs attention, explain the consequences of inaction, and assist the family in getting things in order.

This is the compounding value of a relationship-centred practice. Each conversation creates context. Each life change, when shared, becomes an opportunity to add value. The goal is not simply to keep clients connected to the firm: it is to ensure that the people who have trusted such firm with their planning are never caught off guard by something the firm could have helped them anticipate.

### *Conclusion*

The convergence of North Carolina's online probate system, a fundamentally changed federal tax environment, the implications of *Connelly* for business owner clients, and the need for creative guardianship planning for North Carolina's new residents and their minor children has made estate planning more complex and more consequential for a broader population of clients than at any point in recent memory. Practitioners who continue to operate as transactional document drafters will find themselves increasingly ill-equipped to serve those clients well.

The firms that will distinguish themselves in this environment are those that know their clients deeply, maintain those relationships over time, and bring relevant legal developments to clients proactively before problems arise, rather than deal with them after. An estate plan is not a product delivered at signing: it is a living framework that must be implemented, maintained and ultimately executed by people who understand it. Building a practice around that reality is not just a competitive differentiator but is what the work actually requires.

# USA – PENNSYLVANIA




## Trends and Developments

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**Fitzpatrick Lentz & Bubba, PC**

**Fitzpatrick Lentz & Bubba, PC** is a full-service Pennsylvania law firm with nearly 50 attorneys advising businesses, financial institutions, developers, municipalities, non-profits and individuals across the Commonwealth. From offices in Allentown and Easton, the firm provides counsel in corporate, banking and finance, real estate, litigation, labour and employment, trusts and estates, tax, environmental, land use, construction and other key practice areas. Its multidisciplinary energy and infrastructure group draws on attorneys from these practices to guide clients through the full life cycle of development and infrastructure projects, from site selection, acquisitions and financing through zoning, permitting, utility coordination, construction and dispute resolution. The firm regularly represents clients in matters involving industrial and mixed-use development, warehousing and logistics, energy facilities, utility infrastructure, telecommunications, manufacturing and commercial real estate, providing practical counsel on the legal and business issues that shape investment and development throughout Pennsylvania.

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## Infrastructure and Industrial Opportunities: Pennsylvania's Next Development Cycle

As the information age evolves, e-commerce grows and the United States renews its focus on industry and manufacturing, Pennsylvania is attracting renewed interest from companies and developers seeking land, infrastructure and market access in one location. The strongest activity is coming from uses that are often grouped together but place very different demands on a site, including data centres, distribution and logistics, pharmaceutical and life sciences manufacturing, advanced manufacturing, and, in some markets, transit-oriented or walkable development and redevelopment.

These uses are not interchangeable. A warehouse project turns on addressing highway access, truck circulation, labour, grading, stormwater and traffic. A data centre starts with power, redundancy, fibre and cooling. Pharmaceutical and advanced manufacturing users may focus first on water, wastewater, process utilities, environmental controls and workforce training. Mixed-use or transit-oriented development raises different questions about planning, housing demand, parking, transit access and walkability.

Pennsylvania remains intensely competitive because of the availability of these inputs. The Commonwealth sits between the Midwest and the Northeast Corridor, with highway, port and rail networks that support distribution and manufacturing. For data centres and other power-sensitive uses, generation capacity, transmission access and fibre routes keep Pennsylvania in the conversation. For life sciences and advanced manufacturing, older industrial sites, water resources, universities, community colleges and technical training programmes give several regions a strong workforce and infrastructure base.

The advantage is not that every site is shovel ready, but rather that, in many places, land, power, water, transportation, workforce, connectivity and approvals can be assembled into a workable project.

## The Site-Selection Question Now Supplemented

The old threshold questions do still matter. Buyers care about acreage, price, location, zoning, taxes and incentives. Those issues now sit beside a more practical one: can this site support this use on the required timeline?

The answer depends primarily on the particular use. For logistics, the early issues may be access, off-site road improvements, truck circulation, grading, stormwater and municipal fatigue with warehouse development. For a data centre, the deal may hinge on available electric service, required upgrades, utility study timing, cooling, water, backup power and, increasingly, community acceptance. For pharmaceutical or advanced manufacturing, diligence may turn on water supply, wastewater treatment, discharge limits, process utilities, clean manufacturing space, environmental controls and workforce training. For redevelopment, the focus may be title, easements, legacy contamination, parking, housing demand, public infrastructure and local planning goals.

Early sequencing can determine whether a project advances. A developer may need utility input before finalising site control. A lender may want comfort on permits and service commitments before closing. A municipality needs to understand the impacts on traffic, water, stormwater and emergency services before hearings and public meetings begin. Long-lead equipment, utility upgrades, highway occupancy permits and land development approvals each move on their own schedule.

Pennsylvania's local approval structure adds another layer. Land use is municipally regulated, so a project of regional importance will depend on the ordinance, hearing schedule and political climate of one township, borough or city. A use that fits one municipality may face different definitions, conditions or community expectations in the next. That local variation is not a reason to avoid Pennsylvania, but it is a reason to do the municipal outreach early.

The best site is not always the cheapest or the largest; it is the site where the team can identify constraints, price the improvements, allocate risk and secure approvals without losing the business case. A property that looks ordinary on a map may be more valuable than a larger tract if it offers a clearer path to power, water, access, zoning and construction. Con-

versely, acreage and location can lose value quickly if the infrastructure answer is uncertain.

Use-specific infrastructure planning is now part of the deal's front end. It affects site control, purchase agreements, financing, incentives, construction scheduling and the public process. The projects that move are likely to be the ones that ask the harder questions before the commitment to a location is adversely impacted by economic constraints.

### Large Loads, Power and Project Risk

For large-load projects, power diligence is no longer a macro conversation about whether Pennsylvania produces enough electricity. It is a micro, site-specific inquiry: which utility serves the property, what load can be served, what upgrades are required, how long the studies will take and what commitments the customer must make before service is available.

That matters most for data centres, but it is not limited to them. Advanced manufacturing, cold storage, heavy industrial users and some life sciences projects can also create electric loads that affect site economics. The business issue is not only whether power can be delivered, but also who pays for the infrastructure, who bears the delay risk, what is the impact on other rate payers if the project goes forward and what happens if the project is reduced, delayed or abandoned after the utility has begun planning around it.

PJM Interconnection (PJM) co-ordinates the movement of electricity through all or parts of Pennsylvania, Delaware, Maryland, Ohio, nine other states and the District of Columbia. Its long-term forecast underscores the essential nature of power allocation, with its 2026 forecast projecting that summer peak demand in the PJM footprint could rise by roughly 85,000 MW over 15 years, to more than 241,000 MW. PJM has also been reviewing large-load requests more closely, in part to separate credible projects from duplicative or speculative load estimates. The demand is real, but not every announced data centre or large-load project will be built.

The regional supply question remains unresolved. PJM has warned that this region could fall short of required reserves beginning in 2027 if demand grows faster than new generation, transmission, demand response and other resources can be brought online. There is disagreement over timing and severity, but the issue is now part of development planning. For very large users, the power strategy may need to include on-site or nearby generation, power purchase agreements, storage, curtailment rights or demand-response commitments.

Pennsylvania's Public Utility Commission (PUC) has moved into this discussion through its large-load model tariff framework. The framework generally applies to customers above 50 MW individually or 100 MW in the aggregate. It addresses cost responsibility, financial security, study timing, contract terms, exit provisions, queue transparency and self-construction options. The PUC's role differs from PJM's role in regional reliability and interconnection, but both will now determine whether a large-load project in Pennsylvania can be financed and built.

For developers and users, the practical answer is to treat power as a critical, even gateway, deal term rather than a utility follow-up. Service commitments, upgrade costs, deposits, minimum-load obligations, termination rights and construction sequencing should be addressed while the project still has leverage and optionality. Waiting until after site control is locked down can mean the project has to negotiate around constraints it should have discovered and priced earlier.

### Water, Wastewater and Stormwater

Water and wastewater deserve the same early attention. For pharmaceutical manufacturing, food and beverage, healthcare, advanced manufacturing and some data centre cooling strategies, capacity can be as important as electric service. A site may need an authority commitment, a private system, pretreatment, discharge approvals, line extensions or plant upgrades before it can operate as planned.

These issues can quickly become community issues. A municipality or authority may support economic development but still worry about system capacity, ratepayer impacts, treatment obligations and the timing of public improvements. A project that will draw heavily from local water or wastewater infrastructure

needs a clear story about demand, discharge, funding, long-term operations and mitigation.

Addressing stormwater is an underappreciated constraint. It affects the development of warehouses, data centres, manufacturing, solar, mixed-use redevelopment and ordinary commercial projects. In Pennsylvania, it often sits at the centre of municipal and county land development review, state permitting, site engineering and neighbourhood concern. Stormwater can affect usable areas, grading costs, building and parking layout, and the approval schedule.

Public investment reflects both the need and the opportunity related to water use. In 2025, PENNVEST announced a USD547.1 million funding round for drinking water, wastewater, stormwater and non-point source projects across Pennsylvania.

That investment helps to modernise systems, but it does not replace project-level diligence. A developer still has to know whether the specific authority, plant, pipe, pump station or receiving stream can support the project in question.

### Solar as the Cautionary Example

Solar remains part of Pennsylvania's energy and land use picture, but it is no longer the straightforward growth story it might have appeared to be in some markets. Utility-scale solar still has demand, particularly as large users and public entities look for renewable power options. At the same time, many projects now face a harder path through local zoning, agricultural land concerns, interconnection limits, decommissioning obligations and public opposition.

That does not make solar irrelevant or a mistake, but it does make it a cautionary tale. A use can be favoured by market demand and still slow down when municipal ordinances, local planning goals and public expectations have not caught up. Pennsylvania's Department of Environmental Protection recognises the role of local governments in solar siting, including zoning and land use review for grid-scale projects. Similar local questions are now appearing around battery storage, data centres, substations, transmission lines and other infrastructure-heavy uses.

The lesson is simple: public need does not eliminate local review. A project that looks compelling at the state, regional or utility level may still have to answer municipal-level questions about traffic, farmland protection, noise, viewshed, emergency services, stormwater and future land use. The best projects anticipate that tension instead of treating it as a late-stage communications problem.

### Pennsylvania's Local Approval Layer

Pennsylvania's land use structure is one of this market's defining features, particularly for developers more familiar with county-led approval systems. Maryland offers a useful East Coast comparison. It has about 6.3 million residents and 24 primary local jurisdictions: 23 counties and Baltimore City. Pennsylvania has about 13.1 million residents, but land use approval often drops below the county level to one of 2,560 municipal corporations. Roughly 1,603 of those municipalities have adopted their own zoning ordinances. Another 137 are covered by county zoning, and 821 have no zoning at all. The result is a far more localised approval map.

County review still matters in Pennsylvania, but it usually does not replace municipal review. Municipal zoning takes precedence over county zoning, and a municipality can displace county zoning by adopting its own ordinance. The same local-first pattern often appears in subdivision and land development reviews. Even where there is no zoning, a project may still need subdivision and land development approval, stormwater review, sewage planning, highway access approvals, environmental permits, building code review and utility co-ordination. "No zoning" can mean no zoning district or conditional use process; it does not mean no land use hurdles.

There can be real variation from one municipality to the next. A use permitted by right in one place may require conditional use approval, a special exception, a variance or a zoning text amendment elsewhere. Definitions matter, too. A local ordinance may not clearly account for a data centre, battery storage facility, fulfilment centre, life sciences manufacturing use or accessory generation facility. When that happens, the approval process can become the place where the use is effectively defined.

Traffic is often the flashpoint. Municipal officials and residents may want road improvements that address regional traffic patterns, not just traffic from a single project. But the approval process does not always allow every desired improvement to be imposed on a developer. Some work requires PennDOT involvement; some depends on the municipality's subdivision and land development ordinance; and some must be negotiated rather than required. That distinction should be clear before the first public meeting.

Early municipal work matters. The project team should understand the comprehensive plan, zoning ordinance, subdivision and land development ordinance, the hearing process, the risk of appeals and likely community concerns before committing deeply to a site. In Pennsylvania, local approvals are not a box to check after the business terms are settled: they are part of the business terms.

### The Lehigh Valley as a Regional Example

The Lehigh Valley shows how the pieces can come together. The region has long benefited from its location between New York and Philadelphia, its highway and rail network, its industrial base and its labour pool. Those advantages still matter. They are now being paired with life sciences, manufacturing, logistics, healthcare, higher education, downtown reinvestment and redevelopment.

Lehigh Valley Economic Development Corporation (LVEDC) reported that the Lehigh Valley economy reached USD57.3 billion in 2025, and that the region ranked as the No 1 mid-sized US market for new economic development projects. Those figures do not make the region immune to land constraints, traffic concerns or public resistance, but they do show why site selectors keep returning to places where transportation, utilities, workforce and approvals can be assembled with some confidence.

A prime example is a recent project in which Fitzpatrick Lentz & Bubba, is working with Eli Lilly to develop a pharmaceutical manufacturing campus in Lehigh County. Public statements from the company and the Commonwealth describe a planned USD3.5 billion investment, at least 850 permanent jobs and approximately 2,000 construction jobs. The important point is not only the size of the investment: it is the mix of factors behind the site decision, including industrial land, access, utilities, incentives, workforce development and a co-ordinated approval path.

Other regions of Pennsylvania will tell the story differently. Some will compete through energy and land; others through universities, medical systems, ports, rail, legacy industrial sites or downtown redevelopment. The common thread is not that every region has the same assets; it is that the most competitive regions can match the right assets to the right use and move the project through approvals without losing the schedule.

