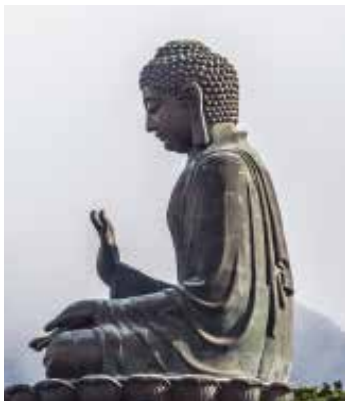
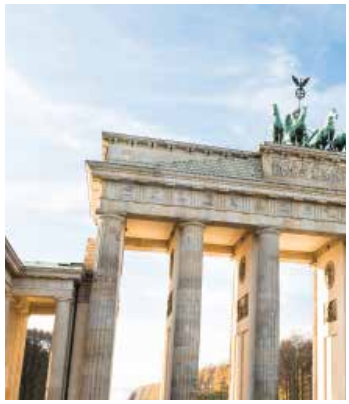
International Business Guide



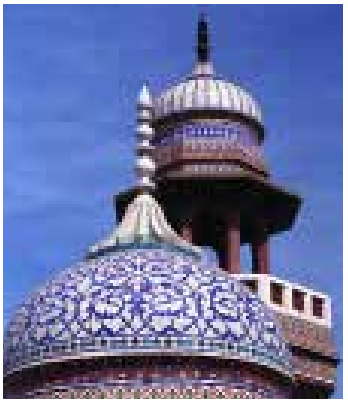




A practical guide to conducting business around the world.







advoc

Contents

Introduction

Our clients tell us that we genuinely understand their challenges and their sectors, and that we focus on trying to find solutions rather than problems.

We do this by providing high-quality, plain-speaking legal advice. We don't give you both sides of a story and then sit firmly on the fence while you make the big decisions that affect your future: we help you decide.

ADVOC has built a reputation for excellence and we work hard to form strong, long-term relationships with our clients, based on outstanding service and real value for money.

We also pride ourselves on being down-to-earth and accessible. There's no point in employing expert lawyers if you can never get hold of them, so you can ask us anything, anytime.

ADVOC has a strong international coverage and regularly work on complex, cross-border projects, providing legal expertise in more than 70 jurisdictions through over 90 member firms.

Europe

ADVOC EUROPEAN COUNTRIES

- Belgium
- Bulgaria
- Croatia
- Cyprus
- Denmark
- England
- Finland
- France
- Germany
- Hungary
- Ireland
- Italy
- Latvia
- Lithuania
- Norway
- Poland
- Romania
- Scotland
- Serbia
- Slovakia
- Spain

Belgium

We are looking to set up a Belgian trading company. What structures/business vehicles do you use?

A Private limited liability Company (BVBA – besloten vennootschap met beperkte aansprakelijkheid / SPRL – société privée à responsabilité limitée).

This sort of company is usually used for small to medium undertakings. The liability of the shareholders/partners is limited up to the amount of their contribution. The company is managed by one managing director, who can be a partner or an outsider. The incorporation of the company takes place by deed before notary.

The minimum share capital amounts to EUR 18,550. The minimum paid up capital is 20% of each share with a minimum of EUR 6,200.

This company is a mix between a Personal and a Public Limited Liability Company (see below), with the following main characteristics:

- The transmission of shares to persons other than the shareholders needs the consent of all other shareholders.
- The company cannot make public offering.
- The company can be instituted by one shareholder/ partner (special rules apply).
- If the managing partner is designated by the articles of memorandum, he can only be removed by a vote of the shareholders requiring the majority to modify the articles of memorandum.

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

A Public limited liability Company (NV – naamloze vennootschap / SA – société anonyme) which offers more possibilities than the Private Limited Liability company. The board of directors should be at least three members unless there are two shareholders, in which case two members are sufficient.

The liability of the shareholders/partners is limited up to the amount of their contribution. However, the founder shareholders can be held personally liable in case of:

- Bankruptcy declared within three years of the incorporation if the company's equity set up with the incorporation is considered to be insufficient for the business.
- Irregularities in the constitution of the company.
- Misrepresentation of the contributions in kind.

Each company must be registered with the KBO (Kruispunt Bank voor Ondernemingen) / BCE (Banque Carrefour des Entreprises) and register its activity to be compatible with one category listed by the NACEBEL-code. Annual accounts must be filed early before the 30 June of the next accounting year with the National Bank of Belgium. Any change within the board of managers, the managing director, their powers or of the registered office has to be filed with the Court of Commerce and published in the Official Gazette.

What are the rules on capitalisation of entities in Belgium?

The minimum share capital of an NV / SA is EUR 61,500. The minimum paid up capital is this minimum at the time of incorporation. The capital can be paid either in cash or a contribution in kind.

Cash contributions must be paid before the incorporation on a special bank account. Contributions in kind need a Belgian independent auditor who will draft a report stating the value of the contribution has been determined in accordance with generally accepted accounting principles.

What information are we required to provide businesses/ consumers with when trading with us?

There is no specific information to provide when trading with business entities. However, there are several rules and principles to ensure that adequate information is given to consumers.

Prior to the sale, the seller has to provide the consumer with the following information:

- The main characteristics of the product.
- The identity of the company, including business number, company name, address and telephone number.
- The total price of the product, including tax.
- The payment, delivery and execution terms as well as the date on which the company is committed to deliver the product and the conditions set by the company for processing the possible claims.
- The reminder of the existence of a legal guarantee.
- The duration of the contract and the conditions to terminate it.
- The terms and conditions of sale.

We would prefer to avoid having an actual physical presence in Belgium and instead are looking to appoint an agent or distributor to sell our products and/or services. What are the legal implications?

Distribution agreements are regulated quite strictly by Belgian law. Special legislations provide a high degree of protection for the distributor/agent considered as being the "weaker" party by Book X of the Code of Economic Law:

- In case of the unilateral termination without rightful cause of some distribution agreements for an indefinite duration (exclusive distribution agreements and quasi-exclusive distribution agreements), the principal must give an appropriate notice period or pay an indemnity in lieu of this and, if applicable, a compensation for the goodwill he has built up.
- In case of the unilateral termination without cause of an agency contract, the principal must give a compulsory notice period and pay goodwill compensation in favour of the agent.

- Precontractual information must be given to the distributor/agent to be appointed at least one month before the signature of the contract.

We intend to sell goods via our online website. What are the legal requirements if we wish to sell into Belgium?

There are two distinct types of rules affecting online retailers: traditional consumer protection regulations, which apply to all sales made online and rules designed specifically to deal with issues facing online retailers. They largely derive from EU legislation which include the E-commerce Directive, the Distance Selling Directive, the Distance Marketing Directive and the Electronic Signatures Regulations.

These various regulations share a central theme: companies should provide consumers with as much information as possible before they start the purchasing process.

Regulations also look at “contract formation and legality” and require that when a withdrawal right exists, the conditions, the time and the exercise of such right are well defined.

Do you have legislation in respect of the use of electronic signatures?

On 23 July 2014, the EU adopted the “electronic identification and trust services regulation“. Commonly referred to as eIDAS, The regulation establishes a new legal structure for electronic identification, signatures, seals and documents throughout the EU. eIDAS came into effect on 1 July 2016. On that date the existing EU directive, as well any laws of EU member states that are inconsistent with eIDAS, have been automatically repealed, replaced or modified.

According to this new regulation, all electronic signatures and verification services shall be admissible as evidence in legal proceedings. While both basic electronic signatures and advanced electronic signatures are legal, admissible and enforceable under eIDAS, only qualified electronic signatures are deemed to be legally identical to handwritten signatures. Importantly, they are also the only type of electronic signature that will be mutually recognised by all of the EU member states.

We intend to import goods into Belgium for sale. What are the legal requirements for doing this?

There are no other restrictions on the import of goods into Belgium other than the need to comply with the European common external tariff for goods entering the Union (for the non EU importers) and the applicable VAT rules. By entering the EU, goods can be placed under a temporary customs warehouse or VAT warehouse regime.

In addition to the packaging and information formalities, some goods may be subject to licensing requirements and/or some specific restrictions such as technical standards, anti-pollution standards, health and safety rules and labour or consumer protection rules. Further, depending on the type of products, registration may be mandatory.

What rights do consumers have when selling to them?

Besides the legal guarantee, the Belgian law has introduced an additional layer of protection for consumers covering a wide range of activities including advertising, market practice, unfair clauses, credit awarding, price and so on.

What are a customer’s rights in so far as returning goods (whether or not they are faulty)?

A two year legal guarantee mandates the seller to guarantee the buyer (i) against hidden or latent defects of the goods, and (ii) a peaceful enjoyment of the goods that have been purchased.

Moreover, Belgian law has introduced a right of withdrawal applicable in some circumstances, such as purchases outside shops, marriage agencies, real estate agencies, insurance companies, consumer credits and timesharing. The customer has a cooling-off period without any charge and without having to justify.

When a purchase is made outside a shop (online, by phone or mail order), every customer has the right to return the sale and ask for a full refund within 14 days.

Are we required to ensure that all customers have agreed to our terms of business in writing?

As general terms and conditions are deemed to be part of the agreement, they will only be applicable if the contracting parties have agreed on them. In Belgium, a contracting party is deemed to have agreed on the applicability of general sales conditions when he “took note of the general conditions” and has accepted them no later than the time when the agreement has been signed.

This implies that the contracting party effectively took note of the general conditions or had a reasonable chance to do so. A mere reference to the sales conditions being available on the website, at the office of the court clerk or at the registered office is not sufficient.

The acceptance of sales conditions can either be explicit or tacit. There can, however, only be a tacit acceptance when the silence, considering the circumstances, cannot be interpreted in another way than as deemed to signify their acceptance.

EMPLOYMENT QUESTIONS

We are looking to set-up a business in Belgium and intend to bring some of our current employees into Belgium to work. Do we require work/residency permits?

With the exception of nationals who are part of the European Economic Area (EEA) or Swiss nationals, foreigners need a work permit to be employed in Belgium. Those intending to exceed a 90 day residence within a period of six months also require a residence permit. Accordingly, an application for a type D visa on the basis of the work permit has to be submitted to the Belgian diplomatic or consular authorities in the applicant's country of residence.

EEA and Swiss nationals can enter Belgium for professional purposes without a Belgian work permit, provided they have a valid ID. Those entering Belgium with the intention of working for a period longer than three months need to register in the municipality of the place where they intend to live in Belgium.

What formalities do we need to comply with when recruiting employees in Belgium?

When employing employees in Belgium, the employer must comply with the following labour formalities:

- To establish a work regulation.
- To register with the National Office for Social Security (NOSS).
- To take out insurance against accidents at work.
- To set up an internal health and safety service and appoint a health and safety advisor.
- To affiliate with a medical service which advises employers on health and safety with respect to working conditions.
- To register with the direct tax authorities.

Furthermore, the recruitment and selection of employees is regulated by the collective labour agreement n°38. There are, however, no penalties for failure to comply with it.

What are the minimum rights we have to adhere to for employees in Belgium?

Employer/employee relations are governed by labour law, collective labour agreements, work regulations and individual employment contracts. The most important labour conditions are as follows:

- Draft of an employment contract either verbally or in writing.
- Comply with the wage scales and the minimum wage schemes.
- Comply with the maximum working hours, which are set at 38 hours per week on an average basis, and 9 hours per day.
- To partially/totally bear social security contributions for his employees.
- Provide employees with their entitled 20 working day annual holiday if they work on the basis of a five-day week, and 24 working days on the basis of a six-day week.
- Employees are entitled to ten public holidays on top of their annual holidays.

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

The self-employed status is much more flexible than the employee regime as the strict and protective rules of labour law do not apply, the social security costs are taken care of by the consultant, and the necessary insurances are his responsibilities.

Moreover, it is the consultant's legal responsibility to collect and pay the direct and indirect taxes. It should, however, be noted that it is not a free choice between an employment contract and self-employed status. The status will depend on the way the contract is carried out. As such, if the self-consultant works under the supervision of his client he shall be presumed to be an employee regardless of the wording of the contract itself.

What options exist if we want to terminate employees' contracts with us? Can we make them redundant?

A fixed-term contract cannot be terminated before the end of the agreed period, except in specific cases such as gross misconduct by one of the parties or mutual agreement.

For indefinite term contracts, the contract can be unilaterally terminated by either party. An exception exists for so-called "protected" employees and in case of collective dismissal procedures that are subject to strict legal formalities.

Each party can terminate the employment contract at any given time by giving prior notice in writing. The duration of the notice period is legally fixed. Termination is also possible with immediate effect with the payment of an indemnity in lieu of the notice period. The dismissal has to be motivated by the employer.

An employment contract also comes to an end:

- By mutual (written) agreement between the employee and employer.
- In case of "force majeure" having a long term impact; for instance a permanent incapacity of the employee to exercise his/her function.
- By immediate termination in case of serious cause.

TAX AND INVESTMENT QUESTIONS

Are there any restrictions on foreign investment into Belgium?

Various attractive tax regimes and investment incentives exist to facilitate and draw foreign investment to Belgium. Foreign private entities have the same legal right to establish business enterprises as domestic companies. The right to acquire or sell interests in business enterprises is similarly protected by law.

Foreign companies may enter into joint ventures and partnerships on the same level as domestic parties, except for certain activities, such as doctors, lawyers, accountants, auditors and architects.

However, access to a number of activities (such as building and construction or food production) requires registration with the relevant authorities, or need a special permission.

Do you have any currency or exchange controls in place?

There are no exchange control or currency regulations in Belgium.

How are employees taxed in Belgium?

An employee's income is subject to a monthly professional withholding tax to be paid by the employer. The individual income tax is based on progressive rates together with tax exemptions.

An employer also has to collect and pay social security contributions on the salaries paid to its employees. Social security contributions are borne partly by the employer and partly by the employee. The employer's contributions amount to approximately 35% and the employees' contributions to 13.07% of the gross salary.

What are the current rates of tax for employees?

The tax rates for individuals varies between 25% and 50% and applies to the net income, i.e. after deduction of the compulsory social security contributions.

What taxes apply to the business models you have identified above?

The Belgian tax system combines direct and indirect taxes. Value-added tax is the main indirect tax.

Belgian companies having their registered office, main business centre or seat of management located in Belgium are subject to a 33.99% Belgian corporate income tax on their worldwide profits.

Companies may also be subject to regional and municipal taxes depending on the circumstances. Regional taxes on enterprises include taxes on waste, abandoned economic activity sites, discharges of industrial waste water, etc. Those additional taxes vary presently between 6 and 8 percent of the corporate tax.

How are dividends to foreign companies/shareholders taxed?

Dividends, interest and royalties distributed by a Belgian company are subject to a withholding tax which can vary from 25% to 27%. Other reduced rates can apply due to previous circumstances.

Belgium applies the Parent-Subsidiary Directive and there is no withholding tax when the parent company holds at least 10% of the shares of the subsidiary for a period of 12 months.

Most of the tax treaties signed by Belgium provide for a reduction of the Belgian withholding tax rate to 15% and, in some cases, to 10% or 5% in case of a substantial participation (often 25%) into the Belgian subsidiary company.

Are there transfer pricing rules in place?

Belgian transfer pricing rules allow the tax authorities to adjust tax computations in the case of transactions which are not at arm's length and transactions with off shore companies.

On 21 June 2016, the EU Council agreed on the draft Anti-Tax Avoidance Directive, which is based on the OECD BEPS Report. Various measures proposed in the report and the Directive are already embodied in the Belgium tax legislation.

Do you have double taxation treaties in place with foreign jurisdictions? If so where can we find out details?

Belgium has an extensive net of double tax treaties (more than 90 countries). Details can be found at the following website of the Ministry of Finance: http://ccff02.minfin.fgov.be/KMWeb/document.do?method=view&id=3232bda5-33df-4fdd-b3b2-c7ada30b7da1#findHighlighted

Buyle Legal

www.buylelegal.be/

KEY CONTACT:
Jean Pierre Brusseleers
Partner
T:+32 2 600 52 00
jpbrusseleers@buylelegal.eu

ANTWERPEN
Jan Van Gentstraat, 7b.102 B-2000, Antwerpen

BRUSSELS
Avenue Louise, 523 Louizalaan B-1050, Brussels

CHARLEROI
Bd Mayence, 17-19 B-6000, Charleroi

LOUVAIN-LA-NEUVE
Place des Peintres, 8/004 B-1348, Louvain-la-Neuve

Bulgaria

We are looking to set up a Bulgarian trading company. What structures/business vehicles do you use?

Pursuant to the Bulgarian law (Foreign Investment Act) 'foreign' are those legal entities which are not registered in Bulgaria. All remaining legal entities registered in Bulgaria are 'local' legal entities.

In the interest of legal security, most legal systems associate the establishment of a legal entity with the requirement for its registration (entry) in a special register. In Bulgaria this role is taken by the Bulgarian Trade Register. It contains data related to the existence, headquarters, representation, management, capital of the legal entity etc.

According to the Commerce Act (CA), the incorporation, reorganisation, termination of the legal entities, and the mode of their representation, as well as rights and obligations of the partners (members), shall be governed by the law of the State where the company is registered. Pursuant to the Commerce Act, if the company is registered in more than one State the law of the State will apply where the management (the seat) of the company is located according to its articles of incorporation.

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

Limited Liability Company is the most common structure/ business vehicle in Bulgaria. The shareholders in it are not liable for the debts of the Company. They risk, at most, losing the contribution made. From this point of view this legal and organisational form is appropriate for the conduct of business activities by foreign persons.

No permanent residence permit is required for the participation of foreign persons in a LLC. This company is a company of the capital. The participation with personal labour and efforts is placed in the background. The accent is put on the participation in the capital. Often daughter companies are being registered as LLC in Bulgaria, provided that the mother company is a foreign entity. Actually, LLC is the only company that allows registration by a single owner of capital. The requirements for the registration of a single person LLC are identical to those applying to the ordinary LLC, with the difference being that the single owner of the capital signs a constitutive deed which replaces the articles of incorporation.

Another typical representative is the Joint-Stock Company (JSC). The advantage of this company type is the lack of shareholders liability for the debts of the company as it is in the case of the LLC. Therefore the participation in a JSC does not imply the mandatory presence of the foreign person in the country. Membership in it is easily acquired through the purchase of shares and, respectively, the termination of membership is effected through the sale of the shares held. The shares of some of the local companies are also traded on the Bulgarian Stock Exchange.

The participation of foreign persons in a JSC is connected with the holding of shares, which are recognised as a form of foreign investment.

What are the rules on capitalisation of entities in Bulgaria?

The rules of capitalisation of the most spread entities in Bulgaria, i.e. Limited Liability Company (LLC) and Joint Stock Company (JSC) are as follows:

- LLC – With the changes to the Commerce Act adopted in 2010, the minimum capital required for incorporation of a limited liability company was decreased from BGN 5 000 to BGN 2. This change made the LLC an extremely attractive type of entity and accessible for a wide range of entrepreneurs.
  In fact, this type of company is set up on a higher amount of capital. For the owner of the company it is crucial to be able to accept new shareholder(s) by selling company shares without increasing the capital first.
- JSC – The minimum capital required to set up a JSC in Bulgaria is BGN 50,000. However, depending on the activities of the JSC the minimum capital required to set up a company varies. For instance, it is higher than BGN 50,000 in the case of JSC having registered specific type of activities, such as: bank activities, insurance activities etc.

What information are we required to provide businesses/ consumers with when trading with us?

There are no strict requirements that a company doing business has to comply with when entering into a contract. In fact it depends on the type if the contract. However, the minimum required information that has to be provided is the name of the company and the company identification code under which the company is registered in the Bulgarian Trade Register, as well as the VAT details when trading with a customer. In the case of trading online, please see the information provided under the relevant question (E-commerce).

What are the legal implications?

If the owner of the business established in Bulgaria is a foreign person, his/her physical presence in Bulgaria is not required unless that same person is registered in the Trade Register as one of the company managers. Being a manager of a Bulgarian company means signing documents, performance of administrative and employment procedures which, as per the Bulgarian law, can only be executed by the managers, entered in the Trade Register. Therefore, for the purpose of avoidance of such complications, the foreign legal/ physical persons should authorise a Bulgarian 'physical' person to represent them, respectively, to participate in the managing body of the registered company.

Our experience with foreign investors shows that only if the Bulgarian representative is duly entered into the Trade Register as a manager of the local entity, the foreign person could be released from regular visits to Bulgaria.

We intend to sell goods via our online website. What are the legal requirements if we wish to sell into Bulgaria?

E-Commerce is regulated by Bulgarian legislation. Bulgaria started implementing the Consumer Rights Directive 2011/ 83/ EU of the European Parliament and of the Council of 25.10.2011 (the Directive). The Directive introduced the Principle of "maximum harmonization", which is new to the Bulgarian doctrine. Pursuant to the said Principle, the Member States shall not reserve or introduce in their national legislation clauses that are different to the ones envisaged in the Directive.

E-Commerce is regulated in Bulgaria mainly by the Law on E-Commerce (LEC). Pursuant to that Law, E-Commerce is a specific deal which matches the criteria of LEC (not all electronic deals). The main three stages of E-Commerce are as follows:

- Offer by the Merchant
- Statement of acceptance of the Offer by the Client
- Confirmation by the Merchant for receiving the Statement of acceptance

Mandatory rules in addition to the above-listed legal pre requisites are the following provisions of the Law on Consumer Protection (LCP):

- Pre-contractual information is an integral part of the contract and is not subject to further change by the parties.
- A new regulation adopted recently is the obligation of the Merchant to provide the consumer with written confirmation for the concluded contract – prior to the date of delivery of the goods. The said confirmation shall contain the entire pre-contractual information.
- Waiver of contract clause is harmonised with the Directive. For instance the consumer is entitled to cancel the contract within a 14-day term provided that the Merchant has informed the consumer of such right. In this case the consumer shall not indicate any reason for contract cancellation, and neither shall pay any compensation to the Merchant.
  The newly adopted LCP contains a detailed list of contracts for which the Waiver of contract clause does not apply, such as: goods with short expiry periods, goods produced upon order of the consumer, etc.

Do you have legislation in respect of the use of electronic signatures?

Electronic document/ signature are used in documents exchanged with the Bulgarian administration, for instance, to submit tax returns, applications, appeals and all other documents that one needs to exchange with the State structures.

Banks recommend the usage of an electronic signature, as it eliminates the possibility of abuse and manipulation to the greatest extent. Moreover, having electronic signature is one of the mandatory requirements in case you want to use active operations, including ordering payments online.

One can sign his/her correspondence in order to be sure that it remains unchanged in the internet whilst reaching the right recipient. Electronic signatures offer a mechanism to encrypt the information, so that it remains completely confidential.

Usage of E-signature by legal entities:

- Submitting tax, insurance and employment documents: VAT returns and VAT registers, Intrastat, etc.; registration of labour and civil contracts.
- Issuing electronic invoices, which are recognised electronic documents and thus save time and costs, and improve the relationships with the partners and clients.
- Switching to paperless document flow and storage. Thus one can reduce costs and accelerate the business processes. Using specialised software for electronic signing of documents and maintaining e-records.
- Introducing policy of signing the internal document flow. Thus one can enhance transparency and ensure credibility of the business processes.

Special Usage:

Specialised signatures are used for different purposes such as:

- Authentication of server data
- Protection of e-mails
- Encryption/decryption of data
- Authentication of the identity in virtual private networks (VPN)

We intend to import goods into Bulgaria for sale. What are the legal requirements for doing this?

If the importer of goods is an entity incorporated in a Member State then the rules for import are quite unified and clear. Bulgaria has been a Member State of the EU since 1 January 2007, and therefore it is clear that the Principle of Free Movement of Goods applies to Bulgaria as it applies to all other Member States.

A limitation to the Principle of Free Movement of Goods as far as Bulgaria is concerned is the restriction imposed to the parallel import. However, we believe that this restriction affects most of the markets within the EU.

In principle, parallel import within the borders of the EU is not explicitly forbidden provided that original goods are subject to trading (not counterfeit goods).

On the other hand, pursuant to Bulgarian law, the owner of the trademark disposes of various legal instruments against the parallel importer.

This principle is envisaged in the Mandatory case-law of the Republic of Bulgaria, which is grounded on 3 (three) EU Directives already implemented in Bulgaria. The European Commission has made it clear that the parallel import is a violation of the rights of the owner of the trademark. The main two infringements to rights originating from a trademark are as follows:

1. When the subject of the parallel import are counterfeit goods, which is a major violation of the rights of the owner of the trademark .
2. When the import is not authorised by the owner of the trademark (parallel import) – in such case the right of the owner of the trademark to decide on the distribution channels of the goods carrying his brand is infringed.

According to recent case-law, which is mandatory for the Bulgarian authorities, even though the parallel import is not directly forbidden, the owner of the trademark is entitled to use all legal instruments for defence of his rights, including the entitlement to seek compensation for damages and the expenses collected under the court proceedings.

In addition, the measures for border control allow the customs officers to retain the imported goods of a specific trademark by request of the trademark owner. The idea of the law is to protect the intellectual property rights and the national market from counterfeit products.

Therefore, as the Bulgarian Commission for Protection of Competition (CPC) stated: it's a matter of partnership and agreement between the owner of the trademark and his official distributor how this is solved and whether the owner of the trademark shall allow the appearance of the parallel companies or shall protect the interests of his official partner (the official distributor).

What rights do consumers have when selling to them?

The main rights of consumers in Bulgaria are as follows:

- The right to advertising which is not misleading
- Defective goods to be repaired or replaced
- Contract without unfair terms
- The right to return the goods, bought online, within a 14-day period
- The right to free assistance by the ECCs.

What are customers rights in so far as returning goods (whether or not they are faulty)?

In the case of faulty goods, the customer is entitled to return the goods provided that the defect has been discovered in the time frame of the guarantee term (as per the law it is 2 (two) years as of the purchase of the goods or in the time frame of validity of the commercial guarantee as per the terms and conditions set forth in it.) Once the claim is brought to the trader, he shall repair for free the faulty goods or he shall replace the faulty goods with a new one in a 1 month term. In case of his failing to do any of the above listed remedies, he is obliged to refund either part of the sale price or the entire sale price to the customer. The sale price is to be refunded to the customer in the case of occurrence of three repairs to one and same product within the two-year guarantee term.

The return of goods for reasons such as 'its colour is not appropriate' or 'the size is not right' etc is not envisaged in the Bulgarian Law on Customer Protection, except for the case where the transaction is concluded at a distance or at least outside the commercial premises. In the case of online trading the customer is entitled to terminate the transaction in a 14 day term as of the goods delivery.

The return of goods bought in a traditional store without defects or after the expiration of the 14 day term in the case of online trading is a matter of good business practice on the part of individual economic operators.

Are we required to ensure that all customers have agreed to our terms of business in writing?

Generally speaking, there is no such requirement as per the Bulgarian law.

EMPLOYMENT QUESTIONS

We are looking to set-up a business in Bulgaria and intend to bring some of our current employees into Bulgaria to work. Do we require work/residency permits?

Typically, it is possible for foreign employees to work on an employment contract in the territory of Bulgaria. A prerequisite to such employment is a list of imperative requirements. Prior to concluding an employment contract, each foreign employee shall receive a work permit in accordance with the legal requirements.

Apart from the employment relationship, it is possible for the foreigner to work in Bulgaria without an employment contract, and consequently without a work permit, in case he/she is sent on a business trip by its foreign employer to Bulgaria for a 3-month term within one calendar year.

The process of obtaining a work permit shall be initiated by the Bulgarian employer. i.e any person, having activities on the territory of Bulgaria, and registered as per the Bulgarian laws.

The term of the work permit shall have the validity of the term of the employment contract, but not for more than 1 year. It can be prolonged with another 1 year term if there is no cease in the occupation. The total duration of the work permit shall not exceed 3 years. That limitation shall not refer to foreign persons who are managers or members of the board of companies and/ or their branches established in the territory of Bulgaria.

For Bulgarian employers who fail to obtain a work permit for their foreign employee there is a fine imposed both on the employer and on the employee.

What formalities do we need to comply with when recruiting employees in Bulgaria?

When recruiting employees in Bulgaria an employer shall comply with the provisions of the Bulgarian labour and insurance law. The employment contract has to be in written form and has to meet the requirements of the Labour Code (LC). The employment contract is subject to registration in the NRA and the NII. Any significant changes to the employment contract, such as changes related to the employee's position, place of work, work duration etc. shall be reported to the relevant Bulgarian Institutions.

A very important element of the employment contract is the term. From the point of view of the term, the employment contracts could be two types: fixed-term contracts and indefinite term contacts. An important note for the employer who recruits Bulgarian employees is to know that an employment contract shall not be terminated without sound reason. The grounds for termination of an employment contract are listed in the LC. The list is exhaustive.

What are the minimum rights we have to adhere to for employees in Bulgaria?

Bulgarian employees are entitled to use their annual leave. Furthermore, an employment contract shall not be terminated by the employer even though the employer is entitled to do so during the annual leave and/or during the sick leave of the employee. In case of employers failing to adhere to the above mentioned employee's right, the employee shall be entitled to appeal the termination notice served during his/ her leave before the Bulgarian court. It is important for the employer to know that the employees seeking their rights in court are exempted from any state taxes. In case the court rules in favour of the employee the employer is obliged to accept the employee back to his/her position and pay back his/ her insurance for the period of litigation.

The maximum work time is regulated strictly in Bulgaria. Overtime work is feasible if the terms and conditions set forth in the LC are observed by the employer and is subject to extra fee (additional salary).

There is a special category of employees who receive special treatment and defence under the LC, for instance: employees who suffer diseases, are listed in a special act, pregnant employees etc. This category of employees is privileged also because employees who belong to this category shall not be dismissed without a prior explicit permission of the Labour Inspection (LI). Employers should be aware of any update of the data for such employees.

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

It does make a difference. If someone is contracted as a consultant it means that he has incorporated a local company first and only then (as a legal entity) signed a consultancy agreement. The employee receives a salary, gets insurance by the employer and is not subject to direct taxation, whereas the consultant is a corporate entity and being such receives remuneration in accordance with the terms and conditions of the consultancy agreement, pays insurance through the legal entity of the consultant,manage their own account and pays taxes to the NRA – corporate tax, VAT etc.

What options exist if we want to terminate employees contracts with us? Can we make them redundant?

Termination of an employment contract is a delicate issue in Bulgaria mostly because employers are supposed to have a legal ground (one of the listed in the Labour Code) in order to terminate an employment relationship. The employer has two ways of terminating the employment relationship, as follows: 1) Based on a disciplinary offense committed by the employee and 2) Based on any of the listed grounds, such as: the closure of the enterprise, reducing the volume of work, closing the position, lack of educational background or lack of personal skills which makes the employee unqualified for the position occupied, etc.

What is the Transfer of Undertakings (Protection of Employment) Regulations 2006?

Pursuant to Bulgarian law, the transfer of undertaking, business or part of business does not in itself constitute grounds for dismissal. The European Directive has been implemented in Bulgaria and as a result of the said implementation the employees are under protection, i.e. their employment relationship, instead of being terminated, is automatically transferred from the former employer to the new employer.

The former and the new employer shall bear joint liability towards the employees; for instance, in the case that the former employer has unfairly dismissed an employee, the latter is entitled to claim compensation for unfair dismissal against both the former and the new employer.

The joint liability of the former and the new employer is a principle of law and cannot therefore be overruled by any agreement between the parties to the Transfer of Undertaking.

TAX AND INVESTMENT QUESTIONS

Are there any restrictions on foreign investment in Bulgaria?

Foreign persons, who conduct business activity, make investment and receive income in the territory of Bulgaria, are subject to taxation in accordance with the general tax treatment applicable to local persons. Certain legislative acts contain special provisions regarding foreign persons but ultimately they do not lead to the establishment of special tax treatment differing materially from the treatment of local persons.

The tax treatment does not establish any special criteria for the determination of the subjective scope of foreign persons in relation to tax liability.

However, special tax treatment of foreign persons may exist by virtue of special clauses providing for application by priority of international agreements, such as Double Taxation Treaties. As to foreign persons from states with which Bulgaria has concluded such agreements, the special tax treatment will find an application as provided for in the relevant agreements.

Apart from the tax-related issues mentioned above, the only restriction that currently exists towards foreign investors is the ban for purchase of agricultural land by foreign (including European) citizens, unless they reside in Bulgaria continuously for more than 5 years. This restriction to foreign investment was adopted in 2014 to protect the national and territorial interest.

Do you have any currency or exchange controls in place?

In the field of currency or exchange controls Bulgaria is harmonised with the European legislation. Currently, Bulgarian Lev is fixed to EURO. The maximum amount that may be paid in cash as opposed to electronic transfer between natural persons, natural person and a legal person, and between two legal persons is BGN 10,000, which is equal to EUR 5112.91. The said restriction applies both to transactions in local currency and to transactions in foreign currency.

At the end of 2015, the Bulgarian Government placed a proposal for strengthening the restriction as to the maximum amount we pay in cash as opposed to electronic transfer by decreasing it from BGN 10,000 to BGN 5,000, equal to EUR 2556.45.

How are employees taxed in Bulgaria and what are the current rates of tax for employees?

Salaries and other payments due for employment relationship are included in the annual taxable income and are subject to personal income tax. The employer is required to withhold provisional tax from the salaries of the employees on a monthly basis. The Bulgaria law provides specific rules for determining the taxable amount for tax on income from employment relationships. The salary withholding tax is charged at the flat tax rate of 10%.

When during the respective year the employee received only employment income, he/she is not liable to file a tax return. Where the salary withholding tax exceeds the annual tax liability (for reasons of being employed for part of the year, etc.), the refund is determined and provided through the employer.

What taxes apply to the business models you have identified above?

The taxation of corporate income and profits is governed by the Corporate Income Tax Act (CITA). In connection with the accession of Bulgaria to the European Union since 1st January 2007, a new CITA was adopted to meet the necessity of harmonisation of Bulgarian taxation legislation with the requirements of the European directives concerning direct taxation. Another reason for passing a new act in the field herein is to make perception and application of the corporate taxation easier for the taxable persons and for the revenue administration.

Taxable persons are:

- The local legal entities.
- The foreign legal entities that carry out economic activity in the Republic of Bulgaria through a permanent establishment or from disposition of property of such permanent establishment, or which receive income from a source inside the Republic of Bulgaria.
- The natural persons who are merchants within the meaning given by Article 1 (3) of the Commerce Act (persons who have established a business, which in accordance with its purposes and volume requires that its activities be conducted on a commercial basis): in the cases specified in the Income Taxes on Natural Persons Act.
- The employers and the commissioning entities under contracts for management and control in respect of the tax on the expenses on fringe benefits.
- For the purposes of taxation of income from a source inside the Republic of Bulgaria, any foreign organisationally and economically distinct formation (trust, fund and other such) that independently carries out economic activity or performs and manages investments shall likewise be a taxable person where the owner of the income cannot be identified.

Corporate income tax in Bulgaria applies at a single rate of 10%.

Bulgarian local companies are subject to Bulgarian tax on their world-wide profits. Companies that are not local in Bulgaria are liable to taxes in respect of the profits gained through a permanent establishment in the Republic of Bulgaria and of the income specified in the CITA accruing from a source inside the Republic of Bulgaria. A company is local in Bulgaria if it is incorporated pursuant to Bulgarian legislation.

Most of the taxation rules, including the major rules relating to tax incentives, apply equally to local and foreign corporations conducting activities through a Bulgarian permanent establishment.

How are dividends to foreign companies/shareholders taxed?

Bulgarian local corporations that distribute dividends have to withhold dividend withholding tax from dividend distributions in favour of foreign legal persons, with the exception of cases where the dividends accrue to a foreign legal person through a permanent establishment in the country.

No withholding tax is levied, if the dividends are distributed in favour of a common fund or a foreign legal entity which is resident for tax purposes in a Member State of the European Union or in another State which is a Contracting Party to the Agreement on the European Economic Area.

The taxable amount for assessment of the tax withheld at source on dividends is the gross amount of the dividends distributed.

Since 1 January 2008 the tax rate for withholding tax on dividends has decreased from 7% to 5%.

Are there transfer pricing rules in place?

There is no group taxation in Bulgaria. Each entity is taxed as a separate taxpayer.

Bulgaria has tax rules regulating the tax deductions and the taxable revenue from transactions between related parties (“the transfer pricing rules”). Transfer pricing rules apply to both domestic and international transactions between related parties. The Bulgarian transfer pricing rules are broadly similar to the generally accepted OECD standards that can be seen in the EU and OECD countries.

Do you have double taxation treaties in place with foreign jurisdictions? If so where can we find out details?

Bulgaria has concluded more than sixty Double Taxation Treaties which provide for a tax relief or a reduced tax rate.

In order to benefit from the reliefs in a double taxation treaty, a foreign person must submit an application to the revenue authority proving that the said person:

- Is a resident of the other State within the meaning given by the relevant treaty.
- Is an owner of the income from a source inside the Republic of Bulgaria.
- Does not own a permanent establishment or a fixed base within the territory of the Republic of Bulgaria, whereto the income is effectively connected.
- Fulfils the special requirements for application of the treaty or separate provisions thereof in respect of persons specified in the treaty itself, where such special requirements are contained in the relevant treaty.

Written evidence, regarding the type, the grounds for realisation and the amount of the relevant income, should be attached to the claim.
The revenue authorities exercise control as to the application of convention and conduct an examination or an audit. Where an examination is conducted, an opinion on the existence or non-existence of grounds for application of the tax convention shall be issued to the foreign person within 60 days after submission of the request. Non-pronouncement within this time limit is presumed as an opinion on existence of grounds for application of the double taxation treaty.

The foreign person is entitled to appeal the refusal of the revenue authorities to allow direct application of the tax treaty.

AP Law Firm

AP LAW FIRM

www.aplawbg.com/

BULGARIA
Office 4, 25 Sveti Naum Blvd, Sofia - 1421, Bulgaria

KEY CONTACT:
Emilia Andreeva
T: +359 2 9897068
andreeva@aplawbg.com

Croatia

We are looking to set up a Croatian trading company. What structures/business vehicles do you use?

In Croatia, there are two main types of business structures:

- Companies incorporated pursuant to the provisions of the Companies Act
- Crafts set up pursuant to the Craft Act

There are several types of companies, as follows:

- Limited Liability Company (Croatian: d.o.o.)
- Simple Limited Liability Company (Croatian: j.d.o.o.)
- Joint Stock Company (Croatian: d.d.)
- General Partnership (Croatian: j.t.d)
- Limited Partnership (Croatian: k.d.)

Croatian Companies Act, apart from companies and partnerships, also governs sole proprietorships, secret partnership and economic interest grouping (Croatian: GIU).

The most common types of business structures used in Croatia are limited liability companies and crafts.

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

Foreign companies most commonly incorporate limited liability companies (Croatian: Društvo s ograničenom odgovornošću, d.o.o.) - a legal entity usually used for small and medium business. There may be one or more shareholders holding shares in the share capital of the company. A foreign legal entity or individual may own 100% of a company in Croatia. However, regardless of the nationality of the founder, such a company would be deemed a Croatian entity subject to all the laws of Croatia, including, inter alia, tax laws.

Shareholders of a limited liability company are not liable for the companiy's obligations. In case of bankruptcy, shareholders personal assets are protected.

The newly established company has to be properly registered with the Tax Department, Croatian Pension Fund, Croatian Health Insurance Fund and Department of Statistics. Annual financial reports must be filed with the Financial Agency (FINA).

What are the rules on capitalisation of entities in Croatia?