### Project Delivery: Where the Business and Legal Work Meet

These projects do not move through one legal lane. A single development may involve real estate, land use, energy, environmental, tax, finance, construction, utility, incentives and eminent domain issues simultaneously. Treating those as separate workstreams can create gaps in timing and risk allocation.

The better approach is to organise the work around the project's actual sequence. Before site control, the team should know whether the use is allowed, whether utilities can serve it and whether access is feasible. Before closing, the team should understand easements, title, environmental conditions, public approvals and financing conditions. Before construction, the team should have a realistic path through permits, utility commitments, procurement and public improvements.

The questions worth answering early are practical ones.

- Can the project obtain the utilities and access it needs, including power, gas, water, wastewater, broadband, roads and rail, where relevant?
- Does the zoning ordinance support the use, and what approvals or ordinance changes are required?
- What off-site improvements, easements, right-of-way or utility upgrades are needed, and who will pay for and obtain them?
- Is there a viable workforce, including training support through universities, community colleges,

career and technical schools or employer-funded programmes?
- What stormwater, environmental, title, mineral, access or legacy-site issues could affect design or timing?
- Are incentives available, and do they impose investment, job, reporting, infrastructure or community benefit obligations?
- What opposition, appeals, neighbour claims or operating issues are foreseeable?

Those are legal questions, but they are also business questions. They determine whether the project can be financed, approved, built and operated without the schedule or cost structure breaking down.

### Outlook

The next year is likely to be a period of filtering. Developers and users will continue to pursue sites, but more attention will shift to utility capacity, water and wastewater, transportation access, zoning, municipal appetite and the approval path. For data centres and other large loads, power availability and utility study timing will remain gating factors. For logistics and industrial projects, traffic, land supply, stormwater and community reaction will continue to separate workable sites from difficult ones.

Over the next few years, more announced projects will either enter visible development or fall away. The projects that move forward will become visible in the form of substations, utility upgrades, water and wastewater improvements, road work, fibre extensions, redevelopment activity, generation and storage projects, and public hearings. The projects that stall will often do so because a utility study took too long, a road improvement became too expensive, a zoning appeal changed the schedule, financing tightened, or local opposition made the business case harder to defend.

Pennsylvania should be well positioned in this cycle, but the opportunity is not automatic. The Commonwealth has location, energy, water, industrial history, transportation, workforce and redevelopment capacity. It also has aging infrastructure, local land use variation, power delivery constraints, warehouse fatigue in some communities, water and stormwater pressure, and a public approval process that can become contested.

The projects that succeed will be the ones that do the hard work early. They will match the use to the site, test the infrastructure, understand the local ordinance, price the improvements, secure the necessary rights and build a credible public record. In this market, Pennsylvania's advantage is not just its assets: it is that, in the right places, those assets can still be assembled into a project that works.

# USA – TEXAS




## Trends and Developments

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**Phelps Dunbar LLP** has 18 office locations across the USA and in London. The firm serves clients in the region's major commercial centres. Its more than 450 lawyers focus on six core areas: labour and employment, litigation, business, admiralty, insurance coverage and healthcare. But it is more than its casework that sets the firm apart. The firm is known for asking questions not only about what is, but what should be. It ensures clients can access its experience seamlessly, with every lawyer in every office available to contribute as part of their team. This approach reflects the firm's belief that anything can make the difference in a business-critical deal or lawsuit.

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## Doing Business in Texas in 2026: Courts, Capital, and Capacity

Texas has established itself as a leading business-friendly jurisdiction in the United States. According to the Texas Economic Development & Tourism Office, Texas continues to attract businesses due to its business-friendly climate, absence of corporate or personal income tax, skilled and diverse workforce, accessible global markets, strong infrastructure, and reasonable regulatory environment. However, in 2026, Texas is moving beyond size, growth, and political branding by building a comprehensive business-law ecosystem. This includes specialised courts for high-value commercial disputes, updates to corporate-governance law, new capital markets infrastructure, advanced power and infrastructure planning, and support for emerging industries such as commercial space, artificial intelligence infrastructure, energy expansion, and advanced manufacturing. For companies considering Texas, the opportunities are significant, but so are the diligence requirements. Growth alone no longer defines Texas; legal, governance, energy, and dispute resolution planning must now be addressed early in any Texas investment.

### *A new forum for high-risk business disputes*

One of the most important legal developments for companies doing business in Texas is the creation and continuing refinement of the Texas Business Court and the Fifteenth Court of Appeals. Together, they represent a structural change in how Texas will handle many high-stakes commercial disputes. The Business Court is a specialised trial court for certain commercial disputes. It does not replace Texas district courts, nor does it hear every business case. Its importance lies in the types of disputes it is designed to handle: high-value commercial matters, governance disputes, fiduciary-duty claims, significant business transactions, and other matters that can benefit from judges focused on complex business litigation. For parties entering Texas transactions, this development changes initial planning. Forum selection clauses, venue provisions, governing-law clauses, jury-waiver provisions, arbitration clauses, and entity-governance documents should be reviewed with the Business Court in mind. Companies should not assume disputes will automatically be heard in the Business Court, nor should they overlook its likely influence. In appropriate cases, access to a specialised business forum may influence litigation strategy and settlement leverage. The Fifteenth Court of Appeals is equally important. Appeals from the Business Court follow a specialised appellate path. Over time, that should help create a more coherent body of Texas commercial-law precedent. That is significant in a state where large commercial disputes historically moved through different intermediate appellate districts, creating the possibility of uneven treatment among regions. As with any new court, some initial uncertainty is expected. Parties are testing the limits of jurisdiction, removal, remand, venue, and amount-in-controversy requirements. This uncertainty should prompt careful drafting, pleading, and planning, rather than avoidance of the forum. For businesses, dispute-resolution strategy in Texas now starts before litigation. It should be considered during contract drafting, entity formation, governance updates, and when determining where and how prospective disputes will be resolved.

### *Corporate-governance modernisation and the Texas redomestication pitch*

The Business Court is just one aspect of Texas's expanded strategy. The state has also enacted substantial changes to its business-organisation laws, striving to make Texas more attractive for operating, forming, governing, and potentially redomesticating business entities. Recent amendments to the Texas Business Organizations Code address issues that matter to directors, officers, shareholders, investors, and litigation counsel. They include provisions concerning internal entity claims, exclusive Texas forum provisions, jury-waiver provisions in governing documents, derivative proceedings, director independence, officer and director liability, and the treatment of certain shareholder-litigation practices. These changes reveal a national competition for corporate charters, headquarters, and investment. While Delaware remains the leading corporate law jurisdiction, Texas is making a direct appeal to corporations and investors. For companies with significant operations, capital, or litigation in Texas, and growing access to Texas-based exchange infrastructure, Texas corporate law should be part of strategic planning. The most immediate impact is on corporate planning. Boards and management teams of Texas entities should

review their governing documents to ensure compliance with the new statutory environment, including exclusive-forum provisions, jury waivers, indemnification and exculpation clauses, derivative-action procedures, shareholder-meeting mechanics, and approval thresholds for significant transactions. Public companies have additional considerations. Texas now allows certain nationally listed corporations to opt into stricter requirements for shareholder proposals. These provisions may appeal to companies concerned about shareholder activism, environmental or social proposals, or proxy-season costs, but call for careful analysis. Investor expectations, exchange rules, federal securities law, proxy-advisory firm positions, and shareholder-relations strategy remain important. Not every company should become a Texas entity, but the question is now more relevant than ever. Texas is moving beyond branding and is building a legal infrastructure to compete for corporate decision-making authority.

### *Y'all Street and the rise of Texas capital markets*

The term "Y'all Street" reflects a genuine trend, despite being more of a slogan than a legal doctrine. Dallas, along with the broader Texas market, is increasingly positioned as a financial centre, supported by new exchange infrastructure and a growing capital markets presence. The Texas Stock Exchange is part of the state's effort to provide a Texas-based alternative in public markets. NYSE Texas has launched as a Dallas-based electronic equities exchange, and Nasdaq Texas now offers dual-listing functionality. These developments give Texas a more prominent role in public-company listing, trading, issuer relations, and corporate identity. A Texas listing option may affect investor communications, corporate governance choices, exchange compliance planning, shareholder proposal strategy, and the wider decision about whether to align a company's legal identity, operational headquarters, and public-market presence. These exchange developments complement the state's corporate-law reforms. Texas is pursuing an integrated approach including corporate law reforms, specialised courts, an appellate structure, exchange infrastructure, and a business climate designed for public companies, private equity sponsors, family offices, lenders, and emerging-growth businesses.

Texas is unlikely to replace New York as the centre of US capital markets or displace Delaware's dominance in public-company governance. However, companies now have more options, which should be evaluated strategically rather than by default. For companies with a significant Texas presence, new questions have become more prominent: should the company remain incorporated elsewhere or consider forming or redomesticating in Texas? Should it pursue a Texas-based or dual listing? Should the governing documents be updated to comply with Texas law? Should commercial contracts account for the Business Court? Should investor-relations teams be prepared to explain the benefits of a Texas-based governance structure? These questions go beyond legal considerations and intersect with finance, investor perspective, and business identity.

### *Power, data centres, and the new infrastructure diligence*

Texas's growth increasingly depends on the electric grid. While site-selection analysis has traditionally focused on land, labour, incentives, logistics, and taxes, many projects – especially data centres, advanced manufacturing, cryptocurrency facilities, hydrogen projects, and oil-and-gas electrification – now prioritise whether reliable power can be secured on a commercially viable timeline. ERCOT's long-term planning illustrates the scale of the challenge. Texas sees significant projected load growth, largely from data centres and other major electricity users. Even if not all proposed projects are built, large-load interconnection has become an important factor for economic development. The state has responded with a more organised process for evaluating large-load interconnection requests. ERCOT's Batch Zero process groups qualifying projects for collective study, permitting more coherent evaluation of demand, reliability, and transmission needs. This approach distinguishes mature projects from speculative ones and provides developers, utilities, and regulators with a clearer planning path. For companies, this shift affects deal diligence. Agreements for large Texas projects should not treat power as a routine utility condition. Power availability, interconnection status, transmission constraints, curtailment risk, private generation, behind-the-meter arrangements, water use, environmental permitting, and cost allocation may all be

material considerations. Lenders and investors face similar concerns. Even with a strong site, sponsor, and incentives, a project may face considerable execution risk if power procurement is uncertain. Financing parties should assess the interconnection pathway, utility discussions, load forecast maturity, backup generation availability, and contractual allocation of delay or curtailment risk. Texas will likely remain attractive for data centres and other high-growth infrastructure projects due to its land, large power market, major technology customers, favourable business climate, and energy development tradition.

However, these advantages do not remove constraints, making disciplined diligence essential. Legal work on Texas infrastructure projects is becoming more integrated. Real estate, energy, environmental, tax, construction, finance, procurement, corporate, and litigation counsel must all understand the same project assumptions. The key issue is not only whether the project can be built, but whether it can be powered, connected, operated, and financed in line with the business plan. SpaceX's Starbase operations in South Texas provide a case study in how Texas approaches frontier industries. While most companies do not resemble SpaceX, Starbase demonstrates both the speed and complexity of disruptive projects in Texas. Commercial space activity involves multiple layers of law and regulation, including federal launch licensing, environmental review, public safety, land use, road and beach access, local government authority, infrastructure development, workforce housing, and community relations. Starbase also illustrates how private industrial projects can influence local governance and regional identity. The FAA's approvals for expanded Starship/Super Heavy launch activity demonstrate the importance of federal review, even in a state known for business-friendly policy. Texas may provide the local and political environment for rapid development, but a launch operator still depends on federal licensing, environmental analysis, and operational approvals.

For businesses in other sectors, the lesson is broader: Texas welcomes ambitious projects, but legal complexity persists. Advanced manufacturing, semiconductor, energy, carbon-capture, data centre, logistics, and aerospace projects all present multi-layered legal obstacles. Larger and more visible projects are more likely to attract scrutiny from regulators, communities, counterparties, competitors, and advocacy groups. Starbase also stresses the importance of local planning. Texas is not a uniform market; projects in different regions may face distinct political, labour, infrastructure, environmental, and community dynamics. While state-level policy is important, local execution often determines project success.

### *Privacy, data, and technology compliance as a cross-cutting issue*

Texas is emerging as an important regulator of privacy and technology. The Texas Data Privacy and Security Act applies to many companies doing business in Texas, providing products or services to Texas residents, or processing personal data. It grants consumers rights over their data and imposes obligations on businesses regarding notices, consumer requests, data security, sensitive data, and data protection assessments. This extends past traditional consumer-facing businesses. Data centres, software providers, financial services, healthcare-adjacent businesses, retailers, employers, marketing platforms, artificial intelligence developers, and technology vendors must assess whether and how Texas privacy law applies to their operations. Privacy compliance should be integrated into Texas expansion planning. Companies entering the Texas market should review consumer notices, vendor contracts, data-processing agreements, cybersecurity practices, biometric data practices, targeted advertising, sensitive data processing, and consumer-request workflows.

Recent enforcement actions by the Texas Attorney General have focused on failure to provide clear consumer notices, insufficient processes for responding to consumer requests, and inadequate safeguards for sensitive personal data, including biometric and health-related information. Common compliance pitfalls include failing to respond promptly to data subject requests, inadequate employee training in handling personal data, and insufficient documentation regarding data processing activities. Counsel should remain aware of evolving enforcement priorities and ensure that privacy programmes are regularly reviewed and tested to reduce enforcement risk. The key takeaway is that Texas's pro-business reputation does not equate to a lack of regulation. In privacy,

energy reliability, infrastructure, securities markets, and corporate governance, Texas is actively legislating and regulating. While its approach may differ from California, New York, or the federal government, it acts proactively.

### *Practical takeaways for companies entering or expanding in Texas*

Companies operating in Texas in 2026 should view the state as a strategic legal market, not just an operating location. Several considerations are increasingly important.

- First, companies should review governance documents. Texas entities and companies considering Texas formation or redomestication should evaluate forum-selection clauses, jury waiver provisions, derivative-action procedures, director and officer protections, shareholder proposal mechanics, indemnity provisions, and approval requirements for significant transactions.
- Second, companies should draft commercial contracts with a dispute forum in mind. The Texas Business Court and Fifteenth Court of Appeals should be part of the litigation-planning conversation for high-value commercial relationships, especially where governance, fiduciary duty, investment, acquisition, finance, or major commercial disputes may arise.
- Third, capital markets decisions should be integrated with corporate-governance decisions. Texas-based exchanges and dual-listing options may create opportunities, but they also require careful consideration of investor expectations, securities law compliance, public company governance, and communications strategy.
- Fourth, power and infrastructure diligence should move to the front of the project schedule. For data centres, manufacturing facilities, energy-intensive operations, and major real estate developments, power availability and interconnection risk may be as important as land, labour, and incentives.
- Fifth, privacy and technology compliance should be addressed early. Texas privacy law can apply to companies outside Texas that do business with Texas residents. Consumer data practices, vendor contracts, and data protection assessments should be reviewed before launch, not after a complaint or regulatory inquiry.
- Sixth, local execution matters. Texas affords notable opportunities, but projects often succeed or fail based on local infrastructure, permitting, community participation, workforce availability, environmental constraints, and political relationships.

### *Conclusion*

Texas remains an important business jurisdiction in the United States. However, in 2026, its story extends beyond population growth, relocations, and advantageous tax policy. The state is developing a more comprehensive business-law platform. The Texas Business Court and Fifteenth Court of Appeals are changing the dispute-resolution landscape. Corporate-law reforms are strengthening the state's pitch to boards, investors, and public companies. Texas-based exchange infrastructure is giving substance to the "Y'all Street" narrative. ERCOT's large-load planning reflects the reality that economic growth now depends on power capacity and transmission planning. Starbase shows how Texas can attract frontier industries while still calling for careful navigation of federal, state, and local law. Privacy regulations show that the state is willing to actively regulate in areas it considers important. For companies, the opportunities are considerable. However, success in Texas now requires more than simply establishing operations. The optimal approach is to align legal structure, governance, dispute planning, capital strategy, infrastructure diligence, and regulatory compliance from the outset. Texas is open for business. In 2026, success also depends on appreciating the legal infrastructure the state is building to support business activity.

# VIETNAM




## Law and Practice

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**VILAF** has been at the forefront of Vietnam's legal market for over three decades. The firm is widely recognised for advising foreign investors and institutions on their business activities in Vietnam, delivering high-quality, commercially focused legal solutions. With more than 100 lawyers, including 16 partners, VILAF offers expertise across a full range of practice areas, including banking and finance, corporate and M&A, dispute resolution, energy and infrastructure and real estate. Its internationally trained lawyers combine global standards with deep local insight, enabling the firm to handle complex cross-border transactions effectively. VILAF is particularly known for its strong M&A and corporate practice, supported by a large team of English-speaking lawyers and Chinese language capabilities. The firm consistently handles large, sophisticated matters under demanding timelines, with many partners recognised as leading lawyers in Vietnam.

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# 1. Legal System

## 1.1 Legal System and Judicial Order

### Overview of the Legal System

Vietnam's legal system is principally rooted in the civil law tradition, reflecting its historical development under French colonial rule. As a result, the legal framework is primarily founded on codified law. It mainly comprises primary legislation enacted by the National Assembly and subordinate legislation issued by the Government, ministries and other agencies. The Government plays a central role in law-making by proposing and drafting legislation, enacting and implementing regulations on key aspects of laws and publishing guidance on their practical application.

Vietnam has recently developed a case-law system under which the Supreme People's Court may select and designate certain portions of judgments as official precedents. These precedents are binding on Vietnamese courts when adjudicating cases involving similar legal issues. However, the system of precedent remains limited, with fewer than 100 officially recognised cases to date. The Supreme People's Court and the Supreme People's Procuracy also periodically issue internal guidance informed by higher-court decisions to promote consistency in the judicial approach to particular issues.

### Organisation of Judicial Order

#### *The People's Courts system*

Following a restructuring of the court system in 2025, Vietnamese courts are organised into a three-tier structure comprising the Regional People's Courts, the Provincial-level People's Courts and the Supreme People's Court:

- The Regional People's Courts serve as the principal first-instance courts for most criminal, civil, commercial, family and administrative cases. For certain specialised matters related to insolvency, rehabilitation, intellectual property and technology transfers, only some selected Regional People's Courts in Hanoi, Da Nang and Ho Chi Minh Cities with specialised court divisions will have the first-instance jurisdiction over such matters. These courts generally exercise jurisdiction over a broad geographical area spanning several wards, being the smallest administrative units in Vietnam.
- The Provincial-level People's Courts generally hear appeals from the Regional People's Courts. They also exercise first-instance jurisdiction over serious criminal cases and certain special matters, such as annulment of domestic arbitral awards.
- The Supreme People's Court, based in Hanoi, is the highest court in the judicial system and primarily handles cassation and retrial cases. It also has three Appellate Divisions in Hanoi, Da Nang and Ho Chi Minh City to hear appeals from the Provincial-level People's Courts.

#### *The IFC Specialised Court*

Notably, in early 2026, Vietnam established a new specialised court at the International Financial Centre located in Ho Chi Minh City ("IFC Specialised Court") to support the operation of Vietnam's newly

established International Financial Centre (with two hubs located in Ho Chi Minh City and Da Nang). The IFC Specialised Court has exclusive jurisdiction over most types of business and commercial disputes and matters where at least one party is a member of the International Financial Centre in Vietnam, provided that they do not involve public interests or the interests of the State. It was established as a self-contained dispute resolution mechanism with its own legal framework and procedural rules, many of which are derived from common law practice. Some notable features are:

- Foreign judges: Vietnamese and foreigners can be appointed as judges. They must have relevant expertise, at least 10 years' experience resolving investment and business disputes and sufficient English proficiency.
- English being the primary language: Proceedings shall be conducted and judgments issued, in English, either alone or together with a Vietnamese translation.
- More streamlined proceedings: There are only two tiers of proceedings and appellate judgments are final and not subject to cassation or retrial procedures. The Court may also issue default judgments and summary judgments. Proceedings may also be conducted by electronic means from case filing until trial.
- Case and cost management: The IFC Specialised Court has case management powers not available to the People's Court. These include conducting case management conferences and conducting pre-trial review. The Court may also allocate costs based on the outcome of the case, including reasonable attorney fees, which are generally not recoverable in traditional court litigation.
- Direct enforcement: Unlike ordinary court judgments and orders, which are enforced by the Civil Judgment Enforcement Agency, the enforcement of IFC Specialised Court judgments and decisions is overseen directly by designated judges, who may issue ancillary enforcement orders, including orders attaching property or earnings and third-party debt orders.

At present, the Supreme People's Court is in the process of developing the detailed Procedural Rules for the IFC Specialised Court.

## 2. Restrictions on Foreign Investments

### 2.1 Approval of Foreign Investments

Under Vietnamese laws, foreign investments into Vietnam are subject to a prior investment approval regime, as outlined.

#### Investment Policy Approval (IPA)

Certain investment projects must obtain investment policy approval before implementation due to their scale, sector, land use, national security impact or other regulatory sensitivities (Article 24 of the Law on Investment 2025).

#### Projects Subject to Approval by the National Assembly

The National Assembly has the authority to approve investment policies for projects that require special mechanisms or policies that differ from existing laws or National Assembly resolutions (Articles 24.20 and 25.1 of the Law on Investment 2025).

#### Projects Subject to Approval by the Prime Minister

The Prime Minister has authority over, among others:

- projects involving conversion of protected forests, watershed forests, border protection forests or production forests exceeding statutory thresholds;
- projects involving the conversion of two-crop rice cultivation land of 500 hectares or more;
- nuclear power plant projects;
- foreign-invested projects in telecommunications infrastructure, afforestation, publishing and press sectors; and
- casino and betting business projects (Article 24.1, Article 24.2, Article 24.4, Article 24.6, Article 24.7 and Article 25.2 (a) of the Law on Investment 2025).

The Prime Minister also approves projects involving large-scale resettlement and projects located within specially protected world heritage conservation areas (Article 25.2 (b) and Article 25.2 (c) of the Law on Investment 2025).

### Projects Subject to Approval by the Provincial People's Committee Chairman

The Chairman of the provincial People's Committee has authority over, among others:

- projects requiring land allocation, land lease or land use conversion;
- housing and urban development projects;
- golf course projects;
- airport, seaport and aviation transport projects;
- industrial park infrastructure projects; and
- projects implemented in areas affecting national defence or security (Article 24.8 through Article 24.18 and Article 25.3 (a) of the Law on Investment 2025).

The provincial authority also approves projects involving medium-scale resettlement and projects located within protected heritage areas outside the Prime Minister's authority (Article 25.3 (b) and Article 25.3 (c) of the Law on Investment 2025).

### Authority of Industrial Zone and Economic Zone Management Boards

For projects located within industrial parks, export processing zones, high-tech zones, concentrated digital technology zones or economic zones that are consistent with approved planning, the relevant management board has the authority to approve the investment policy (Article 25.4 of the Law on Investment 2025);

### Investment Registration Certificate (IRC)

Foreign investors and foreign investor equivalents, as prescribed in the Law on Investment regulations, must obtain an Investment Registration Certificate in the following principal circumstances:

- establishment of a new foreign-invested company to implement an investment project in Vietnam (Article 26.1 (a) of the Law on Investment 2025);
- implementation of an investment project by an economic organisation treated as a foreign-invested economic organisation under Article 20.1 of the Law on Investment 2025 (Article 26.1 of the Law on Investment 2025);
- implementation of investment projects under a business cooperation contract ("BCC") between:
  - a domestic investor and a foreign investor; or
  - foreign investors together (Article 22.2 of the Law on Investment 2025).

### Notification on Satisfaction of Capital Contribution, Share Acquisition or Acquisition of Capital Contribution in Existing Vietnamese Enterprises ("M&A Approval")

Vietnamese law permits investors to invest in existing Vietnamese enterprises through:

- capital contribution;
- share acquisition; or
- acquisition of capital contribution interests (Article 21.1 of the Law on Investment 2025).

These investment forms constitute the principal framework for mergers and acquisitions ("M&A") transactions involving foreign investors in Vietnam.

Foreign investors conducting M&A transactions in Vietnam must satisfy the following principal conditions:

- compliance with foreign investor market access conditions;
- compliance with national defence and security requirements; and
- compliance with land law restrictions applicable to land use rights in sensitive locations, including islands, border areas, coastal communes, wards and special administrative zones (Article 21.2 (a), Article 21.2 (b) and Article 21.2 (c) of the Law on Investment 2025).

Foreign individuals or organisations receiving shares or capital contributions through donations, inheritances, exchange contracts or other ownership transfer arrangements must also satisfy the same conditions as those applicable to foreign investor M&A transactions (Article 75.5 of Decree No. 96/2026/ND-CP).

### Member Registration or Recognition Certificate (MRC)

Organisations and enterprises may register as members of the International Financial Centre ("IFC") if they satisfy the applicable requirements on financial capacity, reputation and business activities aligned

with the IFC development orientation under Resolution No. 222/2025/QH15 and its implementing regulations (Article 10.1 of Resolution No 222/2025/QH15).

Certain qualified institutions may obtain member recognition without conducting formal member registration procedures. These include:

- financial institutions, investment funds or enterprises listed in the Fortune Global 500 ranking published by Fortune Magazine at the time of registration or their direct parent companies, excluding entities operating in banking, securities and insurance sectors; and
- domestic financial institutions ranked among the top ten enterprises by charter capital within their respective sectors, excluding banking, securities and insurance sectors (Article 10.2 (a) and Article 10.2 (b) of Resolution No 222/2025/QH15).

Except for specific regulated sectors, investors must establish a legal entity as an IFC member in accordance with the Resolution and implementing regulations (Article 10.3 of Resolution No. 222/2025/QH15).

Following issuance of the MRC, investment projects implemented by an IFC member are generally exempt from the IRC requirement. However, projects subject to IPA under the investment laws must still obtain the relevant IPA before implementation. In addition, projects operating in conditional business sectors remain subject to applicable sector-specific operating licenses or certificates of eligibility prior to commencement.

Other sector-specific licenses may apply depending on the nature of the investment. For example, a foreign contractor awarded a construction contract in Vietnam may obtain a construction operation license from the Ministry of Construction under the Law on Construction. In such a case, the construction operation license is generally sufficient to implement the relevant bid package without requiring a separate investment license.

## 2.2 Procedure to Obtain Approval and Sanctions for Non-Compliance

### IPA

Projects subject to IPA are generally implemented through a two-step process:

The first step is obtaining the IPA. IPA applications are submitted to:

- the Ministry of Finance, for projects subject to approval by the National Assembly or the Prime Minister;
- the provincial Department of Finance ("DOF"), for projects outside special-purpose zones; or
- the Management Board of industrial parks or economic zones, depending on project nature and scale (Articles 24 and 25 of the Law on Investment 2025).