The minimal initial capitalisation for a standard limited liability company is 20.000 HRK (i.e. approximately 2.800 EUR). A "simple" limited liability company may be established with a share capital of 10,00 HRK (1,4 €). Limited liability companies registered for some specific activities may be required by special laws to have a higher minimum capitalisation.

The minimum registered capital required for establishment and operation of a joint stock company is HRK 200.000,00 (i.e. approximately 27,000 EUR).

What information are we required to provide businesses/ consumers with when trading with us?

In the case of a limited liability company, the following information has to be included in the company's business memorandum:

- Name of the company.
- Registered seat.
- Name of the Company Registry and registered number.
- Bank account information (name and registered seat of the bank, bank account numbers).
- Share capital (amount of the share capital and information on whether it is paid in full or partially paid).
- Members of the Management Board (name and surname of all members).

We would prefer to avoid having an actual physical presence in Croatia and instead are looking to appoint an agent or distributor to sell our products and/or services. What are the legal implications?

It is possible to sell products and/or services through an agent or distributor on a contractual basis. Terms and conditions of sale of products and/or services in the Croatian market should be agreed between the company and the agent. The agent or distributor has to have a physical presence in Croatia and must be registered to perform the respective business activity (e.g. sale and purchase of goods).

Since the agent or distributor places the products and/ or services on the Croatian market, a number of legal implications may arise e.g. liability issues (liability of the manufacturer and/or agent), consumer protection rights (filing complaints to the agent and/or manufacturer), intellectual property rights, etc.

We intend to sell goods via our online website. What are the legal requirements if we wish to sell into Croatia?

For online sale of goods in the Croatian market, the seller either has to have a registered seat in the Republic of Croatia (and register information society services as business activity) or a registered seat in any of the EU Member States. Namely, EU E-commerce Directive is transposed into the Croatian E-commerce Act, meaning that information society services, in principal, are subject to the laws of the Member State in which the service provider is established. However, in certain issues explicitly provided by law, Croatian legislation applies even to service providers seated in an EU Member State (e.g. copyright matters, contractual obligations in consumer contracts).

For EU service providers in the Croatian market, no licence or approval for provision of e-commerce services is required.

Do you have legislation in respect of the use of electronic signatures?

Yes. Use of electronic signatures is regulated by the Electronic Signatures Act (Official Gazette No. 10/02, 80/08, 30/14) and has a number of implementing rules and

regulations.
Use of electronic signatures is constantly growing in Croatia, and as of 2016 bids in all public procurement procedures must be signed with enhanced electronic signature.

We intend to import goods into Croatia for sale. What are the legal requirements for doing this?

Since Croatia is an EU Member State, import of goods from another EU Member State is not subject to customs control and supervision (and is not considered as ''import'').

Dealing with foreign goods imported from countries outside the EU is regulated by the provisions of the Act on Customs Regulations of the European Union (NN 54/2013). Subject to customs supervision are the goods for which the EU customs regulations prescribe customs supervision. Goods are subject to customs supervision from the time of their entry, and the same should require a customs-approved treatment or use of goods. Customs-approved treatment or use of goods requires the submission of a customs declaration for the customs procedure or use of goods.

What rights do consumers have when selling to them?

Consumer rights in general are regulated by the Consumer Protection Act (Official Gazette No 41/14, 110/15) and a number of implementing rules and regulations, all in line with EU consumer directives. For specific types of goods there are special consumer protection rights regulated in a number of other acts and regulations, which apply as lex specialis (e.g. for consumer loans, postal services, e-commerce, air transport etc).
Consumer rights may be summarised as follows:

- Right to Safety – right to purchase goods with high level of health and safety standards.
- Right to Information – right to be informed about each product.
- Right to unilateral termination of sale and purchase contract – in certain cases prescribed by the law.
- Right to protection from unfair contractual clauses – certain types of clauses are considered unfair and thus null and void for the consumer.
- Right to non-faulty goods, corresponding to the contracted goods.
- Protection from unfair business practices – certain seller's actions are considered aggressive or misleading
- Right to effective legal protection of rights (prescribed mechanisms of individual and collective protection of consumer rights).

Consumer rights associations are very strong in Croatia.

What are a customers rights in so far as returning goods (whether or not they are faulty)?

According to the general provisions stipulated by the Croatian Obligations Act, the consumer is entitled to terminate the contract, to return the goods and to claim reimbursement of all payments on the basis of the restitutio in integrum principle, but only if the goods are faulty. The right to return the goods can only be used if the trader failed to repair such goods or to replace them or to decrease the price of the faulty goods. Apart from general provisions, the Croatian Consumer Protection Act, which was enacted entirely in accordance with the Consumer Rights Directive 2011/83/EU, sets additional provisions for distance contracts and off-premises contracts and enables the consumer to withdraw from such contract and to return the goods without giving any reason, but only with prior notification to the trader expressing his intention of doing so. However, consumer's right to return the goods (whether or not they are faulty) may be limited for certain cases and types of goods explicitly provided by law (goods with risk of deterioration or sealed goods, newspapers, etc.).

Are we required to ensure that all customers have agreed to our terms of business in writing?

In general, the trader is not required to ensure that the customers have agreed with the terms of business in writing. However, in certain cases explicitly provided by law (distance contracts, off-premises contracts) a written form of the agreement or a written confirmation of the prior oral agreement is required.

EMPLOYMENT QUESTIONS

We are looking to set-up a business in Croatia and intend to bring some of our current employees into Croatia to work. Do we require work/residency permits?

The Croatian Foreigners Act provides that a foreigner may work in Croatia based on the residency and work permit. This is a unique permit that allows a foreigner temporary residency and work in Croatia. Temporary residency and work permits are issued by annual quota set by the Croatian Government and is announced in the Official Gazettes.

For members of the EEA (European Economic Area), including the Swiss Confederation, residency and work permits are not required if reciprocity between the member states exists.

What formalities do we need to comply with when recruiting employees in Croatia?

When recruiting employees in Croatia, resident and work permits should be obtained (excluding EEA member states if reciprocity exists) and the Employment Contract concluded.

What are the minimum rights we have to adhere to for employees in Croatia?

Minimal rights might be summarized as follows:

- **General rights** (direct and indirect discrimination of a person at work is forbidden, the employer is due to insure safety measures at work).

- **Rest periods and leaves** (daily rest period ("break") of at least 30 minutes, daily rest period between two consecutive working days for a minimum of 12 hours without interruption, weekly rest period on Sunday, lasting at least 24 consecutive hours, paid annual leave, paid leave for a maximum of seven working days for important personal needs).
- **Protection of motherhood, parents and adoptive parent** (right to maternity leave, prohibition of dismissal, right to return to previous or appropriate job).
- **Protection of employees temporarily or permanently unable to work** (prohibition of dismissal, right to return to previous or appropriate job).
- **Salaries** (equal salaries for women and men for equal work, payment of salaries in money, salary calculation which is an enforceable document, increased salary for arduous working conditions, overtime and night work, and for work on Sundays, holidays).
- **Termination of employment contract** (notice period in case of regular termination, severance pay).

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

A consultant provides services on the grounds of a service contract. Pension and social welfare contributions that the employer has to pay for the consultant on the grounds of a service contract are higher by approximately twenty percent than contributions paid for the employee on the grounds of an employment agreement.

A consultant is usually engaged if consultations are required for the specific and shorter time period.

What options exist if we want to terminate employees contracts with us? Can we make them redundant?

The Employment Contract may be terminated by cancellation due to economic, technological or organisational reasons ("notice due to business reasons"), with the notice period provided by the Employment Contracts (or under an agreement between the employer and the employee).

What is the Transfer of Undertakings (Protection of Employment) Regulations 2006?

If the company or part of the company (plant) is transferred to a new employer, all Employment Contracts of workers working in the company or part of the company which was subject to transfer are also transferred to the new employer. The worker whose Employment Contract has been transferred retains the rights in relation to the dismissal, notice periods, severance pay and other issues related to employment he or she acquired until the transfer date. The employer to whom Employment Contracts are transferred assumes, as of the transfer date, all the rights and obligations from the Employment Contract that has been transferred.

TAX AND INVESTMENT QUESTIONS

Are there any restrictions on foreign investment in to Croatia?

According to the Constitution of Republic of Croatia foreign investors shall be guaranteed free transfer and repatriation of profits and invested capital. Also, according to the Foreign Exchange Act foreigners can invest in Croatia freely, unless otherwise prescribed by law. However, despite the seemingly positive provisions, the politic, tax and economic climate in Croatia is often an obstacle for foreign investments in Croatia.

Foreigners can purchase real estate in Croatia under the principle of reciprocity and with the approval of the ministry of justice. Citizens of the European Union can purchase real estate in Croatia under the same requirements as Croatian citizens. However, some real estate (such as agricultural land, protected natural areas etc.) are exempt from the ownership of foreigners.

Do you have any currency or exchange controls in place?

Croatian currency or KUNA (abbreviation kn) floats freely on the market. However, Croatian National bank sometimes intervenes in the market to ensure the stability of kuna. Moreover, it is one of the primary mandates of Croatian National bank to keep the exchange rate against the euro stable. Legal entities, residents and non-residents can open accounts in foreign currency freely. Also, residents can open accounts in foreign currency abroad with no restriction.

How are employees taxed in Croatia?

Employees are taxed with income tax. Whilst paying the salary to the employee the employer must calculate all taxes and deduct them from the gross salary of the employee. The employee is paid with the net salary and the taxes are paid directly into the state budget. Some types of workers (seamen, self-employed, etc.) are obliged to report and pay annual taxes as well.

What are the current rates of tax for employees?

Tax rates for employees are regulated by the Income Tax Act. New Income Tax Act came into force on 1 January 2017 as a part of the Croatian tax reform. According to Article 24 of the Income Tax Act income tax rates are 24% on the tax base up to 17.500,00 kn (approx. 2.300,00 eur), and 36% on the tax base above 17.500,00 kn. Also, Tax Act regulates annual income tax where tax rates are 24 % on the tax base up to 210.000,00 kn (approx. 30.000,00 eur) and 36 % on the tax base above 210.000,00 kn.

What taxes apply to the business models you have identified above?

Companies identified above are taxed with:

1. Taxes on business activities (state taxes)

- Corporate profit tax (12 % on the income up to 3.000.000,00 kn, approx. 400.000,00 eur and 18% on the income on 3.000.000,00 kn or higher) and withholding tax (15% or 12%)

- Value added tax (25%, with exemption: 5% - bread, milk, medicine etc., 13 % - accommodation services, magazines, service of food and drinks etc.)
- Excise duties and special taxes (i.e. alcohol, tobacco products, luxury products etc.)

2. City or municipal taxes

- Consumption tax.
- Tax on trade name.
- Tax on the use of public land.

3. Special taxes

- Inheritance and gifts tax (5 %).
- Tax on road motor vehicles.
- Tax on vessels.
- Tax on coin-operated machines for games for amusement.
- Tax on real estates (5%).

How are dividends to foreign companies/shareholders taxed?

Dividends to foreign companies/shareholders are taxed with withholding tax according to Profit Tax Act and Profit Tax Ordinance.

According to Article 31 Para 4 of the Profit Tax Act, withholding tax rate is 15 % (in some cases 12%). However, a company/shareholder who has residency in tax havens or financial centres pays withholding tax in the amount of 20%.

The taxpayer is the company paying the dividend.

Are there transfer pricing rules in place?

Croatia applies the arm's-length principle and methods specified by the Organisation for Economic Co-operation and Development (OECD) Guidelines and Croatia is a member of the European Union Joint Transfer Pricing Forum. Transfer pricing rules are prescribed by Article 13 of the Profit Tax Act and by the Article 40 of the Profit Tax Act Ordinance.

According to Article 13 Para 1 of the Profit Tax Act 1: "Where associated persons, within their business relations, agree on prices or other conditions different from the prices or other conditions which would be agreed between non-associated persons, the whole amount of the profit that would be realised if the business relations were between non-associated persons, shall be included in the associated persons' tax bases."

Article 13 Para 3 of the Profit Tax Act regulates transfer pricing methods for determining whether business relation between associated persons are agreed according to the market prices. The transfer pricing methods are: the comparable uncontrolled price method, the resale price method; the cost-plus method, the profit split method and the net-profit method (same methods proposed by OECD).

Do you have double taxation treaties in place with foreign jurisdictions. If so where can we find out details?

Croatia has Agreements on avoidance on double taxation with multiple countries. The list of countries and agreements can be found on Ministry of Finance, Tax Administration`s web page on the following link:

http://www.porezna-uprava.hr/en/EN_porezni_sustav/Pages/double_taxation.aspx

MACESIC PARTNERS LLC

Macesic & Partners LLC

www.macesic.hr/

RIJEKA
Pod Kaštelom 4, 51000, Rijeka

ZAGREB
Mihanoviceva 16, 10000, Zagreb

KEY CONTACT:
Ivana Manovelo
Attorney, Equity partner
T: +385 51 215-010
manovelo@macesic.hr

Cyprus

We are looking to set up a Cypriot trading company. What structures/business vehicles do you use?

Incorporation of a private company with limited liability by shares governed by the Companies Law, Cap 113, which is subject to the approval / registration with the Registrar of Companies. The information and documents that need to be submitted to the Registrar as part of the application include the proposed name, the particulars of the directors, shareholders, secretary, registered office address and the Memorandum and Articles of Association. It is compulsory for a company to appoint at least one director and have at least one shareholder, a secretary and a local registered office. It is strongly recommended that the sole director (or, in case there is more than one director, the majority of them) is a Cyprus resident, and that board meetings, general meetings and major decisions take place in Cyprus. Those are some factors, among others, that demonstrate that the management and control of the company is in Cyprus.

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

The most common business structure is that of private companies with limited liability by shares, which means that the liability of the shareholders to the creditors of the company is limited to the capital originally invested - namely the value of the shares and any premium paid in return for the issue of the shares by the company. The company is required to appoint auditors in Cyprus who will audit its accounts and file the official returns with the Inland Revenue authorities (IR). The Company should register with the IR and obtain a tax identification code within 60 days of its date of incorporation. The basic reporting requirements that should be adhered to by the company are the filing of the annual audited financial statements, the annual returns in statutory form, the changes in the authorised and issued share capital and in the company structure, and the payment of the annual fee to the Registrar.

What are the rules on capitalisation of entities in Cyprus?

There is no minimum share capital, but it is advisable to have an authorised share capital of Euro 2000. The capital is usually expressed in Euro and may be divided into shares of any value. Other currencies, such as US dollars, may be adopted, subject always to the approval of the Registrar.

What information are we required to provide businesses/ consumers with when trading with us?

Law 133(I)/2013, which is based on the relative European Union directives, stipulates that the merchant should provide the consumer with information on the main characteristics of the goods or services, the identity of the merchant (such as his trading name, geographical address of establishment and telephone number), the total cost of the goods or services inclusive of taxes and any additional delivery charges, the arrangements for payment, delivery execution, guarantee service after sale, the duration of the contract, conditions of termination, and any other terms and conditions. The above mentioned law makes a distinction between contracts that are not distance contracts, distance contracts, and off premises contracts. For the last two types of contract additional information is required, such as the right of withdrawal, way of exercising it, conditions that apply and other.

We would prefer to avoid having an actual physical presence in Cyprus and instead are looking to appoint an agent or distributor to sell our products and/or services. What are the legal implications?

Cyprus Contract Law, Cap 149 contains the general legislative provisions governing the area of agency and distribution and essentially reflects common law. The legal framework with respect to commercial agents has been improved by two further pieces of legislation which are generally in line with EU legislation, namely the Commercial Agents Law as amended by Laws 21 (I)/1994 and 148 (I)/2000 and the Regulation of Relations between Commercial Agents and Principals Law 51 (I)/1992 as amended by Law 149 (I)/2000. The latter law covers the duties of the commercial agent and principal and vice versa, remuneration and commission, termination of the contract and rights to indemnity and compensation upon such termination and restraint of trade clause. If an agent or distributor falls into the definition of a commercial agent given by the relative law, then Law 51(I)/ 1992 as amended applies. Otherwise the relationship between the agent/ distributor and the principal is governed by the Contract Law Cap 149.

We intend to sell goods via our online website. What are the legal requirements if we wish to sell into Cyprus?

In the pre-contractual stage, the owner of the website or the online shop who sell goods and services via the internet is obliged to provide the visitor of the website with the minimum information before the transaction: the trade name of the company or name of the supplier, the registered place of business, contact details and license authority details. In the case of an online shop there are additional obligations imposed on the owner; for example description of the goods or services to be rendered, price, cost of delivery, right to withdrawal, language of the contract etc.

Do you have legislation in respect of the use of electronic signatures?

Cyprus has enacted relevant legislation for the legal framework for electronic signatures and other related matters, namely Law 188(I)/2004 as amended. According to this law the advanced electronic signature which is based on a recognised certificate issued by an authorised certification service provider is considered to have the same legal effect as a handwritten signature.

We intend to import goods into Cyprus for sale. What are the legal requirements for doing this?

Importing goods into Cyprus is subject to the same regulations as in other EU countries. There are certain products that do require import licenses or permission when imported as there are restrictions on their importation. The relevant law on Imports and Exports of Controlled Items is law 1(I)/2011. The aim of prohibitions and restrictions is the protection of society and the perpetuation of a safe environment. Such prohibitions and restrictions are essential for the safeguard of social ethics, order and security, protection of public health or the health of animals, protection of plant life, protection of industrial and commercial property, archaeological treasures, cultural artefacts etc. Products imported from non EU countries for which import duties and taxes have been paid in another EU country do not carry any customs duties when released into the Cyprus market. Companies importing from other countries need to register with the Customs Register for clearance procedures. When importing goods invoices, licenses and certificates are needed (depending on the goods).

What rights do consumers have when selling to them?

The consumers have the right to be informed prior to being bound by the sales contract. The relevant law on the protection of consumers states that the information to be provided to the consumer must be made in a simple and comprehensive way in the case of contracts that are not distance or off premises, and for off premises contracts the information must be in writing or other means in simple and comprehensive language. In the case of distance contracts the information should be made available in a way suitable for the mode of communication used and the commercial web pages should contain information before placing an order as to whether there are any limitations for delivery and as to the means of payment. The consumer has the right to delivery without unreasonable delay and within 30 days from the date of the conclusion of the contract.

What are the customers' rights in so far as returning goods (whether or not they are faulty)?

On the basis of the Law on the Rights of the Consumer 133(I)/ 2013 for distance contracts and for off premises contracts, the customer (subject to some exceptions) has the right to return the goods within 14 days from the day he took possession of same, without stating the reasons and without incurring extra charges except those stipulated by law. The merchant is under a legal obligation to return the payment received without unreasonable delay and within 14 days from the date he was informed about the consumer's decision to have the goods returned.

Are we required to ensure that all customers have agreed to our terms of business in writing?

For off premises contracts, the merchant has to provide the consumer with a copy of the signed contract or confirmation of the contract in paper or other means if the consumer agreed to it, including the confirmation of the consent and acceptance of the consumer. For distance contracts, the merchant has to provide the consumer with confirmation of the contract at the time of delivery of the goods.

EMPLOYMENT QUESTIONS

We are looking to set-up a business in Cyprus and intend to bring some of our current employees into Cyprus to work. Do we require work/residency permits?

The procedures for work or residency permits differ depending on whether the foreign workers are EU or non-EU nationals. In the case of EU nationals, the procedure is fairly simple, as the EU principle of free movement of workers is adhered to. EU nationals are permitted to enter Cyprus by showing a valid EU passport or identity card; however, should there be an intention to stay and take up employment in Cyprus, EU nationals are required to apply for a Registration Certificate and for a Social Insurance number.

The procedure for non-EU nationals is more complicated as the criteria and procedure for granting an approval for work permit, as approved by the Council of Ministers (Cyprus) on the 6/12/1991, should be adhered to. These include (but are not limited to) the requirement of proving non-availability of suitably qualified local personnel, and further safeguards which essentially ensure that the local labour workforce are properly utilised. There are also other important conditions, such as that the business should be registered with the Social Insurance Fund, to have a VAT number and be registered with the Department of Inland Revenue. The whole procedure is complicated and legal advice is recommended.

In relation to the posting of workers (regulated under Law 137(I)/2002), namely when a worker is posted in Cyprus under a contract concluded between the undertaking making the posting and the receiver of the services operating in Cyprus, and provided that there is an employment relationship between the sending undertaking and the worker, the worker, as a rule, does not need a work permit, and will be also covered under the social insurance system of his country of residence. However, other than that, he will be subject to the local legislation and regulations, including, among other, the income taxation.

What formalities do we need to comply with when recruiting employees in Cyprus?

There is an extensive legal and regulatory framework for employment matters, which differs depending on the sector.

Basic formalities are also set out above, including the obligation of the employer to be registered in the Social Insurance Department as he has to pay social insurance contributions.

The employer is also obliged, under the Provision of Information to the Employee by the Employer on the Conditions Applicable to the Contract or Employment Relationship Law 2000, to inform the employee in writing of

the essential terms of the contract of employment, amongst others the nature of the duties, date of commencement of employment, duration of paid leave, etc.

It has to also be noted that there is a statutory minimum salary for certain occupations.

What are the minimum rights we have to adhere to for employees in the Cyprus?

The minimum rights are those stipulated in Cyprus Law covering issues such as the termination of employment, annual paid leave, social insurance, safety and health at work, maternity leave, protection of wages and equal treatment at work.

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

Indeed there is an important distinction between persons employed under a contract of service (employment contract), which is governed by the employment Law (including ensuring compliance with respect to Law No. 100(I)/2000, whereby an employer is obliged to inform the employee in writing of the essential conditions applicable to his contract of employment, and Law No. 24/1967, protecting employees against unfair dismissal), and those contracted as external consultants or independent contractors pursuant to a contract of services, which is governed by the principles of Contract Law.

In essence, as per multiple rulings on this subject by the Cyprus Courts, the question as to whether the relationship of employer and employee exists is always a question of fact. The criteria for establishing whether a person is an employee of another is not only the payment of a salary for services rendered by him but, inter alia, establishing whether the employer can exercise control over the work of the other. Important distinction as to the obligations of an employer when an employment relationship is established is the obligation to pay social insurance contributions.

What options exist if we want to terminate employees' contracts with us? Can we make them redundant?

According to the Termination of Employment Law No. 24/1967, the employer may legitimately dismiss an employee for the reasons which are exhaustively stipulated in law, namely when the employee fails to perform his work satisfactorily, expiry of contract of employment, reaching retirement age, force-majeure, conduct rendering the employee subject to summary dismissal, and if the employee has been made redundant.

Reasons for redundancy are also stipulated exhaustively in law, including, when the employer ceases or intends to cease operation of business, by reason of modernisation, mechanisation or other changes concerning products or re-organisation which reduces the number of employees needed, reduce of the workload and/or business, etc.

Special procedure has to be followed and certain limitations are stipulated in Law in case of redundancy.

If an employee is dismissed for the above reasons then no compensation is payable but notice must be given. The minimum periods of notice are correlated to the length of service of an employee in continuous employment and are stipulated by law. Otherwise, namely in case of unfair dismissal, compensation is payable, the maximum of which can be 2 year's of salary, only one of which is payable by the employer.

Termination of employment can also be effected by mutual agreement between the parties.

What is the Transfer of Undertakings (Protection of Employment) Regulations 2006?

For the protection of the employees' rights in the event of transfer of an undertaking, under the Cyprus Law there is the Law Providing for the Preservation and Safeguard of the Employees' Rights in the event of Transfers of Undertakings, Business or Parts of Undertakings or Business, Law No. 104(I)/2000, as amended, and the Law for establishing a general framework for informing and consulting employees, Law No 78(I)/2005, as amended.

The transferor's rights and obligations arising from a contract of employment or from an employment relationship, existing on the date of transfer, are transferred to the new employer, the transferee.

The new employer shall respect the terms and conditions of employment as agreed at the time of transfer, until the date of termination or expiry of the collective agreement or the entry into force or application of another collective agreement (there is however a minimum time-limit of one year to respect the previous terms and conditions). There are certain exceptions.

The transfer of an undertaking or part of an undertaking cannot in itself constitute grounds for dismissal by the transferor or the transferee. However, this provision does not stand in the way of dismissals for economic, technical or organisational reasons entailing changes in the workforce.

TAX AND INVESTMENT QUESTIONS

Are there any restrictions on foreign investment in to Cyprus?

Generally most restrictions were abolished. Some restrictions still exist, such as the production and distribution of electricity, telecommunication services, postal services, education, airlines and the media sector. Foreign investment in these areas must be approved beforehand by the government.

Do you have any currency or exchange controls in place?

As Cyprus is a member of the euro zone, there are no currency or exchange controls. However, amounts exceeding €10,000 or equivalent must be declared if travelling from or to a country outside the EU. Also, amounts over €12,500 or equivalent must be declared if travelling from or to a country within the EU.

How are employees taxed in Cyprus?

This is mainly by income tax. An individual is considered to be a tax resident in Cyprus if he is present for more than 183 days in the year of assessment. Cyprus tax residents are taxed on all income accrued or derived from all sources in Cyprus and abroad. Non-tax residents are taxed on income accrued or derived from sources in Cyprus, provided that they are physically present in Cyprus when offering their services.

Apart from income tax, employees have to pay social insurance, and if they work in the private sector they have to pay a special contribution.

What are the current tax rates for employees?

Income tax

Chargeable income (€)	Chargeable income (€)	Amount of Tax (€)	Accumulated tax (€)
0 – 19.500	Nil	Nil	Nil
19,501 – 28,000	20	1,700	1,700
28,001 – 36,300	25	2,075	3,775
36,301 – 60,000	30	7,110	10,885
Over 60,000	35		

Foreign pension is taxed at the rate of 5%. An annual exemption of €3,420 is granted.

What taxes apply to the business models you have identified above? (Company limited by shares)

The main tax is corporation tax which is at 12.5%. Cyprus tax resident companies are taxed on all income accrued or derived from all sources in Cyprus and abroad. A Company is a tax resident of Cyprus if it is managed and controlled in Cyprus. Non-resident companies are taxed on income accrued or derived from a business activity, which is carried out through a permanent establishment in Cyprus.

A permanent establishment is a fixed place of business through which the business of an enterprise is wholly or partly carried on. This includes a place of management, a branch, an office, a factory and a workshop. There are also a number of exemptions and deductions. A separate tax regime applies to international shipping and ship management services, ship owners, charterers, and also intellectual property rights. Companies must also pay a Special Defence Contribution which is deducted from the dividends paid to Cyprus tax residence individuals.

How are dividends to foreign companies/ shareholders taxed?

No withholding tax is imposed in Cyprus upon payment of dividends, interests and royalties used outside Cyprus to non-residents of Cyprus. There is no Special Defence Contribution on dividends paid to non-resident companies or shareholders.

Are there transfer pricing rules in place?

There are no specific transfer pricing rules in Cyprus. Cyprus follows the OECD transfer pricing guidelines.

Do you have double taxation treaties in place with foreign jurisdictions? If so where can we find out details?

Cyprus has a number of double taxation treaties with about 60 jurisdictions. More information can be found on the Ministry of Finance website: http://www.mof.gov.cy/mof/mof.nsf/page26_en/page26_en?OpenDocument

LELLOS P. DEMETRIADES LAW OFFICE LLC

Lellos P Demetriades Law Office LLC

NICOSIA
The Chanteclair House,
2, Sophoulis Street,
9th floor, 1096

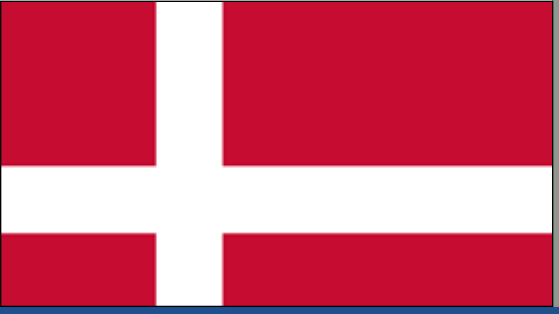
www.ldlaw.com.cy/

KEY CONTACTS

Theodora Taoushanis
Business
T: +357 22 676060
theot@ldlaw.com.cy

Anastasia (Natasa) Iakovou
Employment
T: +357 22 676060
natasa@ldlaw.com.cy

George Taoushanis
Tax and Investment
T: +357 22 676060
info@ldlaw.com.cy



Denmark

We are looking to set up a Danish trading company. What structures/business vehicles do you use?

Business activities in Denmark can be structured and operated in several different ways. Please see below for further details.

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

An international business commencing operations in Denmark often chooses to establish a subsidiary entity as a vehicle for conducting its affairs. Most subsidiaries are formed as private limited companies or public limited companies. Both types of companies have limited liability. The Danish Companies Act comprises regulation on both public limited companies and private limited companies as well as other forms of businesses (e.g. limited partnership company as described above). As of 1 January 2014 a new kind of private limited company, a so-called "start-up" company, has been introduced. The start-up company is generally governed by the same rules as private limited companies; however, the start-up company is subject to less stringent capital requirements.

What are the rules on capitalisation of entities in Denmark?

Public limited companies are required to establish a minimum share capital of DKK 500,000 (approx. EUR 67,000) and private limited companies are required to establish a minimum share capital of DKK 50,000 (approx. EUR 6,700). Start-up companies can be established with a minimum share capital of DKK 1 (approx. EUR 0.13). However, 25 per cent of such a company's yearly profits are retained (and not available for distribution of dividends or other methods of payment to shareholders) until the capital base of the company is DKK 50,000. Share capital is payable in cash and/or by contribution in kind. The amount to be paid per share must be no less than the nominal amount of the share.

What information are we required to provide businesses/ consumers with when trading with us?

The governing principle is a freedom of contract according to which parties are free to decide the contents and form of agreements. Contracting parties are generally advised to make sure that contracts are not vague or ambiguous in their intentions in order to clearly to describe the object, parties and terms of the agreement. Nevertheless, a contract may be concluded orally and theoretically does not need to be in writing. Also, depending on the products, certain information regarding the content, shelf life, date of production etc. is required.

We would prefer to avoid having an actual physical presence in Denmark and instead are looking to appoint an agent or distributor to sell our products and/or services. What are the legal implications?

Entering into a distribution agreement with a Danish distributor does not impose legal implications in general. When entering into an agency agreement with a Danish commercial agent, please note that Danish legislation contains mandatory provisions regarding (i) notice of termination and (ii) compensation to the commercial agent at the expiry of the agency agreement. As such, the commercial agent may be entitled to compensation if the agent has provided a substantial number of new customers or has increased the sales to existing customers considerably.

The above is in accordance with the generally applicable EU rules, which thus have naturally been implemented in Denmark.

We intend to sell goods via our online website. What are the legal requirements if we wish to sell into Denmark?

When establishing a web shop you have to comply with an amount of different Danish laws. The details of the company (company type, business registration number, registered business name of the company, the registered premises of the company, etc.) shall - amongst others - be available to the customers. Furthermore, certain information regarding the goods, the terms and the cost of freight, payment fee, confirmation of order etc. shall also be available to the customers.

Please also pay attention to the The Danish Act on Processing of Personal Data, which contains restrictive rules for the collection, processing and disclosure of personal data. Among other things, a company may not disclose data concerning a consumer to a third party for the purpose of marketing or use such data on behalf of a third company for this purpose unless the consumer has given his explicit consent.

Do you have legislation in respect of the use of electronic signatures?

In Denmark we do not have any legislation regarding electronic signatures. However, to a wide extent, we accept electronic signatures.

We intend to import goods into Denmark for sale. What are the legal requirements for doing this?

In general there are no restrictions for the import of goods into Denmark other than those that generally apply in EU countries, i.e. goods can be imported into and sold in Denmark and sometimes subject to custom duties and special requirements depending on the country of origin and type of goods.

What rights do consumers have when selling to them?

In general consumers in Denmark enjoy the general consumer protection rights applicable in the EU – and in certain cases even better conditions.

What are a customers rights in so far as returning goods (whether or not they are faulty)?

Goods bought through an online web shop can be returned/ cancelled within 14 days, provided that the goods can be returned to the company in the same condition and without any deterioration. The right of cancellation should appear on the website.

Are we required to ensure that all customers have agreed to our terms of business in writing?

The requirements for treating standard terms/terms of business as agreed are quite high in many areas. Parties using standard terms/terms of business need to consider and make sure that such terms are in fact (clearly) presented to the customer and agreed upon. Otherwise there is a substantial risk that a court will find that terms are not part of an agreement. It is not required that an approval from the customer shall be in writing. When dealing with web shops a check mark made by the customer will be sufficient.

EMPLOYMENT QUESTIONS

We are looking to set-up a business in Denmark and intend to bring some of our current employees into Denmark to work. Do we require work/residency permits?

Citizens from the Nordic countries, the European Union (EU) and European Economic Area (EEA) and Switzerland are free to reside and work in Denmark.

However, if the employee is an EU/EEA or Swiss citizen and wishes to reside in Denmark for more than three months, the employee must apply for a registration certificate at International Citizen Service or the Regional State Administration.

If the employee is a citizen from outside the Nordic countries and the EU/EEA, the employee must apply for a residence and work permit before he or she starts working. If the employee already legally resides in Denmark, the employee can submit his or her application for a residence and work permit at the Danish Agency for Labour Market and Recruitment online via Newtodenmark.dk, or at the local police station.

The rules apply to all kinds of work.

What formalities do we need to comply with when recruiting employees in Denmark?

The employer has - according to the Employment Contracts Acts - a legal obligation to ensure that the employee receives a written statement of all essential employment terms.

The employer is also obliged to take out different kinds of insurance, including insurance against occupational injury. The employer's liability for industrial diseases is covered through affiliation to the Labour Market Occupational Diseases Fund.

Furthermore, the employer shall pay contributions to different kinds of social security schemes, including the Danish scheme of "ATP" (the Labour Market Supplementary Pension) and "Barsel.dk"-contribution. Barsel.dk is a scheme for employers in the private sector that enables them to share and compensate for their expenditure on wages paid during maternity leave.

What are the minimum rights we have to adhere to for employees in Denmark?

In Denmark labour law is regulated by legislation, collective agreements and individual employment contracts.

The legal status of the employee determines the legal framework of the employment. There are 3 groups of employees: Executive officers, white-collar workers and blue-collar workers. Consequently, it will depend on the specific type of employment, the relevant collective agreement or the individual employment contract to determine the minimum rights that the employer will have to adhere to.

There is, however, legislation that applies to all employees in Denmark, such as the Holiday Act, which entitles employees up to 25 holidays per year. The Danish Holiday Act contains a number of mandatory rules from which deviation cannot be made to the detriment of the employee.

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

Contrary to the employee who is in an employment relationship with the employer, the (independent) consultant operates at his or her own expense and risk.

The consultant is – unlike the employee – not bound by a wide range of employment rules that provide protection in various employment terms and conditions such as sickness, maternity leave, holiday, notice etc.

What options exist if we want to terminate employees contracts with us? Can we make them redundant?

In Denmark an employee is only protected against termination if he or she is covered by the basis agreement or the Danish Salaried Employees Act, both containing rules on unfair dismissal.

Salaried employees are entitled to a notice period of 1-6 months depending on the length of employment, unless prolonged by individual agreement. The notice period contained in the collective agreement is typically shorter than those of the Salaried Employees Act.

However, some special rules protect against unfair dismissal of, for example, minorities such as disabled employees, pregnant employees or employees on maternity/paternity leave. Unfair dismissal can result in compensation of up to 12 months' extra salary.

Depending on the number of employees to be made redundant, the Collective Redundancies Act may be applicable. According to this Act, the employer is under an obligation to inform and consult the employees before effecting the contemplated redundancies.

What is the Transfer of Undertakings (Protection of Employment) Regulations 2006?

The principle of the Transfer of Undertakings Act is that the new employer is legally obliged to take on the existing employees of the business. The terms and conditions and the employer's obligations in the contract of employment are automatically transferred to the new employer. This means that as a general rule the former employer will be released from his employer's duties and the employees will therefore have to present any claims to the new employer, unless otherwise agreed between the former and the new employer.

A transfer of an undertaking does not in itself constitute grounds for dismissal, unless the dismissal is due to economic, technical or organisational reasons.

TAX AND INVESTMENT QUESTIONS

Are there any restrictions on foreign investment into Denmark?

No.

Do you have any currency or exchange controls in place?

No.

How are employees taxed in Denmark?

The salary is first taxed with a so called labour-market contribution (AM-bidrag). The remaining income is then taxed with a tax to the state, the municipality, the church and a health contribution.

What are the current rates of tax for employees?

- Tax to the state is a progressive tax, which means that the tax increases to the extent that your income increases.
- The tax rate to the municipality depends on which municipality the employee lives in.
- The tax to the church is voluntary.
- The maximum tax rate is 56% in total.
- Social contribution for the employee constitutes only of a so called ATP- bidrag (a contribution), and the rest of the social contribution is to be paid by the employer.

What taxes apply to the business models you have identified above?

The limited liability companies are taxed with a tax rate of 22%.

How are dividends to foreign companies/shareholders taxed?

Dividends paid from a Danish company to foreign companies/shareholders lead to limited tax liability to Denmark. The Danish company is obliged to withhold tax of the dividend.

The dividend is tax free if the companies own more than 10% of the shares in the company.

The tax rate for dividends is 25% for companies, and for private persons 27% up to DKR 50,600 (2016) and 42% for dividends above this amount.

If the dividend is also taxed abroad, the result will be double taxation of the dividend. This has to be solved by the distribution rules in a double taxation agreement between Denmark and the country concerned, if such an agreement has been made.

Are there transfer pricing rules in place?

There are a number of rules on controlled transactions - transfer pricing.

There are rules concerning the preparation and storage of transfer pricing documentation.

In addition, the Danish legislation also contains an orientation duty, which means that the companies must inform SKAT (the Danish tax authority) about the company transfer pricing activities.

In addition there are a number of rules that give SKAT the authority to disregard and correct or adjust the conditions and prices used in controlled transactions.

Do you have double taxation treaties in place with foreign jurisdictions. If so where can we find out details?

Yes, indeed. Denmark has entered into a long series of double taxation agreements and all agreements are partly available on SKAT's website. http://www.skat.dk/SKAT.aspx?oId=2082818&chk=211712 and otherwise on www.retsinfo.dk. Both websites are, unfortunately, only in Danish.

DELACOUR

DELACOUR Law Firm

www.en.delacour.dk/

COPENHAGEN
Langebrogade 4 DK-1411 København K

AARHUS
Åboulevarden 13 DK-8000 Aarhus C

KEY CONTACTS
Thomas Salicath
Partner
+45 3345 8540
tsa@delacour.dk

England

We are looking to set up an English trading company. What structures/business vehicles do you use?

An overseas company can set up a trading entity in England by either establishing a branch or incorporating a company limited by shares.

The branch does not give rise to a separate legal entity but is part of the overseas company itself. A branch does not need its own director.

With respect to the branch, the overseas company will need to comply with the Overseas Companies Regulations 2009.

A company incorporated as a subsidiary is a separate legal entity to the overseas company, therefore each is subject to limited liability.

A private company incorporated in England and Wales must have at least one director who is a natural person. The company will need to comply with the Companies Act 2006.

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

The most typical vehicle for a foreign company to use is a private company limited by shares.

The company, depending on its size will need to file either full or abridged accounts accounts annually, and also annually file a list of shareholders and officers of the company.

What are the rules on capitalisation of entities in England?

A private limited company must issue at least one share on incorporation. Issued shares have an accounting or par value which can be any amount, i.e. £1.00 or £0.01. The par value indicates the amount the shareholder is liable to contribute if the company is wound up and monies are outstanding.