The second step requires obtaining the IRC, following issuance of the IPA.

The statutory timeline is as follows.

- IPA issuance:
  (a) National Assembly approvals depend on the legislative session schedule and applications are generally required at least 60 days before the relevant session;
  (b) Prime Minister approvals: at least 38 working days; and
  (c) Provincial People's Committee approvals: at least 26 working days; and
- IRC issuance: following issuance of the IPA, the competent licensing authority will issue the IRC within five working days (Article 38.1 (a) of Decree No 96/2026/ND-CP).

For projects in which the investor has already won an investor selection tender or a land auction, the IRC is also issued within five working days of the investor's request being submitted (Article 38.2 of Decree No 96/2026/ND-CP).

Investment activities implemented without the required IPA may be subject to administrative penalties, mandatory post-filing obligations and suspension of the unlawful investment project. (Article 19.3 (a) of

Decree No. 122/2021/ND-CP and Article 35.2 (dd) of Law on Investment 2025)

### Investment Registration Certificate (IRC)

Projects subject to IRC but exempt from IPA are generally implemented through a two-step process.

The first step is obtaining the IRC. The investor submits one set of application documents to the competent investment registration authority. (Article 39.1 of Decree No 96/2026/ND-CP). The competent authority depends on the project location:

- the Management Board has authority for projects located inside industrial parks, export processing zones, high-tech zones, concentrated digital technology zones or economic zones (Article 27.1 of the Law on Investment 2025);
- the Department of Finance has authority for projects located outside such zones (Article 27.2 of the Law on Investment 2025); and
- for multi-province projects or those implemented both inside and outside industrial/economic zones, authority is determined by the location of the project operating office (Article 27.3 of the Law on Investment 2025; Article 36.2 and Article 36.4 of Decree No 96/2026/ND-CP).

Step two is obtaining an enterprise registration certificate ("ERC"). Following the IRC issuance, foreign investors will be required to submit an application dossier to establish an enterprise and obtain an ERC from the relevant provincial DOF.

Alternatively, under the new investment regime, foreign investors may establish the enterprise to obtain the ERC before obtaining the IRC, provided that the IRC is completed within 12 months of ERC issuance.

The statutory timeline is as follows.

- The IRC must be issued within 10 working days from receipt of a valid dossier if all statutory conditions are satisfied. (Article 39.3 of Decree No. 96/2026/ND-CP)
- The ERC must be issued within 3 working days from receipt of a valid dossier.
- Foreign investors commencing investment activities without obtaining the required IRC:
  (a) will be subject to an administrative penalty;
  (b) will be required to submit for the IRC; and
  (c) may even face suspension of the entire unlawful investment (Article 19.3 (a) of Decree No 122/2021/ND-CP and Article 35.2 (dd) of Law on Investment 2025).

### Special Investment Procedure

Under the Law on Investment 2025, foreign investors may elect to apply the special investment procedure for projects located in:

- industrial parks;
- export processing zones;
- high-tech zones;
- concentrated digital technology zones;
- free trade zones;
- international financial centres; and
- functional zones within economic zones (Article 28.1 of the Law on Investment 2025).

Under this mechanism, the project is exempt from several pre-approval procedures, including:

- investment policy approval;
- technology appraisal;
- environmental impact assessment procedure;
- detailed planning procedure; and
- construction permit procedure (Article 28.2 of the Law on Investment 2025).

However, the investor must provide written commitments regarding compliance with construction, environmental and fire prevention regulations (Article 28.2 of the Law on Investment 2025).

Before construction commencement, the investor must submit a commencement notice and supporting technical documents to the competent authorities (Article 28.3 of the Law on Investment 2025).

#### *Consequences of non-compliance*

Investment activities undertaken without the IRC may be subject to administrative penalties, mandatory post-filing obligations and suspension of the unlawful investment project (Article 19.3 (a) of Decree No

122/2021/ND-CP and Article 35.2 (dd) of the Law on Investment 2025).

### M&A Approval

To complete a M&A transaction subject to M&A Approval, foreign investors will need to undergo a two-step process with the provincial DOF.

The first step requires obtaining M&A approval, followed by the second stepc ompleting post-transaction registration changes. Step one will generally take 10 working days or 17 working days for transactions involving land in national defence or security-sensitive areas. Step two will take three working days.

Transactions completed without the required approval may not be legally recognised and may be subject to administrative penalties.

### MRC

The procedure requires submitting an application dossier for IFC's member registration or recognition with the IFC's Operating Authority. Following the issuance of an MRC, the IFC's Operating Authority assigns a unique identification number (with equivalent validity to an enterprise registration number).

It takes seven working days for registration and five working days for recognition from the date of receipt of a complete application dossier (Article 4 of Decree 324/2025/ND-CP).

The only risk regarding compliance is that the entity will not qualify for IFC membership.

## 2.3 Commitments Required From Foreign Investors

In practice, the licensing authorities assess not only the legality and feasibility of the proposed investment project, but also the foreign investor's financial capacity, implementation capability and compliance commitments. Approval is generally conditional upon the investor satisfying the statutory investment conditions and undertaking to comply with applicable Vietnamese laws throughout the project lifecycle.

Under Article 39.3 of Decree No 96/2026/ND-CP, key commitments and conditions commonly required include:

- the investment project must not fall within prohibited business sectors;
- the investor must have a lawful project location or a lawful right to use the proposed site;
- the project must comply with applicable master planning, zoning and land use requirements;
- the investor must satisfy applicable foreign ownership limitations and market access conditions for conditional sectors; and
- the project must satisfy technology, environmental, fire prevention and national security requirements where applicable.

In addition, foreign investors are generally expected to commit to implementing the project in accordance with the registered investment objectives, implementation schedule and investment capital contribution timeline. For conditional business sectors, investors may also be required to obtain additional operational licenses or approvals after establishment.

For projects implemented under the special investment procedure, investors are also required to provide written undertakings confirming compliance with construction, environmental protection and fire prevention regulations prior to project implementation.

## 2.4 Right to Appeal

Foreign investors may challenge a refusal decision or other adverse administrative decision issued by the competent investment authority through administrative complaint procedures or court proceedings in accordance with the Law on Administrative Procedures.

In practice, however, judicial challenges against investment licensing decisions are relatively uncommon, as the process may be time-consuming and the likelihood of overturning the authority's decision is generally limited.

Before issuing a formal rejection, the licensing authorities commonly offer investors the opportunity to amend, supplement or restructure the proposed

investment project and application dossier to align with Vietnam's foreign investment conditions and regulatory requirements.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

Vietnam's Law on Enterprises recognises four principal forms of enterprise: limited liability companies, joint stock companies, partnerships and private enterprises. In practice, the two most prevalent corporate forms are the limited liability company (LLC), which can be owned by between one and 50 members and the joint-stock company (JSC), which must have at least three shareholders but is not subject to any limitation on the number of its shareholders.

#### Limited Liability Company

An LLC may be established as either a single-member LLC or a multiple-member LLC.

A single-member LLC has one owner, which may be an individual or an organisation. A multiple-member LLC has two to 50 members. An LLC is a form of company that cannot issue shares but issues equity interests in its charter capital to its "members," who have an interest in and limited liability for the charter capital pro rata to their capital contributions.

There is no general statutory minimum charter capital, although minimum capital requirements may apply in certain regulated sectors, eg, banking, insurance or securities.

Transfers of capital interests in an LLC are more restricted than transfers of shares in a JSC. In a multiple-member LLC, existing members generally have statutory preemptive rights before a capital interest may be transferred to a third party.

An LLC is typically suitable for circumstances where the parties prefer a simple company form with a limited number of investors and tighter control over changes in ownership (eg, wholly owned subsidiaries, greenfield projects, holding companies and closely held joint ventures).

#### Joint Stock Company

A JSC is a form of company which can issue shares in different classes and must have at least three shareholders. There is no statutory maximum number of shareholders. If a JSC has more than 100 voting shareholders or has made an "initial public offering" via mass media, it may become a "public company" and therefore be subject to higher disclosure and other requirements under securities regulations. Similar to an LLC, a JSC also offers shareholders limited liability to the extent of their contributed capital.

There is no general statutory minimum charter capital, subject to sector-specific requirements. Shares in a JSC are generally more freely transferable than capital interests in an LLC (except for certain limitations on founding shareholders for the first three years or restrictions on the company's charter agreed by shareholders).

This form is best suited for businesses with multiple investors and/or that need greater flexibility to raise additional capital, as well as companies intending to become public or listed.

### 3.2 Incorporation Process

The incorporation process may vary depending on whether the proposed company is domestically owned or foreign-invested.

For a domestic company initially incorporated by Vietnamese investors, incorporation generally requires an application for an Enterprise Registration Certificate (ERC) submitted to the competent business registration authority. The statutory processing timeline is three business days from submission of a valid application.

For a foreign-owned company initially incorporated by the foreign investor and/or foreign equivalent investor, such investor will generally first need to obtain an Investment Registration Certificate (IRC) for the "investment project," followed by an ERC for the company implementing such investment project or *vice versa*.

In practice, a straightforward domestic company may be established within one to two weeks, while

a straightforward foreign-invested company typically takes four to eight weeks, depending on the project scope, business lines, foreign ownership conditions, location and authority review.

After incorporation, both domestic- and foreign-invested companies must complete post-licensing matters, including:

- opening a bank account;
- obtaining a company seal;
- contributing charter capital; and
- (where applicable) obtaining sector-specific sublicences or operational permits.

## 3.3 Ongoing Reporting and Disclosure Obligations

Generally, private companies in Vietnam may be subject to ongoing corporate, tax, accounting and, where applicable, investment reporting obligations.

### Changes in the Enterprise Registration Information

A company must register or notify the competent business registration authority of changes in its enterprise registration information, such as its company name, head office, charter capital, legal representative, owner or members/shareholders in certain cases and its business lines. Certain enterprise registration information will also be available through online public searches on the National Business Registration Portal, a centralised national portal that provides basic corporate information of all companies incorporated in Vietnam.

Amendments to the company charter are generally approved internally by the relevant corporate body, but where the amendment results in any changes in registered enterprise information (eg, legal representative or charter capital), the corresponding change must be registered or notified to the business registration authority.

### Changes in the Investment Project

A company with the IRC must conduct procedures to amend its IRC if any amendment to the investment project changes the contents of the IRC..

### Accounting

Annual financial statements must be prepared and approved in accordance with the company's governance rules and filed with the competent authorities within the statutory timeline, generally within 90 days from the end of the annual accounting period. If the company is subject to statutory audit requirements, its annual financial statements must be audited by an independent audit firm before being disclosed and submitted to the state authorities.

For reference, under the laws, foreign-owned entities, credit institutions, financial institutions, insurance-related enterprises, public companies, securities trading organisations and other large-scale enterprises must be audited at least once a year by an independent audit firm.

### Tax Filling

A company is generally required to submit tax declarations to the competent tax authority on a monthly, quarterly, annual or transaction-by-transaction basis, depending on the relevant tax and circumstances. Value-added tax and personal income tax are generally declared monthly or quarterly, while corporate income tax (CIT) is generally paid provisionally on a quarterly basis and finalised annually. Certain taxes may also be declared upon each occurrence, eg., real estate transfer cases.

Tax payments are generally due by the applicable tax filing deadline, except where specific rules provide otherwise, such as the deadline for quarterly provisional CIT payments. Companies using invoices purchased from the tax authorities must also submit invoice usage reports in accordance with the invoice regulations. Late filing, late payment or invoice-related non-compliance may result in administrative penalties and/or late payment interest.

### Beneficial Ownership Disclosure

Vietnam has introduced beneficial ownership disclosure requirements. Companies are required to identify, maintain and disclose information about their beneficial owners in accordance with applicable laws. A beneficial owner is generally an individual who directly or indirectly owns at least 25% of the enterprise's

charter capital or voting shares or otherwise controls key corporate decisions of the company.

### Periodical Investment-Related Reporting

A foreign-invested company and/or a company implementing investment projects shall be subject to investment reporting obligations. These typically include periodic reports on project implementation, such as investment capital disbursements, business results, human resources, taxes, environmental matters and other project-specific indicators, submitted to the investment registration authority and the statistics authority.

## 3.4 Management Structures

The management structure depends on the type of company and the governance model adopted in its charter.

### Limited Liability Company

In a single-member LLC,the governance structure is relatively simple and depends on the status of the owner. Where the owner is an individual, the company is generally managed by a company president and a director or general director (collectively, GD). Where the owner is an organisation, the company may adopt either a company president model or a Members' Council (MC) model. The MC, if established, comprises three to seven members appointed by the owner. In either case, the company will also have a GD responsible for day-to-day management and, where required, an Inspection Committee.

A multiple-member LLC is managed through the MC comprising all capital-contributing members (or their authorised representative if the member is an organisation), a GD is responsible for day-to-day management and a Supervisory Board (SB), where required. The MC is the highest decision-making body of the company.

### Joint Stock Company

A JSC may adopt either of the following governance structures:

- The first model includes a General Meeting of Shareholders (GMS), a Board of Directors (BOD), an SB and a GD.
- The second model includes a GMS, BOD and GD. For a JSC that follows the second model, at least 20% of the BOD must be independent and the company must establish an Audit Committee under the BOD.

The GMS is the highest decision-making body, comprising all shareholders with the right to vote.

The BOD has three to 11 members appointed by the GMS. This is the company's management body and has full authority, on behalf of the company, to decide and exercise the company's rights and obligations.