A public limited company may also incorporate with one share. However, before the public limited company can start trading it needs an issued share capital of at least £50,000, 25% of which must be fully paid up.

What information are we required to provide businesses/ consumers with when trading with us?

Limited companies operating in England are legally obliged to provide certain information about themselves to the public or those with whom they trade. This information includes its:

- Registered name
- Company number
- Registered office address
- Address for service
- VAT number

These disclosure requirements generally apply to all business letters and notices and all other forms of its business 'stationery' (Companies (Trading Disclosures) Regulations 2008, SI 2008/495, reg 6). The disclosure requirements also apply to notices at business premises.

Where a company fails, without reasonable excuse, to comply with the requirements relating to the disclosures above, an offence is committed by the company. Please note that the particular rules for charities, partnerships and sole traders vary.

We would prefer to avoid having an actual physical presence in England and instead are looking to appoint an agent or distributor to sell our products and/or services. What are the legal implications?

Agents enjoy substantial legal protections set out in the Commercial Agents (Council Directive) Regulations 1993. The regulations are implied into all commercial agency agreements, both written and oral, or formal and informal.

Applicability:

- Goods-focused and do not apply to agents selling services.
- They apply to agents who are self-employed intermediaries and authorised to negotiate (and in some cases conclude) the sale or purchase of goods on behalf of another (yourself being the "principal").
- Non-applicable to unpaid commercial agents or agents operating in a commodity exchange/commodity market.

The legal implications vary from case to case (consider contractual protections). In summary, principals should be aware of the following areas in relation to an agent's rights:

- General duties to act in good faith and to provide the agent with all the necessary documentation required for the performance of the agency agreement.
- Entitlement to a compensation or indemnity payment, on termination of the agency relationship.
- 'Reasonable' remuneration and commission.

We intend to sell goods via our online website. What are the legal requirements if we wish to sell into England?

Businesses should be aware of two types of legislation affecting online sellers:

1. Traditional consumer protections, such as the Consumer Rights Act 2015.
2. Specific online protections. These largely derive from EU Directives and include the E-commerce Regulations, the Distance Selling Regulations and the Electronic Signatures Regulations.

For instance, the E-Commerce Regulations set out that companies' specific information must be available to customers on their trading website. These regulations also state that all prices must be clearly provided (including tax details).

All customers must be kept informed of any necessary information in relation to the formation of a binding agreement of sale (payment, delivery, term etc.).

Furthermore, the acceptance process of any such agreement should be clearly sign-posted by the seller.

Businesses should also be aware that any data collected by an online seller will likely be subject to the Data Protection Act 1998, and then the General Data Protection Regulation when it is transposed into UK law. This position will change over the next 2 years as the UK negotiates its exit from the EU.

Do you have legislation in respect of the use of electronic signatures?

The Electronic Communications Act 2000 deals with the use of electronic signatures.

We intend to import goods into England for sale. What are the legal requirements for doing this?

By reason of the UK's membership of the European Union (EU) the 'single market' principles apply to any imports in England. Importing rules are different for goods depending on whether their importing origin was within the EU or not. This position will change over the next 2 years as the UK negotiates its exit from the EU.

Goods imported from within the EU:

- Find the relevant Commodity Code and pay VAT, but not import duty. An import licence will not usually be necessary.
- Businesses do not have to pay duty on goods that have been produced in the EU. These goods are 'in free circulation' in all EU countries (this includes goods from outside the EU if duty has already been paid on them).

Importing goods into England from outside the EU:

- Determine the applicable Commodity Code (duty, VAT payments and any other necessary customs procedures).
- Payment of tariffs or duty.
- Register and declare goods you are importing with the Customs Handling of Import and Export Freight (CHIEF) system.
- Register all appropriate licences for the importing/handling.

What rights do consumers have when selling to them?

The Consumer Rights Act 2015 (the "Act"), which replaced and consolidated previous consumer legislation, provides a number of protections to consumers when they purchase goods.

In essence, businesses should ensure that the standard of their goods are:

- 'As described', and of 'reasonably satisfactory' quality (reasonableness is based on an average consumer).
- Fit for purpose, and last a reasonable time.

The Act also introduced the above standards to protect consumers of digital content. This includes digital content that is paid for, digital content supplied free with other paid-for items and digital content supplied on a physical medium, such as a DVD.

What are a customer's rights in so far as returning goods (whether or not they are faulty)?

The Consumer Rights Act 2015 (the "Act") provides consumers with a right to reject faulty goods (includes unsatisfactory quality, unfit for purpose or not as described), and be entitled to a full refund in most cases, for a fixed period of 30 days.

Consumers also have the 30 day right to reject digital content and products. This right is supplemented by the Consumer Contracts (Information Cancellation and Additional Charges) Regulations 2013 ("Regulations"). The Regulations provide that consumers will be afforded a 14 day 'cooling off' period to cancel off-premises or distance contracts without giving any reason or incurring any liability (other than costs for return or services used for the cancellation period).

After 30 days a consumer's right to a refund becomes somewhat diminished and consumers may need to give the seller of the faulty goods an opportunity to repair or replace the goods instead of a full-refund.

Businesses are not obliged by law to have a non-faulty goods return policy; however many retailers provide a "goodwill" returns policy offering an exchange, refund or credit for most returns. If a business has a returns policy in relation to non-faulty goods, they must stick to this.

Are we required to ensure that all customers have agreed to our terms of business in writing?

There is no general legal requirement that companies must ensure all customers have agreed to terms of business in writing. Terms may be implied (often by conduct) in business relationships.

However, businesses should avoid uncertainty and misunderstandings, which may arise in the absence of written terms and conditions. Written terms and conditions have a crucial role when it comes to two parties (i.e. customer/supplier) understanding the duties, rights, roles and responsibilities that have been agreed. It is good practice for companies to incorporate their own standard terms into dealings with customers.

Furthermore, the Consumer Contracts (Information Cancellation and Additional Charges) Regulations 2013 provide that certain information must be provided to consumers, and therefore would be best provided in writing, including the following details:

- Main characteristics of the goods, services or digital content.
- Business information.
- Pricing (including additional delivery charges).
- Payment, delivery and performance arrangements.
- Reminders of any applicable legal duties.
- Digital content's compatibility, functionality and technical protection.

We are looking to set-up a business in England and intend to bring some of our current employees into the England to work. Do we require work/residency permits?

Currently, EEA Nationals are able to work in England without the need to apply for visas or work permits (other than employees from Croatia, who must still apply for a work visa). However, this may change in due course as a result of Britain's vote in June 2016 to leave the EU.

Workers from outside the EEA will need to apply for a visa and be sponsored by a UK employer who holds a Sponsor Licence before being able to work in England.

Employees transferring from their employer's overseas business to it's office/establishment in England, may be able to apply for a Tier 2 Intra-Company Transfer Visa.

What formalities do we need to comply with when recruiting employees in England?

Recruitment usually involves:

- Preparing a job description and person specifications.
- Advertising the vacancy, inviting applications (using either application forms or other means of applying) and dealing with speculative applications.
- Undertaking equal opportunities monitoring.
- Shortlisting and interviewing.
- Making an offer of employment, subject to conditions where appropriate (and, where necessary, withdrawing the offer).
- Inducting the new employee, starting with a probationary period where appropriate.

Employers should not make employment conditional on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation. To do so is discriminatory and a breach of legislation.

What are the minimum rights we have to adhere to for employees in England?

There are certain mandatory laws that apply to all employees. Employees have various rights that assist them in job security. It is imperative that businesses follow procedures carefully and recognise the basic rights of employees.

This includes the right to:

- Minimum wage
- Holiday pay
- Sick pay
- Protection from unfair dismissal and discrimination
- Maternity and paternity rights
- Request flexible working hours
- Not have to work more than 48 hours per week unless expressly agreed to
- Minimum notice of termination of employment

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

Genuine self-employed consultants do not have all of the same legal rights as employees.

However, whether or not a person is "employed" for the purpose of employment law will depend on the working relationship and arrangement between the business and the person (and not just any contract recording the relationship). Businesses should be aware that, just because a person is intended to be a "consultant", they could still be deemed to be an employee and therefore afforded employment rights by an Employment Tribunal.

What options exist if we want to terminate employees contracts with us? Can we make them redundant?

An employee is entitled to minimum statutory notice, which is one week during the first two years of service, rising to a week's notice for each completed year of service, up to a maximum of 12 weeks' notice. Employers and employees can agree longer contractual notice periods.

An employee may be dismissed by reason of redundancy if the dismissal is wholly or mainly due to the employer:

- Ceasing to carry on the business for the purposes of which the employee was employed by it.
- Ceasing to carry on that business in the place where the employee was so employed, or
- Having a reduced requirement for employees to carry out work of a particular kind.

There are set procedures to be followed when carrying out a redundancy process, and additional prescriptive consultation processes where 20 or more jobs are at risk.

What is the Transfer of Undertakings (Protection of Employment) Regulations 2006?

"TUPE" is based on the Acquired Rights Directive. If there is a "relevant transfer" under TUPE, employees of the "transferor" assigned to the business or service being transferred to the transferee will transfer automatically to the transferee, on their existing terms, with their seniority (length of service) preserved.

In simple terms, a relevant transfer will occur where:

- There is a transfer of an economic entity which will retain its identity following the transfer, or
- There is a change in a service provider.

The transferee also inherits liability for all employment-related claims from the transferring employees.

Before the transfer:

- The transferor must provide "Employee Liability Information" to the transferee.
- The transferor and transferee must provide statutory information about the transfer to representatives of affected employees, and consult with them about any proposed measures.

Are there any restrictions on foreign investment in to England?

There is no specific law governing or restricting foreign investment. Foreign and British investors alike must comply with monopoly and merger rules. Banking and Insurance concerns must obtain Financial Conduct Authority (FCA) or Prudential Regulation Authority (PRA) and government authorisation before commencing operations in the UK.

Do you have any currency or exchange controls in place?

No

How are employees taxed in England?

Income Tax is a tax employees pay on their income

Most people get a Personal Allowance of tax-free income. This is the amount of income a person can have before paying tax.

The amount of tax payable can also be reduced by tax reliefs, if a person qualifies for them.

Most people pay Income Tax through PAYE. This is the system whereby the employer or pension provider deducts Income Tax and National Insurance contributions before paying wages or pension. A tax code tells the employer how much to deduct.

If a persons financial affairs are more complex (e.g. they are self-employed or have a high income) Income Tax and National Insurance may be payable through Self-Assessment. In that case a tax return will need to be completed every year

What are the current rates of tax for employees?

Band	Taxable income	Tax rate
Personal Allowance	Up to £11,000	0%
Basic rate	£11,000 to £43,000	20%
Higher rate	£43,001 to £150,000	40%
Additional rate	over £150,000	45%

What taxes apply to the business models you have identified above?

Corporation Tax

Limited Company: All Limited companies incorporated in England and Wales are subject to UK corporation tax.

Companies resident in England and Wales are taxable on their worldwide profits (subject to an opt-out for non-UK branches).

The normal rate of corporation tax is 20% for the year beginning 1 April 2016. This rate will fall to 19% for the year beginning 1 April 2017, and to 17% for the year beginning 1 April 2020.

Branch: A UK corporation tax return for the branch of an overseas company (based on its income and expenses) will need to be submitted.

Tax is subject to possible offsetting under applicable tax treaties.

VAT: If the branch has no physical presence (e.g. virtual office) VAT registration may still be required depending on the nature of the business activity. It should also be noted that in this situation the branch will not benefit from the UK VAT registration threshold.

Limited Company: The application of VAT to the activities is not dependent on the nature of the entity conducting them. Of more importance is the nature of the activity and the place where it is conducted. So VAT registration may be required if a Vatable business activity is being conducted from an establishment in England.

Branch: The application of VAT to the activities is not dependent on the nature of the entity conducting them. Of more importance is the nature of the activity and the place where it is conducted. So VAT registration may be required if a Vatable business activity is being conducted from an establishment in England.

PAYE/NI

Limited Company: Individual employees are subject to UK PAYE / NI.
Overseas nationals are subject to UK PAYE / NI but offset against tax due in country of residence.

Branch: Individual employees are subject to UK PAYE / NI.
Overseas nationals are subject to UK PAYE / NI but offset against tax due in country of residence.

How are dividends to foreign companies/shareholders taxed?

Dividend income is subject to either 10% (for a basic taxpayer) or 32.5% taxation (for a higher rate taxpayer). Dividends on foreign investments carry with them a tax credit of one ninth.

Are there transfer pricing rules in place?

Yes, the UK's transfer pricing legislation details how transactions between connected parties are handled and in common with many other countries is based on the internationally recognised 'arm's length principle'.

The UK legislation allows only for a transfer pricing adjustment to increase taxable profits or reduce a tax loss. It is not possible to decrease profits or increase a tax loss.

The UK's transfer pricing legislation also applies to transactions between any connected UK entities.
The 'arm's length principle' applies to transactions between connected parties. For tax purposes such transactions are treated by reference to the profit that would have arisen if the transactions had been carried out under comparable conditions by independent parties.

Exemptions

There's an exemption that will apply for most small and medium sized enterprises.

The business is a 'small' enterprise if it has no more than 50 staff and either an annual turnover or balance sheet total of less than €10 million.

The business is a 'medium sized' enterprise if it has no more than 250 staff and either an annual turnover of less than €50 million or a balance sheet total of less than €43 million.

Do you have double taxation treaties in place with foreign jurisdictions. If so where can we find out details?

Yes, the UK has a large number of double taxation treaties in place with numerous foreign jurisdictions.

You can find out more by visiting the following site;

https://www.gov.uk/government/collections/tax-treaties

ashfords

Ashfords LLP

www.ashfords.co.uk

KEY CONTACT
Stuart Fleet
Partner
T: +44 (0)20 7544 2473
s.fleet@ashfords.co.uk

LONDON
1 New Fetter Lane, London EC4A 1AN

EXETER
Grenadier Road, Exeter EX1 3LH

BRISTOL
Tower Wharf, Cheese Lane, Bristol BS2 0JJ

TAUNTON
Blackbrook Park Ave, Taunton TA1 2PX

PLYMOUTH
Princess Court, Plymouth PL1 2EX

TIVERTON
Gotham House, Tiverton EX16 6LT

Finland

We are looking to set up a Finnish trading company. What structures/business vehicles do you use?

Finnish Law recognises several possible company structures suitable for different business types.

Sole trader is an entrepreneur who is responsible for paying taxes and is free to withhold profit. A European Economic Area resident may act as an entrepreneur in Finland under their own name.

Partnership requires at least two members between whom the company is owned and profits are shared. No shared capital investment is required when beginning a partnership company. The details and conditions of the ownership are set in a partnership agreement. The owners are personally liable for any debts of the company. The capital of the owners isn't separated from the assets of the company.

Limited partnership is owned by at least one general partner and at least one silent partner. A general partner may use decision-making power over the company and may use the company's profits. Unlike general partners, silent partners of the company may not use any power over the company. On the other hand, silent partners are not responsible for any debts that the company shall have.

Limited company is owned by company shareholders. They use their powers to the company according to the number of shares they own. There is a minimum requirement of 2.500 euros of shared capital necessary to set up a limited company. The company must be recorded to the Finnish Trade Register (https://www.prh.fi/en/kaupparekisteri.html) before it is legally considered a company. The company is managed through a management board. The financial funds and debts of the company are distinct from the capital of its owners.

Public limited company must have a share capital of 80.000 euros and requires registration. Unlike limited company, public limited company may trade and transfer its shares and it may be listed on the stock. It is obliged to give semi-annual reports and must have at least 3 members and a director in its management board.

Both limited and public limited companies are governed by the Finnish Company Act (http://www.finlex.fi/fi/laki/kaannokset/2006/en20060624.pdf).

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

If the scale of the business is not large and the business is managed by one individual, the most common company form is working as an entrepreneur under the owner's own name. The liability of the company belongs fully to the owner.

If the company is owned by several members, the most common business form is a limited company as it only requires a reasonable amount of share capital and the liability of the shareholders is restricted. The owners may not be held liable for any debts of the company. It must be noted, however, that sharing company capital is not allowed unless it is done according to the rules of the Company Act.

Partnership is worth considering when there is a strong mutual trust between the owners. Liability must be carefully determined in the partner agreement. However, owners are free to share the profits of the company without being limited by strict legal procedures.

Starting a new company in Finland is very straightforward and includes only a few steps. However, residents outside the European Economic Area may need a permit to start a company. New companies as well as existing foreign companies must file a start-up notification to the Finnish Trade Register and to the Finnish Tax Administration. The procedure is simplified with single, joint application which may be sent through the Finnish Business Information System (https://www.ytj.fi/en/). Also, further annual reports to the above mentioned authorities may be filed via The Business Information System.

New companies must register as employers if wages are paid in exchange for work.

What are the rules on capitalisation of entities in Finland?

Companies may take out loans or increase share capital as a source of capitalisation:

According to the Finnish Limited Liability Companies Act, companies may take out capital loans, such as subordinated loans, under circumstances regulated in chapter 12. Repayment of such loans is subordinate to all other debts in case of company liquidation or bankruptcy. The repayment must follow legal procedures or otherwise it is considered unlawful distribution of assets.
Contract on capital loans shall be drafted in written form. Change in the contract terms or posting of security is invalid in case of liquidation or bankruptcy.

The decision to increase share capital in a company belongs to the Annual General Meeting (qualified majority) or the shareholders unanimously. The Board may make a proposal on the amount of increase as well as on the basis of increase. Detailed rules for share capital investments are regulated in the Limited Liability Companies Act chapter 9, sections 10-12.

What information are we required to provide businesses/consumers with when trading with us?

The EU legislation on product safety (http://ec.europa.eu/consumers/safety/prod_legis/index_en.htm) requires providing buyers, especially consumers, with clear and necessary information on product safety. This is also required in the Finnish national law about product safety. It must be noted that information concerning product safety and safe use must be given in Finnish and Swedish when selling to Finnish consumers. Also the name of the manufacturer and importer, as well as the name and address of the seller must be included in the product.

When selling online, all above mentioned information must be added to the product as well. It needs to be noted that the consumer always has the right to cancel within 14 days when buying online.

Generally, all information that may affect the decision-making of the consumer must be clearly indicated in the product.

Moreover, consumers must be provided with basic information about the company, such as business ID, address, contact details, product information, price, shipping costs, other additional costs, the possibility of cancelling the order or if such right is somehow restricted. If a guarantee is given, the main terms also need to be given.

When trading with another company, the requirement to provide information is less strict as another company may be expected to find out about product qualities. However, hiding necessary information may lead to compensation for the buyer.

We would prefer to avoid having an actual physical presence in Finland and instead are looking to appoint an agent or distributor to sell our products and/or services. What are the legal implications?

In Finland an Act on Commercial Representatives and Salesmen (http://www.finlex.fi/fi/laki/kaannokset/1992/en19920417.pdf) govern agency agreements. It is based on the EU Directive on self-employed commercial agents including mandatory provisions regulating the contractual relationship between the agency and the manufacturer.

However, there is no specific law governing the sales of distributors. Therefore general commercial, contract and competition laws as well as relevant EU legislation must be assessed when drafting distribution agreements in Finland.

The Finnish court sometimes tends to apply agency legislation also to distribution that contains agency characteristics. Therefore some restrictions, e.g. concerning compensation, in the agency legislation may apply to distributors.

Generally, both contractual agreements should be made in a written form and the details of the contractual relationship should be stated clearly.

We intend to sell goods via our online website. What are the legal requirements if we wish to sell into Finland?

According to distance selling rules, when selling goods to private individuals the business has to register for VAT in the Finnish Tax Administration if the value of the distance selling, without including the amount of VAT, is over 35.000 euros in the same calendar year. If the value of online sales does not exceed the 35.000 euros threshold, the sales are not taxed in Finland.

To be able to provide all information needed for taxation, the business must have an accounting system in Finland in which business operations are recorded. If online sales are taxed in Finland, the business is also obliged to submit periodic tax returns either monthly, quarterly or annually. If the online sales exceed 35.000 euros also in the following years, the sales will be automatically taxed in Finland. If not, the business must file a written note of termination of business to the Tax Administration.

The registration for taxation in Finland requires the following documents: a start-up notification form (http://www.ytj.fi/english/), and a copy of local trade register document translated to Finnish or Swedish proving that the company is a registered incorporation. The registration document must clearly show the company name, the fiscal domicile, the sector of business, the accounting period and the names of the individuals authorised to sign the company name. Also articles of association of the company, the charter, the partnership agreement, or similar by-laws or a certified copy of them with Finnish or Swedish translations are required.

Distance selling rules do not apply when selling goods for VAT registered entities.

Do you have legislation in respect of the use of electronic signatures?

There is an Act on Electronic Signatures (http://www.finlex.fi/fi/laki/kaannokset/2003/en20030014.pdf) and Act on Strong Electronic Identification and Electronic Signatures (http://www.finlex.fi/fi/laki/kaannokset/2009/en20090617.pdf). The purpose of these acts is to enable free and protected identification online.

Electronic signatures are commonly used in the public sector and it is considered a valid signature. They may also be used in private trading.

We intend to import goods into Finland for sale. What are the legal requirements for doing this?

As business trading within the European Union, the European Economic Area businesses have the right to export and import goods freely. The right to free trade also includes the right of free transit throughout the territory of the EU.

Set import restrictions are based on the EU legislation.

What rights do consumers have when selling to them?

In Finland, consumers are protected by consumers' rights legislation. Consumers are entitled to get compensation for any faults in purchased items or services. Consumers may demand a flawless item or to get their money back.

If a consumer can't reach settlement with the seller they may contact a Consumers' Advisory Service for advice. There is also a Consumer Dispute Board that specialises in dispute resolution between consumers and sellers.

Improper marketing and unfair contract terms may also be opposed to the Finnish Consumer Ombudsman.

Moreover consumers must be provided with basic information about the company, such as business ID, address, contact details, product information, price, shipping costs, other additional costs, possibility of cancelling the orders or if such a right is somehow restricted, specifications need to be given. Whether a guarantee is given, and the main terms need to also be given.

What are a customer's rights in so far as returning goods (whether or not they are faulty)?

In distance selling customers have a mandatory right to return an item bought online. However, customers may be held liable for return expenses unless otherwise agreed with the trader. The Finnish Consumer Protection Act (http://www.finlex.fi/fi/laki/kaannokset/1978/en19780038.pdf) provides consumers with 14 days' right to withdraw from a sale.

Are we required to ensure that all customers have agreed to our terms of business in writing?

The Finnish Consumer Protection Act requires to hand terms of business, when required, to all customers. Customers should have full opportunity to become acquainted with crucial terms of business. An acceptance of receiving terms of business given by a customer is satisfactory. It is up to the customer to study them further. The 14 day rule of withdrawal from the sale is also applicable to this issue.

EMPLOYMENT QUESTIONS

We are looking to set-up a business in Finland and intend to bring some of our current employees into Finland to work. Do we require work/residency permits?

The right to work in Finland depends on the foreigner's nationality. When hiring an EU/EEU citizen, the employee must register his/her right of residence if the working period takes more than three months. However, all EU/EEA citizens have a right to work in Finland. This right is guaranteed by virtue of the fundamental right of free movement within the European Union.

When hiring a non-EU/EEA employee, an employee might require some sort of permit depending on the occupation and professional field. The Aliens Act (http://www.finlex.fi/en/laki/kaannokset/2004/en20040301.pdf) has a list of different occupational fields, telling which professional fields do not require an employee's residence permit. The occupations listed in the Aliens Act do, however, require a visa or regular residence permit. If a residence permit is granted, an employee has a right to work in Finland.

The Finnish immigration service (http://www.migri.fi/) provides detailed information about required permits.

What formalities do we need to comply with when recruiting employees in Finland?

Some insurances are compulsory for employers in Finland. Firstly, employers are obliged to take statutory accident insurance that compensates any accidents or occupational diseases that might occur at the workplace. A list of institutions providing accident insurances and additional information may be viewed at www.tvk.fi/en/> Insurances > Taking out insurance > How to take out an insurance policy.

Employers and entrepreneurs are also obliged to take pension insurance (also called the TyEL) for all employees in Finland. The length or other conditions of the employment contract has no effect on this obligation. The insurance must be taken from an authorised pension provider, e.g. insurance companies or pension funds. For example, the Finnish Centre for Pensions (http://www.etk.fi/ > in English) provides pension insurances for employers.

The above mentioned insurances are offered by most insurance companies. In addition, the insurance premiums often offer group life insurance, unemployment insurance contribution, and social insurance premium.

Employers must arrange and pay for occupational healthcare for employees. Necessary healthcare with reasonable costs may be arranged via Kela (http://www.kela.fi/web/en).

Employers are responsible for deducting taxes and social security contributions from paid salaries and other remittance to the Tax Administration of Finland. Monthly and annual notifications of payrolls must be sent to the Tax Administration.

What are the minimum rights we have to adhere to for employees in Finland?

When hiring a foreign employee the applicable law is usually the Finnish law, but in an international employer-employee-relationship the applicable law should be determined case by case. According to Finnish law, an employer shall apply the same occupational safety requirements, employment terms and statutory insurance to Finnish and foreign employees. Discrimination based on nationality, for example is strictly forbidden.

The employer shall draft a written form of employment contract or in the temporary absence of an employment contract, they should at least draft the basic terms of the employment in a written form. An employee has a right to get paid according to the national, occupation-based collective labour agreement. The amount of the wage is determined by the Finnish collective labour agreement for each sector. Moreover, an employee has a right to be part of a labour union in order to ensure his/her rights.

The employer and the employee are free to agree on the terms of employment as long as it is in compliance with legislation, terms and conditions of collective labour agreements, and an employment contract.

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

The Finnish law does not make a distinction between consultant contracts and employment contracts. However, the terms of an employment contract are important when defining the content of employment and may be changed afterwards only with a mutual agreement of employer and employee. Thus, the work assignments have to meet the description of the employment contract.

The work itself may be arranged as employment or as a service provided by external, self-employed individuals. Employment grants employers the possibility to direct and supervise the work of an employee, while the purpose of an outside service is to complete a contract as agreed upon. There are a few other differences between working as an employee or as an independent contractor.

What options exist if we want to terminate employees' contracts with us? Can we make them redundant?

An employment contract may be terminated in Finland for reasons of redundancy. This requires permanent and substantial decrease in work or reorganisation of production. If the employer, however, may offer the employees other work in a company in which the employer exercises power, it must be offered to employees who would otherwise be made redundant.

When terminating employments, employers must follow a period of notice stipulated in an individual employment contract or in a collective agreement. Employees who have been dismissed unlawfully may be granted compensation ordered by the court. The amount is between 3 to 24 months' of wages.

What is the Transfer of Undertakings (Protection of Employment) Regulations 2006?

Finland has implemented the EC Council Directive 77/187, also known as the Acquired Rights Directive. The regulation protects the rights of the employees in the event of transfer of undertakings or businesses.

When selling a company or parts of it, transfer to a new owner does not change the situation of the employees. The employees have a right to continue working for the new employer while the conditions of the employment contract remain the same. Also rights and duties of the employer are transferred to the new owner. A transfer of business does not allow employers to terminate work contracts without being held liable for damage compensation.

TAX AND INVESTMENT QUESTIONS

Are there any restrictions on foreign investment into Finland?

There are no general regulatory restrictions concerning foreign acquisitions in Finland. However, domestic and EU competition regulation applies to mergers and acquisitions in Finland. Mergers of large Finnish companies may require notification to the Ministry of Employment and the Economy.

Do you have any currency or exchange controls in place?

Exchange controls do not exist in Finland. Thus money and funds are freely transferable. However, there are provisions preventing and helping in revealing money laundering.

There is a duty, set by the European Commission, to declare funds worth over 10.000 euros when carried in the area of the EU. However, this obligation does not prevent or restrict trade.

How are employees taxed in Finland?

When working mostly in Finland for an employer domiciled in Finland, the Finnish Tax Administration is allowed to tax income. The most typical tax card in Finland is progressive. Thus, the rate of tax depends on the size of income. The larger the income, the more it is necessary to deduct. Tax card needs to be revised if income changes. If too much tax is paid, some of it will be returned next year. On the contrary, tax needs to be paid back if an increase in income fails to be reported.

Employees must give employers a tax-at-source card, available at the Tax Administration. This enables employers to deduct the correct amount of tax from the income.

If employees fail to submit the card on time, the employer has to withhold as much as 60 percent of income as tax. However, the amount of tax may be adjusted in later income.

In Finland employers are entitled to receive tax-exempt reimbursement from their employers. For example, travel expenses may be paid under some circumstances for employees working in Finland.

In case of foreign employees working in Finland, if double taxation were to occur, credit will be given for the amount of taxes paid in the tax authority of another country. Some foreign professionals, such as university professors, are granted with a tax relief and are allowed to pay fewer taxes compared to average Finnish citizens.

What are the current rates of tax for employees?

In 2016 tax rates vary from 6.5% - 31.75% depending on earned annual income. Furthermore, additionally set percentages for unemployment insurance payment (1.15%) and pension insurance payment (5.70%) are deducted from the salary.

What taxes apply to the business models you have identified above?

Some companies, such as limited companies, are liable to pay income tax as individual taxpayers. The corporate income of tax rate for limited companies is 20%.

When distributing dividends to shareholders, the amount seen as capital income and is taxed through capital income tax is 30%. Specific rules are provided for taxation of shareholder-beneficiaries.

Company profits are taxable as incomes of the owners in the case of a self-employed professional individual, a self-employed business entrepreneur or a general or limited partnership.

How are dividends to foreign companies/shareholders taxed?

The Finnish Supreme Court has stated that foreign residents who receive dividends from a Finnish company cannot be liable to more tax on dividend income than what a Finnish resident would have to pay in a similar situation.

Therefore taxation of dividend income is carried out in a similar way as if the dividend recipient were a Finnish resident.

Are there transfer pricing rules in place?

Transfer pricing legislation is laid out in the Act on Assessment Procedure. Article 31 refers explicitly to principle. Transfer pricing documentation requirements are set out in Articles 14a, 14b and 14c. Also the National Board of Taxes has provided guidance on transfer pricing documentation requirements (1471/37/2007).

According to Section 14a of the Taxation Procedure Act, companies are required to file a specific tax form including information about the main functions of the entity, profitability of the entity and the group it belongs to, and its related party transaction volumes during the tax year by transaction type.

Penalty fees are possible if a company fails to provide pricing documentation.

Do you have double taxation treaties in place with foreign jurisdictions? If so where can we find out details?

Double taxation treaties are typical in Finland as the tax rates are fairly high.

A full list of tax treaties between Finland and other jurisdictions may be found here: http://www.vero.fi/en-US/Precise_information/International_tax_situations/Tax_treaties(22032) .

Additional information on the removal of double taxation in Finland may be found here:

https://www.vero.fi/en-US/Individuals/Moving_away_from_Finland/Elimination_of_double_taxation__receipts(17503) .

Lindblad

Lindblad & Co Attorneys Ltd

www.lindblad.fi/en/

KEY CONTACTS
Anna Virta
Senior Lawyer
T: +358 (0) 20 749 8164
anna.virta@lindblad.fi

HELSINKI
Vuorikatu, 16 A 5 00100

MIKKELI
Vuorikatu, 3A, 2.krs 50100

LAPPEENRANTA
Oksasenkatu, 8 B 15 53100

IMATRA
F.O. Virtasen, katu 6 55100

JOENSUU
Niskakatu, 7, 3.krs 80100

TAMPERE
Hämeenkatu, 18 A 6 33200

France

We are looking to set up a French trading company. What structures/business vehicles do you use?

Investors can set up a permanent or temporary structure in France.

In order to set up a French trading company, you may use one of the three main types of limited liability companies:

- The Société Anonyme (SA)
- The Société à Responsabilité Limitée (SARL)
- The Société par Actions Simplifiée (SAS)

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

Choosing a business structure will depend on the investor's strategy and also on the degree of independence that the operations need to have from the head company (if any). However the most common business structure that is adopted for a foreign company is the SAS, Société par Actions Simplifiée, which is one type of French Limited Liability Company.

A SAS can be set up with a single partner. The Liability of shareholders is limited to contributions, except in civil or criminal lawsuits.

What are the rules on capitalisation of entities in France?

€1 minimum capital is required for a SAS or SARL.
€ 37,000 is required for SA.

What information are we required to provide businesses/ consumers with when trading with us?

The mandatory information that must be provided by any person registered in the register of trade and companies to its consumers and business partners is as follows:

- The legal form of the company.
- The SIREN number, which is an unique identification number with 9 digits, used to accurately identify a company or organism.
- The location of registration of the company.
- The share capital of the company.
- The location of the companies head office.
- If it is a commercial company whose headquarters are abroad, its legal form and the registration number in the State where it has its headquarters must be provided.

We would prefer to avoid having an actual physical presence in France and instead are looking to appoint an agent or distributor to sell our products and/or services. What are the legal implications?

Normally the agent or distributor would not be considered as a branch by tax authorities; therefore, it would not be subject to corporation tax in France.

We intend to sell goods via our online website. What are the legal requirements if we wish to sell into France?

The e-trader shall make available, in the language of the consumer, its terms and conditions, justified by the need to protect consumers.

Do you have legislation in respect of the use of electronic signatures?

Advanced electronic signatures that are based on a qualified certificate and which are created by a secure-signature-creation device:

- Shall satisfy the legal requirements of a signature in relation to data in electronic form in the same manner as a handwritten signature satisfies those requirements in relation to paper-based data.
- Are admissible as evidence in legal proceedings.

Article 1316-4 of the French Civil Code deals with the use of the electronic signature and provides that the signature is electronic when it consists of the use of a reliable process of identification guaranteeing its link to the agreement to which the signature is attached. The reliability of this method is presumed, until proven otherwise.

We intend to import goods into France for sale. What are the legal requirements for doing this?

An import declaration shall be filled out, and some restrictions could apply, or prior completion of special formalities, depending on the goods imported, may be filled out.

Import duty and taxes are due when importing goods into France from outside of the EU whether by a private individual or a commercial entity. They are calculated on the CIF value, i.e. the sum of the value of the imported goods and the cost of shipping and insurance.

The duty rates applied to imports into France typically range between 0% and 17%. Some products, such as laptops and mobile phones are duty free. Certain goods may be subject to additional duties depending on the country of manufacture. The standard VAT rate for importing is 20%, with certain products attracting VAT at a reduced rate of 10%, and some at a super reduced rate of 5.5% or 2.1%. VAT is calculated on the value of the goods plus the international shipping costs and insurance plus any import duty due.

What rights do consumers have when selling to them?

The applicable legislation provides that online consumers have, for instance, a right of information regarding the product, a right to cancel the sale if the product is not delivered within 30 days, and a right to return a product within 14 days.

What are a customer rights in so far as returning goods (whether or not they are faulty)?

Under French consumer law, and concerning products sold online, a consumer may change his mind and has the right to return a product he bought within fourteen days, without explaining why and without penalty (apart from the actual cost of returning the product). Reimbursement must be made as soon as possible, and within 30 days. This right has been extended (doubled) by the “loi Hamon” from 7 days to 14 days for sale contracts concluded after the 14th of June 2016. In certain circumstances this law doesn’t apply; for instance, if it was a purchase of food and other products that can go off, computer software that has been opened by the consumer, or services regarding transport, accommodation or leisure activities.

The starting point of the fourteen days period is:

- The delivery when it is a good
- The offer’s acceptance when it is a service

Are we required to ensure that all customers have agreed to our terms of business in writing?

Customers only need to be informed of the terms and conditions. Information must be available but do not require written agreement.

EMPLOYMENT QUESTIONS

We are looking to set-up a business in France and intend to bring some of our current employees into France to work. Do we require work/residency permits?

France has implemented international mobility measures, designed to help bring in skilled employees and facilitate intra-group employee mobility.

Immigration procedures depend on the type of activity being conducted by the foreign national. In this respect, a distinction should be made between a salaried employee and a company director, who each have to follow a different procedure to obtain specific residence permits. The exception to the rule is that some residence permits allow any type of employment to be undertaken on French soil (salaried or commercial employment) without any specific formalities: these are the “Private and Family Life” temporary residence permit and the Standard residence permit.

What formalities do we need to comply with when recruiting employees in France?

The administrative formalities involved in hiring employees have been streamlined with the introduction of a pre-hiring declaration form for new employees (déclaration préalable à l’embauche). The employer must complete the form in the eight-day period before a new employee starts work and send it to the local URSSAF office. The form can also be submitted online. As such, the following can be carried out in a single procedure: registering the employee with the social security system and with occupational health, organising the mandatory medical examination (during the probationary period), and registering with the unemployment insurance body (Pôle Emploi).

What are the minimum rights we have to adhere to for employees in the France?

A works council must be set up when a company has at least 50 employees. The council is elected for a period of four years by the employees to represent their interests when decisions are made about economic changes in the company (such as company development and changes in work organisation) and social and cultural issues. If the company has fewer than 200 employees the employer may decide, after consultation with employee representatives, to opt for a single employee representation delegation which combines employee and works council representatives in the same elected Body.

Establishments with at least 50 employees must also set up a Joint Safety Committee (Comité d’hygiène, de sécurité et des conditions de travail – CHSCT) to involve employees in training and other initiatives to prevent occupational risks and improve working conditions.

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

The main difference between a contract with a consultant and an employee is the nature of the relationship: this is a relationship of subordination between the employee and the company, and this relationship of subordination does not exist with an independent consultant. Moreover, the employee will receive a salary on a monthly basis, whereas the consultant will receive payment related to the service delivered to the company.

What options exist if we want to terminate employees contracts with us? Can we make them redundant?

- Amicable termination to a permanent employment contract.
- Employees can be dismissed on either economic or personal grounds, but employers must provide genuine and serious grounds for layoffs and comply with the legally prescribed procedures, which vary according to the reason for termination, the number of employees concerned, and the number of people employed by the company.
- Layoffs on economic grounds: job cutbacks or changes, or when an employee rejects a modification to a key component in their employment contract in the wake of financial difficulties; technological changes; restructuring to protect the company’s competitiveness; or closure of the business. Such layoffs may be individual or collective.

What is the Transfer of Undertakings (Protection of Employment) Regulations 2006?

The principle of continuation of employment contracts applies. The employment contracts are transferred from the transferor to the transferee.

The contract may be any kind of employment contract (e.g. fixed or indefinite term, or a trial contract).

Any notice of termination given because of the transfer (e.g. at the request of the transferee) will be treated as fraudulent and unfair – but not void. In that case, employees can either obtain damages or be reinstated. The transferor and the transferee are jointly liable for damages paid in the case of a fraudulent dismissal prior to the transfer. If an employee is dismissed prior to the transfer, then given a new contract with the transferee immediately afterwards, this will be considered null and void due to a circumvention of the transfer of business regulations. However, dismissals of employees by the transferor or the transferee may be justified by the need to reorganise the activity for business reasons or on personal grounds.

TAX AND INVESTMENT QUESTIONS

Are there any restrictions on foreign investment in to France?

There are no restrictions on foreign investment in France. Prior authorisation in certain specific cases (economic or national strategic related issues) shall be requested.

For investors from countries outside the European Union and the European Economic Area (EEA), authorisation is required for the acquisition of interests exceeding 33.33% of equity or voting rights in a French company (unless the investor has already been authorised to acquire a controlling interest). Authorisation is given by the Ministry responsible for the Economy within two months (tacit agreement to be assumed if no reply is received).

Do you have any currency or exchange controls in place?

There haven't been any currency exchange controls or any kind of restriction put in place in France since 1990.