The SB members are appointed in a similar manner to those of the BOD and the number of SB members must be at least three and not more than five. The SB oversees the BOD and the GD with respect to the company's management.

The GD is appointed or hired by the BOD and is responsible for the day-to-day management of the company.

## 3.5 Directors', Officers' and Shareholders' Liability

### General Duties

The members of MC, BOD, SB, GD, legal representatives and other managers of Vietnamese companies are subject to statutory duties under the Enterprises Law. These duties generally include:

- to act in accordance with law, the company charter and corporate approvals;
- to exercise rights and perform duties honestly, diligently and to the best of their ability for the protection of the legitimate interests of the company;
- to be loyal to the company; not to abuse the company's position, corporate information, business opportunities or assets for personal benefit or for the benefit of others; to notify timely, completely and accurately any substantial shareholding owned by them or their related persons, in other companies; and
- to disclose their related interests and abstain from voting on transactions between the company and their related person.

Managers who breach these duties may be personally or jointly liable for losses, required to return benefits received and liable to compensate the company and, in certain cases, third parties. Members or shareholders, a group of shareholders holding at least 1% of ordinary shares, may bring claims against managers in certain circumstances, including where managers breach their statutory duties or exceed the scope of authority granted under applicable laws or the company's charter.

### "Piercing The Corporate Veil"

Vietnamese law does not expressly recognise a broad common law-style doctrine of "piercing the corporate veil." However, Vietnamese law contains specific statutory exceptions under which shareholders, members, owners or managers may be subject to personal, joint, civil, administrative or even criminal liability despite the company's separate legal personality and limited liability. These include, for example, failure to fully and timely contribute committed charter capital, unlawful withdrawal or return of capital or related-party transactions conducted without proper approval.

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

#### Employment Legislations

As Vietnam's legal system is principally rooted in the civil law tradition, the legislations governing the employment relationship are primarily codified. The principal source is the 2019 Labour Code ("Labour Code"). Other notable labour-related legislations include:

- the 2024 Law on Social Insurance;
- the 2025 Law on Employment;
- the 2015 Law on Occupational Safety and Hygiene;
- the 2024 Law on Trade Unions;
- Decree No 145/2020/ND–CP of the Government guiding certain provisions of the 2019 Labour Code; and
- Decree No 219/2025/ND–CP of the Government on foreign workers working in Vietnam.

Vietnam has recently developed a case-law system. Certain parts of a court judgment adopted by the Supreme People's Court as official precedents are binding on Vietnamese courts when adjudicating cases involving similar legal issues. However, to date, there are only a few official precedents in the employment sector.

#### Collective Bargaining Agreements

Collective bargaining agreements may be concluded at the level of an enterprise, an industry, multiple enterprises or other forms through a collective bargaining process, although in practice they are most commonly concluded at the enterprise or industry level. They typically provide employees with entitlements that are more favourable than those set out by law. Although collective bargaining agreements are recognised by law in Vietnam, in practice, they are not especially common.

#### Employment Contracts

The employment contract is the principal document establishing the employment relationship and governing its terms and conditions, including the place of work, term/ duration of employment, remuneration, working and rest periods and other obligations such as confidentiality, provided that the terms and conditions are not contrary to applicable law and collective bargaining agreements.

### 4.2 Characteristics of Employment Contracts

An employment contract is an agreement between an employee and an employer regarding a paid job, salary, working conditions and the rights and obligations of each party in labour relations. Accordingly, regardless of how the parties name the agreement between them (eg, collaboration agreement, service contract), such an agreement will still be deemed an employment contract if it provides for paid work, wages and management, direction and supervision by one party. This approach is intended to ensure that employees receive the protections afforded under labour law.

In terms of formalities, all employment contracts with a term of one month or more must be made in writing. Employment contracts with a term of less than 1 month can be made verbally, with a few exceptions. Employment contracts made in electronic form in accordance with the law are also considered as being in writing. Vietnam has recently introduced legislation

to encourage the use of electronic employment contracts.

In terms of duration,an employment contract can be for a definite term of up to 36 months or for an indefinite term. After signing two consecutive definite-term contracts, the parties may only continue the employment relationship under an indefinite-term contract, subject to certain exceptions, including foreign employees and elderly employees who continue working after reaching the statutory retirement age. In the case of foreign employees, this is because the term of the employment contract cannot exceed the term of the work permit, which has a maximum duration of two years.

An employment contract must contain several mandatory terms, including:

- information of the employer and the authorised signatory;
- information of the employee and the work permit number or work permit exemption certificate number for a foreign employee.
- job description and workplace;
- duration of employment contract;
- salary and payment terms;
- salary increments and promotion regime;
- working hours and rest periods;
- occupational safety and labour protection equipment;
- compulsory insurance obligations; and
- training and professional development.

## 4.3 Working Time

The normal working time must not exceed 8 hours per day (where working time is determined on a daily basis) or ten hours per day (where working time is determined on a weekly basis) and in any event, must not exceed 48 hours per week. For certain work that exposes employees to hazardous or harmful factors, employers must also comply with the working time limits set by relevant laws and technical regulations.

Employers may generally only require employees to work overtime with their consent and must observe the following limits:

- overtime does not exceed 50% of normal working hours per day, not exceed 12 hours (normal plus overtime hours) per day and not exceed 40 hours per month; and
- total overtime does not exceed 200 hours per year in normal cases or 300 hours per year in certain industries, such as textiles and garments, leather and footwear and seafood processing or due to exceptional situations such as urgent production deadlines. In the latter case, employers must also notify the relevant Department of Home Affairs.

Employers may require employees to work overtime without their consent at any time, without hours limitations, in extraordinary cases, such as for the purpose of national defence or security or to protect human life and property in cases of disasters, fire and epidemics.

## 4.4 Termination of Employment Contracts

Leaving aside termination upon expiry of its term, an employer cannot terminate an employment contract or otherwise bring it to an end at will and must comply with the applicable statutory grounds, conditions and procedures. In contrast, an employee may generally terminate the contract at will by giving the required statutory notice.

### Unilateral Termination by the Employer

An employer may unilaterally terminate an employment contract in the following cases:

(i) the employee consistently fails to satisfy performance standards prescribed in the employer's internal rules, which are only adopted after following a statutory procedure;
(ii) the employee is ill or injured and has received treatment but has not recovered for a legally prescribed period, which varies based on the term of the contract;
(iii) the employer is required to reduce its workforce due to a natural disaster, fire, major epidemic or relocation or downsizing required by a competent authority.
(iv) the employee fails to return to work within 15 days after expiry of a period of suspension of the contract;
(v) the employee reaches the retirement age;
(vi) the employee is absent without reason for five

consecutive days; and
(vii) the employee provides untruthful information affecting their recruitment in the first place.

For the cases set out in (i), (ii), (iii), (v) and (vii) above, the employer must give prior notice of at least:

- 45 days (for indefinite-term contracts);
- 30 days (for definite-term contracts of 12–36 months);
- 3 working days (for definite-term contracts under 12 months); and
- 3 working days for the case in (ii) above.

In certain sectors (eg, aviation personnel, enterprise management personnel and seafarers), longer notice periods may apply.

However, an employer may not unilaterally terminate the contract where:

- the employee is undergoing treatment or rehabilitation prescribed by a competent medical establishment (except for the case in (ii) above);
- the employee is on annual leave, personal leave or other employer-approved leave; and
- the female employee is pregnant or the employee is on maternity leave or raising a child under 12 months of age.

### Retrenchment/Collective Redundancies

An employer may implement retrenchment/ collective redundancies in the following circumstances: (i) technological or organisational changes, (ii) economic reasons (eg, recession or restructuring of the economy) or (iii) company restructuring or change of control. An employer must strictly comply with the statutory requirements, the most important of which are:

- establishing and justifying the basis and necessity for collective redundancies;
- preparing a labour usage plan (detailing, among others, the employees who are kept, re-trained for continued employment, moved to part-time positions or terminated) with the consultation of the employees' representative organisation at the grassroots level;
- offering impacted employees new positions (if available);
- announcing the labour usage plan within 15 days of its adoption; and
- for cases involving technological or organisational changes or economic difficulties, consulting the relevant grassroots employees' representative organisation at the grassroots level and giving at least 30 days' prior notice of the proposed termination to the labour authority and affected employees.

### Employee Dismissal

An employer may dismiss an employee for committing certain serious disciplinary violations prescribed under the Labour Code, including:

- committing theft, embezzlement, gambling, intentional injury or drug use at the workplace;
- disclosing trade or technological secrets;
- infringing the employer's intellectual property rights;
- causing serious damage or threatening particularly serious damage to the employer's assets or interests (what constitutes serious damage or particularly serious damage is normally defined in the employer's internal labour rules, which are required to be registered with the relevant Department of Home Affairs); or
- committing workplace sexual harassment.

What constitutes serious damage or particularly serious damage is normally defined in the employer's internal labour rules, which are required to be registered with the relevant Department of Home Affairs.

- repeating the same misconduct within a certain period after having been disciplined by wage increase deferral or demotion for such misconduct; and
- being absent without a valid reason for a total of five days within a 30-day period or 20 days within a 365-day period.

The dismissal process, including the conduct of a disciplinary hearing, must be carried out in strict compliance with applicable legal requirements.

### Unilateral Termination by the Employee

An employee may unilaterally terminate the employment contract by giving a prior notice of at least:

- 45 days (for indefinite-term contracts),
- 30 days (for fixed-term contracts of 12–36 months),
- 3 working days (for fixed-term contracts under 12 months).

In certain sectors (eg, aviation personnel, enterprise management personnel and seafarers), longer notice periods may apply.

An employee may also terminate the employment contract without prior notice where:

- the employee is not given the work, workplace or working conditions as agreed;
- the employee fails to pay wages in full or on time;
- the employer abuses, harasses or forces the employee to work against their will;
- the employee is sexually harassed in the workplace;
- the fmeale employee is pregnant and has to stop working;
- the employee reaches the age of retirement; and
- the employer provides false information when signing the contract (eg, work, workplace, working hours, remuneration or insurance).

### Monetary Entitlements Upon Termination of Employment

Upon terminating or otherwise ending an employment contract, the employer must pay the employee all entitlements, including salary and other contractual benefits, up to the date of termination. Depending on the reason for terminating or ending the contract, the employer may also have to pay a severance allowance or a job-loss allowance.

## 4.5 Employee Representations

Under the Labour Code, an employee may join a "grassroot-level employees' representative organisation" ("representative organisation" for short), which is voluntarily established by the employees within an enterprise to protect their rights and interests. Such organisations may be either a Trade Union at the enterprise level, which is a part of the Vietnam Trade Union or an employees' organisation within the enterprise not belonging to the Vietnam Trade Union. In practice, the most common type of representative organisation is the Trade Union at the enterprise level.

At law, an employer must engage in workplace dialogue with employees (through their representatives) or the grassroots-level employees' representative organisation on certain workplace topics at least annually, in accordance with the workplace democracy rules. In addition, an employer must consult and/or have the grassroot-level employees' representative organisations (if established) participate in certain matters, including:

- adoption of the internal rules on assessment of performance standards for employees;
- retrenchment due to technological or organisational changes or economic reasons;
- adoption of the labour usage plan in the case of retrenchment/ collective redundancies;
- establishment of pay scales, payroll and productivity norms;
- establishment of a reward scheme;
- adoption or amendment of internal labour rules; and
- conducting disciplinary proceedings.

Where no representative organisation has been established at the enterprise level, employers commonly, as a matter of prudence, involve the higher-level Trade Union for matters that would otherwise require such organisation's participation, although this can be time-consuming.

# 5. Tax Law

## 5.1 Taxes Applicable to Employees/ Employers

Under Vietnamese law, employees are subject to PIT on employment income if they are either tax residents in Vietnam or non-residents deriving Vietnam-sourced income. An individual is generally regarded as a tax resident if he/she is present in Vietnam for 183 days or more within a calendar year or 12 consecutive months or have a permanent residence in Vietnam. Tax residents are taxed at progressive rates from 5% to 35%,

while non-tax residents are taxed at 20% on Vietnam-sourced income.

Both Vietnamese employees and employers are required to contribute to compulsory insurances, subject to statutory caps:

- employee contributions include 8% social insurance, 1.5% health insurance and 1% unemployment insurance; and
- employer contributions include 17.5% for social insurance, 3% for health insurance and 1% for unemployment insurance.

## 5.2 Taxes Applicable to Businesses

A company is generally subject to taxation in Vietnam if it is established under Vietnamese law or has income sourced from Vietnam. The principal taxes applicable to companies doing business in Vietnam include:

### Corporate Income Tax ("CIT")

CIT rates in Vietnam generally range from 15% to 50%, depending on the taxpayer's revenue level and the nature of its business activities. The standard CIT rate is 20%. Reduced rates of 15% and 17% apply to certain enterprises meeting prescribed revenue thresholds, while higher rates ranging from 25% to 50% apply to oil and gas exploration and production activities and certain precious and rare natural resource extraction activities. Expenses are generally deductible for CIT purposes where they are incurred in relation to the taxpayer's business operations and income-generating activities, are supported by sufficient supporting documents and are not specifically excluded from deductibility under the prevailing tax regulations.

### Value-Added Tax ("VAT")

Vietnam applies three VAT rates: 0%, 5% and 10%. The 0% rate generally applies to exports and certain international services; the 5% rate applies to specified essential goods and services; and the standard 10% rate applies to all other taxable goods and services.