How are employees taxed in France?

The taxation principle is as follows: individuals, whether French or foreign nationals, who have their tax domicile in France are generally subject to personal income tax (PIT) based on their worldwide income (unless excluded by a tax treaty). Individuals who are not domiciled in France (non-residents) are subject to tax only on their income arising in France or, in certain cases, on imputed income. So, most of the time, employees are subject to personal income tax according to their revenues (based on a progressive schedule).

Moreover, employees are subject to social contributions and social surcharges (CSG + CRDS).

What are the current rates of tax for employees?

The rates depend on the situation of the company, as different kinds of social contributions apply.

What taxes apply to the business models you have identified above?

- Any company operating within the French territory is subject to the French Corporate Income tax (CIT) following the territory principle, meaning that French corporations are not taxed on their foreign source income, only on their income made in France. The CIT rate is currently at 33.33% of the company's income.
- Plus, a 3.3% additional contribution tax.

How are dividends to foreign companies/shareholders taxed?

- Dividends paid out to a resident of the EU:
  Dividends distributed to a European parent company are exempted from the withholding tax if its headquarters are located in the EU and it holds a stake of at least 10% in its French distributing subsidiary.

  The withholding tax rate has been 21% on dividends collected by an individual residing in an EU country, Iceland or Norway.

- Dividends paid out to a resident outside the EU:
  Most of the tax treaties France has signed provide for the application of a withholding tax on dividends with a standard rate of 5% for companies or 15% for individuals. The new tax treaties signed by France (with Japan and the US) provide for no withholding tax to be applied when dividends are paid (subject to specific conditions of stake ownership).

  If no tax treaty exists, the withholding tax is 30%.

Are there transfer pricing rules in place?

Transfer pricing rules apply to payments made between related parties.

The French transfer pricing policy follows the OECD recommendations, especially the arm's length principle. A specific transfer pricing documentation is required from French companies with a gross annual turnover or gross assets exceeding € 400 million, French subsidiaries owned more than 50% by French or foreign entities meeting the €400 million criteria, French parent companies that directly or indirectly own 50% or more of companies meeting the €400 million criteria and French tax consolidated group (with at least one tax consolidated entity meeting the €400 million criteria within the perimeter).

The set of documents required includes:

- General information about the group and its subsidiaries.
- Detailed information of the transfer pricing policy set up within the French audited entity.

The company has to be vigilant that the documentation provides satisfactory justifications for the choice of the transfer.

Do you have double taxation treaties in place with foreign jurisdictions? If so where can we find out details?

A wide range of double taxation treaties have been concluded by France with foreign jurisdictions (around 125 tax treaties are currently effective). You may find them online, on the French government dedicated website at this address: http://www.impots.gouv.fr/portal/dgi/public/documentation.impot?espId=-1&pageId=docu_international&sfid=440

Foreign-source income which is exempted from French tax by application of a tax treaty is, nevertheless, included to income taxable in France either to determine the French tax rate applicable to income taxable in France (exemption with progression) or to calculate gross French tax liability, from which tax paid abroad is deducted (tax credit system), depending on the applicable tax treaty.

AVOXA SOCIÉTÉ D AVOCATS

www.avoxa.fr

BREST
2 bis rue Colbert 29219

NANTES
Immeuble EUREKA, 1 Mail du Front Populaire, 44200

RENNES
5 allée Ermengarde d'Anjou 35108 Rennes Cedex 3

LORIENT
1 rue du Commandant Charcot Parc d'activités Armor Océan 56260 Larmor Plage

PARIS
1, avenue du Président Wilson, 75116 Paris

LYON
BUREAU SECONDAIRE 12 rue de la Navigation 69009

KEY CONTACTS
Florian Bachelier
Senior Managing Partner
fbachelier@avoxa.fr
T: 02 23 484 600

Germany

We are looking to set up a German trading company. What structures/business vehicles do you use?

Gesellschaft mit beschränkter Haftung ("GmbH") – Limited Liability Company: The GmbH can be set up for nearly any purpose. Most of the GmbHs in Germany are production, trade and service companies. Governance is more flexible than in a stock corporation (AG) but a stock exchange listing is not possible.

"GmbH & Co. KG" is a limited partnership with one or more limited partners and a general partner (with unlimited personal liability) which is not a natural person but a GmbH. The particularity of this kind of limited partnership is that no natural person is liable without limitation to the company's creditors. With regard to specific business purposes, this legal form can provide tax advantages as it is a "partnership" with personal liability on paper but a capital company with limited lability in fact.

Aktiengesellschaft ("AG") – Stock Corporation: The German Stock Corporation Act provides for detailed and quite complex rules for the governance and organisation of an AG. Unlike in the case of a GmbH, most of these rules are mandatory. Therefore, an AG is subject to strict requirements in terms of organisation and accounting but it is the main legal form if there is an intention to be or to become listed.

"Societas Europaea" or "SE"; (Latin for : European society or company) is a public company registered in accordance with the corporate law of the European Union (EU), introduced in 2004 with the Council Regulation on the Statute for a European Company. Such a company may more easily transfer to or merge with companies in other member states and has benefits under German codetermination laws. Furthermore, the SE is in Germany more or less comparable with the Stock Corporation.

Gesellschaft des bürgerlichen Rechts ("GbR") or Partnerschaftsgesellschaft ("PartG") – Partnership Company: These are special legal forms for members of the liberal professions (e.g. lawyers or architects), in general without limitation of liability.

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

The limited liability company ("GmbH") is the most common structure/business vehicle for foreign companies to adopt, in particular because the shareholders hold the final decision-making power regarding the business of the company and directly instruct the managing directors. Further, the most important legal characteristics of the GmbH are:

- The company's assets alone serve to discharge the company's obligations vis-à-vis its creditors.
- The GmbH may be incorporated by one or several shareholders. The articles of association require notarial form. The limited liability company has to be registered at the Commercial Register.
- The GmbH has one or more managing directors, who represent the company vis-à-vis third parties. Only natural persons (not corporations) can be managing directors. The company can adopt rules of procedure that ensure that certain business decisions require the approval of the shareholders' meeting.
- The managing directors must conduct the company's affairs with the due diligence of a prudent businessperson (business judgement rule). Managing directors who breach the duties incumbent upon them can be severally and jointly liable to the company for any losses caused thereby.
- Any transfer of the company's shares requires notarisation of the corresponding share transfer agreement by a notary.

What are the rules on capitalisation of entities in Germany?

The registered share capital of the GmbH amounts to no less than € 25,000. Since only the company's assets are available to satisfy the creditors, it is necessary to ensure that the registered share capital is available to the creditors to cover liabilities. The German Limited Liability Company Act ensures the maintenance of the registered share capital through various statutory provisions:

- The company assets necessary to maintain the registered share capital may not in general be paid out to the shareholders.
- The company may not acquire its own shares if it cannot provide for a balance sheet reserve in the amount of the consideration without diminishing the registered share capital.
- The amount of the registered share capital is to be shown as subscribed capital in a special section of the balance sheet.

What information are we required to provide businesses/ consumers with when trading with us?

If you are doing business in Germany using the GmbH, you have to provide the following information concerning the company in all business communication:

- Legal form.
- Registered office of the company.
- Register court and register number.
- Names of all managing directors.
- Name of the chairman of the supervisory board (if such a board exists).

We would prefer to avoid having an actual physical presence in Germany and instead are looking to appoint an agent or distributor to sell our products and/or services. What are the legal implications?

When considering setting up a long-term business establishment, relying on mere contractual cooperation relations can offer the interested party the advantage of not having to make a large initial investment, which in turn reduces the party's corporate financial risks. Another notable advantage of setting up this type of contractual cooperation

scheme is the fact that the foreign business party can make good use of the distributor's existing business structures and its acquired experienced of the German market.

Business parties seeking to sell their products in Germany without having their own subsidiary tend to go for one of the two following distribution options:

Distributorship Agreement: The parties set up a long-term contractual relationship whereby the distributor purchases the supplier's goods and resells them in its own name and for its own account in Germany. In this way, the foreign supplier merely has to sell its products to one or several distributors which operate in the target market, who in turn automatically and independently take care of the commercial procedure to resell said products.

Commercial Agency: Under this format, the commercial agent tends to play the role of an intermediary between the principal and the final client or purchaser and therefore performs sales on behalf of the principal, in the principal's name and for the principal's account. In other words, the supplier in this case sells its products directly to the buyers in the German market that have been acquired thanks to the agent's involvement. The agent's profit is variable and is calculated in direct relation to sales turnover (commission).

Keeping in mind that making sure that all due payments are regularly honoured in an international setting, tends to be distinctly harder to ensure than at the national level, international interests tend to go for the distributorship agreement option to minimize risks. Said format limits the number of potential debtors that might have to be "chased after" in the foreign market; to one or a few whose financial capacity will likely be better known and easier to control.

A further important issue is that of the statutory provisions and case law, which grant the agent as well as the distributor compensation if the contract expires or is terminated for reasons other than a default attributable to the agent or the distributor. In Germany, this is compensation for goodwill created by the agent or distributor and which accrues to the principal after the end of the contract.

We intend to sell goods via our online website. What are the legal requirements if we wish to sell into Germany?

In general it is possible to sell goods via an online website. There are some special requirements that must be observed, such as the content and form of the imprint on the website. Additionally, the general provisions for the sale of goods must be fulfilled, e.g. the European Antitrust Principles. Regarding the customer provisions, see below.

Do you have legislation in respect of the use of electronic signatures?

If the electronic form is intended to replace the written form prescribed by statute law, the party making the declaration must add his name to it and provide the electronic document with a qualified electronic signature. The conditions of the electronic signature are regulated by the Electronic Signature Act. The written form can only be replaced by the electronic form if the recipient of the declaration or the contractual partner agrees to it. In Germany, the electronic signature is not yet widely used in business.

We intend to import goods into Germany for sale. What are the legal requirements for doing this?

The cross-border movement of goods within the EU is, in general, free. All goods that are imported from a non-EU country have to be cleared through customs. The customs office only accepts the customs declaration if the regulations concerning foreign trade were duly complied with. Restrictions concerning the import of goods exist e.g. in medical products and narcotics, weapons and explosive materials. Restrictions can also exist when embargo measures are being implemented.

What rights do consumers have when selling to them?

In Germany there are extensive consumer rights, which are generally based on the implementation of EU directives.

In the case of distance contracts (concluded by telephone, e-mail, etc.), the company must provide consumers with information including, for example: the main characteristics of the goods, the trader's identity, and the total price of the goods including taxes. Furthermore, consumers have a right of withdrawal in the case of distance contracts without any grounds within fourteen days after conclusion of the contract.

The 14 day period only begins to run if the seller provides the consumer with relevant statutory information concerning the right to withdraw. This must be done immediately after the conclusion of the contract.

What are customers rights in so far as returning goods (whether or not they are faulty)?

Even if the goods bought by the consumer for non-commercial use are not faulty, he/she is allowed to withdraw from the contract within 14 days even without a reason (see above).

If the customer notices faults or defects within two years after the time of purchase, he/she has a statutory entitlement under warranty. The purchaser may, at his choice, demand that the defect be remedied or that a product free of defects be supplied within a specified period of time. If the purchaser has specified an additional period for curing the defect without result, he/she may revoke the contract and ask for a refund of the price by returning the product. The purchaser can also revoke the contract if the cure is impossible, two efforts at remedying the defect have failed or the seller refuses to cure the defect completely.

Are we required to ensure that all customers have agreed to our terms of business in writing?

The legal framework for general terms and conditions ("Ts&Cs") is particularly relevant when dealing in cross-border commercial activities. With regard to the requirements to be fulfilled in order to duly incorporate Ts&Cs into a contract, any reference to the application of Ts&Cs of a party must be made in the language which the parties used in the course of their negotiations. Should the language of the contract be different from the language in which the negotiations were carried out, a reference to the Ts&Cs in the language of the contract is sufficient only if the other party understands this language and if this reference is itself easy to understand.

Furthermore, the proper Ts&Cs must be drafted in the same language as was used in negotiations. Exceptions are acceptable only if the other party also understands the other language in which the Ts&Cs have been drafted or if they have been drafted in an internationally accepted standard language, knowledge of which is a given in international business (especially English).

In order to ensure a valid and binding incorporation of Ts&Cs in an international business relationship, it is advisable to require the explicit acceptance by the other party of the Ts&Cs. In general, should a party keep silent with regard to the Ts&Cs, this cannot be interpreted as a tacit agreement on behalf of said party to the applicability and acceptance of the Ts&Cs.

EMPLOYMENT QUESTIONS

We are looking to set-up a business in Germany and intend to bring some of our current employees into Germany to work. Do we require work/residency permits?

Citizens of the EU, Iceland, Liechtenstein, Norway and Switzerland have unrestricted access to the German labour market. They do not need a visa or a residence permit either to enter or work in Germany.

Citizens of other states may, as a rule, only work in Germany if they have a residence permit.

Australian, Canadian, Israeli, Japanese, South Korean, New Zealand and US citizens may acquire this residence permit from the competent foreigners' authority after their arrival in Germany. They may not, however, start work until they have obtained the relevant permit. All other citizens have to apply for a visa in their home country before travelling to Germany. Skilled workers can apply for an EU Blue Card. This is a residence permit for the purpose of gainful employment.

What formalities do we need to comply with when recruiting employees in Germany?

You must comply with the General Equal Treatment Act. It prohibits adverse treatment of employees on the grounds of race or ethnic origin, sex, religion or ideology, disability, age or sexual orientation.

Therefore, the formulation of job advertisements should be gender-neutral; they should not contain any specifications concerning age, religion or ideology and disability. You should only list the criteria which are necessary for the position advertised. The selection of applicants should be carefully documented in order to prove that no violations of the prohibitions of adverse treatment were committed.

You can also lease employees from an agency (the lessor). However, be aware: labour leasing in Germany can only be undertaken legally if the lessor has a labour leasing licence from the Employment Agency. If the lessor does not have a licence, an employment between the client and the leased employee will be formed at the time the work is to commence under the contract between the client and the lessor.

What are the minimum rights we have to adhere to for employees in Germany?

As an employee in Germany, you have a number of minimum rights. These include in particular the following:

Since 1 January 2015, the Minimum Wage Act ("Mindestlohngesetz") applies to employees who are employed in Germany and provides for a minimum wage of €8.50 gross per hour.

The Working Time Act, the Maternity Protection Act and the Young Workers Protection Act regulate especially maximum daily working hours, rest breaks, work on Sunday and public holidays.

The Part-Time and Limited-Term Act provides a right for employees in companies with more than 15 employees to reduce their working time, as long as no internal company reasons prevent such a reduction or restrict the possibilities for concluding fixed-term employment contracts.

The Protection Against Dismissal Act provides for strong dismissal protection after six months of employment and work in a business with more than 10 employees. In this case an ordinary dismissal will only be effective for one of the reasons mentioned expressly in the Protection Against Dismissal Act. See the question below.

Under the Federal Vacation Entitlement Act, the minimum statutory annual holiday entitlement is 20 days based on a five-day working week, and 24 days based on a six-day working week.

If employees are sick, the Continued Remuneration Act grants them (once they have been employed for four weeks) six weeks' statutory sick pay.

Statutory rights exist also for the benefit of parents (e.g. maternity leave or parental leave).

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

Yes, there is a huge difference between a consultant and an employee.

An employee is defined as a person who works for another in a dependent working situation. The employee´s work is subject to instructions of the employer (time, place and details of the assigned work). An employee is also integrated into the working environment.

A consultant takes entrepreneurial risks, is able to determine the time, place and details of work and is not integrated into the working environment.

Employees enjoy mandatory rights (see above). The employer has to pay social insurance (employers and employees bear the costs in equal parts) and is responsible for deducting the income tax accruing on the gross remuneration and forwarding it to the competent tax authority.

Sometimes consultants are listed and treated as self-employed, but in fact are – because of the actual implementation of the contract – employees. In other words, they are bogus self-employed. If a bogus self-employment is determined, this has far-reaching consequences. The freelancer becomes automatically an employee, with the consequences that this entails. For example, the company has to pay social insurance retroactively for up to four years, and income tax. The bogus self-employed person, however, enjoys all the rights of an employee mentioned above.

What options exist if we want to terminate employees' contracts with us? Can we make them redundant?

Employee contracts may be terminated by mutual consent, for example by a redundancy agreement (that is, the employee agrees to the termination of the employment contract against a severance payment by the employer) or by expiration of an employment agreement limited in time.

The most common way to terminate employees' contracts is by dismissal (dismissal with notice or dismissal without notice for good cause). The notice of termination must be in writing (not by fax, email or text message) and signed by the competent person. Termination must observe the termination notice period, which depends on – unless otherwise agreed – the employee´s years of service.

The ability to terminate an employment is severely restricted by the Protection Against Dismissal Act (Kündigungsschutzgesetz). This statute is applicable after six months of employment in all companies with more than ten employees. In this case, dismissal with notice will only be effective on the basis of one of the following reasons: (i) conduct-related dismissal (i.e. due to the employee's misconduct at the workplace), (ii) dismissal for reasons connected with the individual employee (i.e. the employee's inability to do the work) and (iii) for redundancy.

If a works council exists, it must be consulted before every dismissal.

What is the Transfer of Undertakings (Protection of Employment) Regulations 2006

In order to safeguard employees' rights in the event of transfer of business or parts of a business as a result of a legal transaction, the European Acquired Rights' Directive (ARD) was adopted. In Germany, the ARD was implemented by section 613a of the Civil Code, which is particularly aimed at:

- Protecting existing employment agreements.
- Ensuring continuity of the employment conditions (from employment agreement or collective agreements) after the transfer.
- Regulating the liability of the seller and the purchaser.

A transfer of business or undertaking is triggered if a whole operation, or a separate, organisationally identifiable part thereof, is transferred from the seller to the purchaser by means of a legal transaction, thereby enabling the purchaser to pursue the same or a similar business purpose without changing the identity of the operation.

The employees affected by a transfer of business have the statutory right to object to the transfer of their employment to the purchaser with the result that they continue to be employed by the seller. To enable the employees to consider whether they want to be transferred, labour law provides for an obligation to inform the affected employees in detail about the transfer and its consequences.

TAX AND INVESTMENT QUESTIONS

Are there any restrictions on foreign investment in Germany?

The Ministry of Economics and Technology may review and prohibit or restrict foreign investment that in its opinion creates a risk for the public order or security (Sec. 4 Foreign Trade and Payments Act).

Do you have any currency or exchange controls in place?

In general, there are no exchange controls in Germany.

How are employees taxed in Germany?

The employees in Germany pay income tax, solidarity surcharge and – if they are members of a religious community which levies it – church tax.

What are the current rates of tax for employees?

The income tax rate depends on your wage, i.e. the higher the income, the higher the tax rate. The tax rate is currently 0% up to an annual income of 9.000 euro and 14% to 45% of the total annual income above.

The solidarity surcharge is 5.5% of the income tax.

The church tax is – depending on the federal state and the church – 8-9 % of the income tax.

What taxes apply to the business models you have identified above?

The profits of unincorporated private companies are subject to income tax at the level of the individual partners.

The profits of corporations (for example GmbH or AG) are subject to corporation tax at the level of the company. The corporation tax rate is 15%.

In addition, trade tax is levied if the company earns income from a commercial activity. The trade tax rate is assessed independently by each municipality and may vary regionally (between 13% and 15%).

All companies are also obliged to pay the solidarity surcharge of 5.5% based on the corporation tax.

How are dividends to foreign companies/shareholders taxed?

Dividend income is subject to 25% withholding tax (plus the solidarity surcharge at 5.5% of the tax due and church tax of 8-9 % of the tax due).

Where the shareholder is a corporation, the dividend income is tax-free. However, a lump sum of 5% of the gross dividends is added back to taxable income representing non-deductible business expenses, irrespective of the actual expenses incurred by the company.

Do you have double taxation treaties in place with foreign jurisdictions? If so where can we find out details?

There are more than 100 double taxation treaties in place with foreign jurisdictions. To find out more details visit the website of Federal Ministry of Finance.

LSV Rechtsanwalts GMBH
Lawyers, Tax Consultants
Accountants, Notary

www.lsv-legal.com

FRANKFURT
Bockenheimer Landstraße 51-53,
60325 Frankfurt am Main,

KEY CONTACTS

Dr. Hans-J. Lappat
Partner - Specialist for International Tax and Company Law
info@LSV-Legal.com
T: +49 69 50982-121

Sabine Unkelbach-Tomzcak
Partner - Specialist for International Tax and Company Law
info@LSV-Legal.com
T: +49 69 50982-107

SEUFERT RECHTSANWÄLTE

Seufert Rechtsanwälte

www.seufert-law.de

MUNICH
Residenzstraße 12
80333 München

LEIPZIG
Markt 10
04109 Leipzig

KEY CONTACTS

Dr. Johannes Gruber
Partner
gruber@seufert-law.de
T: +49 89 29033-133

Hungary

We are looking to set up a Hungarian trading company. What structures/business vehicles do you use?

The simplest corporate form is a limited partnership (in Hungarian: “betéti társaság” or “bt.”), which shall be established by at least two members: one general partner having unlimited liability for obligations of the company, and one partner with limited liability. Limited liability companies (in Hungarian: “korlátolt felelősségű társaság” or “kft.”) and private limited companies (in Hungarian: “zártkörűen működő részvénytársaság” or “zrt.”) may also be established as single-member companies, where liability of the members is limited. The main difference between the two forms is that in the case of the latter, the company issues shares. The parent company may also consider establishing a branch that shall not qualify as a separate legal entity, but an organisational unit of a foreign enterprise vested with economic autonomy. The assets necessary to cover the obligations of the branch shall be provided by the foreign enterprise, which shall bear joint and several liability for all obligations of the branch. An even simpler model of operation is the commercial presence which has no separate legal entity or economic autonomy, and shall only be considered as a registered organisational unit of the foreign enterprise established for constant and direct representation.

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

The most common business vehicle is the limited liability company (kft.). A kft. is a separate legal entity, independent from the founder. The obligation of the members is limited to the provision of the capital contribution, and other in-kind contributions as set forth in the memorandum of association. As a main rule, the member shall not be liable for the obligations of the company. The limited liability company shall prepare an annual report with the last day of its business year as reporting date. The annual report shall contain the assets, incomes and financial situation of the company. The annual report shall be approved by the general meeting by the last day of the fifth month after the reporting date and shall be published and deposited in electronic form.

What are the rules on capitalisation of entities in Hungary?

Rules of capitalization mainly depend on the corporate form chosen. Additionally, depending on the business carried out, stricter rules of capitalisation may apply in certain sectors.

In case of a limited partnership, no minimum capital is prescribed; however, the general member shall bear unlimited liability for the obligations of the company. In case of a limited liability company the minimum capital prescribed by law shall be HUF 3,000,000, which may be provided as pecuniary contribution or as in-kind contribution. Pecuniary contribution does not need to be provided at foundation, but the member shall be liable up to the value of the contribution not yet provided. If the in-kind contribution reaches 50% of the registered capital, it must be provided at establishment of the company, in all other cases within the time limits set out by the articles of association, but at the latest within 3 years of establishment.

In case of a private limited company minimum HUF 5,000,000, in case of a public limited company minimum HUF 20,000,000 capital shall be provided. The proportion of pecuniary contribution must not be less than 30% at the establishment of the company.

Branches must show the assets permanently provided by the foreign enterprise as capital in their books, but no minimum capital is prescribed.

What information are we required to provide businesses/ consumers with when trading with us?

All service providers and traders carrying out for profit business activity must provide their partners with the following information before or upon conclusion of the contract:

- The basic information related to the service provider (such as corporate name, legal form, company registry no., operation site, contact data).
- The general terms of business applied, especially highlighting the applicable law and jurisdiction of the contract.
- The terms of warranty.
- The fee of the service provided or product sold or the factors influencing the amount of the consideration due.
- The service provider must without delay examine and remedy any complaints raised by its partners, and in case the complaint is not remedied they must answer the complaint within 30 days in writing.

Special and stricter rules shall apply to consumer contracts especially with respect to complaint handling and prior information on pricing.

We would prefer to avoid having an actual physical presence in Hungary and instead are looking to appoint an agent or distributor to sell our products and/or services. What are the legal implications?

Besides the above described organisational possibilities for establishing a domestic trading entity of a foreign enterprise, three main types of agency or distribution contracts can be distinguished:

- The commercial agency (see directive 86/653/EEC) where the commercial agent negotiates and, where appropriate, concludes the transaction for the principal. The specialty of Hungarian commercial agency contract is that the rules shall not only apply to trading with goods but also to the provision of services. The contract must be concluded in writing. Compulsory limitations of termination and obligatory rules of compensation protect the interests of the agent.

- The distribution agreement, based on which the distributor purchases the goods and later sells them to consumers in its own name and for its own risk and benefit. Agreement may also be concluded for the distribution of services. The parties may agree freely within the boundaries of general rules of contract in the minimum order quantity, the purchase price of the goods and the consequences of breach of contract.
- The franchise contract, under which the franchisee shall be entitled to sell goods or provide services using the business model, know-how and other intellectual property developed and owned by the franchisor against the payment of a franchise fee.

We intend to sell goods via our online website. What are the legal requirements if we wish to sell into Hungary?

Depending on the casual or permanent nature of the sale of goods, the business activity may qualify as cross-border service provision or business activity carried out under the right of free establishment. Any enterprise established in another EEA member shall have the freedom to provide cross-border services in Hungary without any limitations. Nevertheless, the provision of services within the territory of Hungary shall be subject to certain domestic legal provisions, such as the legal requirements governing the protection of personal data, the basic rules of contract in the area of civil and family law as well as employment law, the requirements for representation in judicial proceedings and the creation, existence and enforcement of intellectual property rights.

Do you have legislation in respect of the use of electronic signatures?

Hungarian legislation on electronic signatures is based on Regulation no. 910/2014/EU. The Regulation declares as a principle rule that an electronic signature shall not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in an electronic form or that it does not meet the requirements for qualified electronic signatures. Three types of electronic signatures can be distinguished:

- Qualified electronic signature or qualified electronic signature based on qualified certificate, in case of which it must be presumed that the signature originates from the underwriter and the document was not altered since the signing. Under domestic law, such documents shall have the highest level of proof (authentic instruments and private documents of full probative value). Within the EU, these signatures shall be equivalent to hand signatures and shall be recognised as a qualified electronic signature in all member states.
- Advanced electronic signature, which is uniquely linked to the signatory, apt for identifying the underwriting person and makes detectable all modifications of the document after the signing. The probative value of the documents signed with such signature shall depend on the consideration of all circumstances of the case.
- Simple electronic signature: electronic signatures not falling within the above described (a) and (b) categories (e.g. a scanned hand written document, or a simple e-mail with the typed signature of the sender). These documents cannot be excluded from the scope of proofs; nevertheless, their probative value depends on the considerations of the judge.

In line with the EU regulation, with effect of 1 July 2016 special domestic legal act governs the frame rules of operation of trust service providers.

We intend to import goods into Hungary for sale. What are the legal requirements for doing this?

Considering the fact that Hungary is member state of the EEA, importing goods into Hungary, will see the requirements of the laws of the European Union apply. The most important domestic legal provisions related to importing goods to Hungary are tax law issues.

What rights do consumers have when selling to them?

In case of consumer contracts, the supplier shall in particular provide detailed information with respect to the supplier, the process of conclusion of the contract, the content of the contract, completion of the contract, in case of sale of goods, implied warranties, product warranties, guarantees and the mechanisms of complaint handling and dispute settling.

The consumers shall be entitled to rescind the contract in case of e-commerce, about which the supplier shall also inform the consumers. The supplier shall also consider data protection requirements, and depending on the type of goods sold or services provided further sectorial rules shall apply (e.g. the rules of obligatory warranty).

What are a customer's rights in so far as returning goods (whether or not they are faulty)?

In case of trading via the internet, the consumer shall be entitled to rescind the contract by notice within 14 days of conclusion of the contract (in case of contracts for provision of services) or within 14 days of receipt of the product (in case of contracts for delivery of goods). In case the service provider fails to inform the customer of the right to terminate or waive the contract, the above mentioned deadline shall be extended by an extra 12 months. In addition to the above, in case of consumer contracts in general, if a fault in the service provided or the product delivered becomes apparent within 6 months from completion of the contract, it must be presumed that the service or product delivered was defective (unless this presumption is manifestly incompatible with the type of service or product delivered). In case of a fault in general, the consumer shall have the right to request replacement or repair of the product, and shall only be entitled to waive the contract if the service provider refuses to replace or repair the product, or the consumer loses its interest for replacement or reparation.

Are we required to ensure that all customers have agreed to our terms of business in writing?

General terms of business only become part of the contract of the parties if the issuer of the terms made them available to the contracting party and the contracting party has accepted the application of these. The acceptance need not to be in writing; however, in order to ensure proof it is advisable to evidence it in writing or by way of other durable medium.

The consumer must be informed separately of any business term that substantially differs from the general provisions of law or the usual terms of contract or the former practice of the parties.

Separate information shall be provided to consumers with respect to any extra payment due to the service provider in addition to the consideration agreed. In case the contract is concluded via a homepage, the service provider must ensure that the general terms of business are available at its homepage and are suitable for preservation (e.g. printable or downloadable by the consumer).

EMPLOYMENT QUESTIONS

We are looking to set-up a business in Hungary and intend to bring some of our current employees into Hungary to work. Do we require work/residency permits?

Hungary is the member of the EU, a consequence of this is that a work permit or residence permit for the employment of employees arriving from another Member State or European Economic Area (EEA) is not needed.

Employees arriving from outside the territory of the EU or EEA shall obtain a residence permit (which includes the work permit) or work permit from the competent state authority. There are, however, special groups of employees (e.g. key personnel at a branch established by a foreign entity, supervisory board member of a company, a third-country national who has received authorisation from the immigration authority to work in Hungary in accordance with immigration laws, within the framework of an international convention) who are exempted from work permit.

What formalities do we need to comply with when recruiting employees in Hungary?

Employers generally are free to verify references and other information provided by the applicants. This may be done by inquiries to third parties, in particular former employers. In doing so, the personality rights of the applicant and the data protection laws have to be considered.

The employer may seek information from applicants, or require them to take a medical test, only if it does not violate the applicant's personal rights (e.g. reputation), and it provides essential information in connection with the prospective employment (i.e., necessary for the conclusion or fulfillment of the employment relationship).

Employers cannot ask about an employee's membership of any trade union.

The employer has to inform applicants and employees about all facts and conditions that are relevant to employees exercising their rights and performing their obligations. The Labour Code provides for the general requirement of equal treatment under which it qualifies unlawful to discriminate against applicants or current employees on the basis of the protected characteristics (e.g. gender, age, nationality, religion) in advertising vacancies, determining employment conditions, taking measures before or during the employment.

What are the minimum rights we have to adhere to for employees in Hungary?

Both the Hungarian Constitution and the Labour Code ensure for everyone the right to establish or join any organisation that aims to protect his or her economic or social rights. The right to strike is also protected.

The trade unions have various consultation and co-decision rights, as a main rule, the collective bargaining agreement may deviate from the mandatory rules of the Labour Code. Only one collective bargaining agreement may apply to each employer. The agreement covers all employees of the given employer (except the executives) regardless of whether a particular employee is a member of the trade union or not.

Moreover, works council is to be elected at every employer that has more than 50 employees, and an employee representative is to be elected at every employer with 15 to 50 employees. Similar to trade unions, a works council also exercises various information, consultation, and co-decision rights against the employer. Co-decision rights apply to the use of funds for welfare purposes.

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

The most significant difference is that employment is hierarchical whilst consultant (mandate) is a more equalised relationship. In the case of employment, the employee is working in person on the tasks determined by the employer's sole discretion under the employer's continuous direction and control. In the case of mandate the tasks to be performed by the consultant are set out in the mandate agreement, which cannot be amended unilaterally later on and the principal may consult about the process only on an ad hoc basis without having right to permanent control. In addition, in the employment the employer has the right to specify the working time whilst in the case of mandate, the principal has no right to do so.

For tax reasons, it is common in Hungary to work under legal constructions other than an employment relationship (e.g., mandate agreement). The parties should be aware that this involves the risk that the legal relationship is qualified as hidden employment by the Hungarian Labour Supervisory Authority or the Tax Authority, in which case penalties shall be imposed.

What options exist if we want to terminate employees' contracts with us? Can we make them redundant?

In general, employment may be terminated only for cause. There are however exceptions to this, e.g., (i) the employment may be terminated without cause during the probationary period with immediate effect; (ii) fixed-term employment may be terminated without cause with immediate effect by the employer subject to paying the absentee fee for the remaining period (a maximum of one year); and (iii) the employee may terminate the employment for an indefinite time with notice period without cause. Further, the employer may terminate an executive's employment at any time at will.

The provisions in the Labour Code regarding the limitations for termination are not applicable to terminations with mutual consent.

The employment of employees who have fewer than five years before reaching retirement age or who receive rehabilitation allowance may be terminated only for causes expressly specified by the Labour Code.

Moreover, employees having special status (e.g. pregnancy and maternity leave) are protected from termination during the protected period.

What is the Transfer of Undertakings (Protection of Employment) Regulations 2006?

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (known as 'TUPE') is the United Kingdom's implementation of the European Union Business Transfers Directive.

Hungary, as the Member State of the EU, has also implemented the European Union Business Transfers Directive (2001/23/EC). As a consequence, a change of employer by legal succession may not in itself be a lawful cause for the termination of employment. In the case of business transfer the employee is entitled to terminate his/her employment by notice only if the transfer of enterprise involves a substantial change in working conditions to the detriment of the employee, and in consequence maintaining the employment relationship would entail unreasonable disadvantage or would be impossible. Employees may exercise the right of notice within thirty days from the date of transfer of employment.

TAX AND INVESTMENT QUESTIONS

Are there any restrictions on foreign investment in to Hungary?

In accordance with Act XXIV of 1988 on the Investments of Foreigners in Hungary the investments of foreigners enjoy full protection and security in Hungary and they shall only comply with the regulations and the investors shall only obtain the permits and authorisations prescribed also for resident persons pertaining the economic activity. Foreign nationals have the right of establishment for the pursuit of an economic activity in Hungary and businesses established in any EEA Member State - or in any country with respect to which it is expressly permitted by law or by international treaty - are also allowed to engage in providing cross border services. Therefore there are no restrictions on foreign investments in Hungary.

Do you have any currency or exchange controls in place?

Further to the applicable rules of the European Union (EUR 10,000 – or its equivalent in other currencies – or more in cash shall be declared when entering or leaving the EU), there are no currency or exchange controls in place in Hungary.

How are employees taxed in Hungary?

Employees having income from Hungarian sources are subject to personal income tax with a flat rate of 15%, which shall be deducted from the gross income. The personal income tax can be decreased by tax allowances, such as the family tax allowance or the first married couples' allowance.

Along with the personal incomes, fringe benefits (e.g. Széchenyi card, Erzsébet voucher) are also subject to tax, which shall be deducted by the provider.

Employees are taxed with social security contributions as well, at a rate of 18,5%. Such contributions include the pension contribution, the health insurance contribution – provided in money or in kind – and the labour market contribution.

What are the current rates of tax for employees?

- The rate of personal income tax is 15%.
- The rate of pension contribution is 10%.
- The rate of health insurance contribution provided in kind is 4%.
- The rate of health insurance contribution provided in money is 3%.
- The rate of labour market contribution is 1,5%.

What taxes apply to the business models you have identified above?

Taxable income of limited partnerships, limited liability companies and limited companies is subject to corporate income tax. The rate of the corporate tax is 10% of the positive tax base up to HUF 500 million and 19% above this threshold.

The base of the corporate tax is the income before taxation, amended by the items prescribed in the Act 1996. LXXXI. on Corporate and Dividend Tax.

Local municipalities may also levy local business tax on business activities pursued permanently or temporarily in their area. With respect to local business tax, taxable commercial activity shall mean any for-profit or gainful activity performed by a business organisation. In case of commercial activities pursued on a permanent basis the tax base is the net sales revenue with the deduction of certain items (e.g. material costs, sums paid to subcontractors etc.) and in the case of temporary commercial activities the tax shall be established on the basis of the number of calendar days during which the activity was performed. For permanent business activities the maximum rate of the local business tax is 2%, for temporary business activities the tax shall not be more then HUF 5,000 per calendar day.

With respect to branches, the foreign parent company shall be subject to tax liability, but only after its income from business operations performed in the Hungarian branch.

Further to the taxes identified above with respect to the income of employees, the employer shall also pay a social contribution tax (the rate of which is 27%) and a vocational training contribution (the rate of which is 1,5%).

Instead of the company tax, limited partnerships, limited liability companies and limited companies can be subject to small business tax if they are comply with certain conditions (e.g. number of staff is below 25 persons, the revenue estimated for the previous tax year is not expected to exceed 500 million forints etc.). The rate of the small business tax is 16% and the taxpayer shall be exempted from the payment of corporate tax, social contribution tax and the vocational training contribution.

How are dividends to foreign companies/shareholders taxed?

Dividends paid for a non-resident private individual may be subject to withholding tax at 15% (which is the personal income tax). Hungarian companies providing dividends for non-resident private individuals shall assess and deduct the tax from the dividend and pay it by the 12th day of the month following the time of payment. Such withholding tax shall not be paid after dividends paid for non-resident private individuals, and such dividends shall not be declared, deducted and paid if there is an applicable treaty according to which such income shall not be subject to tax domestically, and if the non-resident private individual verifies his domicile.

In Hungary, no withholding tax is levied on dividends paid to foreign companies. If a treaty on the avoidance of double taxation is in place with respect to the state of the company which received the dividend, then the provisions of this treaty shall apply.

Are there transfer pricing rules in place

Hungary – as a member of the OECD – has acknowledged the arm's length principle (i.e. "fair market price") according to the agreements between affiliated companies a lower or higher consideration is applied than the consideration which would be enforced between independent parties under fair competition and comparable circumstances ("fair market price"), then the taxpayer – irrespective of any other items that shall be added or deducted from the pre-tax profit – takes the difference between the fair market price and the consideration applied and shall add it to the pre-tax profit or may deduct from the pre-tax profit depending on certain circumstances.

The fair market price can be determined by the comparable price method, the resale price method, the cost and income method, the transactional net margin method, the transactional profit split method or by any other method if the aforementioned methods shall not apply.

Do you have double taxation treaties in place with foreign jurisdictions? If so where can we find out details?

Hungary has concluded over 70 treaties with foreign countries – including all the members of the European Union - in connection with the avoidance of double taxation. Currently there is no official compilation about the concluded treaties. The latest unofficial compilation, which was published on 1 January 2013, can be found at the following link: http://2010-2014.kormany.hu/hu/nemzetgazdasagi-miniszterium/ado-es-penzugyekert-felelos-allamtitkarsag/hirek/magyarorszag-kettos-adoztatas-elkeruleserol-szolo-egyezmenyei-2013-januar

Since the publication of the aforementioned compilation, Hungary has concluded treaties with further nations on the avoidance of double taxation, such as the Republic of Kosovo, Switzerland, United Arab Emirates, Bahrain, Saudi Arabia, Luxembourg, Uzbekistan, Turkmenistan and Lichtenstein.

GÁRDOS | FÜREDI | MOSONYI | TOMORI
Law Office · Established 1992

GÁRDOS FÜREDI MOSONYI TOMORI LAW OFFICE

BUDAPEST
1056 Budapest, Váci utca 81.

www.gfmt.hu

KEY CONTACTS

Dr. Zsolt Kovács
Partner
kovacs.zsolt@gfmt.hu
T: +36 1327 7560

Dr. Péter Gárdos
Partner
gardos.peter@gfmt.hu
T: +36 1327 7560

Ireland

We are looking to set up an Irish trading company. What structures/business vehicles do you use?