### Foreign Contractor Tax ("FCT")

FCT applies to foreign entities and individuals that earn income sourced from Vietnam under agreements with Vietnamese parties. FCT comprises VAT and CIT or PIT, for the income of foreign individuals. Payments subject to the foreign contractor tax include interest, royalties, service fees, leases, insurance, transportation, transfers of securities and goods supplied within Vietnam or associated with services rendered in Vietnam. There are several options for tax declaration. However, the most common method is the direct method, where foreign contractors do not register for VAT purposes or file CIT or VAT returns. Instead, CIT and VAT are withheld by the Vietnamese party from the payments made to the foreign contractor.

### Import and Export Duties

Import and export duty rates are subject to frequent changes and it is always prudent to check the latest position. Import duty rates are classified into three categories: ordinary rates, preferential rates and special preferential rates. Preferential rates apply to imported goods from countries that have Most Favoured Nation (MFN, also known as Normal Trade Relations) status with Vietnam. The MFN rates are in accordance with Vietnam's WTO commitments and apply to goods imported from other WTO member countries.

### Other Taxes

Depending on the taxpayer's business activities and industry sector, additional taxes may be applicable, including special sales tax, natural resources tax, environmental protection tax and other taxes prescribed under Vietnamese tax laws.

### Qualified Domestic Minimum Top-Up Tax rule and Income Inclusion Rule

Effective from 1 January 2024, Vietnam applies the OECD Pillar Two Global Minimum Tax regime through the Qualified Domestic Minimum Top-Up Tax rule and Income Inclusion Rule. The regime is designed to ensure that in scope multinational enterprise groups are subject to a minimum level of taxation in accordance with the OECD's Global Anti-Base Erosion rules.

## 5.3 Available Tax Credits/Incentives

Vietnam does not generally provide tax credits. Instead, tax incentives are primarily granted through preferential Corporate Income Tax ("CIT") rates, CIT exemptions and reductions and land rental incentives.

Qualifying investment projects may benefit from preferential CIT rates of 10%, 15% or 17%, compared to the standard 20% CIT rate. Such incentives are generally available to projects in encouraged sectors, including high-tech enterprises, the production of high-grade steel, energy-efficient products and other priority industries, as well as projects located in economic zones, high-tech parks and areas with difficult or especially difficult socio-economic conditions.

Eligible projects may also enjoy CIT holidays, typically comprising a period of CIT exemption followed by a 50% CIT reduction for a specified period. Certain large-scale, high-technology, innovation-driven or strategically important projects may qualify for enhanced incentive packages, including lower CIT rates and extended tax holiday periods.

The availability and scope of these incentives depend on the sector, location, scale and nature of the investment project and are subject to satisfaction of the applicable statutory conditions.

### 5.4 Tax Consolidation

Vietnam does not currently have a tax consolidation regime. Tax is assessed on a separate entity basis.

### 5.5 Thin Capitalisation Rules and Other Limitations

There are generally no thin capitalisation requirements under Vietnamese tax legislation.

However, pursuant to investment licensing requirements, the maximum permissible debt funding is generally limited to the difference between the registered investment capital and the capital contribution recorded in the relevant investment registration certificate or, where applicable, the in-principle investment approval.

### 5.6 Transfer Pricing

Vietnam's transfer pricing regime, governed by Decree 255/2026/ND-CP, effective from 1 July 2026, is broadly aligned with OECD principles. Taxpayers engaging in related party transactions are generally required to file annual transfer pricing disclosures and maintain contemporaneous transfer pricing documentation. Under Decree 255/2026/ND-CP, the deductible net interest expense for corporate income tax purposes of enterprises having related party transactions is subject to a cap of 30% of the taxpayer's total net profit from business activities during the tax period, plus interest expense after deducting interest income from deposits and loans arising during the period, plus depreciation expense incurred during the period.

### 5.7 Anti-Evasion Rules

Vietnam has anti-evasion and anti-avoidance rules under its tax regulations. These include, among other things, transfer pricing rules for related-party transactions, restrictions on deductible expenses and the tax authorities' powers to reassess or recharacterise transactions that lack economic substance or are undertaken primarily for tax avoidance.

### 5.8 Tariffs

Vietnam imposes import and export duties in accordance with the Law on Export and Import Duties and related implementing regulations. Applicable tariff rates depend on the classification of the goods, their customs value origin and Vietnam's international treaty commitments. Vietnam is a member of the WTO and numerous free trade agreements, including CPTPP, EVFTA and RCEP, under which preferential or special preferential import duty rates may apply to goods that satisfy the applicable rules of origin and other treaty requirements.

In practice, import duty rates vary significantly across product categories. Higher import duties are generally imposed on products for which Vietnam seeks to provide protection to domestic industries, including certain agricultural and steel products, as well as selected consumer goods. Goods imported from countries or territories that do not satisfy the conditions for most favoured nation treatment or preferential tariff treatment may be subject to ordinary import duty rates in accordance with Vietnamese law.

Vietnam's tariff regime has also been influenced by global trade developments and supply chain shifts. In recent years, Vietnam has increasingly resorted to trade remedy measures, including anti-dumping duties, countervailing duties and safeguard measures, particularly in sectors such as steel, metals, chemicals and certain manufactured products, to protect

domestic industries from unfair trade practices and serious injury caused by increased imports.

## 6. Competition Law

### 6.1 Merger Control Notification

Under the Vietnamese Law on Competition 2018 ("Competition Law"), the merger control regime applies to transactions which qualify as "*economic concentration*", including:

- mergers;
- consolidations;
- acquisitions resulting in control or dominance over another enterprise;
- joint ventures; and
- other forms as prescribed by laws.

An economic concentration is generally subject to a merger control filing if any of the following thresholds is reached:

- (a) the total value of assets in the market of Vietnam of a participating enterprise or group of affiliated enterprises of which the participating enterprise is a member is VND6,000 billion (approximately USD230 million) or more during the financial year immediately preceding the year of the proposed economic concentration;
- (b) the total sales or purchases in the market of Vietnam of the participating enterprise or group of affiliated enterprises of which the participating enterprise is a member reach VND6,000 billion (approximately USD230 million) or more during the financial year immediately preceding the year of the proposed economic concentration;
- (c) the transaction value of the economic concentration is VND2,000 billion (approximately USD76 million) or more (not applicable to a transaction conducted outside Vietnam); and
- (d) the combined market share of the participating enterprises is 20% or more in the relevant market during the financial year immediately preceding the year of the proposed economic concentration.

The thresholds at limbs (a), (b) and (c) are effective for the period from 1 July 2026 to 28 February 2027 pursuant to the Government's Resolution No 66.18/2026/NQ-CP. Prior to 1 July 2026, the thresholds at limbs (a) and (b) were VND3,000 billion (approximately USD115 million) and the threshold at limb (c) was VND1,000 billion (approximately USD38 million).

### 6.2 Merger Control Procedure

#### Pre-Notification Assessment and Notification Filing

The merger control process in Vietnam begins with an assessment of whether the proposed transaction constitutes an economic concentration and whether any of the statutory notification thresholds are met. If a notification is required, the parties must file with the NCC before proceeding with the transaction.

#### Preliminary Review

Upon receipt of a complete and valid filing, the NCC conducts a preliminary review that is statutorily required to take 30 days. During this stage, the NCC assesses whether the transaction raises competition concerns. If no such concerns are identified, the transaction may be cleared.

#### Official Review (If Required)

Where the NCC determines that the transaction may have anti-competitive effects by exceeding certain criteria as prescribed by law, it will proceed to an official review. This review may take up to 90 days and may be extended by a further 60 days in complex cases.

#### Issuance of Decision

At the conclusion of its review, the NCC may approve the transaction, approve it subject to conditions or prohibit it if it is likely to substantially restrict competition in the Vietnamese market. The transaction may only be implemented after obtaining the necessary clearance from the NCC.

### 6.3 Cartels

The Competition Law regulates agreements between parties in any form that cause or are capable of causing competition-restricting effects. The law distinguishes between horizontal agreements entered into by competitors and vertical agreements entered into by enterprises operating at different levels of the production, distribution or supply chain.

Certain anti-competitive agreements are prohibited per se, irrespective of market share or actual anti-competitive effects. These include, amongst others:

- bid rigging;
- agreements on preventing or impeding other enterprises from participating in or developing the market;
- agreements on excluding other enterprises from the market; price fixing agreements (whether directly or indirectly);
- agreements on sharing customers, markets or sources of supply; and
- agreements on restraining or controlling output or input.

Other restrictive agreements are prohibited where they cause or are capable of causing a significant competition-restraining effect in the relevant market. These include, amongst others, agreements to restrain technical or technological development or investment; agreements imposing conditions for contract execution or requiring other enterprises or customers to accept obligations unrelated to the subject matter of the contract; agreements not to transact with other enterprises; and agreements restricting the market for the sale or purchase of goods or services of other enterprises.

### 6.4 Abuse of Dominant Position

Under the Competition Law, an enterprise is deemed to hold a dominant market position if it has a market share of 30% or more in the relevant market or possesses significant market power. A group of enterprises may also be considered collectively dominant if they act together and hold a combined market share of 50% or more (for two enterprises), 65% or more (for three enterprises), 75% or more (for four enterprises) or 85% or more (for five enterprises), provided that no individual enterprise within the group has a market share of less than 10%.

Enterprises holding a dominant market position are generally prohibited from engaging in conduct that has the effect or is capable of having the effect of restricting competition. Prohibited conduct includes, among others, selling below the prime costs which lead to or may lead to eliminating competitors, imposing unreasonable purchase or sale prices or fixing minimum resale prices, causing or possibly causing damages to customers, restricting production, limiting the market or obstructing technical or technological development, causing or possibly causing damages to customers; applying discriminating commercial conditions to similar transactions in ways which impede or may impede other enterprises participating or expanding the market; imposing on other enterprises conditions for signing contracts or request other enterprises or customers to accept irrelevant obligations to exclude/hinder such enterprises from participating in or expanding the market; and obstructing the participation or expansion of other businesses in the market.

## 7. Intellectual Property

### 7.1 Patents

Vietnam protects inventions through invention patents and utility solution patents. An invention is a technical solution, in the form of a product or process, that solves a specific problem by applying laws of nature. An invention patent is available where the invention is novel, involves an inventive step and is industrially applicable. A utility solution patent is available where the invention is novel, industrially applicable and not common knowledge, even if the inventive threshold is lower.

Patent protection is obtained through registration with the Vietnamese industrial property authority or through recognition of an international application under an applicable treaty. Foreign applicants without a permanent residence or business establishment in Vietnam must file through a lawful representative in Vietnam. Applications may be filed in paper or electronic form and must generally be made in Vietnamese. A patent application normally includes a description, claims and abstract. A formally valid patent application is published in the nineteenth month from the filing date or priority date, unless early publication is requested. A request for substantive examination must be filed within 36 months from the filing date or priority date. If no request is filed, the application is deemed withdrawn.

Generally, an invention patent is effective from the grant date until the end of 20 years from the filing date. A utility solution patent is effective from the grant date until the end of ten years from the filing date. The patent owner has the right to use, license, prevent others from using and dispose of the protected invention. Use includes manufacturing the protected product, applying the protected process, exploiting the protected product or a product made by the protected process, circulating, advertising, offering or stocking it and importing it.

Unauthorised use of a protected invention during the patent term constitutes infringement. The owner may request cessation, public correction, damages, administrative handling, court proceedings or arbitration. In a civil patent case involving a patented process, the defendant may be required to prove that its process is different where the protected process produces a new product or where the owner cannot identify the defendant's process despite reasonable efforts.

### 7.2 Trade Marks

A trade mark is a sign used to distinguish the goods or services of different organisations or individuals. Registrable signs include words, letters, drawings, images, three-dimensional shapes, colours, combinations of those elements and sound signs capable of graphic representation. A mark must be distinctive and must not fall within statutory exclusions, such as misleading signs, prohibited official symbols, signs identical or confusingly similar to protected marks and signs that take unfair advantage of well-known marks.

Vietnam follows a first-to-file system for registered trade marks. Rights in an ordinary trade mark are established by the grant of a trade mark registration certificate or by recognition of an international registration under an applicable treaty. Rights in a well-known mark are established through use and are not subject to registration. An applicant may register a mark for goods it produces or services it provides. It may also register a mark for goods it lawfully places on the market if the producer neither uses the mark nor objects.

A trade mark application may cover one mark used for one or more goods or services. The application is published in the Industrial Property Gazette within one month after being accepted as formally valid. Third parties may oppose registration within three months of publication. A trade mark application is substantively examined within five months from publication. Registration may be refused for lack of distinctiveness, conflict with earlier rights, misleading content or other statutory grounds.

A registered trade mark is protected from the grant date until the end of ten years from the filing date. Protection may be renewed for consecutive ten-year periods without a statutory limit. A registration may terminate if it is not renewed, if the owner relinquishes it, if the owner no longer exists or conducts business without a lawful successor or if the mark is not used for five consecutive years before a termination request, subject to statutory exceptions.

Trade mark infringement includes unauthorised use of an identical mark for identical goods or services, use of an identical or similar sign for related goods or services where confusion is likely and use of a sign identical or similar to a well-known mark where confusion or a misleading association is likely. Customs control is particularly relevant for counterfeit trade mark goods. Customs authorities may suspend clearance, inspect or supervise goods and apply administrative remedies where counterfeit goods are detected.

### 7.3 Industrial Designs

An industrial design is the external appearance of a product or part of a product, in physical or non-physical form, expressed by shapes, lines, colours or a combination of those elements and visible during exploitation of the product's utility. Protection is available for designs that are new, creative and industrially applicable. A design is not protected if its appearance is dictated solely by technical characteristics, is the shape of a civil or industrial construction work or is invisible during use.