The most common type of company is the Private Company Limited by Shares. A Private Limited Company must restrict the right to transfer its shares, cannot have more than 149 shareholders (excluding employees) and cannot make invitations to the public to subscribe for shares. There are two types of Private Limited Company: the Limited Company (LTD) and the Designated Activity Company (DAC). The principal difference between an LTD and a DAC is that an LTD does not have an objects clause and can carry out any legal activity approved by its directors, whereas a DAC must only act within the scope of its objects clause.

Other company types include Public Limited Companies (which are not subject to the above restrictions imposed on Private Limited Companies but are heavily regulated), Companies Limited by Guarantee (commonly used for charitable organisations), and Unlimited Companies (whose shareholders do not benefit from limited liability).

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

Foreign investors most commonly form a Private Company Limited by Shares as fewer obligations apply to a private company than a public company.

Shareholders of a limited company are only liable to contribute to the assets of the company the amount outstanding on any unpaid shares held by them. A shareholder who has paid in full for all shares held has no liability to the company for its debts.

Private limited companies must file an annual return each year together with financial statements. In certain circumstances, the financial statements must be audited. Returns must be filed with the Companies Registration Office to record certain changes in relation to the company (e.g. share issues, change of directors).

What are the rules on capitalisation of entities in Ireland?

There is no minimum share capital requirement for a private limited company.

A public limited company must have a minimum issued share capital of €25,000.

What information are we required to provide businesses/ consumers with when trading with us?

A company must include the following on all of its business documentation:

- The full name of the company.
- The forename (or initials) and surnames and any former forenames and surnames of the directors and their nationality, if not Irish.

The following additional particulars must be shown on letters, order forms and websites of limited liability companies:

- Legal form of the company.
- Place of registration and registered number.
- Address of the registered office.
- In the case of a company exempt from the obligation to use the company type as part of its name, the fact that it is such a company.
- If the company is being wound up, the fact that it is so.
- If the share capital is mentioned, the reference must be to paid up share capital.

In certain instances, there may be further obligations to provide information (see below regarding information requirements for online selling).

We would prefer to avoid having an actual physical presence in Ireland and instead are looking to appoint an agent or distributor to sell our products and/or services. What are the legal implications?

Where an agent is appointed, the agent has authority to conclude certain contracts on behalf of its principal. Where the agent acts within the scope of such authority (which may be implied in certain circumstances), the resulting contract will create legal obligations for the principal with the other contracting party. If the agent acts outside of its authority, the principal may choose to ratify the contract. Most agents appointed by companies are commercial agents within the meaning of the European Communities (Commercial Agents) Regulations 1994 and, as such, have specific rights regarding entitlement to commission and to damages on termination of the agency.

Where a distributor is appointed, the distributor will purchase goods from the supplier and will in turn sell those goods to its customers in its own right. As a result, no legal contract will arise between the supplier and the person purchasing the goods from the distributor.

We intend to sell goods via our online website. What are the legal requirements if we wish to sell into Ireland?

The law in respect of selling of goods online encompasses both general contract law and consumer protection law along with more specific legislation. The legislation in relation to online selling is:

- European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communication), Regulations 2001 (“Distance Selling Regulations”).
- European Communities (Directive 2001/31/EC Regulations 2003 (“E-Commerce Regulations”).

The Distance Selling Regulation provides that certain information, dependant on the nature of the contract, must be provided to the consumer before the conclusion of the contract. The consumer must be informed that they have a right of cancellation and are to receive written confirmation of the contract, or confirmation in another durable means. The E-Commerce Regulations impose further requirements

in respect of the provision of information. For instance, the terms and conditions must be available to the consumer in a manner in which they can be stored and reproduced.

Do you have legislation in respect of the use of electronic signatures?

The use of electronic signatures in Ireland is dealt with under the Electronic Commerce Act 2000 and allows for a wide definition of what may constitute an electronic signature. Thus, in extreme cases a simple email signature could result in the sender being legally bound.

The Act provides for an 'advanced electronic signature' and 'advanced electronic signatures based on qualified certificates'. Both aim to increase the level of security in contracting via electronic means. The Act, while silent for the most part on which type of signature to use, does provide that where a document is required to be executed under seal, the use of an advanced electronic signature based on a qualified certificate will satisfy the requirements of execution by seal.

One ought to note that while the use of electronic signatures is recognised in Ireland, one party cannot force the other to contract electronically.

We intend to import goods into Ireland for sale. What are the legal requirements for doing this?

As Ireland is a member of the European Union (EU), there are few restrictions on importing from another EU country.

When importing from a country outside the EU, a number of requirements will have to be satisfied. First, the importation of illegal, indecent or obscene material, specific weapons and counterfeit goods is prohibited. For the importation of certain goods (e.g. meat/meat products), a licence to import will have to be obtained from the relevant authority.

The importation process entails pre-approval, approval and presentation to Revenue. Within this, there are various aspects that may vary depending on the type of good being imported. There is a simplified approval mechanism and an electronic approval mechanism, both of which aim to streamline the importation of goods by businesses.

The level of customs duty paid will depend on the class of good. For example, goods in the computer and IT sector are liable for 0%.

What rights do consumers have when selling to them?

Consumers in Ireland are afforded protection through a mix of Irish and European legislation which impose a range of obligations on businesses in Ireland. Two key pieces of legislation to be familiar with are the Consumer Protection Act 2007 and The Consumer Rights Directive.

The Consumer Protection Act 2007 ('the CPA') provides protection to the consumer through a variety of measures; ensuring compliance with consumer legislation, self-regulation (codes of practice) and a set of enforcement measures. The CPA applies before, during and after a transaction has taken place.

The Consumer Rights Directive ('CRD') came into force in 2014 and provides consumers with increased protection when they enter into on premises, off premises (doorstep sales) and distance contracts with web traders based in Ireland and other EU countries.

In Ireland a body known as The Competition and Consumer Protection Commission has responsibility for the enforcement of competition and consumer protection law.

What are a customers rights in so far as returning goods (whether or not they are faulty)?

Consumer contracts are protected by the Sale of Goods and Supply of Services Act, 1980. Under this Act the purchaser of goods has a number of rights - the main ones are (1) Goods must be of merchantable quality, (2) Goods must be fit for their purpose and (3) Goods must be as described.

If the Consumer is not satisfied with the quality of goods they can return the goods to the supplier who sold it and where a fault is proven, the seller can either repair or replace the item, or refund the cost of the item to the consumer. A Consumer has no grounds for redress if:

- They were told about the defect before they bought the item.
- They examined the item before they bought it and should have seen the defect.
- They bought the item knowing that it wasn't fit for what they wanted it to do.
- They broke or damaged the product.
- They made a mistake when buying the item.
- They changed their mind.

The above must be qualified to take account of "cooling-off" periods provided for under the Consumer Rights Directive which allows for a return of goods based on a change of mind.

Are we required to ensure that all customers have agreed to our terms of business in writing?

In general, there is no requirement for the customer to agree to your terms of business in writing. There are exceptions to this, but for the most part customers may accept your terms electronically.

The e-commerce Directive and the Distance Selling Regulations provide that certain information must be provided to the customer, and they must be informed of their right to cancel and that there exists a "cooling-off" period wherein the customer may exit the contract within a specified time without penalty.

The consumer must receive written confirmation of the conclusion of the contract, or confirmation in another durable means to render it enforceable. Further, the terms and conditions must be available to the consumer in a manner in which they can be stored and reproduced.

EMPLOYMENT QUESTIONS

We are looking to set-up a business in Ireland and intend to bring some of our current employees into Ireland to work. Do we require work/residency permits?

The Employment Permits Acts 2003 and 2006 (the "Acts") recognise the automatic right of EEA nationals to work in Ireland while also providing for a system for the granting, refusal or revocation of employment permits.

Under the Acts no formal employment permit is required if the individual is an EEA national. Section 2(10) of the Employment Permits Act 2003 ("the 2003 Act") provides that the requirement to have an employment permit does not apply to a national from an EEA Member State.

Most non-EEA nationals will require an employment permit to work in Ireland. There are various types of permits which are available, depending on the particular circumstances. There is usually a fee payable for a permit application and processing of applications can take several months.

What formalities do we need to comply with when recruiting employees in Ireland?

The Irish employment market is a free market. However, when recruiting, employers should be cognisant of equality legislation. Discrimination is prohibited at all stages of recruitment and employment on the following grounds: gender, civil status, family status, sexual orientation, religion, age, disability, race or membership of the travelling community.

What are the minimum rights we have to adhere to for employees in Ireland?

Irish employment law has been influenced heavily by its membership of the EU and most employment legislation derives from EU Directives.

Minimum rights of an employee include the following non-exhaustive list:

- The right not to be discriminated against in recruitment or throughout the employment.
- The right to fair procedure.
- The right to receive written terms and conditions of employment in writing.
- The right to receive a minimum wage (currently €8.65 per hour).
- The right to minimum holiday entitlements and pay.
- The right to breaks during work.
- The right to protection during periods of maternity, paternity or sick leave.
- The right to join a union.

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

Yes, certain rights and obligations will only apply to the relationship if it is determined to be an employment relationship.

There is considerable case law determining the differences between an employee and an independent contractor. The courts have looked at matters such as: control, ownership of premises/equipment, hours of work, transferability, employee type benefits, taxation, multiple clients, shareholdings etc.

What options exist if we want to terminate employees contracts with us? Can we make them redundant?

The Minimum Notice and Terms of Employment Acts 1973 – 2001 imply a graduated scale of notice periods according to length of service into all contracts of employment.

An employer can generally terminate a contract of employment without much risk in the first 12 months of employment (subject to the provision to adequate notice).

Following the initial 12 month period, the employee acquires various rights, in particular under Unfair Dismissals Acts. After that period, as well as serving adequate notice of termination, an employer must also be able to justify a dismissal, whether that be on grounds of genuine redundancy, capability, capacity etc. An employer is also required to follow proper procedure in dismissing an employee on any of these grounds.

If dismissing on grounds of redundancy, the Redundancy Acts require a payment to be made – dependant on the length of service of the employee.

What is the Transfer of Undertakings (Protection of Employment) Regulations 2006?

The Transfer of Undertakings (Protection of Employment) Regulations 2006 apply in Ireland.

The Regulations are aimed at safeguarding the rights of employees in the event of a transfer of an undertaking, business or part of a business to another employer as a result of the legal transfer or merger by providing that the rights of such employees will automatically transfer to the new employer.

Are there any restrictions on foreign investment into Ireland?

The Irish government actively encourages foreign investment into Ireland and, for the most part, there are no restrictions on the amount of foreign investment. The instances where foreign investment may encounter restriction include: mergers, joint ventures and acquisitions; a public takeover; or investment in regulated industries which include but, are not limited to, financial services, broadcasting and life sciences.

Do you have any currency or exchange controls in place?

There are no currency or exchange controls currently in place in Ireland, save for EU regulations which oblige an individual entering or leaving the EU to declare if they are carrying cash, or the cash equivalent of €10,000 or more.

Cash includes bearer-negotiable instruments including monetary instruments in bearer form such as travellers' cheques, negotiable instruments (including cheques, promissory notes and money orders).

How are employees taxed in Ireland?

Employees in Ireland are subject to Income Tax which is deducted at source by the employer and remitted to the Revenue Commissioners under the Pay As You Earn (PAYE) system. Employees who are Irish-resident and domiciled are liable to Income Tax and Capital Gains Tax on their worldwide income and Capital Gains respectively. Broadly speaking, employees who are resident in Ireland but not domiciled in Ireland will be liable to Irish Income Tax and Capital Gains Tax respectively on Income and Capital Gains arising in Ireland and to Foreign Income or Capital Gains to the extent that such income or Capital Gains are remitted to Ireland only. Employees in Ireland also have to pay Pay Related Social Insurance (PRSI) and the Universal Social Charge (USC) which are deducted at source.

What are the current rates of tax for employees?

There are two rates of Income Tax; a standard rate of 20% and a higher rate of 40%. The amount of Income to which the standard rate applies depends on the status of the employee.

In the case of an employee who is single, widowed or a surviving civil partner the first €33,800.00 is taxable at the standard rate if there no children; this increases to €37,800.00 if there are qualifying children. In the case of a married couple or civil partners, the combined amount charged for the couple or the partners is €42,000.00 where there is one income and €67,600.00 where there are two incomes. Any excess is charged at the higher rate. Employees are entitled to certain credits against the tax payable which again depend on the status of the employee.

Employees are charged PRSI at the rate of 4%. Employers must also make PRSI contributions in respect of their employees at the rate of 10.75% or 8.5% if the employee's income does not exceed €376.00 per week.
The Universal Social Charge is 0.5% on the first €12,012 and 2.5% on the balance where total income does not exceed €60,000. Where total income exceeds €60,000, USC is 0.5% on the first €12,012, 2.5% on the next €6,760, 5% on the next €51,272 and 8% on the balance.

What taxes apply to the business models you have identified above?

Where profits accrue in a partnership or a sole trade, the individuals concerned are liable to pay income tax on the total amount of the profits, less allowable deductions for expenses and tax credits.

Companies benefit from a lower rate of corporation tax (12.5% for trading income and 25% for non-trading income). A company resident in Ireland is liable to CT on its worldwide profits.

Businesses also have an obligation to collect their employees' taxes and pay these monies directly to the Revenue Commissioners through the PAYE system.

Depending on the nature of the business, it may be necessary to register for VAT (Value Added Tax). The rate depends on the nature of the business, the standard rate is 23%, with a lower rate of 13.5% for the supply of some services. Businesses with a low turnover (under €75,000 for supply of goods and under €37,500 for supply of services), may opt not to register for VAT.

How are dividends to foreign companies/shareholders taxed?

Dividends and other distributions (including scrip dividends) made by Irish resident companies are subject to dividend withholding tax (DWT) currently at a rate of 20%. DWT does not apply where the distribution is made to a 51% Irish tax resident holding company.

Exemption can be obtained from the charge to DWT, where certain declarations are made, by certain individuals and companies including:

- An Irish Resident Company.
- Charities, pension funds, certain retirement funds, and certain sporting bodies.
- Companies resident in an EU member state or a country with which Ireland has a tax treaty not under the control of Irish tax resident individuals.
- Non-resident companies ultimately controlled by residents of EU Member States or tax treaty countries.
- Non-resident individuals who are resident in another EU Member State, or a country with which Ireland has a tax treaty.

Are there transfer pricing rules in place?

Transfer pricing in Ireland is addressed under the Finance Act 2010. The relevant factors to be considered are: whether the taxpayer in question is a small or medium enterprise; whether there has been an arrangement between associated persons; if the arrangement is for the purpose of a trade which is subject to Irish Corporation Tax; if an arm's length price has been applied to the arrangement; and if there is price documentation in place.

The arm's length principle is the hypothetical situation where the price of the inter-group transaction is at a level that would be paid between two unrelated companies. Where the price is otherwise than at arm's length, there may be a tax adjustment, which increases the understated profits or reduces any overstated expenses, bringing the transaction in line with the principle.

It is worth noting that the concept of arrangement is broadly defined and will therefore cover all types of inter-company transfers.

Do you have double taxation treaties in place with foreign jurisdictions. If so where can we find out details?

Ireland has comprehensive double taxation agreements with 72 Countries. These agreements cover direct taxes which in the case of Ireland are Income Tax, USC, Corporation Tax and Capital Gains Tax. Details can be found on the website of the Irish Revenue Commissioners www.revenue.ie.

J|W|O'DONOVAN SOLICITORS

J.W. O'DONOVAN

www.jwod.ie

CORK
53 South Mall,
Cork,
T12 H395
Ireland.

KEY CONTACTS

Pat Bradley
Partner
Tax and Investment
T: +353-21-7300200
pbradley@jwod.ie

John Sheehan
Partner
Corporate / Commercial
T: +353-21-7300200
jsheehan@jwod.ie

John Fuller
Associate
Corporate / Commercial
T: +353-21-7300200
jfuller@jwod.ie

Karol-Ann Randles
Associate
Employment
T: +353-21-7300200
krandles@jwod.ie

Colm Tobin
Trainee Solicitor
+353 21 7300200
ctobin@jwod.ie

Italy

We are looking to set up an Italian trading company. What structures/business vehicles do you use?

There are two main business structures that can be used to carry on an economic activity: partnerships and corporations.

The partnership is utilised by the small entrepreneurs (for example a family business operating locally) who may choose three different typologies: (i) informal partnership (società semplice), that can carry on only agricultural or professional activities; (ii) ordinary partnership (società in nome collettivo); and (iii) limited partnership (società in accomandita semplice).

Save for limited exceptions, in partnerships, each partner is manager and representative of the enterprise and, therefore, each partner can manage the business, assume decisions regarding the policy and act in the name and on behalf of the company. On the other hand, each partner has unlimited liability for the debts of the partnership.

Corporations are divided into: (i) stock companies (società per azioni); (ii) limited liability companies (società a responsabilità limitata); and (iii) partnership limited by shares (società in accomandita per azioni).

The shareholders of the corporations are not automatically managers of the same: often external professional managers appointed by the shareholders run the business. Unlike the partners, shareholders are not unlimited and personally liable for the debts of the company, their loss limited to their capital contribution to the company.

In addition to the above, the investor may establish a branch (permanent establishment) to carry out business activities in Italy.

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

The most common vehicle used by foreign companies to carry on business in Italy is the limited liability company (società a responsabilità limitata).

As indicated above, the shareholders are not personally liable for the obligations of the company but their responsibility is limited to the capital contribution. The same rule applies in the case where the limited liability company capital is owned by a sole shareholder, save the exception indicated below. Indeed, in this latter case, if the company is declared insolvent the sole shareholder shall be liable without limitations for any and all obligations and commitments of the company in the following two cases: (i) the contributions in cash have not been entirely paid in by the sole shareholder; and/or (ii) the company's directors or the sole shareholder have failed to file with the competent Companies' Register the relevant data of the sole shareholder.

The incorporation of the limited liability company must be registered at the Trade Register held by the Chamber of Commerce.

What are the rules on capitalisation of entities in Italy?

The minimum amount of the corporate capital is equal to Euro 10,000.00 for limited liability company and Euro 50,000.00 for a stock company.

The total amount of contributions by the shareholder(s) must be equal or higher than the total amount of the corporate capital of the company. Any item with economic value may be contributed, but if the by-laws of the Company do not provide otherwise the contributions of the shareholder(s) must be made in cash. It is also possible to grant as contribution the provision of services or work in favour of the company.

In any case, any contribution different from cash must be evaluated by an independent expert.

What information are we required to provide businesses/ consumers with when trading with us?

Pursuant to the Italian Consumer Code (Legislative Decree no. 206/2005), the trader shall provide the consumer, inter alia, with the following information in a clear and comprehensible manner:

- The main characteristics of the goods or services.
- The identity of the trader, the geographical address at which he is established and his telephone number, and, if relevant, the geographical address and the identity of the trader on whose behalf he is acting.
- The total price of the goods or services inclusive of taxes.
- Where applicable, the arrangements for payment, delivery, performance, the time by which the trader undertakes to deliver the goods or to perform the service, and the trader's complaint handling policy.
- In addition to a reminder of the existence of a legal guarantee of conformity for goods, the existence and the conditions of after-sales services and commercial guarantees, where applicable.
- Where applicable, the functionality, including applicable technical protection measures, of digital content.
- Where applicable, any relevant interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of.

Please note that the above pre-contractual information shall not apply to contracts that involve day-to-day transactions and which are performed immediately at the time of their conclusion.

We would prefer to avoid having an actual physical presence in Italy and instead are looking to appoint an agent or distributor to sell our products and/or services. What are the legal implications?

Distribution agreement is not expressly regulated by the Italian legislation, unlike the agency agreement. Therefore, the general rules on contract law apply to the distribution agreement, in addition to the specific regulation agreed by the parties. For the above reason, it is essential to draft in a proper and complete manner the contract with the Italian Distributor.

Agency agreement regulation is contained in articles 1742 and follow the Italian Civil Code: such regulations reflect the content of the EC Directive 653/86.

The main difference between the two alternatives is the payment of the goodwill compensation, which is not due to the distributor, while it is due to the agent if: (i) he has brought new customers or has considerably increased business with the existing customers and the principal continues to derive substantial benefits from the business with such customers; and if (ii) the payment of such indemnity is equitable having regard to all the circumstances and in particular the commission lost by the agent on the business with such customers.

In general, the amount of the goodwill indemnity acknowledged to the agent is equal to the yearly average of the commissions paid by the principal in the last five years of the relationship.

We intend to sell goods via our online website. What are the legal requirements if we wish to sell in Italy?

The exercise of the sale activities via online website requires the filing of a communication before the Municipality where the registered office of the seller is based.

In relation to the performance of the online sale, the Italian legislation regarding e-commerce activities substantially reflects the content of EU Directives 1993/13/CE and 2000/31/CE. Therefore, among others, the online seller must render easily available the information concerning: (i) the name of the seller; (ii) the geographic address at which the seller is established; (iii) the details of the seller, including his electronic mail address, which allows him to be contacted rapidly and communicated with in a direct and effective manner; (iiii) where the seller is registered in a trade or similar public register, the trade register in which the seller is entered and his registration number, or equivalent means of identification in that register; (VI) where the activity is subject to an authorisation scheme, the particulars of the relevant supervisory authority; and (VII) the VAT number of the seller.

Do you have legislation in respect of the use of electronic signatures?

The legislation on the electronic signature is contained in the Digital Agencies Act (Legislative Decree no. 82/2005) which is applicable to the relationship (and in the exchange of documents) between the public administration, on one side, and individuals and companies on the other side, but its principles are also often applied to the relationship between companies.

In substance, the hand signature can be substituted by the digital signature, which is a signature made to an electronic document that identifies univocally the signatory. The digital signature is made by means of a token (or smart card) released by companies or authorities qualified to do so.

The validity of the digital signature is enforceable vis à vis the public administration (and vis à vis the companies). The Italian legislation also regulates the electronic signature, which is defined, in general terms, as the connection between two sets of electronic data that can be used as modality of electronic identification. The electronic signature is, for example, the signature made by means of a pin code and its validity must be ascertained, in case of dispute, by a judge.

We intend to import goods in Italy for sale. What are the legal requirements for doing this?

Within the European Union we have the principle of the free movement of goods and services and therefore intra-Community trade does not require special customs formalities, fiscal and administrative.

For transactions involving the import from extra EU countries, however the procedure is more complex and often - on the basis of the nature of good to buy from the non-EU States (Ex. Cosmetics and perfumes, electro-medical items, food, pharmaceutical substances, herbal etc) - they are provided for specific authorisations and checks on goods.

Information relating to these trade restrictions can be found online on the website of the Customs Authorities.

What rights do consumers have when selling to them?

Pursuant to the Consumer Code, before the conclusion of a contract in the premises of the seller, the consumer must be provided in a clear and comprehensible manner with some specific information, as indicated under the question “What information are we required to provide businesses/ consumers with when trading with us?”.

In case the good sold is defective, the consumer shall be entitled to:

- Have the goods brought into conformity free of charge by repair or replacement.
- Have an appropriate reduction made in the price.
- Have the contract cancelled in case: (i) the good is defective and the repair of the defects or the replacement of the goods is impossible or extremely burdensome (see below); or (ii) in case the defects have not been repaired within an adequate term.

The guarantee against the defects of the goods summarised above is in favour of the consumer and applicable within 2 years from the date of the sale.

Until the expiry of the sixth month from the date of the sale, the burden of proof that the good was not defective at the date of delivery is up to the seller.

What are a customers rights in so far as returning goods (whether or not they are faulty)?

The customer can return the goods and obtain the price paid, even if the goods are not defective, in case the contract is concluded outside the premises of the seller or "from distance" (e.g. through the website of the seller). The consumer is not obliged to give any reason for the return and shall bear only the costs of returning the goods to the seller. The customer can exercise the above withdrawal right within 14 days from the conclusion of the agreement.

Save for the above exception, in the other case (e.g. purchase of the goods within the premises of the seller), the consumer may return the good (and obtain the price paid) only in case: (i) the goods are defective; and (ii) the repair of the defects or the replacement of the goods is impossible or extremely burdensome.

Are we required to ensure that all customers have agreed to our terms of business in writing?

The Italian Civil Code states that the clauses included in the standard conditions of sale or supply containing among others - in favour of the party who has prepared the agreement (the seller) - limitation of liability, power of withdrawal from the agreement, tacit extension or renewal of the contract, must be specifically approved in writing by the client. In other words, the client must sign the terms of business twice.

In addition, the Consumer Code establishes that the "unfair terms" contained in the terms of business are null and void. The unfair terms are the clauses contrary to good faith, that cause a significant imbalance in the rights and obligations arising under the contract, to the detriment of the consumer.

EMPLOYMENT QUESTIONS

We are looking to set-up a business in Italy and intend to bring some of our current employees into Italy to work. Do we require work/residency permits?

Different rules are applied depending on if foreign employees are EU citizens or not. In the first case, Schengen agreements regulate the situations though the creation of a common area of free movement between the Countries, with the elimination of border controls. In case the EU citizens stay in Italy exceeds 3 months, the EU citizen is required to be inscribed in the civil registry where they reside.

On the contrary, non-EU citizens must apply for a Visa card. The Visa is issued by the Italian embassy or consulate in the state of origin or in the country in which the foreign employee has a permanent residence.

The foreign employee, who enters legally in Italy, within eight working days, must apply for a residence permit for so called "employment reasons".

The residence permit for employment reasons is issued by the Police at the request of a non-EU employee; this permit is valid for a period equal to the duration of the job and cannot be longer than 1 year (in case of fixed-term contract) and 2 years in case of an open-ended employment contract, renewable upon expiration.

What formalities do we need to comply with when recruiting employees in Italy?

When recruiting employees in Italy, within 5 days of the employee's hiring, the employer must communicate the following information to the "Centro per l'Impiego" (a kind of labour office):

- Personal data of the employee
- Data relating to the employer
- Recruitment date (actual date of commencement of employment performance)
- Termination date (if the employment relationship is not open-ended)
- Type of contract and employee qualification
- Economic and regulatory treatment (indication of the national collective labour agreement applied or the amount of the gross daily wage agreed upon)

What are the minimum rights we have to adhere to for employees in Italy?

Some Italian dispositions are mandatory and have to be applied if the employment relationship is performed in Italy. The following provisions can be considered mandatory:

- Provisions regarding working time (such as right to a weekly rest, paid leave, holiday).
- Provisions regarding suspension of the employment relationship during periods of illness, pregnancy or, childbirth.
- Right to the minimum salary, as provided by Law or, if any, by the applied national collective labour agreement.

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

Yes, the main difference is that the employee is granted with some rights not recognised to the consultant. In particular, the employee has the right to illness indemnity, paid holidays and other kind of benefits.

However, the employee must observe some obligations not provided for the consultant; in particular, the employee must observe specific working hours and must observe the dispositions carried out by the employer in order to perform the working activity.

Employees are usually paid at regular intervals (via cheque or direct deposit) on a fixed or hourly basis. Consultants are typically paid upon submission of invoices and expense reports.

Employees are not required to incur employment-related expenses on their own behalf and will typically be reimbursed by their employer.

Consultants often incur their own expenses (without reimbursement) and bear the risk of profits/losses. Please consider that, according to Italian Law, incase some indexes of subordination could be identified in the consultant's activity - such as payment regularly on a monthly basis; submission to customer' guidelines; work in customer's offices - the consultant could claim for the subordinate nature of his/her relationship in order to be declared a customer's employee.

What options exist if we want to terminate employees contracts with us? Can we make them redundant?

According to Italian Law, the dismissal can be for cause (the so called "licenziamento per giusta causa") or for justified reason (the so called "licenziamento per giustificato motivo oggettivo").

The dismissal for cause is provided when there is a cause, which does not allow the continuation of the employment relationship between the employer and the employee: a serious breach of the employment contract by the employee may justify the dismissal for cause. In such a case, no notice period or indemnity in lieu of it is due to the employee. If there are no grounds to dismiss the employee for just cause, the only way to terminate the employment relationship is for justified reasons, namely for economic reasons.

In such situation the company, before dismissing the employee, should consider a possible relocation of the employee to another office (the so called "repechage duty") and should also consider the notice period (or indemnity in lieu of it) that would be due in the event of the repechage duty's failure.

What is the Transfer of Undertakings (Protection of Employment) Regulations 2006?

The Transfer of Undertakings (Protection of Employment) Regulations 2006 is an important part of labour law, protecting employees whose business is being transferred to another business. The regulations' main aims are to ensure that, in connection with the transfer:

- Employees are not dismissed
- Employees' most important terms and conditions of contracts are not worsened
- Employees are informed and consulted through representatives

Transferring companies, both before, during and after the transfer must observe such obligations of employee's protection.

The only exception is represented by transfers that go merely through the sale of a company's shares. In this case, the company is still the same company, therefore all contractual obligations stay the same.

The Regulations apply to other forms of transfer, through sale of physical assets and leases.

In the case of companies that have more than 15 employees, the company is required by law to comply with a specific procedure in order to involve the Unions. If such a procedure is not observed the transfer can be declared invalid.

TAX AND INVESTMENT QUESTIONS

Are there any restrictions on foreign investment into Italy?

There are no restrictions for investments in Italy depending on the nationality of the investors.

Do you have any currency or exchange controls in place?

Italy does not have any currency and exchange controls. Residents and non-residents may hold foreign currency within and outside Italy; direct and indirect investments may be made in any currency.

In any case Italy, as well as in other EU countries, has adopted strict regulations of the cash flows for anti money laundering.

How are employees taxed in Italy?

Employment income includes any compensation, either in cash or in kind, received during a tax period in connection with employment (including any payments received as shares, as acts of generosity or as reimbursement for expenses incurred in the production of the income).

The employer, which qualifies as a withholding tax agent, must withhold income taxes monthly from payments of gross employment income, including benefits in kind.

Non-residents are subject to tax on income from employment derived from services performed in Italy. Also in this case, it applies a withholding tax.

What are the current rates of tax for employees?

A progressive scale is applied to successive portions of taxable income under personal income tax (IRPEF). IRPEF rates range from 23% to 43%.

In addition, a regional surcharge is also applied ranging from 1.23% to 2.03% is levied under IRPEF depending on the level of income and region of residence; a municipal surcharge of up to 0.9% depending on the municipality of residence.

What taxes apply to the business models you have identified above?

Corporate income tax (IRES) is levied on the worldwide income of resident companies, Non-resident companies are taxed only on Italian-source income; foreign entities are taxed on profits generated by their Italian permanent establishments.

The IRES rate is 27.5% on the income of the year.
The regional tax on productive activities (IRAP) is a local tax levied on the net value of production derived in each Italian region by resident companies and by permanent establishments of foreign companies engaged in business activities.

The taxable basis is close to the same basis of corporate income tax (IRES).

IRAP ordinary rate is 3.9%, although the competent region may increase or decrease the rate by up to 0.9%.

How are dividends to foreign companies/shareholders taxed?

Dividends paid to a non-resident company are generally subject to a 26% withholding tax unless the rate is reduced under a tax treaty or the dividends qualify for exemption under the EU parent-subsidiary directive.

Are there transfer pricing rules in place?

Basic transfer pricing rules are contained in Article 110 of the Italian Income Tax Code (Presidential Decree of 22 December 1986, no. 917 and subsequent amendments).

The rules are similar to the international standard by OECD.

Do you have double taxation treaties in place with foreign jurisdictions. If so where can we find out details?

Italy has a large number of double taxation treaties. Most treaties follow the OECD model treaty.

They can easily be found on the institutional websites.

COCUZZA & ASSOCIATI
Studio Legale

COCUZZA & ASSOCIATI

www.cocuzzaeassociati.it/

MILAN
San Giovanni sul Muro 18,
20121,
Milano

KEY CONTACTS

Avv. Giulia Comparini
Partner
T: +39 02 866096
gcomparini@cocuzzaeassociati.it

Avv. Domenica Cotroneo
Senior Associate
T: +39 02 866096
dcotroneo@cocuzzaeassociati.it

Avv. Patrizio Cataldo
Associate
T: +39 02 866096
pcataldo@cocuzzaeassociati.it

Palma Boria

PALMA BORIA LAW FIRM

www.palmaboria.com

ROME
Studio Palma Boria,
Via Tirso n. 26 00198,
Rome

KEY CONTACTS

Avv. Alexandra Brughiu
T: +39 06 3242427
alexandrabrughiu@palmaboria.it

Avv. Maria Giovanna De Sario
T: +39 06 3242427
m.giovannadesario@palmaboria.it

Latvia

We are looking to set up a Latvian trading company. What structures/business vehicles do you use?

Usually business persons choose to establish a limited liability company (private) or stock company (private, but it is possible to go public with the stocks). The minimum share capital for a limited liability company is EUR 2,800, and for a stock company EUR 35,000. It is possible to pay up to 50% of the share capital of a limited liability company within 1 year after its registration at the Commercial Register.

Such vehicles as commercial agents and branches may also be used.

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

The liability of a limited liability or stock company is limited to the assets it owns. Shareholders are not held liable for the commitments of the limited liability or stock company. The limited liability or stock company is not held liable for the commitments of its shareholders.

Both limited liability and stock companies have annual reporting duties to the State Revenue Service, and possibly even monthly reporting duties if the limited liability company or stock company has employed employees or is engaged in some particular regulated trading business.

What are the rules on capitalisation of entities in Latvia?

All shares of limited liability companies have the same value and the value of each share should be quoted in whole euros. A share entitles the shareholder to participate in the company's management, profit distribution and property distribution in case of the winding up of the company. For the purpose of accounting of shares, the company maintains the shareholder register where the nominal value of a share, the number of shares held by each shareholder and the date when the shareholders paid up the shares is stated.

If a shareholder sells his share(s), other shareholders have the right of first refusal.

A share may be pledged pursuant to the commercial pledge rules applicable in Latvia unless creation of encumbrances over the shares is prohibited in the articles of association.

A joint stock company may issue shares of different classes, including preference shares and special employee shares, shares with voting restrictions. Only shares of a stock company may be listed in the stock exchange and traded publicly.

The laws and regulations are silent about keeping the share capital untouched and unused; the company may freely use the whole amount paid up as the share capital or non-monetary contribution invested in the share capital for its business purposes.

What information are we required to provide businesses/ consumers with when trading with us?

The answer might differ depending on the particular service provided to businesses/consumers, as in the case of regulated services there is more information to be provided than in the case of non-regulated services. Furthermore, it also depends on the place where the services are provided – online, at the shop, at the premises of businesses/ consumers, etc.

In the case of online trading, a service provider provides the following information in a clear, direct and permanently accessible manner:

- Company name/ full name, registered office or declared place of residence and registration number (if any) of the service provider.
- Contact information of the service provider, including email address, which ensures the possibility of quick communication in a direct manner.
- If a special permit (licence) is necessary for commencing the relevant activity, information regarding the institution that has issued the special permit (licence).
- In relation to a regulated profession, information regarding the professional organisation that has issued the documents confirming the professional qualification, the name corresponding to the profession or qualification and the state in which it has been granted, as well as a reference to the professional regulations applicable in the registration state and the way in which they may be accessed.
- If the relevant activity is taxable with value added tax, the VAT identification number in the State Revenue Service Register of Persons Taxable with VAT.

If goods are sold online and the price is stated, the price is indicated by the service provider in such a way that it is unmistakable and clearly legible; the service provider provides information about whether the price includes payable taxes and delivery costs of goods.

We would prefer to avoid having an actual physical presence in Latvia and instead are looking to appoint an agent or distributor to sell our products and/or services. What are the legal implications?

In order to avoid physical presence in Latvia, you may conclude a written commercial agent agreement with a business person registered in the Latvian Commercial Register. Such commercial agents are authorised independently on behalf of you (principal) and in your favour to conclude transactions with third parties or only prepare such transactions for conclusion.

A physical presence in Latvia can also be avoided by registration of a branch of your foreign company in the Latvian Commercial Register. Such a branch carries out business activities systemically (regularly) in the name of the foreign company. Do not confuse this with a representative office, which may not carry out commercial activities.

In any case, may it be commercial agent, branch or distributor, it is important to regulate in advance competition matters for selling your products and/or services.

In addition, it shall be evaluated whether the activities of such agent or distributor will not lead to the existence of a permanent establishment for taxation purposes.

We intend to sell goods via our online website. What are the legal requirements if we wish to sell into Latvia?

The chosen structure/business vehicle should register the online website (domain) and conclude an agreement with a hosting company for hosting the website online.

The chosen structure/business vehicle, before selling goods online, needs to register at the State Data Inspection as it will process personal data of consumers. Consumers, before validating the purchase, should tick on the online website that he/she agrees that the company may process its personal data, if any.

Consumers need to be given the right to cancel the agreement within 14 days by providing them in advance a form of cancellation (online).

The Latvian Consumer Rights Protection Law provides detailed provisions on the consequences where the consumer has exercised his/her right to cancel (in relation to return of the goods, payment of delivery expenses, etc.).

Please note that selling of particular goods/providing services may require permits; for example, alcohol, tobacco, medicine, gambling, crediting, investment, financial instruments, etc. Furthermore, it is not allowed to sell alcohol and tobacco online.

Do you have legislation in respect of the use of electronic signatures?

Yes, we do have a legal framework for use of electronic signatures.

We intend to import goods into Latvia for sale. What are the legal requirements for doing this?

There are no import requirements if goods are delivered to Latvia from another EU or EEA country.

If goods are imported from countries outside the EU or the EEA, the chosen structure/business vehicle (registered in Latvia as taxpayer at the State Revenue Service (SRS), which registration is completed simultaneously with registration at the Commercial Register, except for the Electronic Declaration System (EDS) of the SRS, where separate registration needs to be carried out) needs to receive from the SRS a permit to apply special VAT arrangement for the import of goods, and pays VAT showing the calculated tax in the VAT return for the relevant tax period. In addition customs procedures may be applied.

Importing particular goods may require permits; for example, alcohol, tobacco, medicine, etc.

What rights do consumers have when selling to them?

Right to claim non-compliance within 2 years after purchase (if goods/services do not meet the quality). The consumer may request that the seller/service provider rectifies the non-compliance of the item OR replaces it within a reasonable period of time. If the non-compliance is not rectified within a reasonable period of time or the item is not replaced without creating inconvenience to the consumer, the consumer is entitled to respective reduction in price or cancellation of the agreement and return of money. The seller is obligated to reply/ offer a solution within 15 business days. In the case of refusal, it must be justified. In addition to that, in the case of online sale, the consumer has the right to cancel within 14 days.

What are a customers rights in so far as returning goods (whether or not they are faulty)?

In addition to the above, in the case of online sales the customer has to return the goods within 14 days after exercising his/her right to cancel. The seller has to repay the customer the purchase price within 14 days after the customer has exercised its right to cancel, along with the expenses related to the delivery the customer encountered. The customer themself has to pay for their direct costs related to returning of goods to the seller (except in cases where the seller has agreed to pay such expenses or has not informed the customer that he/she will need to pay such expenses).

What rights do consumers have when selling to them?

Right to claim non-compliance within 2 years after purchase (if goods/services do not meet the quality). Consumer may request that the seller/service provider rectifies the non-compliance of the item OR replaces it within a reasonable period of time. If the non-compliance is not rectified within a reasonable period of time or the item is not replaced without creating inconvenience to the consumer, the consumer is entitled to respective reduction in price or cancellation of the agreement and return of money. The seller is obligated to reply/ offer a solution within 15 business days. In case of refusal, it must be justified. In addition to that, in case of online sale, the consumer has the right to cancel within 14 days.

What are a customers rights in so far as returning goods (whether or not they are faulty)?

In addition to the above, in the case of an online sale, the customer has to return the goods within 14 days after exercising his/her right to cancel. The seller has to repay the customer the purchase price within 14 days after consumer has exercised its right to cancel, along with the expenses related to the delivery the consumer encountered. The consumer himself/herself has to pay for his/her direct costs related to returning of goods to the seller (except the case whereby the seller has agreed to pay such expenses or has not informed the customer that he/she will need to pay such expenses).

Are we required to ensure that all customers have agreed to our terms of business in writing?

No, there is no such requirement. However, it is up to the seller/service provider to prove that the customer (consumer) has agreed to the terms of business. Usually it is sufficient that the consumer ticks on the online website that he/she has agreed to the terms of business. Such an act will be regarded as agreeing to the terms of business even if the consumer has not used electronic signature.

EMPLOYMENT QUESTIONS

We are looking to set-up a business in Latvia and intend to bring some of our current employees into Latvia to work. Do we require work/residency permits?

Work/ residency permits are required if the employees are not EU citizens (this includes citizens of EU Member States and citizens of the European Economic Area (EU Member States + Lichtenstein + Iceland + Norway as well as citizens of the Swiss Confederation)).

If an EU citizen intends to stay in Latvia for a term exceeding three months without interruption, he/she needs to get registered with the Office of Citizenship and Migration Affairs and obtain a registration certificate.

Citizens of other countries have a series of restrictions for their entry (visa), stay (residence permit) and employment (right to employment). Furthermore, the employer undertakes full liability for employment of a foreigner (including restrictions to salary) and stay (including place of residence and health care) and, if necessary, deportation costs.

What formalities do we need to comply with when recruiting employees in Latvia?

A job advertisement may not apply only to men or only to women, except in cases where belonging to a particular gender is an objective and substantiated precondition for the performance of relevant work or for a relevant employment.

It is prohibited to indicate (i) age limitations in a job advertisement except in cases where, in accordance with the law, persons of a certain age may not perform relevant work, and (ii) particular knowledge of a foreign language unless it is justifiably necessary for performance of the work.

A job interview may not include such questions by the employer that do not apply to performance of the intended work or are not related to the suitability of the employee for such work, as well as questions that are directly or indirectly discriminatory, in particular questions concerning:

- Pregnancy
- Family or marital status
- A previous conviction, except in cases where this may be of essential importance with respect to the work to be performed
- Religious conviction or belonging to a religious denomination
- Affiliation with a political party, employee trade union or other public organisation
- National or ethnic origin

Differential treatment based on the gender of an employee is prohibited when establishing employment legal relationships, as well as during the period of existence of employment legal relationships, in particular when promoting an employee, determining working conditions, work remuneration or occupational training or raising of qualifications, as well as when giving notice of termination of an employment contract.

What are the minimum rights we have to adhere to for employees in Latvia?

If the employee is on secondment to work in Latvia, irrespective of the law applicable to the employment contract and employment relations, work conditions and employment provisions that must be provided for such seconded employee are those stipulated by the laws and regulations of Latvia and collective work agreements that have been recognised as binding.

Minimum rights granted to employees include, for example, an employment contract in writing, salary and its timely payment, accounting of working hours, paid leave, social guarantees, and stable and safe work.

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

As a consultant is not an employee, in such case the Employment Law does not apply. Accordingly a different tax regime also applies.

What options exist if we want to terminate employees contracts with us? Can we make them redundant?

According to the Labour Law, employment may be terminated if:

- The employment contract is for a set term.
- The employer and the employee agree that the employment is terminated.
- The employee has materially breached the employment contract or the established work procedures without valid reason.
- The employee, when performing work, has acted illegally and therefore has lost the trust of the employer.
- The employee, when performing work, has acted contrary to moral principles and such action is incompatible with the continuation of employment legal relationships.
- The employee, when performing work, is under the influence of alcohol, narcotic or toxic substances.
- The employee has grossly violated labour protection regulations and has jeopardised the safety and health of other persons.

- The employee lacks adequate occupational competence for performance of the contracted work.
- The employee is unable to perform the contracted work due to his or her state of health, and such state is certified with a doctor's opinion.
- An employee who previously performed the relevant work has been reinstated at work.
- The number of employees is being reduced .
- The employer – legal person or partnership – is being liquidated.
- The employee does not perform work due to temporary incapacity for more than six months, if the incapacity is uninterrupted, or for one year within three years, if the incapacity repeats with interruptions, excluding a prenatal and maternity leave in such period, as well as a period of incapacity, if the reason of incapacity is an accident at work or occupational disease.

In each case there are different notice periods the employer needs to comply with.

Redundancy is a reason for termination of an employment contract that is not related to conduct or abilities of the employee, but is adequately substantiated on the basis of the performance of urgent economic, organisational, technological or similar measures in the company.

In the case of a reduction in the number of employees (redundancy), preference to continue employment relations is for those employees who have higher performance results and higher qualifications.

If performance results and qualifications do not substantially differ, preference to remain in employment is for those employees:

- Who have worked for the relevant employer for a longer time.
- Who, while working for the relevant employer, have suffered an accident or have fallen ill with an occupational disease.
- Who are raising a child up to 14 years of age or a disabled child up to 18 years of age.
- Who have two or more dependants.
- Whose family members do not have a regular income.
- Who are disabled persons or are suffering from radiation sickness.
- Who have participated in the elimination of the consequences of the accident at the Chernobyl Atomic Power Plant.
- For whom less than five years remain until reaching the age of retirement.
- Who, without discontinuing work, are acquiring an occupation (profession, trade) in an educational institution.
- Who have been granted the status of politically repressed person.

None of the preferences referred to above has priority in comparison with the others.

What is the Transfer of Undertakings (Protection of Employment) Regulations 2006?

The Labour Law of the Republic of Latvia contains the rules laid down in the EU Directive (2001/23/EC) and states that the transfer of an undertaking means the transfer of an undertaking or its unaffiliated, identifiable part (economic unit) to another person on the basis of an agreement, administrative or normative act, judgement of a court or another basis arisen between the parties outside contractual commitments thereof, as well as a merger, division or reorganisation of commercial companies.

The Transfer of Undertakings (Protection of Employment) is not applicable to seagoing vessels.

TAX AND INVESTMENT QUESTIONS

Are there any restrictions on foreign investment into Latvia?

No. However, the EU sanctions are also applicable in Latvia.

Do you have any currency or exchange controls in place?

No.

How are employees taxed in Latvia?

The remuneration of employees is subject to the personal income tax and the state mandatory social security contributions.

What are the current rates of tax for employees?

At the moment the personal income tax rate is 23%, but the total rate of state social security mandatory contributions is 34.09% which varies for different categories of insured persons.

What taxes apply to the business models you have identified above?

Corporate income tax at the rate of 15%. Value added tax is applied if the respective business model chooses to be a value added tax payer. It is allowed not to register as VAT taxpayer if the total value of taxable supply of goods and services carried out by such person has not exceeded EUR 50,000 during the previous 12 months. Other taxes may be applied depending on the commercial activity exercised by the respective business model.

How are dividends to foreign companies/shareholders taxed?

Since 1st January 2013 Latvia has introduced a holding companies regime under which dividend income is tax exempt in Latvia. It means that dividends received by a Latvian company from another company and dividends paid by a Latvian company to another company will be tax exempted.

There is no participation requirement in order to apply this tax exemption; however, this tax exemption is not applicable to dividends received from or paid out to companies registered in offshore territories. Shareholders – individuals are taxed at the rate of 10%, but for non- residents (individual) a lower rate may be applied if such is provided in the respective tax treaty.

Are there transfer pricing rules in place?

Yes, the transfer pricing rules are adopted and are applicable.

Do you have double taxation treaties in place with foreign jurisdictions. If so where can we find out details?

Latvia began its work for the conclusion of tax treaties in 1992 and till now 54 tax treaties are currently effective for application. Please see here the status of the tax treaties: http://www.fm.gov.lv/en/s/taxes/conventions/status/

LOZE & PARTNERS
ATTORNEYS AT LAW

KEY CONTACTS
Janis Loze
Managing Partner
janis.loze@loze.lv
+371 677 44444

LOZE & PARTNERS

www.loze.lv

RIGA
Kr.Valdemara 33, Riga
LV-1010, Latvia

Lithuania

We are looking to set up a Lithuanian trading company. What structures/business vehicles do you use?

The following legal person status entities may be established in Lithuania:

- Public or private limited liability company (with authorised capital divided into shares).
- Individual enterprise (with unlimited liability and its assets not separated from its owners assets).
- Partnership (enterprise of unlimited liability established on the basis of partnership agreement).
- Agricultural company (limited liability entity established under incorporation agreement, where income from agricultural production and services rendered to agriculture constitute over 50% of total income from sales during the business year).
- Co-operative company (established by its members contributed funds to satisfy the economic, social and cultural needs).
- Micro company (limited liability entity that can be established only by natural persons to promote small business).

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

The most common business structure advisable for foreign investors is a private limited liability company which is liable for its own assets and obligations. This entity is not limited to economic activities. Shareholders are liable for the company's obligations only within the amount, that they must pay for the shares.

What are the rules on capitalisation of entities in Lithuania?

The share capital of a private limited company may not be lower than 2,500 Euro and the share capital of a public limited company may not be lower than 40,000 Euro. The legal status of these two company types differs, because private limited company shares may not be distributed or traded publicly, but public limited company shares may be traded publicly.

The company's own capital must not be lower than 1/2 the authorised capital. If such a situation occurs, shareholders may adopt the decision to increase it with additional contributions or decide to liquidate the company / change its legal status into the other entity.

What information are we required to provide businesses/ consumers with when trading with us?

The entity must provide businesses/consumers with the entity's details (i.e. the name of the company, address, company code, VAT code (if registered as a VAT payer), and account number in the bank).

We would prefer to avoid having an actual physical presence in Lithuania and instead are looking to appoint an agent or distributor to sell our products and/or services. What are the legal implications?

According to the Civil Code, parties may enter into a distribution contract and may provide for only such conditions for limiting competition which is not prohibited by Competition Law.

The producer (supplier) shall have the right to control the warehouses and any other premises of the distributor where the goods bought from the producer (supplier) are kept or sold, as well as control the compliance with other conditions of the contract.

For damage inflicted to third persons the distributor and producer (supplier) shall be liable upon general grounds. Clauses of the contract of distribution by which the producer (supplier) is relieved from liability for damage caused to consumers by goods produced (services supplied) shall be null and void.

We intend to sell goods via our online website. What are the legal requirements if we wish to sell into Lithuania?

Only business entities are entitled to sell goods or provide services via websites. Lithuanian laws require:

- The entity's details (i.e. the name of the company, address, contacts including e-mail).
- The main characteristics of the goods.
- The selling price of the goods.
- The price of delivery of the goods.
- The procedure of payment, delivery or provision.
- The procedure for exercising the buyer's rights to terminate the contract, period of validity of the offer and price. Shortest period of the contract, where a contract is concluded for the supply of goods or services on a continuing basis.

The information must be expressed clearly and correspond to the means of communication used. Unless the contract provides otherwise, the seller is bound to deliver the goods within 30 calendar days from the date of conclusion of the contract.

The buyers have the right to terminate the distance contract of purchase-sale concluded by means of communication by notifying the seller thereof in writing within seven business days.

Do you have legislation in respect of the use of electronic signatures?

The main law that provides for the use of electronic signatures is the Law on Electronic Signature. The law regulates creation, verification and validity of the electronic signature, signature users' rights and obligations, establishes the certification services and requirements of their providers, rights and functions of the institution of the electronic signature supervision.

Electronic signature can be used when concluding private transactions, if both parties agree; for connection to internet service websites, which require the user's electronic signature; the user can use electronic services rendered by the banks, State Social Insurance Fund, the State Tax Inspectorate, the Residents' Register Service, the State Enterprise Centre of Registers and other institutions, and also to submit documents, which are signed with an electronic signature.

It is allowed to establish a company by the use of an electronic signature via the internet.

We intend to import goods into Lithuania for sale. What are the legal requirements for doing this?

As a consequence of Lithuania being a member of the European Union a common external tariff is applied on all the goods entering the EU. The first criteria in importing the goods is to determine whether and what duties and taxes are applicable for the import goods, what is the amount of the tariff quota of imported goods, if the imported goods may be subject to preferences duties, if the goods may not have suspended duty, which are the subject to prohibitions or restrictions, what documents (permits, licenses, etc.) may be required, and so on.

Persons who intend to import the goods into the European Union shall have to pay custom duties, excise duties (if it is set) and the value added tax (VAT), and ensure that goods have certificates of quality standards in line of European Union requirements. Different products have different customs and excise rates, while the duty rate will also depend on the country from which the goods originate.

What rights do consumers have when selling to them?

Consumers have a right to return purchased goods, other than food and some other products, within 14 days and recover the paid price. Detailed rules on the return of goods are provided in secondary legislation. Consumers may also demand the replacement of the faulty goods, as well as demanding the reduction in price. Consumers could also rescind the contract, if the goods do not match quality standards, or require free of charge replacement of the defective goods.

What are customers rights in so far as returning goods (whether or not they are faulty)?

A customers' right to rescind the contract by returning the purchased goods and recovering its price does not depend on the quality defects of the goods or any other considerations, because the consumer is not obliged to give any reasons for the return. However, the goods should remain pristine and merchantable. This rule is not applicable to foodstuffs and other products listed in secondary legislation, for instance underwear, intellectual property such as movies, music in CD's, books, etc. due to obvious reasons.

In the case of faulty goods, the 14 days restriction is not applicable – the consumer may rescind the contract and demand the return of the paid price. If the seller sold defective goods it might amount to fundamental breach of the contract, therefore, the consumer has a right to terminate the contract. For the protection of consumers' rights, Lithuania has implemented EU directive on certain aspects of the sale of consumer goods and associated guarantees (Directive No 1999/44/EC).

Are we required to ensure that all customers have agreed to our terms of business in writing?

The form requirements are not mandatory, the consumer might be informed in writing, in standard form, orally, or in any other way.

Before a conclusion of the distant sale-purchase contract or a contract concluded in the premises not intended for trade, the seller should provide to the buyer clear, accurate and comprehensive information about the seller and goods offered, i.e. about their quality, price with included taxes, costs for the customer service, conditions on payment, delivery, execution of contract, the consumer's right to rescind from the contract, and warranty for the goods provided by the law. Information provided is an integral part of such contract.

The failure of the seller to provide information on costs/ taxes means that the customer is relieved from paying them.

EMPLOYMENT QUESTIONS

We are looking to set-up a business in Lithuania and intend to bring some of our current employees in Lithuania. Do we require work/residency permits?

According to the law on legal status of aliens, an alien who intends to work in the Republic of Lithuania must obtain a work permit before entering the Republic of Lithuania. There are three exceptions, when the work permit is not required:

- An alien comes into Lithuania to work for less than three years in the foreign - owned enterprise established in Lithuania, in the branch of foreign company as the general manager, who is the specialist, who has worked in the company for more than one year and whose expertise is vital for the foreign company.
- An alien is a permanent resident of European Union or a citizen of a country that is a member of European Free Trade Association, who is sent temporarily to work in the Republic of Lithuania by his company and is insured by social insurance.
- European Union citizens are generally exempted from the obligation to acquire working permits because of the free movement within EU.

What formalities do we need to comply with when recruiting employees in Lithuania?

A written employment contract must be concluded, and provisions on place of employment, employee's functions and amount of salary must be included.

When willing to employ a foreigner, the employer must apply to the local labour exchange (by the registered office or by the place of residence) and to register a vacancy. An application to issue a work permit is not considered if an employer has not registered a vacancy one month before submitting an application to the local labour exchange, as specified in legislation. Working without a work permit is considered illegal and employers could face administrative liabilities in respect of each illegal employee.

Employers have an obligation to register with the Territorial Tax Inspectorate and register their employees with a State Social Insurance Board before the start of employment.

Currently Lithuanian Parliament is extensively discussing the reform of Lithuanian Labour Code: therefore in the near future employment relations and legal provisions may be amended – generally speaking, the reform is considered to provide more flexible legal rules on employment.

What are the minimum rights we have to adhere to for employees in Lithuania?

The employer must ensure the health and safety of their employees.

Employers must give their employees itemised pay statements, on a monthly basis, specifying gross and net salary, the amount and purpose of any deductions and details of overtime.

The employer is responsible for deducting and paying the applicable income tax and social security contributions from each employee's wages.

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

Independent contractors allow the employer to avoid cumbersome employment termination procedures and other protections and benefits afforded to employees. There may also be a cost benefit because no social insurance contributions are payable by the engaging entity in respect of an independent contractor.

These arrangements may be scrutinised by authorities: therefore, the contract entered into between the parties must reflect the practical arrangements.

What options exist if we want to terminate employment contract? Can we make them redundant?

An employer can terminate an employment contract:

- By agreement between parties
- Upon the expiration of an employment contract
- Upon the notice of an employee
- On the initiative of an employer without any fault on the part of an employee

The Labour Code restricts the right to make employees redundant and to dismiss from work if they fall into the following categories: an employee with temporary disability, an employee who called up to fulfil active national defence service, a pregnant employee from the day on which her employer receives a medical certificate confirming pregnancy, and other cases specified by laws.

What is the Transfer of Undertakings (Protection of Employment) Regulations 2006?

The main principles of the Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses was implemented in the Labour Code. It provides that changes of the owner of an enterprise, establishment or organisation, the subordination, founder or name thereof, any merger by forming a new enterprise, establishment or organisation, division by forming new enterprises, establishments or organisations, division by acquisition or merger by acquisition may not be a legitimate reason to terminate employment relations.

The employment relationships must continue under the same conditions of business successor company, institution or organisation, regardless of the transference of business or its part. It is prohibited to change working conditions, terminate the employment contract, on the ground of business transfer.

The employee must be notified in advance in writing no later than ten business days about the transfer of the company or its part, indicating the business or part of it, the date of transfer, the legal basis for the transfer and the economic and social consequences for the employee.

TAX AND INVESTMENT QUESTIONS

Are there any restrictions on foreign investment into Lithuania?

Generally, foreign investors have free access to all sectors of the economy, however, some exceptions are provided. According to the Law on Investments, foreign investments shall be prohibited in the activities guaranteeing state security and defence.

Investments into agricultural land by foreign legal and natural persons are restricted. The foreign person who wishes to purchase more than 10 ha agricultural land plot, must have 3 years' farming expertise and get a permit from the National Land Service under the Ministry of Agriculture.

Do you have any currency or exchange controls in place?

There are no currency exchange controls in Lithuania.

However, every person who comes to Lithuania from third countries or goes to the third countries and carries not less than 10,000 Euros (or equivalent in other currency) cash must declare that sum in the Customs of the Republic of Lithuania in standard form. The persons coming from other European Union Member States must declare the sums mentioned above if the officer of the Customs of the Republic of Lithuania demands.

The official currency in Lithuania is the Euro. Possession of foreign currency is not restricted.

How are employees taxed in Lithuania? What are current tax rates?

Every natural person is obliged to pay the personal income tax of the amount of 15% if this person is employed or self-employed. If the person can be considered a permanent resident, the income tax is calculated from the person's income received in Lithuania and abroad.

Foreign residents must pay tax only from that part of income which is received in Lithuania.

Social insurance contributions are paid by both employers and employees. The basic contributions amount to 40,18 % of the total income before tax, thus covering all risks, out of which 31.18 % is paid by an employer on top of gross salary, but the remaining 9 % (3% for the health insurance and 6% for the pension insurance) – is paid by an employee within the gross salary. For example if employees gross salary is 1,000 Euro it will be taxed at 15% income tax, 9% social insurance contributions, and the employee's net salary shall be 760 Euro. On top of gross salary the employer shall pay 31.18% (311,8 Euro) social insurance contribution and total cost shall be 1311.8 Euro.

What taxes apply to the business models you have identified above?

The standard corporate tax rate is 15%. As a general rule 21% value added tax shall apply to sale of goods.

Depending on particular cases, companies owning real estate shall pay real estate tax (0.3 – 1% real estate tax based on the taxable value of the real estate) and annual land tax from 0.01% to 4% (depending on the municipality's decision), from land's value determined by the state for tax purposes. Excise duties, taxes on natural resources, oil and gas resource tax, pollution tax and etc. might be applicable in certain cases. There are some noticeable exceptions:

- The 5% corporate tax rate is applicable to enterprises with gross income below 300 000 Euro during a tax year and with the average number of employees not exceeding 10.
- If an enterprise develops its business in the Free Economical Zone and capital investments reach the amount of 1 million Euro, and at least 75% of the company's income is generated from its activities in the Free Economical Zone, then for 6 years the company is entirely exempted from paying corporate tax. In addition, after these 6 years, for a further 10 consecutive years the corporate tax rate is reduced by 50 %. In order to use this exemption, the company shall provide to the State Tax Inspectorate an auditor's conclusion, justifying described conditions.

For legal entities that do scientific research and experimental development, the tax basis, from which the corporate tax rate is countable ,could be deducted by the costs incurred in connection with scientific or experimental activities. The list of deductible costs are provided in secondary legislation.

Enterprises with 40% or more employees belonging to target groups (disabled people, long-time unemployed, etc.) may benefit from 0% corporate tax rate and other tax incentives.

Entities engaged in agricultural activities earning more than 50% of income from these activities, are subject to 5 % corporate tax rate.

Partnerships and personal enterprises shall pay taxes with the same rates as companies.

How are dividends to foreign companies/shareholders taxed?

According to the Law on Corporate Income Tax, a 15% tax rate is applicable.

Are there transfer pricing rules in place?

According to the Law on Corporate Income Tax, the transfer pricing rules shall be applied to (i) the related parties, and (ii) entities that may have influence over each other resulting in the conditions of their mutual or economic operations being other than those where maximum economic benefit is sought by each of said persons.

Profits attributable to a permanent establishment or branch are subject to transfer pricing analysis. The entities operating through a permanent establishment must submit a report on the transactions or operations entered into with associated parties to the local State Tax Inspectorate annually when submitting their annual corporate income tax return, but the entities whose value of a single type of transactions or a different type of transactions entered into with associated parties during the tax period is less than 90,000 Euro are exempt from this obligation.

The requirement to prepare and maintain transfer pricing documentation exists for the Lithuanian entities and the permanent establishments of foreign entities if their revenue exceeds 2,896,200 Euro. The requirement is applied also to financial and credit institutions and Insurance companies. Documentation must provide information on compliance with the arm's length principle established in the Organisation for Economic Co-operation and Development transfer pricing guidelines.

Do you have double taxation treaties in place with foreign jurisdictions. If so, where can we find out details?

Lithuania has concluded agreements with 45 foreign countries on double tax avoidance treaties.

The details you can find on the link:
http://ec.europa.eu/taxation_customs/taxation/individuals/treaties_en.htm

EUROLEX advokatų kontora law offices

LAW OFFICE VADAPALAS, VAITEKUNAS & PARTNERS EUROLEX

www.eurolex.lt

VILNIUS
K. Kalinausko str. 24 - 402,
LT-03107 Vilnius, Lithuania

KEY CONTACTS
Mindaugas Vadapalas
Attorney Partner
m.vadapalas@eurolex.lt
+370 5212 0719


Norway
ATIONALTHEATER

As a principal rule and legal regime reference is made to the EEA/EU rules. Norway is a member of the EEA which make Norway an associated member of the EU leading to the consequence that Norway is bound by and has implemented major parts of the EU legislation.

BUSINESS QUESTIONS

We are looking to set up a Norwegian trading company. What structures/business vehicles do you use?

Limited companies or local branch of foreign companies registered as such.

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

The Limited company is most common (in Norwegian; aksjeselskap). Such a company has to be established according to the Norwegian Companies Act, hereunder to be formally registered in the Public Company Registry and administered by an individual registered board.

What are the rules on capitalisation of entities in Norway?

For limited companies NOK 30.000, is required as minimum share capital.

What information are we required to provide businesses/ consumers with when trading with us?

Private consumer customers have to be treated according to the Norwegian Consumer Purchase Act. This means specific obligations regarding information, right to return goods etc. Several other laws and regulations impose specific obligations to inform, depending on the kind of goods and services.

We would prefer to avoid having an actual physical presence in Norway and instead are looking to appoint an agent or distributor to sell our products and/or services. What are the legal implications?

There are specific laws and regulations in Norway addressing agency and distribution as a commercial activity. However, the laws are partly voluntary and the parties may to a wide extent individually regulate such activity by specific agreements.

We intend to sell goods via our online website. What are the legal requirements if we wish to sell into Norway?

There are specific rules regarding duties and taxes. To a great extent the law regulating regular commercial activity and sale of goods and services are implemented to web based sale.

Do you have legislation in respect of the use of electronic signatures?

Yes.

We intend to import goods into Norway for sale. What are the legal requirements for doing this?

There may be several legal requirements for doing this. It has to be specifically clarified. Some goods may be fully or partly restricted to import. Some goods may need testing and specific authorisation. Some goods require special transport and safety precautions etc. Reference is made to EEA/EU rules and other international rules, conventions etc.

Are we required to ensure that all customers have agreed to our terms of business in writing?

No. Sellers and distributors may apply their own specific terms and conditions towards customers. However, such terms and conditions have to be in line with mandatory law, regulations and practice. Otherwise such terms may be set aside by legal trial.

EMPLOYMENT QUESTIONS

We are looking to set up a business in Norway and intend to bring some of our current employees in Norway. Do we require work/residency permits?

Principally Yes. However, reference is made to EEA/EU rules on free movement of labour.

What formalities do we need to comply with when recruiting employees in Norway?

Norwegian Labour law (“NLA”) is mandatory to a great extent. NLA may be one of the most employee protective laws in the world. A formal employment agreement is mandatory and such agreement has to address specific issues. Pension schemes and worker’s insurance is mandatory.

Specific rules and procedures have to be strictly followed in the event of dismissal and a dismissal can only be carried out in the event of just/reasonable ground. The burden of proof is always on the employer.

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

Yes, a consultant may be a self-employed contractor and therefore no regular employee. NLA will principally not come into use in the contractual relationship between a customer/ client and a contractor.

TAX AND INVESTMENT QUESTIONS

Are there any restrictions on foreign investment in Norway?

Yes, but it's quite limited. Some investment objects of greater social/national significance require licensing and official authorisation to acquire

Do you have any currency or exchange controls in place?

Yes, there are rules addressing obligation to report/register import/export of currency.

How are employees taxed in Norway?

Individual taxation consisting of several categories of tax. The total marginal tax for personal income may reach around 50% on top level.

What are the current rates of tax for employees?

May vary a lot from 10-50%.

What taxes apply to the business models you have identified above?

Company income tax in regular business income according to company tax rules (currently 25% of net income). To some extent capital income and gains are not taxable if earned by a limited company. For example in the event a parent company sells an affiliate company or real estate owned by the company.

How are dividends to foreign companies/shareholders taxed?

Dividends to shareholders are taxed as capital income (capital income may be taxed in an interval of 25-28,75% of net income). Dividends to limited companies as shareholders may be free of tax particularly if the receiving company is a Norwegian company. In the event the receiving company is a foreign company final taxation will depend on tax treaties and the tax rules in the domicile country of the foreign company.

Are there transfer pricing rules in place?

Yes

Do you have double taxation treaties in place with foreign jurisdictions. If so where can we find out details?

Yes. Details may be informed by Norwegian Tax Authorities or by local tax advisors.

.

SELAND ORWALL

SELAND ORWELL

www.selandorwall.no

OSLO
Klingenberggt. 7A, P.O. Box 1938 Vika,
N-0125 OSLO

KEY CONTACTS

Rune Vikan
Partner
rv@selandorwall.no
+47 906 78 176

Orwell Anderson
Senior Associate
oa@selandorwall.no
+47 952 38 573

Poland

We are looking to set up a Polish trading company. What structures/business vehicles do you use?

A Polish limited liability company (spółka z ograniczoną odpowiedzialnością) is a simple corporate vehicle for the purposes of establishing a business in Poland. This form offers limitation of the shareholders' liability and may be utilised by one or more investors both from the EU/EEA member states and from other foreign jurisdictions. It may be established either in a notarial deed before a Polish notary public or online. In the latter case, however, certain formalities would still need to be fulfilled in paper form and the shareholder has only a few options to choose from when drafting the articles of association of the company.

There are also other partnerships and companies available under the Polish law.

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

A Polish limited liability company (spółka z ograniczoną odpowiedzialnością) is a common corporate vehicle used for investment purposes. Shareholders are required to pay in the agreed contributions to the share capital, but are free from the liabilities of the company.

However, members of the Management Board (one or more natural persons as provided for under the articles of association) may be held liable both for tax and business liabilities of the company if they fail to apply for opening of insolvency of the company within the statutory deadline. The scope of reporting obligations depends on the level of average employment, total balance sheet assets at the end of a financial year and net proceeds. Standard scope of reporting duties includes preparation of an annual financial statement and an annual management report which then need to be approved at the ordinary shareholders' meeting of the company and filed with the relevant tax office and registration court.

What are the rules on capitalisation of entities in the Poland?

A Polish limited liability company (spółka z ograniczoną odpowiedzialnością) requires the minimum share capital of at least PLN 5,000 (ca. EUR 1,250). The whole share capital needs to be paid up prior to filing a motion for registration of the company to the National Court Register. However, in the case of companies registered online, the share capital needs to be paid in within 7 days of the registration.

A joint stock company (spółka akcyjna) requires the minimum share capital of PLN 100,000 (ca. EUR 25,000). In-kind contributions need to be paid in full within a year after the registration of the company. Cash contributions should be paid in at least 25% prior to the registration of the company. In the case of in-kind contributions a report of the founders of the company should be prepared and then verified by a court appointed auditor.

What information are we required to provide businesses/ consumers with when trading with us?

Written communications and commercial orders filed by the company on paper and electronically, and the information published on the company's websites, shall include:

- The business name of the company, its seat and address.
- The registry court where the documents of the company are filed and the number of the company in the register.
- The taxpayer's identification number (NIP).
- The share capital, and, in the case of companies registered online the information that the required contributions towards the share capital have not been paid.

We would prefer to avoid having an actual physical presence in Poland and instead are looking to appoint an agent or distributor to sell our products and/or services. What are the legal implications?

Foreign entrepreneurs may establish agencies in Poland with the scope of activity limited to promoting and advertising the activity of the foreign entrepreneur. Such agencies need to be registered in the register maintained by the Minister of Economic Development.

Please note that the Minister may issue a decision prohibiting further activity of the agency if the agency flagrantly violates Polish law or violates its registration duties, in case of opening of liquidation of the foreign entrepreneur, if the activity of the foreign entrepreneur poses a threat to the defence and security of the state, security of a state secret, or another important public interest.

Separate rules apply to agencies of banks and financial institutions.

We intend to sell goods via our online website. What are the legal requirements if we wish to sell into Poland?

Polish law will in principle apply to a consumer contract made with a consumer with residence in Poland if the entrepreneur by any means directs their professional activities to Poland and the contract falls within the scope of such activities. A choice of law may not deprive the consumer of the protection afforded to them by the Polish law.

You will also be required to clearly inform the counterparty before concluding a contract of:

- The technical acts required to conclude a contract.
- The legal effects of the receipt of the offer by the other party.
- The rules and methods of fixing, protecting and making accessible the contents of the contract to the other party.
- The technical methods and means for detecting and correcting errors in the introduced data that must be made available to the other party.
- The languages in which the contract may be concluded.
- Codes of ethics applied and their availability in electronic form.

Do you have legislation in respect of the use of electronic signatures?

The Polish act on electronic signature was adopted on 18 September 2001. A declaration of will signed using a qualified electronic signature is equivalent to a declaration made in writing. A certificate of the time of the signature issued by a qualified service provider has equal legal effect as certified date under the Polish Civil Code.

Moreover, certain public services may be accessed through a pre-established online account. The Polish Code of Civil Proceedings provides for electronic proceedings in which the identity of the party is confirmed through payment of the applicable court fee.

We intend to import goods into Poland for sale. What are the legal requirements for doing this?

The scope of requirements varies significantly depending on whether the goods are imported from the European Union or from outside the European Union. In the former case, the right to the free movement of goods is exercised, the products are almost always permitted in Poland and could be prohibited only in exceptional cases.

In the case of import from outside of the EU, custom formalities will need to be cleared, typically by submitting a Single Administrative Document (SAD) and import levies (import duties, VAT, excise duties) will need to be paid. It should also be verified if particular goods are permitted in Poland, if CE marking is required and if import does not infringe the rights of the producer or other parties, such as the holder of the trademark.

The importer of goods bears joint and several product liability with the producer of the goods and the holder of the trade mark or similar designation depicted on the goods.

What rights do consumers have when selling to them?

The Polish act on consumer rights provides for a list of issues on which comprehensive and complete information should be provided to the consumer prior to entering into a contract. Additional information obligation applies to distance, off-premises and certain financial services contracts entered into by consumers.

Moreover, the law provides for a statutory right of withdrawal in respect of the distance, off-premises and certain financial services contracts entered into by consumers within 14 days after the conclusion or performance of the contract.

What are customers rights in so far as returning goods (whether or not they are faulty)?

Whether goods are faulty or not, the consumer has the statutory right to withdraw from a distance or off-premises contract within 14 days of entering into or performance of the contract.

In cases where a delivered good has a physical or legal defect, the consumer may withdraw from the contract, unless the seller promptly and without significant complications for the buyer removes the defect or delivers a replacement free of the defect.

The former limitation does not apply if the delivered good had already been exchanged by the seller or a defect had been removed. The consumer may choose between the removal of a defect or the replacements of the goods unless the preferred option is impossible or incurs excessive burden on the seller. However the right of withdrawal does not apply to insignificant defects.

Are we required to ensure that all customers have agreed to our terms of business in writing?

A contract may be entered into in any form sufficient to establish the will of the contracting parties, including electronic form or tacit consent.

The terms of business do not need to be agreed on in writing. However, they should be delivered to the counterparty prior to the conclusion of the contract. If the use of terms of business is customarily accepted and the counterparty is not a consumer, it is sufficient if the other party has the possibility to easily learn of their content.

Electronic terms of business should be additionally delivered in a way that enables the counterparty to store and access the terms in normal course of activities.

EMPLOYMENT QUESTIONS

We are looking to set-up a business in Poland and intend to bring some of our current employees into Poland to work. Do we require work/residency permits?

In principle, no permits will be required in the case of employees who are citizens of a EU or EEA member state or citizens of a country that is a party to an international treaty with the EU on free movement of people. Otherwise, both work and residency permits will be required.

What formalities do we need to comply with when recruiting employees in Poland?

The following formalities need to be complied with when recruiting employees in Poland:

- The undersigning of an employment contract and of the information on the condition of employment.
- OHS and fire protection training.
- Preliminary medical check-up.
- Social security registration.

What are the minimum rights we have to adhere to for employees in Poland?

The minimum rights that need be adhered to when recruiting employees in Poland include:

- The execution of an employment contract in writing (as the principle legal document on the rights and obligations of the employee) which may not be less

favourable to the employee than the binding provisions of the Polish labour law.
- The payment of a just remuneration (at least the minimum monthly remuneration set by the provisions of law, i.e. PLN 1,850, ca. EUR 460 gross in 2016).
- Equal treatment in employment.
- The right to leisure time in the amount guaranteed by the provisions of the Labour Code (at least 20 days annually in the case of full time employment).
- The right to safe working conditions (OHS, as stipulated in the provisions of binding law).

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

Yes, in principle, an employee is protected by the provisions of the Labour Code (broad legal protection), whereas a consultant is not. However, if the consultant performs work for the employer, under the employer's supervision, at the place and time specified by the employer, then the consultant is deemed to be an employee, regardless of the stipulations of the contract, and may claim protection from the court of law against the employer.

What options exist if we want to terminate employees contracts with us? Can we make them redundant?

Termination of a contract concluded for an indefinite period or termination of a contract without notice (concluded for a fixed or indefinite period) require an existing, concrete and just reason (in particular: violation of work duties on the part of the employee).

Redundancy is also possible – if the position is no longer required, but a genuine work-related reason for redundancy is required. There is also a possibility to terminate the contract by mutual agreement at any time.

Employment cases are dealt with by a specialised branch of the judiciary, which tends to result in a broader protection of employees' rights.

What is the Transfer of Undertakings (Protection of Employment) Regulations 2006?

TUPE is the United Kingdom's implementation of the European Union Business Transfers Directive which provides for the rules of protection of employees whose business is being transferred to another business. The regulations' main aims are to ensure that, in connection with the transfer, employment is protected (i.e. substantially continued), and the employees are not dismissed, their most important terms and conditions of contracts are not worsened and affected employees are informed and consulted through representatives. Similar provisions are in force and effect in Poland as a result of implementation of the same EU directive into the Polish labour law.

TAX AND INVESTMENT QUESTIONS

Are there any restrictions on foreign investment into Poland?

Business operations are regulated by the Code of Commercial Companies and Partnerships and the Law on Economic Activity. The law covers most forms of economic activity and has enhanced the attractiveness of the Polish market by streamlining some of the legal obstacles facing foreign investors. Foreign investors are defined as corporations with head offices registered abroad, business associations established by foreign individuals or companies operating under the laws of a foreign country and individuals domiciled abroad. Foreign investors enjoy the same treatment as domestic entities and may apply for permits to engage in restricted activities if they are permanent residents originating from countries applying the reciprocity rule to the Polish companies. All legal entities have to maintain their own bank account(s). Permits are required for mining operations, defence-related industries, fuel or energy operations, security services involving individual property, aviation services and telecommunications.

Do you have any currency or exchange controls in place?

Polish foreign exchange rules are harmonised with the EU legal standards and there are no limits on capital flows between Poland, the EEA and OECD member states. There are no exchange controls on inward or outward investment. The Polish Złoty (PLN) is fully convertible and may be used for settlement of international transactions. However, several reporting obligations apply to transfers to and from Poland.

How are employees taxed in Poland?

Natural persons with their place of residence in Poland are taxed on their total income (Personal Income Tax), regardless of where the income is earned (unlimited tax obligation in Poland). Individuals who do not have a place of residence in Poland are taxed solely on income earned in Poland (limited tax obligation in Poland).

What are the current rates of tax for employees?

Natural persons in Poland are subject to personal income tax calculated, as a rule, according to a progressive tax scale. Tax rates vary depending on the income earned, defined as the total revenue minus tax deductible costs, earned in a given taxable year. In 2016, personal income tax is calculated according to the following tax scale:

Taxable income:	PIT:
Up to PLN 85,528.00 p.a.	18% minus tax-reducing amount of PLN 556.02
More than PLN 85,528.00 p.a.	PLN 14,839.02 + 32% of the surplus over PLN 85,528

What taxes apply to the business models you have identified above?

The corporate income tax (CIT) is the only tax levied on corporate income. The standard CIT rate is 19%. In principle, the provisions of the EU directives have been implemented into the Polish taxation system.

The following withholding tax rates apply taking into account double taxation treaties to which Poland is a party:

- 19% on dividends
- 20% on interest
- 20% on licence fees
- 20% intangible services

Polish Value-Added Tax is also based on the EU VAT Directive. As of 2016, the standard VAT rate applicable in Poland is 23%, but a reduced VAT rate of 8% and a super-reduced VAT rate of 5% apply to certain categories of goods and services.