Industrial design rights are established by the grant of an Industrial Design Patent or by recognition of an international registration under an applicable treaty. Foreign applicants without a permanent residence or

business establishment in Vietnam must file through a lawful representative in Vietnam. A formally valid application is published within one month after formal acceptance, although publication may be deferred at the applicant's request, but not beyond seven months from the filing date. Third parties may oppose the grant within three months of publication. Substantive examination is generally completed within five months of publication.

An Industrial Design Patent is valid for five years from the filing date and may be renewed twice for further five-year terms. The maximum term is therefore 15 years from the filing date. The owner has the right to use, license, prevent others from using and dispose of the protected design. Use includes manufacturing products bearing the protected design, circulating, advertising, offering for sale or stocking those products and importing them.

Infringement includes unauthorised use of the protected design or a design not significantly different from it during the term of protection. Remedies follow the general IP enforcement framework, including civil claims, administrative handling, provisional measures and customs measures.

### 7.4 Copyright

Copyright protects literary, artistic and scientific works that are directly created and expressed in material form. Protection does not depend on content, quality, form, medium, language, publication status or registration. Protected works include written works, lectures, press works, musical works, stage works, films, fine-art and applied-art works, photographs, architectural works, maps, folklore works, computer programs and data compilations. Derivative works are protected only where they do not prejudice copyright in the underlying work.

Copyright arises automatically upon creation and fixation. Registration is not required to obtain or enjoy protection, but it is useful evidence. A copyright registration certificate means the registrant need not prove ownership in a dispute unless contrary evidence exists. Foreign applicants without permanent residence or a local head office, representative office or branch must file through an authorised copyright representative in Vietnam.

Copyright consists of moral rights and economic rights. Moral rights include the right to title the work, be named, publish or authorise publication and protect the integrity of the work. Economic rights include making derivative works, public performance, reproduction, distribution, import for public distribution, broadcasting or communication to the public, making the work available to the public at a chosen place and time and rental of cinematographic works or computer programs where the computer program is the main rental object.

The moral rights to title, attribution and integrity are protected indefinitely. For films, photographic works, applied art works and anonymous works, the publication rights and economic rights are generally protected for 75 years from first publication or 100 years from fixation if certain works are not published within 25 years. For other works, economic rights are generally protected for the author's life plus 50 years. For co-authored works, the term ends 50 years after the death of the last surviving co-author.

Copyright enforcement is particularly relevant online. Right holders may use technological protection measures, request the removal of infringing content from the internet or telecommunications networks, request that competent authorities handle infringement and bring court or arbitration proceedings. Digital platform owners and intermediary service providers have obligations to receive and handle takedown or access-blocking requests, provide contact points and comply with safe-harbour conditions.

### 7.5 Others

Computer programs are protected as works of copyright, not as a separate IP category. Computer programs are protected whether expressed in source code or machine code. Computer programs as such are excluded from patent protection, so protection normally depends on copyright, contracts, confidentiality and trade secrets.

Vietnam does not recognise a sui generis database right. Databases are protected by copyright only

where they qualify as data compilations created through creative selection or arrangement of materials. Protection of a data compilation does not extend to the underlying data.

Trade secrets are protected as industrial property rights without registration. Protection requires information that is not common knowledge or easily obtainable, gives the holder a business advantage and is kept secret by necessary measures. Infringement includes unauthorised access, collection, disclosure or use, breach of confidentiality obligations and use or disclosure by a person who knows or should know that the information was obtained unlawfully. Trade names, semiconductor layout designs, geographical indications and plant varieties are also protected under specific statutory rules.

## 8. Data Protection

### 8.1 Applicable Regulations

As Vietnam continues to develop its digital economy, data has become an increasingly important resource. In this vein, Vietnam's data protection regime has developed rapidly and now rests on two related but distinct pillars: a broader framework for data governance and a specific framework for personal data protection. The principal legal regulations applicable to data protection are as follows.

- At a broader framework level, the 2024 Law on Data ("Law on Data"), adopted by the National Assembly and effective from 1 July 2025, constitutes Vietnam's first comprehensive legal instrument governing data-related activities. The Law on Data is supplemented by Decree No 165/2025/ND-CP ("Decree No. 165/2025"), effective on the same date, which provides detailed guidance on implementing certain provisions of the Law on Data. Taken together, they set out requirements relating to data processing activities (eg, collection, storage, use and transmission), data protection measures, data risk management, the rights and obligations of data subjects and relevant parties (eg, preparing impact assessment dossiers, managing data security and internal controls and addressing restrictions or filing obligations for offshore transfers) and the allocation of regulatory oversight among competent authorities. These instruments mean that businesses operating in Vietnam or handling Vietnam-related data should assess compliance at several levels. This also reflects Vietnam's increasing regulatory attention to high-volume and high-risk processing, including cloud services, artificial intelligence, profiling, platform-based services and other technology-driven business models.
- At the level of personal data, Decree No 13/2023/ND-CP marked Vietnam's first comprehensive regime dedicated to personal data protection. Although this Decree has now been replaced, it remains important for understanding the evolution of Vietnam's approach because many of the compliance concepts first introduced under that Decree continue to shape the current regime.

From 1 January 2026, the 2025 Law on Personal Data Protection ("Law on PDP") establishes Vietnam's first higher-level legislative framework specifically governing personal data protection. This Law provides a comprehensive statutory regime, including enhanced enforcement mechanisms and more detailed compliance requirements and addresses personal data protection in emerging sectors such as artificial intelligence (AI), cloud computing and blockchain. The Law on PDP is followed by Decree No. 356/2025/ND-CP ("Decree No 356/2025"), effective on the same date as the Law on PDP, which implements the Law on PDP and replaces Decree No 13/2023/ND-CP. This Decree provides detailed regulations on administrative procedures relating to personal data protection, including personal data processing impact assessments, cross-border data transfer assessments and data breach notification requirements.

### 8.2 Geographical Scope

Both the Law on Data and the Law on PDP adopt an extraterritorial approach, significantly expanding the reach of Vietnamese data regulations to offshore entities and cross-border data flows. In other words, foreign organisations engaging with the Vietnamese market may be subject to local compliance requirements, even without a physical presence in Vietnam, if they directly participate in or are otherwise connected with, data processing activities involving the Vietnamese market or protected categories of Vietnam-related

data subjects. In practical terms, this means that if a foreign company targets Vietnamese users, processes employee or customer data relating to Vietnam, transfers Vietnam-related data offshore or provides data processing services in Vietnam, it may need to carefully assess the applicability of Vietnamese law, as outlined in examples below.

- The Law on Data applies to foreign agencies organisations and individuals that directly participate in or are otherwise involved in, activities concerning digital data in Vietnam, to the same regulatory expectations as domestic entities. A key practical implication lies in the distinction between different categories of data, which affects the applicable cross-border compliance requirements and drives the level of regulatory scrutiny. While cross-border transfers of "important data" can generally proceed without prior approval, transfers of more sensitive "core data" require pre-approval. In practice, this creates a tiered compliance burden and may introduce timing and regulatory uncertainty for transactions involving higher-risk data sets.
- The Law on PDP adopts a similar scope, extending to foreign agencies organisations and individuals directly engaged in or involved in, data processing activities concerning (i) Vietnamese citizens and (ii) persons of Vietnamese origin residing in Vietnam whose nationality has not been determined and who have been issued identity cards. Accordingly, offshore entities falling within this scope must comply with substantially the same obligations as organisations and individuals in Vietnam.

The Law on PDP also requires that a cross-border transfer impact assessment be submitted to the competent authority within 60 days of the first transfer. This approach operates as a post-transfer compliance mechanism, allowing data flows to proceed without prior regulatory approval. However, the regime relies largely on self-assessment by businesses and does not provide standards for evaluating the adequacy of protection in recipient jurisdictions. That said, the Ministry of Public Security may review the dossier and has its own discretion in issuing a result on whether it meets regulatory requirements. As a result, while the level of regulation is less restrictive compared to the EU GDPR framework, which permits cross-border transfers only on the basis of an adequacy decision or recognised safeguards such as Standard Contractual Clauses or Binding Corporate Rules, it would be more accurate to say that Vietnam adopts its own administrative assessment-based approach to cross-border transfers rather than a clearly less restrictive system.

Further, both laws include mechanisms to address potential overlap in impact assessment requirements. Compliance with impact assessment obligations for "core data" and/or "important data" under the Law on Data may exempt subjects from corresponding requirements under the Law on PDP. Conversely, compliance with personal data processing or cross-border transfer impact assessments under the Law on PDP may remove the need to conduct parallel assessments under the Law on Data. However, this does not remove the need for organisations to map their data flows carefully and identify which legal basis or filing route applies to a particular activity.

## 8.3 Role and Authority of the Data Protection Agency

The Law on Data as well as the Law on PDP allocate responsibilities to competent authorities for the administration and enforcement of data protection regulations, as outlined below.

### Ministry of Public Security ("MPS")

- Under the Law on Data, the MPS plays a central role in administering and enforcing data-related regulations. It is responsible for overseeing and coordinating the implementation of the data governance framework, including the management, protection, processing and use of data, as well as ensuring data security and preventing data-related violations.
- Under the Law on PDP, the MPS is the primary authority responsible for state management of personal data protection. Its key responsibilities include ensuring unified state management, leading the development and implementation of the legal framework and supervising compliance with data protection requirements.

For the purpose of handling administrative procedures relating to personal data protection (eg, receiving data assessment report, cross-border transfer assess-

ment report and other submissions required under the personal data regime), the MPS has designated its Department of Cybersecurity and High-Tech Crime Prevention (A05) as the competent authority responsible for such matters. Accordingly, the MPS/A05 is the primary regulator to consider when assessing official filings, regulatory expectations and enforcement risk in this area.

- The Ministry of National Defence is responsible for data and personal data protection within the military and national defence sectors under both the Law on Data and the Law on PDP.
- The Law on Data and the Law on PDP also allocate responsibilities to ministries, ministerial-level agencies and other Government bodies.

Notably, under the Law on PDP, the Ministry of Science and Technology plays a key coordinating role with the MPS in developing technical standards and regulations on personal data protection, including those relating to data anonymisation and de-identification. At the same time, the relevant ministries, ministerial-level agencies and other relevant state bodies may be assigned co-ordination and implementation responsibilities within their respective functions.

Further, People's Committees at the provincial and municipal levels are also responsible for implementing, administering and promoting compliance with data/personal data protection regulations.

That said, the system is not one in which businesses typically deal with a single independent privacy commissioner, as in some other jurisdictions. Instead, the Vietnamese regime is more state management-oriented, with the MPS and particularly A05 for personal data procedures, occupying a central position. Businesses should therefore regard the MPS as the lead authority for personal data protection matters, while also remaining alert to parallel requirements that may arise under sectoral regulation or the broader Law on Data framework.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms

There are no noteworthy upcoming legal reforms.

# Trends and Developments

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**VILAF**

**VILAF** has been at the forefront of Vietnam's legal market for over three decades. The firm is widely recognised for advising foreign investors and institutions on their business activities in Vietnam, delivering high-quality, commercially focused legal solutions. With more than 100 lawyers, including 16 partners, VILAF offers expertise across a full range of practice areas, including banking and finance, corporate and M&A, dispute resolution, energy and infrastructure and real estate. Its internationally trained lawyers combine global standards with deep local insight, enabling the firm to handle complex cross-border transactions effectively. VILAF is particularly known for its strong M&A and corporate practice, supported by a large team of English-speaking lawyers and Chinese language capabilities. The firm consistently handles large, sophisticated matters under demanding timelines, with many partners recognised as leading lawyers in Vietnam.

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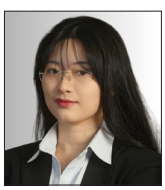
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Vietnam is entering a new era of economic and regulatory development in which investment opportunities continue to expand, while the legal and compliance environment becomes more sophisticated. Many of the developments now shaping the market in 2026 represent a continuation and acceleration of policy and regulatory directions that became more visible in 2025, particularly in relation to digital transformation, infrastructure, sustainability, financial innovation and higher-value manufacturing. For foreign investors, this creates a market that remains highly attractive, while also requiring a more deliberate approach to regulatory planning, transaction structuring and ongoing compliance.

At the same time, enforcement trends indicate a shift toward more active and coordinated supervision across the investment lifecycle, particularly in areas such as:

- tax;
- labour;
- licensing;
- competition;
- foreign exchange; and
- ESG-related obligations.

In this environment, successful investment in Vietnam depends not only on identifying commercial opportunities but also on aligning business models with policy direction, anticipating regulatory risk and establishing governance systems capable of supporting long-term operations.

## M&A Environment and Transaction Structuring

M&A activity in Vietnam remains active across sectors such as manufacturing, real estate, logistics, energy and technology. Transactions are shaped by key regulatory considerations, including acquisition approvals, sector-specific foreign ownership limits and merger control obligations under competition law.

A notable recent development is the adjustment of merger filing thresholds under Resolution No 66.18/2026/NQ-CP, effective 1 July 2026 to 1 March 2027. The framework increases the primary thresholds that trigger notification, raising the total assets and turnover thresholds to VND6,000 billion and the transaction value threshold to VND2,000 billion, while the combined market share threshold remains unchanged. This adjustment reduces the number of transactions subject to pre-closing notification, particularly mid-sized deals and is expected to streamline transaction timelines and lower compliance costs.