The Polish tax system does not include a property or net wealth tax. Only real estate is subjected to taxation, typically based on the area or surface. The tax rates are set by the municipalities, subject to the maximum rate provided for in the national legislation.

How are dividends to foreign companies/shareholders taxed?

Dividends disbursed by corporations with offices in Poland are subject to withholding tax at the rate of 19%, which is collected by the company making the disbursement. The dividends may be tax exempted if the entity receiving income (revenue) from dividends, as well as other revenues qualified as dividends, is a company with unlimited tax obligation in Poland or in another EU or EEA member state, regardless of where it is earned. The condition of the exemption is a continuous, two-year holding period by the company receiving the dividends required 10% of shares in the capital of the company paying the charge. The prerequisite is also considered met if this period has elapsed after the date of receiving the dividend.

Exemptions and deductions may result from double taxation treaties or a different ratified international treaty to which Poland is a party.

Are there transfer pricing rules in place?

Poland has well-established transfer pricing regulations that apply to cross-border as well as domestic transactions. On 1 May 2004, Poland joined the European Union.

Poland, therefore, accepts the EU Transfer Pricing Code of Conduct. However, Polish tax authorities accept only the documentation which is written in Polish and covers all items required under the relevant law. APA legislation has been in force in Poland since 2006. Provisions on the compulsory documentation requirements on taxpayers concluding transactions with related parties and for transactions resulting in payments to entities located in tax havens have been in force since 2001. The reporting thresholds are EUR 20,000 for transactions with entities located in tax havens and from EUR 30,000 to EUR 100,000 (depending on the company's share capital and the nature of the transaction) for transactions with affiliated parties.

According to the lately introduced provisions, the obligation to prepare transfer pricing documentation will depend on fulfilment of two criteria, i.e. the revenues criterion (EUR 2 mln) and the criterion of significant influence of the transaction/other event on the level of taxpayer's income or loss (EUR 50,000).

Do you have double taxation treaties in place with foreign jurisdictions. If so where can we find out details?

Poland has concluded several double taxation treaties. Many of those treaties reduce the withholding tax rates applied to dividend, interest and royalties paid by Polish companies to non-residents. If the EU Parent-Subsidiary Directive or EU Interest and Royalties Directive applies, no tax is withheld on dividends or interest and royalties, respectively. A List of Poland's tax treaties can be found on European Commission's website "http://www.finanse.mf.gov.pl/abc-podatkow/umowy-miedzynarodowe/wykaz-umow-o-unikaniu-podwojnego-opodatkowania".

BSJP
Legal Tax Audit

BSJP BROCKHUIS JURCZAK PRUSAK SP. K.

www.bsjp.pl/en/

WARSAW
ul. Chmielna 19, Warszawa, 00-021

Al. Armii Ludowej 26, Warszawa, 00-609

KATOWICE
ul. Uniwersytecka 13, Katowice, 40-010

POZNAN
ul. Illakowiczówny 11, Poznan, 60-789

WROCLAW
Ul. Grabiszynska 10 lok. 4 , Wroclaw, 53-329

KEY CONTACTS
Mrs Kamila Kościerzyńska
Legal Counsel
kamila.koscierzynska@bsjp.pl
T: +48 58 340 43 85

Romania

We are looking to set up a Romanian trading company. What structures/business vehicles do you use?

The Romanian Law (Companies Law no. 31/1990) provides the following company forms, which can be set up on Romanian territory:

- General partnership
- Limited partnership
- Joint-stock company
- Limited partnership by shares
- Limited liability company

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

The most common structure/business vehicle to adopt for foreign companies are joint-stock company and limited liability company. Nevertheless, depending in the nationality of the shareholders and their national legislation, it could be appropriate to adopt one of the other structures indicated above.

Regarding liability, shareholders of both joint-stock companies and limited liability companies can be made liable only up to the value of their subscribed share capital.

Referring to reporting provisions, please bear in mind that a joint-stock company is a more complex structure than a limited liability company.

What are the rules on capitalisation of entities in Romania?

If we refer to the accumulated profit, on general terms, it may be reinvested or shared to the shareholders. In the second case, the share of the profits to be paid to each shareholder represents a dividend. The dividends shall be distributed to the shareholders in proportion with their participation quota in the registered and paid capital, unless the articles of association provide otherwise.

They shall be paid within the deadline established by the general meeting of shareholders or, as the case may be, established by special laws, but not later than 6 months from the date when the annual financial statement related to the closed financial year was approved.

Otherwise, the company shall owe, after this deadline, a penalty interest calculated according to Article 3 of the Government Ordinance no. 13/2011 on the legal remunerative and penalty interest for cash obligations, as well as for regulating some financial and fiscal measures in the banking field, approved by the Law No 43/2012, unless the articles of association or the general meeting of shareholders that approved the financial statement related to the closed financial year has established a higher interest.

Dividends can be distributed only out of lawfully established profits.

What information are we required to provide businesses/ consumers with when trading with us?

In general, the service provider shall be bound to put at the consumers' disposal the means to allow easy, direct, permanent and free access to at least the following information:

- The name and denomination of the service provider.
- The residence and headquarters of the service provider.
- The telephone, fax number, electronic mail address or any data necessary to contact the service provider directly and effectively.
- The registration number or any other identification means in cases where the service supplier is registered in the Trade Register or any other similar public register.
- The fiscal registration code.
- The identification data of the competent authority in cases where the service provider's activity is subject to authorisation.
- The professional title and the state where it has been granted, the professional body or any similar body to which the service provider belongs, and the indication of the regulations applicable to the respective profession in the state where the service provider is established, as well as the means of access to them in case the service provider is carrying on a liberal profession.
- The tariffs for the related services provided which must be indicated by observing the standards regarding trading of goods and market services, indicating the exception, inclusion or non-inclusion of value-added tax, as well as its value.
- The inclusion or non-inclusion in the price of the supply expenses as well as their value, if applicable.
- Any other information the service provider is bound to put at the recipients' disposal, in compliance with the legal provisions in force.

The above shall be considered fulfilled in case the provider of a service displays this information clearly, visibly and permanently on the web-site by means of which the respective service is offered.

We would prefer to avoid having an actual physical presence in Romania and instead are looking to appoint an agent or distributor to sell our products and/or services. What are the legal implications?

By avoiding physical presence it also means avoiding setting up any company, branch, subsidiary, representative office or any other juridical form with or without legal personality.

Thus, as an alternative, an agent or distributor may be contracted for selling the foreign products and/or services, by concluding a special contract governed by the general EU legislation and special Romanian provisions applicable on the given matter. It also involves customs and fiscal aspects depending on the nature/juridical regime of the envisaged products and/or services. Last, but not least, the designated agent or distributor should have/obtain the corresponding permits/approvals/authorisation for selling respective products and/or services.

We intend to sell goods via our online website. What are the legal requirements if we wish to sell into Romania?

The main legal requirements refer to:

- **Authorisation:** The online providers are not subject to any previous authorisation for the online activity and shall perform such activity under the conditions of free and loyal competition, by observing the legal provisions in force. Notwithstanding the above, the performance of activity involving certain goods/services may require special authorisation related to the nature/juridical regime of such goods/services.
- **Observance of the legal rights of the consumers:** the right to be informed by the service provider (on who they are, what they sell and the costs of the goods/ services, as well as on other certain aspects provided by law), the right to return the good/ to withdraw from a distance contract or an off-premises contract, the right to fair contract terms, and the right either to complain to the national enforcement authorities or to take legal action against a trader in the EU that uses unfair commercial practices, etc.
- **Data protection:** (usually the service provider has to notify the public authority and register itself as an operator of personal data).
- **Electronic notice**: it is possible only with the express consent of the consumer.

Do you have legislation in respect of the use of electronic signatures?

In Romania, the electronic signature is ruled by the Law no. 455/2001.

We intend to import goods into Romania for sale. What are the legal requirements for doing this?

In the case of introducing goods on Romanian territory from another Member State of the EU, it shall apply the free movement of goods and services. In order to be sold on Romanian territory, they are subject to the national legislation (e.g. labelling and packaging of goods).

In case of introducing goods on Romanian territory from a third state, different customs regimes shall apply. Import formalities may differ depending on country of origin and type of goods.

What rights do consumers have when selling to them?

The main consumer rights under Government Ordinance no. 21/1992 on consumer protection, are:

- To be protected against the risk of purchasing a product or to receive a service that could jeopardise life, health or safety or affect the customer's legitimate rights and interests.
- To be informed fully and precisely on the essential characteristics of products and services so that any decisions made by the consumer are based on accurate representation of the goods/services available.
- To have access to markets that provide a wide range of products and quality services.
- To be compensated for damages caused by poor quality of products and services, using for this purpose means provided by law.
- To organise in consumer associations in order to safeguard their interests.

What are customers' rights in so far as returning goods (whether or not they are faulty)?

As a rule, the consumer shall have a period of 14 days to withdraw from a distance contract or an off-premises contract, without having to justify the decision to withdraw. Furthermore, the law provides exceptions when such a right cannot be exercised.

For goods, the withdrawal period starts from the date of delivery, for services in general from the date the online order was placed. Consumers can then withdraw from the contract without penalty and without giving any reason. Reimbursement of sums paid must be carried out as soon as possible and in any case within 30 days. The only charge that can be made to the consumer in this case is the direct cost of returning the goods.

Are we required to ensure that all customers have agreed to our terms of business in writing?

Depending on the type of contract concluded with the consumer, the form/shape of contract may be different.

In case the recipient sends by electronic means the offer to contract or the acceptance of the firm offer made by the service provider, the service provider shall have the obligation to confirm that they have received the offer or, as appropriate, its acceptance, in one of the following ways:

- By sending a receipt proof by electronic mail or any equivalent individual communication means at the address indicated by the recipient, without delay.
- By confirming the receipt of the offer or the acceptance of the offer by an equivalent means, as soon as the offer or acceptance was received by the service supplier, on condition this confirmation may be stored and reproduced by the recipient.

The above examples shall not apply to contracts concluded exclusively by electronic mail or other equivalent individual communication means. The evidence of contract conclusion by electronic means and of the obligations derived from these contracts shall be subject to common law provisions regarding evidence and to the provisions of Law No. 455/2001 on electronic signature.

In the case of off-premises contracts, the professional transmits information provided by law to the consumer on paper or, if the consumer agrees, on another hard copy. This information shall be legible and drafted in plain and clear language. The professional provides the consumer with an original copy of the signed contract or confirmation of the contract on paper or, if the consumer agrees, on another hard copy, including, where applicable, confirmation of the consumer's prior express consent.

In respect of distance contracts, the professional transmits information provided by law or makes that information available to the consumer in a way appropriate to the means of distance communication used, using plain and clear language. To the extent that information is provided in hard copy, it must be legible.

Where a contract is to be entered remotely via phone, the professional must confirm consumer's demand, whose commitment begins just after he signed the offer or sent his written consent. These confirmations must be made on a hard copy.

EMPLOYMENT QUESTIONS

We are looking to set-up a business in Romania and intend to bring some of our current employees into Romania to work. Do we require work/residency permits?

From the perspective of the EU regulations and Romanian applicable law, for EU citizens no work permits are necessary as they benefit from the freedom of movement of workers, having the same rights as the Romanian citizens.

However, if the EU citizens employed within Romanian territory are residing for more than 3 (three) months in Romania, they have to follow the specific procedure for registration of the residency on Romanian territory with the competent authorities.

As to the non-UE citizens, they can be employed on Romanian territory by following specific procedures for obtaining a work permit, and subsequently for obtaining the corresponding visa and residence permits.

The Romanian legislation provides for several types of work permits depending on the type of performed activity (for example, work permit for permanent workers), with the mention that such work permits grant to these employees the right to temporarily stay and work on Romanian territory.

What formalities do we need to comply with when recruiting employees in Romania?

Once the employee is selected by the employer a written employment contract shall be executed between the parties, subject to the prior information of the employee with regard to the essential clauses that the employer intends to provide within the individual employment contract.

The Labour Code provides that one can be employed only based on a medical certificate that ascertains that the respective person is able to perform that specific work.

In practice, the employer also requires from its employee other documents necessary for the personal file of the latter, which the employer will retain (for example, the copy of the identity document of the employee, copies of the documents regarding the studies, qualifications of the employees etc.).

After the employment contract is executed by the parties, the employer has the obligation to register it within the General Electronic Registry of evidence of the employees, that is further provided to the Territorial Labour Inspectorate.

What are the minimum rights we have to adhere to for employees in Romania?

The Romanian Labour Code provides for the following minimum mandatory rights of the employees:

- Right to remuneration for the performed work (right to the minimum wage provided by law).
- Right to daily and weekly rest.
- Right to annual leave.
- Right to equal opportunities and treatment.
- Right to dignity at work.
- Right to security and health at work.
- Right to access to professional training.
- Right to information and consultation.
- Right to participate in the determination and improvement of the work conditions and work environment.
- Right to protection in case of dismissal.
- Right to individual and collective negotiation.
- Right to participate in collective actions.
- Right to establish or to adhere to a trade union.
- Other rights provided by law or by the applicable collective labour contracts.

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

There are several differences between the two hypotheses, such as the fact that two different contracts are to be concluded: either an individual employment contract or a service/consultancy agreement.

In this context, mention should be made that the terms and conditions for the conclusion, execution and/or termination of each such contract are different.

Also, it shall be taken into consideration that the individual employment contract is a specific contract regulated by the provisions of the Romanian Labour Code and implies that the relationship between the two parties (employer and employee) is one of subordination.

Moreover, specific and strict rules regarding the conclusion, execution, amendment and/or termination of the individual employment contract are applicable.

As to a service/collabouration contract, mention should be made that such contract is subject to the common law (respectively, the Romanian Civil Code) and to the terms and conditions agreed by the parties, with the mention that in such case the relationship is not one of subordination.

What options exist if we want to terminate employees contracts with us? Can we make them redundant?

We mention that according to Romanian legislation, the individual employment contract may be terminated only in one of the situations expressly provided by the Labour Code. In this respect, according to article 55 of the Labour Code, the individual employment contract can be terminated:

- De jure.
- Based on the parties' consent, on the date agreed upon.
- As a result of the unilateral will of one of the parties, in the cases and under the terms limitedly stipulated by the law.

All types of individual labour contracts may be terminated by any of the above-mentioned modalities, under the terms stipulated by the law.

What is the Transfer of Undertakings (Protection of Employment) Regulations 2006?

The protection of employees in case of transfer of undertaking is regulated by Law no. 67/2006 regarding the employees' protection in case of the transfer of undertakings.

TAX AND INVESTMENT QUESTIONS

are there any restrictions on foreign investment in Romania?

As per the Companies Law, there are no restrictions on foreign investment in Romania.

Do you have any currency or exchange controls in place?

In relation to the currency or exchange controls in place under Romanian law, mention should be made that one of the main tasks of the National Bank of Romania is to elaborate and implement the monetary policy and the exchange rate policy, respectively to set the foreign exchange regime and to supervise compliance with this regime.

Also, according to the legal provisions, current and capital foreign currency operations shall be performed freely between residents and non-residents, in foreign currency and local currency (respectively, RON).

Moreover, we mention that cash payments are limited to a daily maximum threshold of 5,000 Ron, respectively 10,000 RON.

How are employees taxed in Romania?

According to Romanian legislation, the employees are taxed for and shall pay the following taxes and contributions (either only the employee or together with the employer):

- Tax on income.
- Social insurance contribution.
- Health insurance.
- Unemployment insurance.
- Contribution for leave and allowances of social health insurance.
- Contribution for insurance against accidents at work and occupational diseases.
- Contribution to the guarantee fund for the payment of salary debts.

What are the current rates of tax for employees?

Under the Romanian legislation, the rates of the taxes applicable to the employees are the following:

- Tax on income - 16% the individual contribution of the employee.
- Social insurance contribution - 10.5% the individual contribution of the employee and 10.5%, respectively 20.8 % or 25.3% the contribution of the employer (depending on the work conditions, namely normal, particular or special work conditions).
- Health insurance - 5.5% the individual contribution of the employee and 5.2% the contribution of the employer.
- Unemployment insurance - 0.5% the individual contribution of the employee and 0.5% the contribution of the employer.
- Contribution on leave and allowances of social health insurance - 0.85% the contribution of the employer.
- Contribution on the insurance against accidents at work and occupational diseases – between 0.15% and 0.85% contribution of the employer.
- Contribution to the guarantee fund for the payment of salary debts - 0.25 % contribution of the employer.

What taxes apply to the business models you have identified above?

According to the applicable legislation, in consideration of the business models detailed above, there are two types of taxes applicable to the companies, namely:

- **Tax on incomes of microenterprises** (incomes which do not exceed the equivalent in Lei of EUR 100,000).

  In this respect, mention should be made that the Romanian Fiscal Code provides the following rates of tax on incomes of microenterprises:
  - 1% for microenterprises that have 2 or more employees.
  - 2% for microenterprises that have 1 employee.
  - 3%, for microenterprises that do not have employees.

- **Corporate tax**

According to the Romanian Fiscal Code, the rate of corporate tax that applies to the taxable profit is 16%.

How are dividends to foreign companies/shareholders taxed?

According to the Romanian Fiscal Code, dividends from a resident are taxable incomes obtained in Romania, irrespective of whether the incomes are received in Romania or abroad.

The rate of tax on dividends is, in accordance the Romanian Fiscal Code, on amount of 5%.

Are there transfer pricing rules in place?

We mention that the OECD transfer pricing regulations are also applied in Romania, together with the Romanian Fiscal Code, the Romanian Procedural Fiscal Code and other specific legal enactments (such as the Order no. 442/2016 of the Public Finance Ministry regarding
the amount of the transactions, the terms for the lodging, the content and the conditions of the application of the file regarding the transfer prices and the adjustment/estimation transfer pricing procedure.)

Do you have double taxation treaties in place with foreign jurisdictions. If so where can we find out details?
The treaties regarding double taxation executed by Romania with various states are available on the Romanian National Agency for Fiscal Administration website, respectively:

https://static.anaf.ro/static/10/Anaf/AsistentaContribuabili_r/Conventii/Conventii.html

CUNESCU, BALACIU & ASSOCIATES

www.cunescu.ro

CENTRAL BUSINESS PARK
Calea Serban Voda nr 133, Corp B, etaj 1,
Sector 4, 040205 Bucuresti

KEY CONTACTS
DINU PETRE
Partner
office@cunescu.ro
+40 21 327 4400

Scotland

We are looking to set up a Scottish trading company. What structures/business vehicles do you use?

Within Scotland there is a wide variety of legal corporate structures that can be adopted including:

- Sole trader – person runs the business as an individual.
- Private companies limited by shares – each shareholder's financial liability is limited to the value of shares owned by them.
- Private companies limited by guarantee – the liability of officers of the company is limited to a specified amount (this structure is mainly implemented by charities).
- Public limited companies - the company's shares are traded publicly on a market.
- Limited liability partnerships.
- Limited partnerships.
- General partnerships.

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

There are a number of different structures you can choose for your business as outlined above. Your choice will depend on various factors including, by way of example: the paperwork (and volume of paperwork) that must be filed, tax implications, how you can profit from the business and your responsibilities to the business if it suffers a loss. Each business will need to weigh up the advantages and disadvantages of each structure and find the model that fits their business.

What are the rules on capitalisation of entities in Scotland?

When it comes to planning the finances of the entity and determining how much money should be injected into the business the advice of financial specialists such as accountants and bankers should be sought.

What information are we required to provide businesses/ consumers with when trading with us?

There are no legal requirements regarding the information that you provide to other businesses – however for practical purposes there will be various details that you would wish to provide, including your business information (e.g. entity name, registered address, contact details), the rules for determination of transfer of title, delivery dates, liability and the obligations of each party. This is usually included in the standardised terms and conditions of the selling business.

For consumers the above information as required for businesses would also be provided. In certain circumstances consumers must also be made aware of their rights under The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 and other consumer legislation.

We would prefer to avoid having an actual physical presence in Scotland and instead are looking to appoint an agent or distributor to sell our products and/or services. What are the legal implications?

The primary source of rules is Commercial Agents Regulations 1993, which implemented the Commercial Agents Directive (86/653/EC).

In appointing a selling agent or a distributor, a manufacturer is effectively sub-contracting (or out-sourcing) the selling function of his business. Unfortunately, the labels "agent" and "distributor" are sometimes used interchangeably. This can cause considerable confusion as their legal position (in relation to the principal/supplier) is not the same. As best practice, always be clear about which arrangement is being used.

There are tax implications in appointing an agent as sometimes a principal can be regarded as trading in a territory if he has an agent there, whereas the appointment of a distributor should not give rise to this problem. There are also rights to lump sum payments due to agents on termination that should be considered as these payments are not due to distributors.

There are also implications in relation to the level of control that you can have over distributors (but less so for agents).

We intend to sell goods via our online website. What are the legal requirements if we wish to sell into Scotland?

The Consumer Contracts Regulations 2014 impose detailed information obligations for distance contracts within their scope. Certain information, together with a model cancellation form (where applicable) must be both provided pre-contract and confirmed post-contract.

For contracts concluded via a website, certain information must be indicated no later than the beginning of the order process; other information must be provided directly before the consumer places the order and, if placing an order entails activating a button or similar function, that button or function must be labelled in an easily legible manner only with the words "order with obligation to pay" or a corresponding unambiguous formulation indicating that placing the order entails an obligation to pay the trader.

You must also be aware of the General Data Protection Regulation that will be enforceable against those who offer goods and services to EU citizens by mid-2018 despite being present outside the EU/UK.

Do you have legislation in respect of the use of electronic signatures?

The Electronic Identification and Trust Services for Electronic Transactions in the Internal Market Directive (910/2014), the European Electronic Identification and Trust Services for Electronic Transactions Regulations 2016 and the Electronic Communications Act 2000 are the relevant legislation throughout the EU and UK. These pieces of legislation allow for electronic:

- Signatures
- Seals
- Time stamps
- Documents
- Delivery services

to be used in legal proceedings.

Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 changed the way documents could be signed in Scottish commercial transactions. When this Act came into force in 2015, execution in counterpart became a legal process for signing and the counterparts are together treated as a single legal document. The Act also introduced provisions which allow for electronic delivery of documents, allowing contracts to be concluded by sending a full set of the signed counterparts around the parties by e-mail.

We intend to import goods into the UK for sale. What are the legal requirements for doing this?

The legal requirements for importing goods into the UK (and the rest of the European Union) depend on the type of goods being imported, with the European Union having different legislation for goods of different nature. It will also depend on whether you are moving goods within the EU or importing from out with the EU. This is even more relevant due to the UK leaving the EU.

In general you will have to:

- Ensure the correct commodity code is used for your goods.
- Register with the CHIEF system (if importing from outside the EU).
- Declare the imported goods on the CHIEF system.
- Pay VAT or duty on the imports (in certain cases).
- Ensure that your product complies with all applicable UK and EU law.
- Ensure your goods are not banned from being imported into the UK and check whether a licence is required (for such items as firearms).

What rights do consumers have when selling to them?

All consumer contracts should be transparent under the rules of the Consumer Rights Act 2015. Contract terms should be in plain and intelligible language and easy for consumers to understand. The Consumer Rights Act 2015 provides consumers with certain “quality rights”. These include an expectation for goods to match any model or design shown prior to purchasing, be of satisfactory quality and to be fit for a particular purpose.

New provisions are also included in relation to digital content as the old provisions were no longer fit for purpose as they would only allow digital content to be supplied by tangible means. Digital content shall be subject to the same terms of quality as other goods and traders may be liable where digital content causes damage to a consumer’s hardware or software.

The Sale of Goods Act 1979 (SGA) and Unfair Contract Terms Act 1977 (UCTA) provide a number of important terms into sale of goods contracts, particularly in relation to title and quality and lay down a number of presumptions that will apply to a sale of goods contract unless there is something agreed to the contrary. There are also some terms that will never be capable of exclusion from a contract.

What are a customers rights in so far as returning goods (whether or not they are faulty)?

The Consumer Rights Act 2015 introduced enhanced consumer remedies. These remedies are set out in a hierarchical structure to make it clear to consumers when each remedy can be exercised. The right to reject goods that do not conform to the contract was previously a common law remedy. Now, the consumer has a statutory right to reject goods that do not conform to contract within thirty days of purchase. After the initial rejection period, the consumer has a right of replacement or repair at the trader’s expense. If, after repair or replacement, the goods do not conform to the contract, the consumer has a final right to reject. If this is done after six months of the initial purchase the trader can make a deduction from the price paid for use.

Are we required to ensure that all customers have agreed to our terms of business in writing?

Under the Requirements of Writing (Scotland) Act 1995 only a select few types of contract require a written document. There is no requirement in the 1995 Act for there to be a written contract agreeing to business terms, and therefore such terms can be agreed orally. However, in our experience, a contract will be more reliable when found in a written form.

If you intend to proceed by written terms of business it is best practice to have this annexed to your order form and signed and dated by the customer before payment is made for goods or services. If your terms of business are to be accepted online it is best practice to ensure that the customer ticks an ‘accept terms and conditions’ button before proceeding to payment.

NB: This note does not take into account any issues which may arise as a result of the UK decision to leave the EU.

We are looking to set-up a business in Scotland and intend to bring some of our current employees into Scotland to work. Do we require work/residency permits?

It is a criminal offence to employ a worker the employer knows, or has reasonable cause to believe, is an illegal immigrant. The penalty is a custodial sentence of up to 5 years or a possible unlimited fine

EEA and Swiss Nationals do not require a work or residency permit to work in the UK. Croatian workers' right to work in the UK is currently restricted by transitional arrangements and so they may be required to obtain a registration certificate.

In most cases, migrant workers from outside the EEA must obtain a visa issued under the Points Based System (PBS) which consists of 5 tiers. The employer must register as a sponsor and obtain a sponsor licence for the relevant tier. Next, the employer must carry out right to work checks by obtaining, checking and copying original identification documents.

What formalities do we need to comply with when recruiting employees in Scotland?

From the moment the recruitment process commences the employer has a statutory obligation, under the Equality Act 2010, not to discriminate against job applicants. It is recommended that the employer adopts an objective recruitment process to avoid discriminating. Best practice would include providing the following to the prospective employee:

- Job description
- Person specification
- Job application form
- Equality and diversity monitoring form
- Information about the employer

It is best practice to advertise externally. A job offer letter should be sent to a successful applicant and, if the employment is for a month or more, a written statement of particulars which complies with the statutory minimum including hours, role, pay and other arrangements as set out in the Employment Rights Act 1996 must be issued within two months of the start of employment.

What are the minimum rights we have to adhere to for employees in Scotland?

Employers are required to observe certain minimum requirements in relation to the working pay and conditions of their employees, i.e.: providing a written statement of particulars of employment, the number of hours employees can be required to work and providing for a minimum amount of annual leave; rest periods; maternity leave; parental and other family or dependent leave; the right to take time off work for ante-natal appointments and to deal with emergencies involving dependants; pay for leave if the employee qualifies; sick pay; redundancy pay, and equal pay. Regulations guarantee a minimum hourly rate for all workers aged 16 and over.

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

Yes. Consultants are often considered to be self-employed rather than an employee. Generally, self-employed people do not benefit from all the rights of employees, as set out above. Although generally self-employed people do not have the same rights as employees they still have protection for their health and safety and, if they are workers performing personal services, they would also have protection against discrimination, and working time and rest break rules and the national minimum wage applies. It is best practice to set out the terms of the consultant's engagement in a contract.

What options exist if we want to terminate employees contracts with us? Can we make them redundant?

Employees who have at least two years' service have the right not to be unfairly dismissed. Dismissal must be for one of the five potentially fair reasons in the Employment Rights Act 1996:

- Conduct
- Capability
- Redundancy
- Breach of a statutory restriction
- "Some other substantial reason"

An employee may be made redundant where there is a diminished need (or no need) for the employee to do the work they are employed to do. Consultation rules apply for redundancies. There is a statutory process for making 20 or more redundancies in a particular period.

In dismissing an employee the employer should also follow a fair procedure, and the decision to dismiss must be within the range of reasonable responses open to an employer in the circumstances.

Both employers and employees are normally entitled to a minimum notice period upon termination of employment. This notice period varies, depending on length of service, from 1 week to 12 weeks' notice.

What is the Transfer of Undertakings (Protection of Employment) Regulations 2006?

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE applies to staff assigned to a transferring economic entity (or part of it) which retains its identity, or where there is a relevant service provision change. TUPE states that:

- Employees automatically transfer to the transferee who inherits all rights, liabilities and obligations in relation to them (except those which relate to occupational pension rights).
- A dismissal is automatically unfair if the TUPE transfer is the sole or main reason for it.

There is an obligation to give written information and, if any measures are anticipated in connection with the transfer, to consult with affected employees or their representatives before the transfer, depending on the number of employees.

TAX AND INVESTMENT QUESTIONS

Are there any restrictions on foreign investment in Scotland?

When it comes to planning the finances of the entity and determining how much money should be injected into the business the advice of financial specialists such as accountants and bankers should be sought.

Do you have any currency or exchange controls in place?

When it comes to planning the finances of the entity and determining how much money should be injected into the business the advice of financial specialists such as accountants and bankers should be sought.

How are employees taxed in Scotland?

Employees in Scotland are subject to income tax on pay and benefits provided to them by their employer and third parties as a consequence of their employment.

In addition, both employees and employers must account to HM Revenue & Customs for national insurance contributions in respect of earnings paid to the employee.

What are the current rates of tax for employees?

Income tax is a progressive tax. This means that different rates of tax apply to different bands of income. Each taxpayer in the United Kingdom has an annual personal allowance, below which they do not pay any income tax. In the year to 5 April 2017 the personal allowance is £11,000. This allowance is proportionately reduced for those with income in excess of £100,000. Those earning more than £122,000 do not benefit from a personal allowance.

Income in excess of the personal allowance is taxed at the following rates:

Band of income	Rate
£0 to £32,000	20%
£32,001 to £150,000	40%
Over £150,000	50%

What taxes apply to the business models you have identified above?

Sole traders are subject to income tax at the same rates as employees.

Companies are subject to corporation tax on their profits. The current rate of corporation tax is 20%. A marginal relief applies to companies with profits between £300,000 and £1,500,000.

Partnership entities (limited liability partnerships, limited partnerships and general partnerships) are transparent for tax purposes. This means that the partners are subject to tax on their share of the profits of the partnership. An individual pays income tax on partnership profits and a company pays corporation tax.

How are dividends to foreign companies/shareholders taxed?

In general there is no requirement for a UK company to withhold tax on distributions made to non-UK resident shareholder, however, certain types of property holding vehicles are required to withhold tax on distributions to non-UK entities.

Are there transfer pricing rules in place?

Yes. The UK transfer pricing rules apply to both UK to overseas and UK to UK transactions.

Do you have double taxation treaties in place with foreign jurisdictions. If so where can we find out details?

The UK has a number of double tax treaties. Details of the tax arrangements which the UK has with other countries can be found here https://www.gov.uk/hmrc-internal-manuals/double-taxation-relief/dt2140pp

Based on the imposed word limit the responses outlined below are merely indicative of the position in Scotland and should not be relied on as legal advice. If you would like to discuss anything in further detail then please do not hesitate to contact us.

MACROBERTS LLP

MACROBERTS LLP

www.macroberts.com

GLASGOW
Capella, 60 York Street
Glasgow, G2 8JX

EDINBURGH
Excel House, 30 Semple Street
Edinburgh, EH3 8BL

DUNDEE
River Court, 5 West Victoria Dock Road,
Dundee, DD1 3JT

KEY CONTACTS
Gill Low
Manager
+44 (0)141 303 1122
gillian.low@macroberts.com

Serbia

We are looking to set up a Serbian trading company. What structures/business vehicles do you use?

Business structures/vehicles that we use are: limited liability company (d.o.o.), joint stock company (a.d.) and partnerships (general and limited).

Should you decide not to set up a Serbian company, you may set up a branch of foreign company in Serbia (ogranak.).

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

The most common business vehicle in Serbia is limited liability company (d.o.o).

A limited liability company is a company in which one or more members hold equity interests in the company's share capital, except that company members shall not be liable for the company's obligations except in cases provided under the law, e.g. piercing of corporate veil.

Mandatory reporting for d.o.o. is on an annual basis for annual financial reports. For tax purposes reporting is on a monthly/quarterly (VAT) and annual basis.

What are the rules on capitalisation of entities in the Serbia?

Basic means of capitalisation are:

- Increase of founding capital: by new contributions including conversion of debt into equity; by conditional increase; from undistributed earnings; and as a result of status changes.
- Taking commercial loans from banks or third companies.
- Payment of additional capital by stakeholders without an interest.

Rules of thin capitalisation are applied on loans when there is an excessive ratio of debt to equity.

What information are we required to provide businesses/ consumers with when trading with us?

The following information should be provided:

- Company name
- Name of authorised person
- Full address (street, street number, borough, town)
- Telephone number
- E-mail
- Tax identification number
- Registration number
- Business activity code
- Data on bank account

We would prefer to avoid having an actual physical presence in Serbia and instead are looking to appoint an agent or distributor to sell our products and/or services. What are the legal implications?

In case of appointing agent or distributor, it is necessary to enter into agreements with these companies, whereby all rights and obligations of the parties are regulated, including fee.

The agents and distributors may be either exclusive or non-exclusive, depending on parties' agreement.

There is no obligation of mandatory reporting to Serbian authorities in relation to the number of signed agreements or fees received.

We intend to sell goods via our online website. What are the legal requirements if we wish to sell into Serbia?

If the Serbian subsidiary is an online seller, provisions of the Law on E-Trade apply, as well as provisions of Trade Law and Consumer Protection Law. If the seller is a foreign company these laws are not applicable.

Pursuant to the Law on E-Trade, an online seller does not have to obtain a special permit or approval. If the service provider is a Serbian subsidiary, there is an obligation to, in a form and manner that is directly and continuously available to the consumer and competent government authorities, provide information such as name of the service provider, registered seat, TIN, data on registration in Companies registry, and other information about the service provider based on which the consumer can communicate with him quickly and smoothly. If the service provider states prices, the prices must be clearly and unambiguously marked, and in particular must indicate whether marked prices include shipping costs, other handling costs, taxes and other relevant costs.

Do you have legislation in respect of the use of electronic signatures?

Yes, Serbia has a Law on Electronic Signature and pertaining decrees and regulations which regulate this matter.

We intend to import goods into Serbia for sale. What are the legal requirements for doing this?

Provided that you set up a Serbian subsidiary for importing goods into Serbia and selling them directly to consumers, that company needs first to lease a warehouse(s) for storing the goods.

Also, the importing company will need to engage a competent freight-forwarding company and accountant.

Retail sale requires fulfilment of a number of additional requirements relating to business space (warehouses), qualified workforce etc. which depends on the type of commodities.

What rights do consumers have when selling to them?

Pursuant to the Consumer Protection Law basic rights of the consumers are:

1. Satisfaction of basic needs - availability of most essential goods and services.
2. Security - protection from goods and services which are dangerous to life, or goods of which possession or use is prohibited.
3. Awareness - access to accurate information which is necessary for a reasonable choice of goods and services offered.
4. Choice - possibility of a choice between more goods and services.
5. Participation - representation of consumer interests in the process of adoption and implementation of consumer protection policies.
6. Legal protection - protection of consumer rights in the statutory procedure in case of violations of his rights and compensation for pecuniary and non-pecuniary damage.
7. Education - to acquire basic knowledge and skills necessary for the proper and reliable choice of products and services.
8. Healthy and sustainable environment.

What are a customer's rights in so far as returning goods (whether or not they are faulty)?

The first situation relates to distance contracts and contracts concluded outside of seller's premises (i.e. online shopping). The consumer is entitled to withdraw from the contract in the period of 14 days from the day of signing without specifying the reasons and the seller is then obliged to refund the money to consumer in the period of 14 days from the day of receipt of statement.

A second situation would be when a seller does not deliver the goods at the agreed time, even though fulfilment of obligations in the agreed time is an essential ingredient of the contract or the consumer has informed the seller of the importance of timely delivery. In this case the contract is terminated by the law.

Third case is lack of conformity of goods (defects as to quantity, quality, description and packaging). A consumer who has informed the seller of this circumstance has the right to request the seller remove such defects by repair or replacement, price reduction or to terminate the contract in respect of those goods.

Are we required to ensure that all customers have agreed to our terms of business in writing?

No, it is not required to have customers sign terms of business in writing. Depending on the goods that are being sold, it is recommended that the consumer agrees on sellers' terms of business.

EMPLOYMENT QUESTIONS

We are looking to set-up a business in Serbia and intend to bring some of our current employees into Serbia to work. Do we require work/residency permits?

A work permit is not required for a foreigner whose stay in Serbia does not last longer than 90 days in the period of 6 months after the first entry into Serbia, provided that the foreign national is a) an owner, founder, representative or a member of governing bodies of a legal entity registered in Serbia, if he/she is not engaged in an employment relationship with that legal entity; or b) an assignee that is working in Serbia based on contract for purchase of goods, purchase or renting of machines or equipment and its delivery, installment, assembly, repair or training for work on those machines or equipment and stays in Serbia independently.

In case of employer's request for assignees or transfer within multinational corporations, foreign workers must obtain a work permit and a temporary residence permit (regardless of the duration of the stay) or permanent residence permit issued by the Ministry of Internal Affairs.

What formalities do we need to comply with when recruiting employees in Serbia?

Employment contracts must be concluded in written form. Besides standard rights and duties arising out of an employment contract, the employer must inform the employee of other particular rights and duties (e.g. personal data protection, whistleblower procedure, health and safety at work, mobbing, etc.). Within three working days, the employer is required to register the employee at the National Pension and Disability Insurance Fund and National Health Insurance Fund.

What are the minimum rights we have to adhere to for employees in Serbia?

The minimum rights that must be adhered to by an employer are prescribed by the Labour Law. These include: twenty working days of annual leave, forty working hours per week (eight working hours per day), minimum wage, increased salary (overtime, work during holidays), compensation of salary, refund of expenses (lunch allowance, payment for annual leave, etc.), etc.

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

A consultant is engaged by the Consultancy (services) Agreement, while the employee derives his rights and duties from the Employment Contract. The Consultancy Agreement is based on the Law on Contracts and Torts and does not have to contain all elements of Employment Contract which are prescribed by the Labour Law. Furthermore, consultancy fees (income from Services Agreement) and salary (income from Employment Contract) are taxed differently

What options exist if we want to terminate employees contracts with us? Can we make them redundant?

An employment relationship may be terminated by mutual agreement between the employer and the employee in writing.

The employer may terminate the contract (i) for justifiable reasons relating to the employee's work capability and conduct; (ii) if the employee violates his/her work duty by his/her own fault; (iii) if the employee fails to observe work discipline, and (iv) if there is a justified reason that refers to the employer's requirements.

Employment relationships can be terminated, i.e. employees made redundant, if there is a valid reason relating to the employer's needs as a result of technological, economical or organisational changes, the need to perform a specific job ceases, or there is a decrease in workload. If 10 or more employees are to be made redundant, the employer is obliged to adopt the employees' redundancy program and obtain an opinion of the National Employment Services Agency. If an employment contract is terminated due to redundancy, the employer is obliged to pay such employee a severance payment in accordance with the Labour Law.

TAX AND INVESTMENT QUESTIONS

Are there any restrictions on foreign investment in Serbia?

According to the newly adopted Law on Investments there are no restrictions on foreign investment. Furthermore, Serbia has concluded and ratified more than fifty bilateral treaties on promotion and protection of investments (BIT).