In parallel, Vietnam has undertaken a significant reform of its investment framework through Resolution No 66.17/2026/NQ-CP, which simplifies conditional business sectors with effect from 1 July 2026 to 1 March 2027. Under this reform, the number of conditional business lines is reduced from 198 to 142 sectors, reflecting a substantial relaxation of market entry requirements. This reform represents a broader shift in regulatory approach, with the government moving away from a “pre-approval” licensing model toward a “post-inspection” framework based on technical standards and ongoing compliance. As a result, while initial licensing constraints are reduced, regulatory oversight continues through sector-specific requirements and post-licensing supervision. However, transactions that fall below merger thresholds or are outside conditional sectors remain subject to substantive competition review and other regulatory scrutiny. Accordingly, transaction structures must continue to address regulatory risks, particularly in regulated or sensitive sectors.

Key regulatory considerations affecting transactions include:

- acquisition approval requirements;
- sector-specific foreign ownership limits;
- merger control obligations under competition law.

In practice, this requires:

- early regulatory mapping;
- parallel processing of approvals;
- detailed contractual provisions addressing regulatory risks, including change-in-law and liability allocation.

The combined effect of merger control reform and simplification of conditional business lines reinforces a more facilitative investment environment, while maintaining a robust compliance framework. As such, the

increasing sophistication of transactions continues to underscore the importance of comprehensive legal due diligence and proactive regulatory engagement.

### Cross-Border Documentation Reform Through the Adoption of the Apostille Convention

A further notable development supporting cross-border investment is Vietnam's accession to the Hague Apostille Convention, which abolishes the requirement for legalisation of foreign public documents and is expected to take effect in September 2026.

The reform introduces a fundamental change in how foreign public documents are authenticated for use in Vietnam and abroad. Under the current regime, documents are typically subject to a multi-step consular legalisation process involving certification in both the issuing country and Vietnam. The new framework replaces this process with a single Apostille certificate issued by the competent authority of the originating jurisdiction.

This shift is expected to significantly reduce administrative burdens for investors, particularly in transactions requiring cross-border documentation, such as M&A, financing arrangements and dispute resolution proceedings.

Key trends arising from this reform include:

- simplification of authentication procedures through the replacement of multi-step legalisation with a single Apostille certification;
- reduction in processing time and transaction costs for cross-border investments and corporate documentation;
- increased predictability in project timelines, particularly for licensing, financing and workforce mobilisation;
- greater alignment of Vietnam's legal framework with international practices in document recognition and legal cooperation.

The reform also has direct practical implications for transactional and dispute-related documentation, including powers of attorney, corporate records and litigation documents, which are expected to be processed more efficiently.

For foreign investors, the adoption of the Apostille system represents a significant administrative improvement and supports a more seamless execution of cross-border transactions, consistent with Vietnam's broader efforts to enhance its investment environment and legal integration.

### Financial Innovation by Vietnam International Financial Centre

A significant development in Vietnam's financial sector is the establishment of the Vietnam International Financial Centre, structured as a single financial platform operating across Ho Chi Minh City and Da Nang City.

The framework introduces a specialised regulatory regime designed to attract international capital, financial institutions and fintech participants, while facilitating cross-border financial activity within a more flexible and commercially oriented environment.

The dual-location structure reflects distinct policy orientations. Ho Chi Minh City is positioned as a comprehensive financial hub focused on capital markets and traditional financial services, whereas Da Nang City is designed as an innovation-driven centre with an emphasis on fintech, digital assets and regulatory sandbox models.

Entry into the financial centre is available through registration, recognition or sector-specific licensing, depending on the nature of the business. While the regime simplifies market entry and reduces administrative procedures for many investors, regulated sectors such as banking, securities and insurance remain subject to separate licensing and supervision.

Recent developments indicate a shift toward specialised financial ecosystems aligned with Vietnam's comparative advantages and strategic industries. In particular, Ho Chi Minh City is advancing sector-specific financial clusters, including the development of an aviation financial hub (the Asia-Pacific Aviation Financial Hub, an initiative under VIFC-HCMC), supporting aircraft financing, leasing, insurance and logistics-related financial services, with initial capital mobilisation already reaching approximately USD6.1 billion.

In parallel, the launch of an international maritime financial ecosystem (the International Maritime Financial Ecosystem, another initiative under VIFC-HCMC), supported by strategic cooperation between financial institutions and logistics operators such as Vietcombank and Gemadept, aims to integrate financial services with port infrastructure, trade flows and global supply chains. This initiative seeks to enhance domestic value retention in maritime activities and develop higher-value financial services, including trade finance, insurance and risk management, which have historically been performed offshore.

The regulatory framework is further complemented by specialised institutional mechanisms within the financial centre. In particular, the establishment of an International Arbitration Centre creates a dedicated dispute resolution forum for commercial and investment-related matters arising within the VIFC ecosystem. Its jurisdiction is based on party agreement, allowing parties to refer to disputes arising from activities within the VIFC to a forum aligned with international arbitration practice. The framework also permits parties, subject to agreement, to waive recourse to setting-aside proceedings before domestic courts, thereby enhancing the finality and enforceability of arbitral awards. This mechanism is designed to improve predictability in dispute resolution and reduce post-award litigation risks, particularly for cross-border transactions.

In addition, the Commodity Exchange within the VIFC introduces a regulated platform for trading a broad range of asset classes, including commodities, energy products, derivatives, metals and emerging products such as carbon credits and tokenised assets. The platform is structured to enable integrated trading, hedging and financing functions, supporting the development of more sophisticated financial products within Vietnam's market.

Key trends emerging from the framework include:

- development of specialised financial hubs, including aviation and maritime finance, integrated with real economy sectors;
- expansion of fintech, digital asset and carbon-related financial services within controlled regulatory environments;
- greater flexibility in capital mobilisation and cross-border transactions;
- gradual adoption of international accounting standards and market practices;
- growth of integrated ecosystems linking finance, logistics, infrastructure and trade;
- establishment of specialised dispute resolution and market infrastructure platforms supporting investor protection and market development.

For foreign investors, the financial centre offers a strategic platform for accessing Vietnam's financial markets and participating in both traditional and emerging sectors, while benefiting from a more flexible and internationally aligned regulatory framework.

### Strategic Direction in Technology, Sustainability and the Digital Economy

Vietnam's development strategy is increasingly anchored in the convergence of technology, sustainability and digital transformation. The government has positioned science, technology, innovation and digitalisation as central drivers of national growth, reinforced through Resolution No 57-NQ/TW, which sets ambitious targets for digital competitiveness and economic modernisation.

This shift is already reflected in measurable outcomes. Vietnam's digital economy reached approximately USD 72.1 billion in 2025, contributing around 14.02% of GDP and recording strong growth momentum across sectors. These figures highlight the transition of the digital economy from a high-growth sector into a foundational component of the national economic structure.

In parallel, climate commitments have been integrated into national policy. Vietnam's net zero target by 2050, combined with strengthened environmental regulation and ESG requirements, reflects a broader transition toward a sustainability-driven growth model. For investors, this dual focus on technology and sustainability increasingly shapes regulatory priorities and project approval processes.

Within this framework, the digital economy has evolved from a high-growth sector into a critical component of national infrastructure. Recent legislative reforms,

including the Law on Digital Technology Industry and related investment and tax amendments, have established a structured legal foundation for digital technologies, data infrastructure, semiconductors and digital assets.

Key trends include:

- expansion of digital infrastructure, particularly large-scale data centres, cloud computing and supporting platforms;
- accelerated adoption of artificial intelligence and advanced digital technologies, supported by dedicated governance frameworks;
- formal recognition and regulation of digital assets, including tokenised assets, for the first time under Vietnamese law;
- development of digital technology parks and innovation zones designed to attract high-tech investments and support ecosystem integration;
- introduction of targeted investment incentives, particularly for semiconductor manufacturing, AI applications and digital infrastructure projects, including preferential tax treatment and streamlined procedures.

In addition, certain strategic digital projects benefit from accelerated implementation mechanisms that allow earlier execution by bypassing traditional approval processes. At the same time, regulatory expectations are increasing. Greater emphasis is placed on data governance, cybersecurity, transparency and risk management, particularly regarding AI systems and digital platforms.

For investors, the digital economy presents significant opportunities across data infrastructure, semiconductors and emerging digital asset markets. However, the evolving regulatory landscape requires careful alignment between global operational models and Vietnam-specific compliance requirements, particularly in areas such as data control, licensing and technology governance.

### Energy Transition and Power Market Reform

Vietnam's energy sector is undergoing a structural transformation driven by rapid economic growth, industrialisation and rising energy demand, alongside its commitment to achieving net-zero emissions by 2050.

The regulatory framework underpinning this transition is anchored in the revised Power Development Plan 8 (PDP8) and the Electricity Law (2024), which together establish a comprehensive roadmap for decarbonising the power sector, strengthening energy security and modernising market structures.

Key trends emerging from this framework include:

- accelerated expansion of renewable energy, with solar, wind (including offshore) and biomass forming the core of future capacity growth;
- progressive reduction of coal dependency, with caps on coal-fired capacity and long-term transition toward cleaner energy sources;
- large-scale investment in grid infrastructure, smart grids and energy storage to address capacity constraints and integrate renewable generation;
- introduction of more market-oriented mechanisms, including direct power purchase agreements, enabling large consumers to procure renewable energy directly;
- increasing alignment with ESG and sustainable finance frameworks, supporting investment in green energy and infrastructure.

The scale of investment required is substantial, with PDP8 estimating capital needs of approximately USD136.3 billion for the period from 2026 to 2030.

Despite strong policy direction, investors continue to face regulatory and practical challenges, including evolving tariff mechanisms, grid curtailment risks and bankability concerns in power purchase arrangements. These factors remain critical considerations in structuring and financing energy projects.

### ESG, Carbon Markets and Sustainable Supply Chains

Sustainability is becoming a core consideration in Vietnam's investment and regulatory environment, with ESG compliance, carbon market development and sustainable finance frameworks advancing alongside broader economic transformation.

Recent reforms signal a clear policy direction. These include mandatory ESG-related disclosures for certain enterprises, the introduction of a national green taxonomy to guide environmentally eligible investments and the pilot development of a domestic carbon market to support emissions reduction and climate-aligned capital flows.

In parallel, sustainable finance is expanding. Green bonds, green credit programmes and environmentally focused lending are gaining traction, strengthening the link between capital markets and sustainability objectives. However, the framework remains evolving, with further clarity expected on carbon pricing, market operation and reporting standards.

At the same time, these developments are reshaping Vietnam's manufacturing and infrastructure sectors. While the country continues to benefit from its role in global supply chains, investment is shifting toward higher-value, technology-driven production, with stronger ESG requirements across supply chains.

Key trends include:

- increased automation and adoption of advanced technologies;
- growing emphasis on ESG compliance and supply chain traceability;
- continued expansion of logistics and infrastructure supporting trade and distribution;
- closer alignment between industrial growth and sustainability objectives.

Infrastructure development, particularly in transport, logistics and urban systems, remains essential but involves complex regulatory processes, including land acquisition and environmental approvals.

For investors, these convergence points signal a transition toward more sustainable and higher-value economic activity, requiring integrated approaches to compliance, technology and long-term sustainability strategy.

### Metro and Transit-Oriented Development (TOD)

Vietnam's recent legal and policy framework has elevated metro infrastructure and transit-oriented development (TOD) to core tools for reshaping urban growth, especially in Hanoi City and Ho Chi Minh City. Vietnam's Capital Law 2024 expressly embeds "urban development oriented towards public transport" as a key planning principle for Hanoi City, laying the groundwork for higher-density, mixed-use development around metro corridors.

At the national level, the National Assembly's Resolution 188/2025/QH15 adopts special mechanisms to accelerate urban rail and TOD, empowering major cities to integrate land-use planning, financing and rail investment more flexibly.

At the planning level, the adjusted master plan for Ho Chi Minh City to 2040 (Decision No 1125/QD–TTg) adopts public transport-oriented urban development as a core principle. The plan promotes the alignment of urban expansion, redevelopment of existing areas and infrastructure investment with transit systems, emphasising increased connectivity and improved land-use efficiency throughout the urban structure. A consistent direction is reflected in the adjusted master plan for Hanoi City to 2045 (Decision No 1668/QD–TTg), which also places urban rail and public transport networks at the centre of spatial organisation.

In Ho Chi Minh City, these policies are being operationalised through a dedicated TOD implementation plan along Metro Line 2 (Ben Thanh – Tham Luong), under which the People's Committee of Ho Chi Minh City has defined TOD zones as the area within a 1,000-metre radius of stations and the depot selected for pilot implementation. The city's approach focuses on using metro stations as focal points for compact urban clusters that integrate residential, commercial and office functions, with improved public spaces, pedestrian connectivity and reduced reliance on private vehicles. Complementing this, the government has proposed allowing Ho Chi Minh City to retain revenue generated from TOD-related land development to reinvest in urban rail and transport infrastructure, effectively creating a form of land value capture to fund metro expansion. In practice, these mechanisms are now visible in project-level decisions: Ho Chi Minh City has approved pilot TOD planning at five sites along Metro Line 2, while Hanoi City is integrating TOD concepts into new metro lines such as Line 3 (Nhon

– Ha Dong), with planners and investors increasingly required to coordinate transport, planning and land policy from the outset.

For investors, developers and lenders, the latest TOD framework means that transit-accessible land banks, mixed-use zoning potential and compliance with TOD-specific planning requirements (including resettlement, public amenities and pedestrian infrastructure) are becoming central to project feasibility and regulatory engagement must now start early in the rail-planning cycle rather than after metro routes and stations have been fixed.

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