Do you have any currency or exchange controls in place?

Payment operations in Serbia are carried out in local currency - Serbian dinar (RSD) with several exemptions e.g. payment concerning transfer of ownership of real estate property, where payment can be effected in foreign currency.

How are employees taxed in Serbia?

An employee's gross salary is comprised of (i) net salary and (ii) tax and mandatory social security contribution. Salary tax should be calculated, paid and withheld by the employer. Mandatory social security contributions include pension and disability insurance, health insurance and unemployment insurance, and are payable on behalf of an employee and on behalf of the employer. They should be calculated and withheld by the employer.

What are the current rates of tax for employees?

Salary tax rate amounts to 10%

Mandatory social security contributions	On behalf of an employee	On behalf of an employer
Pension insurance	14%	12%
Health insurance	5.15%	5.15%
Unemployment insurance	0.75%	0.75%

What taxes apply to the business models you have identified above?

Corporate income tax rate is flat and amounts to 15%. Capital gains are separately taxed at the rate of 15%.

Payment of intercompany dividends between Serbian resident companies is tax exempt.

Withholding tax at a rate of 20% shall apply to dividends, royalties, interest and lease payments for real estate and other assets on the territory of Serbia, paid by a Serbian tax resident to a non-resident. Withholding tax at the rate of 25% shall apply on royalties, interest, rental income and services fees paid by a resident to a non-resident from a jurisdiction with a preferential tax system.

Value added tax (VAT) registration threshold amounts to RSD 8 million (approx. EUR 65,000).

VAT Rates	
Standard Rate	20%
Reduced Rate	10% applies on supplies of basic foodstuffs, 'listed' drugs, first transfer of ownership on residential buildings, etc.
Zero Rate	Export of goods; transit or temporary import of goods; entry of goods in free zone; supplies within the free zone; services within the free zone; etc.

If not otherwise regulated by double taxation treaties, withholding tax at a rate of 20% shall apply to dividends. Withholding tax may be reduced by double taxation treaties to 5/10/15 % depending on the particular treaty.

Are there transfer pricing rules in place?

Transfer pricing rules have been present for more than a decade in Serbian corporate income tax legislation. Relevant transfer pricing rules are incorporated in Articles 59, 60, 61, 61a, 61b and 62 of the Corporate Income Tax Law, Rulebook on Transfer Prices and Methods Applied for Determining Prices in Related Party Transactions in accordance with the Arm's Length Principle and Rulebook on 'Arm's Length' Interest Rates.

Do you have double taxation treaties in place with foreign jurisdictions. If so where can we find out details?

Yes, Serbia has signed more than 50 effective double taxation treaties with foreign jurisdictions, while a number of treaties are under negotiation. Please, see the following link:

http://www.mfin.gov.rs/pages/issue.php?&id=7063&change_lang=ls

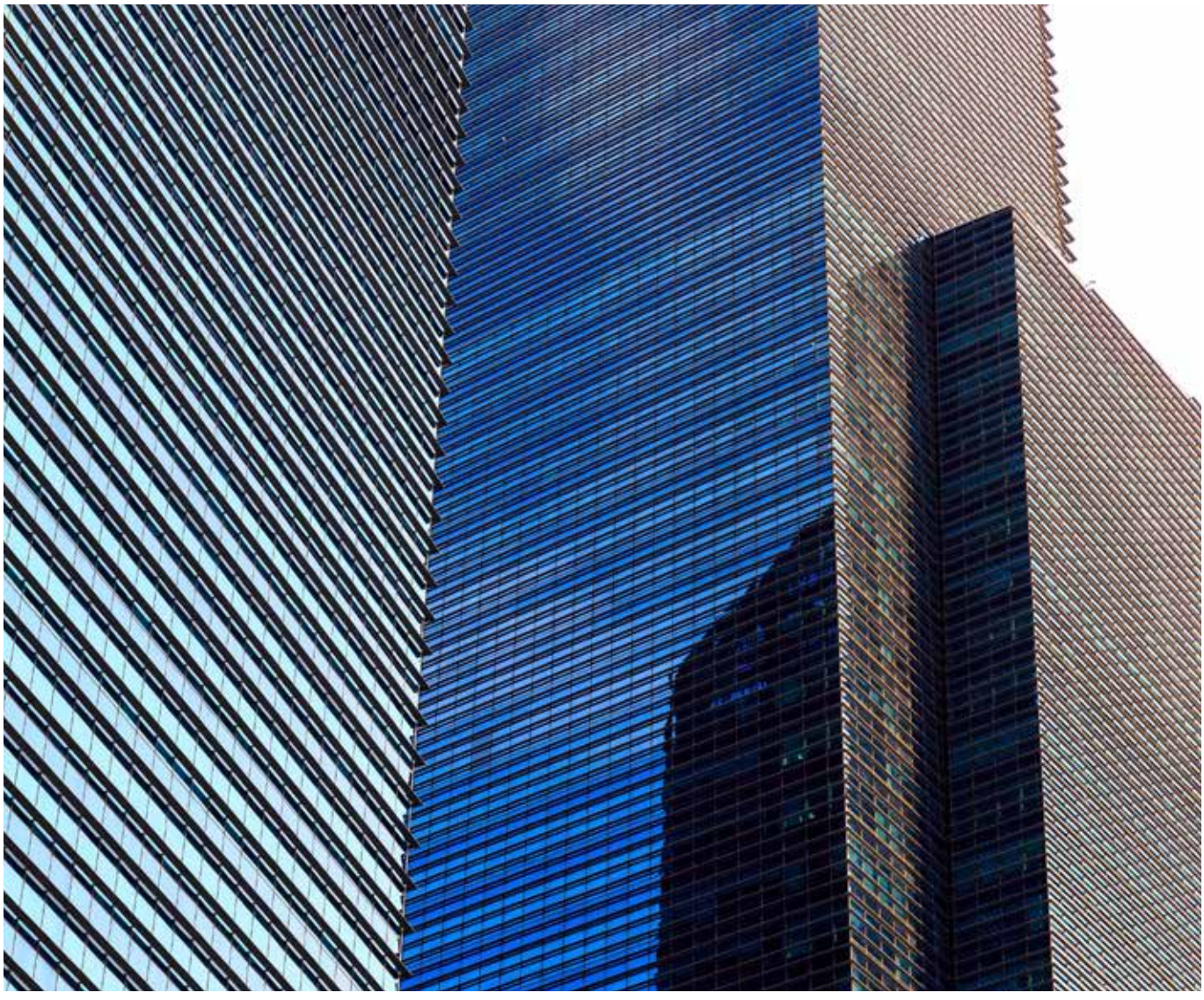
Law Office Milošević

LAW OFFICE MILOSEVIC

www.lawmilos.rs

BELGRADE
24 Prote Mateje,
11000, Belgrade, Serbia

KEY CONTACTS
Filip Milosevic
Attorney at Law
T: +381 11 3441 161
f.milosevic@lawmilos.rs



Slovakia

We are looking to set up a Slovakian trading company. What structures/business vehicles do you use?

Foreign business entities can do business in Slovak Republic through the following business vehicles:

1. Branch
2. Independent entity (i.e. established under respective Slovak legislation).

The main difference between no. 1) and entity no. 2) is liability. In case of a branch office, a creditor may request payment of liability from the founder of a branch office as a branch is not considered a independent legal entity. As regards types of entities, these are liable for its obligation by all amount of its asset; please note that liability of shareholders/founders for obligations of independent entities is limited (please see question no. 2) and strictly different based on type of certain business vehicle.

In light of the above mentioned, please find below following business vehicles of trading companies in Slovak republic:

- Limited Liability Company (hereinafter as the "LLC")
- Joint Stock Company
- Limited partnership
- Unlimited partnership
- Cooperative
- Simple joint stock company – as of 1st January 2017

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

The most common type of business vehicle in Slovakia is an LLC which is liable for its obligations with all its assets. A shareholder is liable for obligations of an LLC only up to the unpaid amount of its capital contribution in the LLC registered in the relevant Commercial registry.

An LLC may be established by a legal as well as natural person (Slovak or foreign) with a maximum of 50 shareholders. Statutory body of the LLC are one or more executive directors who may act together or solely on behalf of the LLC.

Reporting obligations of business entities towards public authorities are extensive in Slovakia, the main ones being:

- Accounting agenda.
- Taxes (VAT, corporate tax, customs, excise taxes).
- Employment related reporting (social insurance, health insurance, tax authority).
- Corporate changes (for example: change of seat, change of executive directors, change of name).

Please note that any business entity is duly obliged to notify any corporate changes to the tax authority and trade license office.

What are the rules on capitalisation of entities in Slovakia?

Minimum capital requirements of the respective types of entities are as follows:

- Limited Liability Company- the value of the registered capital must be at least EUR 5,000.
- Joint Stock Company - the value of registered capital must be at least EUR 20,000.
- Simple joint stock company - EUR 1 (can be established as of 1st January 2017).
- Limited partnership - the value of registered capital must be at least EUR 250.
- Unlimited partnership - 0 value of registered capital, all partners are liable for obligations of the company with all their assets
- Cooperative - the value of registered capital must be at least EUR 1,250.

What information are we required to provide businesses/ consumers with when trading with us?

Business entities are obliged to provide other parties (i.e. business entities or consumers) with the following details for general identification.

- Business name
- Registered seat
- Legal form
- Business register which keeps records of entity
- Identification number
  - Tax identification number
  - Number of VAT (if the entrepreneur is payer of VAT).

As regards consumers, additional information obligations apply such as :

- Characteristics of the selling product or the characteristics of the providing service.
- Using methods, installation and maintenance of products and the dangers resulting from improper use, installation or maintenance of this product.
- Conditions of the storage and storage itself as well as the risks associated with the service. If it is required by the nature of the product.
- The method and duration of use.

Please note that the seller of a product is obliged to ensure that information is clearly contained in a written manual.

We would prefer to avoid having an actual physical presence in Slovakia and instead are looking to appoint an agent or distributor to sell our products and/or services. What are the legal implications?

The basis for such a relationship is a well drafted legal contract. Legal implications arise with respect to legal responsibility for acts of an agent/distributor. As the most significant difference of established between 1) client and agent and 2) client and distributor are as follows:

1. It is based on conclusion of a business agency agreement; it means that:
   - Agent represents himself in front of third parties as an independent business entity.
   - Agent is duly entitled to do all activities aiming for conclusion of contracts for the principal with third parties and for the principals account.

- The principal is obliged to pay agent for its activities or for negotiating and concluding agreement a commission.

2. It is based on conclusion of the agreement distribution agreement; it means that:
   - Distributor represents in all extent, the client;
   - Distributor is exclusively entitled to do the activities aimed to concluding the contract with a third party on behalf of the client.
   - The client is obliged to pay the distributor for performing the activities aimed to conclude respective contract remuneration (commission).

We intend to sell goods via our online website. What are the legal requirements if we wish to sell into Slovakia?

Slovak legislation requires meeting several criteria with respect to operation of an e-shop such as:

- Identification data of seller (please refer to question 4).
- Business terms and conditions- shall be freely accessible; it is recommended that they are prepared by an attorney.
- Return policy -shall be freely accessible; it is recommended that they are prepared by an attorney.
- Personal data protection – meeting of conditions related to administration of personal data of customers.

Do you have legislation in respect of the use of electronic signatures?

Use of electronic signature is governed by Act. no. 215/2002 Coll. It regulates relations established in production, use and certification of electronic signature. Electronic signature is typically used with respect to public authorities.

We intend to import goods into Serbia for sale. What are the legal requirements for doing this?

Slovak Republic is a member of European Union (hereinafter "EU") in which free movement of goods between member states is secured.

In accordance with above mentioned, movement of goods between Slovak Republic and other EU member states is possible without the necessity of paying any taxes, customs duties or application of quantitative restrictions.

Please note import of goods from a third country to an EU member state is duly connected with payment of customs fees and other obligations (e.g. technical, safety) stipulated by respective national and European legislation.

What rights do consumers have when selling to them?

Rights of consumers in Slovakia are governed mainly by Act. No. 250/2007 Coll. on consumer protection. Under this act the consumer is duly entitled, inter alia, to

- Buying products at the correct weight, extent, or in the right amount.
- Checking the correctness of weight, extent, amount of buying products.
- Buying products in regular quality.
- Having shown the product, if the nature of the product allows.
- Buying products in accordance with proper and safe use.
- Claiming warranty if the products does not comply with its guaranteed weight, extent or amount.

What are a customers rights in so far as returning goods (whether or not they are faulty)?

The legal right of a consumer to return products without any reason arises only in situations if consumers are sold products by:

- The Distance agreement (agreement concluded between the seller and the consumer agreed and by means of one or more instruments of distance communication without physical presence of the any of respective party, mainly by using of the internet website, e-mail address, telephone, fax or catalog).
- The agreement concluded out from seller´s business premises (for example agreements concluded between the seller and the consumer without physical presence of any of respective party in a place which is not the seller´s business premises).

A consumer may withdraw from the contract and return the goods within 14 days of receipt.

Slovak legislation does not give to the consumer the right to return products bough in stores or in commercial premises without giving any reason.

Are we required to ensure that all customers have agreed to our terms of business in writing?

We are not aware of a requirement of agreeing to business terms in writing. Business terms and conditions are usually involved as an Annex to an agreement with the customer; hence, once the agreement is concluded by the customer, he approves terms and conditions. With respect to internet shops, business terms and conditions are agreed by "clicking" on them.

We are looking to set-up a business in Slovakia and intend to bring some of our current employees into Slovakia to work. Do we require work/residency permits?

To decide whether its necessary to ask for the granting of a residency permit or work permit, it is firstly important to distinguish between two situations:

Employment in Slovakia

1. citizen of EU member state
2. citizen of Non- EU member state

With respect to no.1) any citizen of the EU is allowed to work and live without work/residency permits. With respect to no. 2) any person from a third country is obliged to meet criteria defined by respective immigration legislation (e.g. residency permit for work purpose).

Assignment to Slovakia

1. Employer from EU member state posting (i) EU citizen (ii) third country national.
2. Employer from Non-EU member state posting (i) third country national (ii) EU citizen.

With respect to no.1) (i) respective employee may be assigned to Slovakia without work/residency permits. With respect to no.1) (ii) respective employer may also post the third country citizen for the purposes of providing services secured by this employer. With respect to no.2) (i) specific conditions defined by respective immigration legislation (e.g. residency permit for work purpose) have to be met. With respect to no.2) (ii) EU citizen may be posted for work without work/residence permit.

What formalities do we need to comply with when recruiting employees in Slovakia?

In general an employment relationship is in most cases concluded based on a written employment contract. Please note that under respective legislation, Slovak companies are duly obliged to pay contributions for their employees to health, social insurances, and tax authorities. Therefore, an employer is obliged to register the employee in a social insurance company and health insurance company. Moreover the employer is obliged to educate the employees in relation to the safety regulations in the work place as well as protection of health. Providing this training or education shall be proved by a written statement signed by the employees.

Please note that this is only a few general obligations related to recruiting employees, there are more various obligations arising from the particular type of business activity performed by the employer.

What are the minimum rights we have to adhere to for employees in Slovakia?

Slovak labour law legislation is very strict and imposes a lot of obligations upon an employer including minimum rights of employees. Their exhaustive remuneration exceeds the purpose of this questionnaire. Examples of minimum rights are as follows:

- Vacation: 4 weeks, if the employee exceeds the age of 33 years – 5 weeks.
- Minimum salary per calendar month in amount of EUR 405 (is changed each year).
- Minimal wage per one hour in amount of EUR 2,32.
- Maximum work time-40 hours per week.
- Overtime-400 hours per year out of which only 150 may be instructed by employer the rest only with consent of the employee.

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

Under relevant Slovak legislation, the relationship between company and consultant is based on Agreement of provision of services which is generally governed by the Commercial code. The employment relationship is established based on the employment contract and it is governed by labour law. In this respect, labour law in the Slovak republic includes high legal protection for employees. On the other hand it is up to agreement of client and consultant how they will structure their rights and obligations; commercial law is very flexible. However, please note that authorities are auditing circumventions of employment relationship through conclusion of service contracts for positions which would normally be performed in an employment relationship.

What options exist if we want to terminate employees contracts with us? Can we make them redundant?

Employer may unilaterally terminate employment relationship only based on specific reasons and meeting respective conditions stated by law.

Termination by notice
An employer, subject to the protective function of labour law, may give notice of termination to an employee only for reasons which are exhaustively stipulated by the Labour Code. Notice period applies and depends on length of the employment relationship from 1 to 3 months. Moreover, in some cases (e.g. termination due to organisational reasons) employer shall pay severance payments to employee from 1 to 4 months' salary depending on length of the employment relationship.

Immediate termination of employment by notice
Employer may only terminate employment relationship immediately only in exceptional cases, such as the employee was convicted of an intentional crime or seriously breached work discipline.

What is the Transfer of Undertakings (Protection of Employment) Regulations 2006?

The directive of the council under no. 2001/23/ES on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfer of undertakings, businesses or parts of undertakings or businesses was transposed to the Slovak Labour Code in provision of par. 27-29 as follows;

Transfer of rights and obligations resulting from labour- law relations.

§27
If an employer with a legal successor dissolves, rights and obligations arising from labour law relations shall pass to such a successor, unless otherwise stipulated by special regulation.

§28
If a business unit, which is an employer or a part of an employer for the purposes of this act or if a task or activity of an employer or part thereof is transferred to another employer, the rights and obligations arising from the relationships governed by labour law with the transferred employee shall be transferred to the transferee employer.

A transfer pursuant to Paragraph 1 is the transfer of a business unit, which preserves its identity as an organised group of resources (tangible assets, intangible assets and personnel), whose purpose is to carry out economic activity regardless of whether this activity is primary or secondary. The transferor is a legal person or natural person who ceases to be the employer on a transfer in accordance with Paragraph 2.

The transferee is a legal person or natural person who becomes the employer of the transferred employees on a transfer in accordance with Paragraph 2.

Rights and obligations of the hitherto employer towards employees whose labour law relations ceased on the day of transfer shall remain unaffected.

§29
An employer shall be obliged, no later than one month prior to the transfer of rights and obligations arising from labour-law relations, to inform the employees" representatives, and if no employees" representatives operate at the employer, the employees directly in writing on:

1. The date or proposed date of transfer
2. Reasons thereof
3. Labour- law, economic and social implications of the transfer with respect to employees

TAX AND INVESTMENT QUESTIONS

Are there any restrictions on foreign investment in to the Slovak Republic?

In general, there are no restrictions on foreign investment in Slovak Republic. As a form of restriction are considered to be restriction with respect to acquisition of certain of agricultural land by foreign persons (legal, natural) in case the country of their seat, citizenship or residency does not allow Slovak persons (legal, natural) to acquire agricultural land. This restriction does not apply to EU member states, countries of European Economic Area, Switzerland and countries who signed as international agreement by which Slovak Republic is bound and the exception is stated in the agreement. Moreover, an exception applies to legal persons having their seat and natural persons with residence in countries mentioned in the preceding sentence.

Do you have any currency or exchange controls in place?

No

How are employees taxed in the Slovak Republic?

Tax advance payments from employees wages are in principle each month, withheld by the employer who is obliged to remit them to respective tax authorities. Hence, an employee does not remit tax advance payments himself.

The same system applies to social and health insurance contributions.

After end of year, the employee may ask the employer to prepare a yearly reconciliation which equals a tax return or may submit the tax return himself.

What are the current rates of tax for employees?

There are two tax rates for employees. Income lower or equal to EUR 35,022 is taxed at 19% tax. Income above this threshold is taxed at 25%. Please note that the threshold changes year as it equals 176,8 times the amount of the minimum subsistence level.

What taxes apply to the business models you have identified above?

The tax rate for all types of legal persons is 21% as of 1st January 2017.

How are dividends to foreign companies/shareholders taxed?

With one exception dividends /profit sharing to shareholders/ members (LLC, Joint stock company, Limited partners in Limited partnership, Cooperatives) are not taxable in Slovakia. Please note that profit of partners who are liable with all their assets for obligations of limited and unlimited partnership are taxed. A tax rate of 35% applies to distribution of profits from a Slovak tax resident company to shareholders (legal persons) who are tax residents in a country which is not stated in the list published by the Slovak Ministry of Finance (states with which Slovak Republic does have an agreement on avoidance of double taxation or an agreement on exchange of tax information).

Are there transfer pricing rules in place?

Transfer pricing rules apply both to foreign as well as to Slovak related entities.

Do you have double taxation treaties in place with foreign jurisdictions? If so where can we find out details?

Slovak Republic has concluded double taxation treaties with 65 countries. List of treaties can be found on:

http://www.finance.gov.sk/en/Components/CategoryDocuments/s_LoadDocument.aspx?categoryId=285&documentId=588

Futej & Partners LAW FIRM

FUTEJ & PARTNERS

www.futej.sk

BRATISLAVA
Radlinského 2
811 07 Bratislava
Slovakia

KEY CONTACTS
Rudolf Sivák
futej@futej.sk
+421 2 5263 3161

Spain

We are looking to set up a Spanish trading company. What structures/business vehicles do you use?

The most common ones are the following:

- Limited Liability Company (S.L.)
- Anonymous Company (SA)
- In some cases, setting up a subsidiary or a branch office of the "Parent Company"
- To appoint a Spanish agent or distributor in the country

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

The most common structure is a Limited Liability Company (S.L.).

In a Limited Company the shareholders are not responsible for the social debts (so they don't have to respond personally to the debts of the company). However, if it's a Single Member Company, we must inform of this fact to the Company House within 6 months, otherwise, the shareholder will be responsible for the social debts until he/she declares this fact.

The company will have to present the Annual Accounts, the Corporate Tax and to bring the "commerce books", between other obligations.

What are the rules on capitalisation of entities in Spain?

In a Limited Liability Company (S.L.), a minimum share capital of 3.000 € is required according the Spanish Law. The total share capital of the company has to be subscribed and paid in the constitution act.

In an Anonymous Company (S.A.), a minimum share capital of 60.000 € is required according to Spanish Law. A minimum of 25% of the share capital has to be subscribed and paid in the constitution act.

When the company has losses that leave reduced equity to an amount lower than half of its share capital, you must proceed to dissolve it (unless you adopt the measures required according to the Law in order to solve this patrimonial situation).

What information are we required to provide businesses/ consumers with when trading with us?

The information that we have to provide is:

- Name of the company and type of company
- Vat Number
- Registered Office
- In the information provided about the company, details related to the inscription in the Company Registry has to appear
- If a company is a One-Person Company, this fact has to be made known

We would prefer to avoid having an actual physical presence in Spain and instead are looking to appoint an agent or distributor to sell our products and/or services. What are the legal implications?

The figure of the agent is specifically regulated by the Spanish Law of Agency 12/1992, which is a transposition of EU directive 86/653. Although the agent is not considered an employee of the company, we have to take into account that he/she has several inalienable rights, the most important one being the right to compensation (mainly because the clientele provided) when the contract finishes (except when it is a consequence of a breach of contract by the agent).

On the contrary, the distribution contract has not a specific regulation in the Spanish Law. Although initially the distributor doesn't have the same rights as the agent, the Courts are recognising similar rights in some cases when we are in front of an "exclusive distributor".

In both cases it is advisable to have a written contract, with agreements related to the exclusivity, competition, minimum sales / purchases, etc.

We intend to sell goods via our online website. What are the legal requirements if we wish to sell into Spain?

Specially, we will have to consider the following requirements:

- A clear identification of the Company (name, identification number, registered office, contact details).
- Terms and General Conditions of the sale: description of the product, total price, delivery term of the product, ways of payment, consumer rights.
- In the event that their activity requires an administrative authorisation, information about this fact and identification of the entity responsible for its supervision.
- Fulfil the requirements relating to the Protection of Personal Data.

Do you have legislation in respect of the use of electronic signatures?

- Law 34/2002 of 11 of July, on Information Society Service and Electronic Commerce.
- Law 59/2003, of 19 of December about the electronic signature.

We intend to import goods into Spain for sale. What are the legal requirements for doing this?

We have to consider the following requirements:

- To fulfil the Customs requirements and authorisations.
- The importer must be properly identified in the Spanish Tax Authorities.
- To take into account possible International treaties and agreements of collabouration between countries.
- In Addition, there may be specific regulations applicable to certain types of products (for instance, special administrative permissions, quantitative restrictions, reporting obligations, etc.).

What rights do consumers have when selling to them?

Mainly, the following rights:

- The right of information related to the terms and conditions of the sale (clear and real description of the product, total price, identification of the seller, terms of delivery, ways of payment, etc.).
- The warranty related to the product.
- The possibility to exercise their rights for returning the product.
- That the product is safe (given that products that have not passed the corresponding safety and quality controls could not be commercialised).
- Data privacy by the company and protection of their personal data (including the right of access, rectification and deletion of data, between others).
- Security in the payment means provided by the seller.

What are customers rights in so far as returning goods (whether or not they are faulty)?

In Spain this matter is regulated by the Law 1/2007, 16 November, related to the defense of Consumers and Users.

The main right of customers for returning goods is the "right of withdrawal": when the consumer has received the product, in good condition, he has the possibility to return it, without any penalisation

However, there are some exceptions to this right regulated by Law (for instance products elaborated by order or personalised, products not suitable for being returned for health reason, etc).

The Spanish Law establishes a period of time of 14 days to exercise this right, but the seller may have granted a longer period.

In addition, if you receive a product that is not in good condition, you can also claim compensation for damage suffered.

Are we required to ensure that all customers have agreed to our terms of business in writing?

Yes.

EMPLOYMENT QUESTIONS

We are looking to set-up a business in Spain and intend to bring some of our current employees into Spain to work. Do we require work/residency permits?

Yes. All workers in Spain must have permission of residence

What formalities do we need to comply with when recruiting employees in Spain?

There's no specific regulation about the recruitment process.

What are the minimum rights we have to adhere to for employees in Spain?

Employees have as basic rights:

- The right to obtain a salary (not below 650 Euros month/8 hours).
- To have enough time to rest between 2 working days, minimum 8 hours.
- To be treated with proper manners and respected in his Fundamental Rights, as a human person.
- To have health protection.

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

Yes. Employees depend economically and organisationally on the company. The Consultant is free to establish his fees, and is responsible for his own organisation.

What options exist if we want to terminate employees contracts with us? Can we make them redundant?

Yes. To terminate an employee's contract the company must make them redundant. If there are economic or other objective reasons, the compensation will be 20 days/ worked year, with a limit of 1 year's salary. If the reasons are based on disciplinary wrong behaviour of the employee, the company will not have to satisfy any compensation. The free contract termination without legal cause is not allowed for companies in Spanish Law. However, if in a Sentence, or by agreement between company and employee, the absence of legal reason for the termination is recognised, the company should pay a compensation of 33 days/worked year, with a limit of 2 year's salary.

What is the Transfer of Undertakings (Protection of Employment) Regulations 2006?

Inside the EU there is free transfer of workers, except the illegal cession of workers, that hides a faked hiring.

TAX AND INVESTMENT QUESTIONS

Are there any restrictions on foreign investment in to Spain?

No, but you have to fulfil some requirements:

- The foreign Company needs a Spanish Vat Number (NIF).
- In cases where the Company appoints a “foreign” Administrator, he/she needs a Spanish Vat Number too (NIE).
- You have to declare these investments to the Ministry of Economy.

Do you have any currency or exchange controls in place?

No.

How are employees taxed in Spain?

They have to pay the Personal Income Tax.

What are the current rates of tax for employees?

It depends on their total income and the Autonomous Community of Residence. They are in a range between 19% and 57%.

What taxes apply to the business models you have identified above?

Mainly, the Corporate Tax, the Tax of Economic Activities, and VAT.

How are dividends to foreign companies/shareholders taxed?

It depends on the Tax Treaties.

Usually dividends are not taxed if the foreign shareholder company has a participation higher than 5% in the Spanish company.

Are there transfer pricing rules in place?

Yes.

Do you have double taxation treaties in place with foreign jurisdictions. If so where can we find out details?

You can find the double taxation treaties signed by Spain in the following link:

http://www.agenciatributaria.es/AEAT.internet/en_gb/Inicio/La_Agencia_Tributaria/Normativa/Fiscalidad_Internacional/Convenios_de_doble_imposicion_firmados_por_Espana/Convenios_de_doble_imposicion_firmados_por_Espana.shtml

ESTUDI JURÍDIC SÁNCHEZ & ASOCIADOS

www.estudi-juridic.com

BARCELONA
Nicaragua, 48, 3r planta, 08029,
Barcelona, España

KEY CONTACTS

Gal·la Sánchez Vendrell
Founding Partner
T: +34 93 444 11 66
gala.sanchez@estudi-juridic.com

Anna Vázquez Vargas
Partner
T: +34 93 444 11 66
anna.vazquez@estudi-juridic.com

Australia and New Zealand

ADVOC FIRMS

Australia
Maddocks

New Zealand
Hesketh Henry

Australia

We are looking to set up an Australian trading company. What structures/business vehicles do you use?

In Australia, the following are common business vehicles:

- A company
- A discretionary trust
- A unit trust
- A branch or permanent establishment of a foreign entity
- A partnership, limited liability partnership, joint venture or combination of the above entities

The business structure or vehicles utilised in Australia by a foreign entity will depend on the specific circumstances of the foreign entity looking to commence trading in Australia, including its tax profile and whether it intends to invest alone or with partners.

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

The two primary structuring options are for a foreign company to either:

1. Invest in Australia directly through a branch.
2. Incorporate an Australian corporation wholly owned by the foreign company. An incorporated Australian company will have limited liability.

If the foreign company invests through a branch, the foreign company may need to register as a foreign company with the Australian Investments and Securities Commission (ASIC), and may need to comply with financial reporting and other regulatory requirements in Australia including lodging income tax returns. The Australian subsidiary will also need an Australian-resident director.

If the foreign company incorporates an Australian subsidiary, the Australian subsidiary will need to comply with any financial reporting and other regulatory requirements in Australia, including lodging income tax returns.

What are the rules on capitalisation of entities in Australia?

There is no minimum capital requirement for companies incorporated in Australia.

However, Australia has thin capitalisation rules which may limit the interest deductions for both inbound and outbound investors if the Australian debt to equity ratio exceeds prescribed limits.

The thin capitalisation rules may be applicable where a company (and its associated entities) has debt (interest) deductions in Australia of greater than $2 million in an income tax year.

If the thin capitalisation rules are applicable, the portion of debt (interest) deductions may be denied if the debt to equity ratio exceeds the “safe harbour” limit (i.e. the safe harbour limit prescribes a 3:2 debt to equity ratio).

We note that the thin capitalisation rules and interest deductions are currently being reviewed as part of the OECD’s BEPS Actions and may therefore be subject to change.

What information are we required to provide businesses/consumers with when trading with us?

When you trade with businesses or consumers you must provide the terms and conditions that you intend to govern the transaction. These terms and conditions will be governed by the common law and the Australian Consumer Law (ACL). There may also be other legislation that governs the particular products or services provided.

The ACL is incorporated into Australian legislation and has also been adopted in each State and Territory of Australia.

Under the ACL:

- A supplier must provide a consumer with a receipt when the total price of goods or services supplied is more than $75. If the total value is less than $75 the consumer can request a receipt. A receipt must identify the supplier including their ABN or ACN and detail the transaction.
- Information and safety standards for goods and services of particular kinds are specified by the Australian Government. Information standards require certain information be provided. Safety standards set out requirements for preventing or reducing risk of injury including the content of markings, warnings and instructions that must accompany particular goods. More information on safety standards is available from Product Safety Australia: https://www.productsafety.gov.au/content/index.phtml/tag/mandatorystandards

More details on the ACL are available at http://www.consumerlaw.gov.au.

We would prefer to avoid having an actual physical presence in Australia and instead are looking to appoint an agent or distributor to sell our products and/or services. What are the legal implications for appointing a distributor?

The legal requirements on a foreign entity appointing a distributor to sell their products or services in Australia are minimal. There is no registration process involved, but you should ensure that the distributor has any relevant governmental authorisation that may be needed to sell your products or services in Australia.

The parties are free to negotiate the terms and conditions of any distribution or agency agreement. Care should be taken in appointing an agent to act on your behalf in Australia, as you may be liable for acts done by the agent in Australia. This includes acts that are within the scope of the agent’s apparent or ostensible authority.

When appointing a distributor or agent, you should consider at least the following in the agreement:

- The territory covered
- The fee payable
- The term of the agreement
- Protecting your intellectual property
- Protecting your confidential information
- Exclusivity arrangements
- Any product recall policy

Care needs to be taken as, depending on the terms of the arrangement, appointing an agent may result in the foreign company having a permanent establishment (and therefore taxable presence) in Australia.

We intend to sell goods via our online website. What are the legal requirements if we wish to sell into Australia?

The Australian Competition and Consumer Commission claims that it has jurisdiction to enforce compliance with the Competition and Consumer Act 2010 (Cth) (CCA) on foreign entities selling to Australia online. The CCA enforces competition and fair trading in business dealings. It is advisable to comply with the CCA and the ACL when selling into Australia.

Foreign entities selling goods online who have an Australian link must not:

- Disclose personal information they hold about an individual under the Privacy Principles set out in the Privacy Act 1988 (Cth).
- Send unsolicited commercial electronic messages under the Spam Act 2003 (Cth).

Although not a requirement to sell goods online into Australia, you should consider protecting your intellectual property and trademarks through registration in Australia.

Do you have legislation in respect of the use of electronic signatures?

There is legislation governing the use of signatures in respect of electronic communications in each Australian state and territory as well as for the Commonwealth of Australia. The relevant legislation typically states that the requirement for a signature is taken to be met in electronic communications if:

- A method is used to identify the person and indicate their intention in respect of the communicated information.
- The method was as reliable as appropriate in the circumstances.
- The entity requiring the signature consents to the method of identification of the person giving the signature.

We intend to import goods into Australia for sale. What are the legal requirements for doing this?

Generally, an import declaration needs to be made to clear the goods through customs. No licences are required to import goods into Australia. Permits are required to import some prohibited and restricted goods into Australia.

Importers must determine whether goods they are importing are subject to any restrictions.

Australia, as an island nation, has strict biosecurity controls, to prevent the introduction of disease or contamination that may affect Australia's agricultural industries or its people. Importers must ensure their goods meet these controls and are packaged in accordance with import requirements. Imported goods will be inspected to ensure they meet Australian biosecurity controls and there are costs associated with the clearance of goods.

The ACL provides that safety standards can be specified in relation to consumer goods and product related services. Safety standards specified under the ACL require that certain steps be taken to prevent or reduce the risk of injury to any person when using particular consumer goods. An importer must ensure that their goods comply with the relevant safety standards.

The Australian Quarantine and Inspection Service (AQIS) are responsible for enforcing Australian quarantine laws as part of the Department of Agriculture and Water Resources.

What rights do consumers have when selling to them?

The protection of consumers in Australia is codified in the ACL. It applies nationally and in each state and territory. Under the ACL a person is taken to be a consumer if they have acquired goods or services for less than $40,000, or the goods or services are ordinarily acquired for personal, domestic or household use or consumption.

The ACL requires that a person (the seller) must not in trade or commerce engage in a number of behaviours including misleading and deceptive conduct, unconscionable conduct, and other unfair practices. The ACL also outlines that a consumer is entitled to certain guarantees as to goods supplied to them including that they be of acceptable quality.

If the seller engages in any prohibited practices or fails to uphold any guarantees under the ACL they will commit an offence and face penalties of up to $1,100,000 for body corporates and $220,000 for individuals.

What are a customer's rights in so far as returning goods (whether or not they are faulty)?

If a guarantee under the ACL is not complied with by the supplier of goods, the consumer can seek that the supplier address the failure to uphold the guarantee. A supplier may make good its failure to uphold the guarantee under the ACL by:

- Repairing the good
- Replacing the good
- Providing a refund

The key guarantees that are provided by the supplier of goods under the ACL are:

- A guarantee that goods are of acceptable quality.
- A guarantee that the good is fit for any purpose disclosed to the consumer. This means that if a consumer tells you that they are using the good to do X, you must not tell them it can do X if it cannot.

Consumers also have rights at common law, particularly in relation to any representations made by a seller or in relation to any implied terms that products be fit for purpose.

Are we required to ensure that all customers have agreed to our terms of business in writing?

There is no requirement that a contract or its terms be in writing under common law or under legislation. Sale of goods legislation in each state and territory specifies that a contract can be:

- In writing
- Oral
- Partly in writing and partly oral
- Implied by the conduct of the parties

Terms will be validly incorporated into a contract where the customer has been given valid notice and an opportunity to reject it. Contract terms can be validly incorporated if they are displayed for the customer to read prior to entering into the contract.

The ACL specifies a term of a consumer contract will be void if it is unfair. Care must be taken to ensure contracts don't contain unfair terms that cause a significant imbalance between the parties' rights and obligations and are unnecessary to protect the parties interests. Contracts cannot exclude the protections a consumer is provided by the guarantees under the ACL.

EMPLOYMENT QUESTIONS

We are looking to set-up a business in Australia and intend to bring some of our current employees into Australia to work. Do we require work/residency permits?

In order to work legally in Australia, employees require a work visa, or they need to be an Australian permanent resident or an Australian citizen. A foreign national working in Australia without a visa or in breach of their visa conditions is an illegal worker.

Employees may be eligible for a nominated or sponsored work visa if, amongst other things, they are nominated or sponsored by an approved Australian employer or business, a state or territory government agency or authority.

A useful visa options comparison chart is available on the Australian Government Department of Immigration and Border Protection website as follows: http://www.border.gov.au/Trav/Work/Empl/Visa-options-comparison-charts

Other information on the types of work visas that employees can apply for includes the following websites: http://www.australia.gov.au/information-and-services/immigration-and-visas/work-visas; http://www.border.gov.au/Trav/Work and http://www.border.gov.au/Busi/Empl/Empl.

What formalities do we need to comply with when recruiting employees in Australia?

Subject to satisfying visa requirements and the considerations below, there are no particular formalities that need to be complied with when recruiting employees in Australia.

New employees must be provided with a Fair Work Information Statement which contains information about the National Employment Standards (NES), modern awards, agreement-making, the right to freedom of association, termination of employment, individual flexibility arrangements, union rights of entry, transfer of business, and the respective roles of the Fair Work Commission and the Fair Work Ombudsman.

Employers in Australia should ensure they comply with Australia's anti-discrimination laws during the recruiting process. Legislation at state and commonwealth level prohibits employers from directly or indirectly discriminating against an applicant for a job because of a protected attribute, such as age, sex, race, religion, sexual orientation, carer status or marital status. Employers should ensure that recruitment is based on merit, and should determine objective criteria against which to assess applicants, conduct interviews and select a candidate.

What are the minimum rights we have to adhere to for employees in Australia?

All people working in Australia, including foreign workers, are entitled to basic rights and protections in the workplace.

The Fair Work Act 2009 (FW Act) applies to all employees covered by the national workplace relations system. It sets out the NES, which are 10 minimum conditions of employment, regulating matters such as maximum weekly hours, paid annual and personal/carer's leave, notice of termination and redundancy pay.

Modern awards also provide minimum wages and conditions for various industries or occupations. These conditions apply on top of the NES.

An employer may enter into an enterprise agreement with its workforce that sets out minimum employment conditions that apply to businesses. When a workplace has a registered agreement it will operate to the exclusion of any applicable awards. However, the terms and conditions of an enterprise agreement must be better than that of any relevant awards.

Employers must also ensure they comply with relevant state and commonwealth legislation, including anti-discrimination laws, occupational health and safety laws, privacy legislation (where applicable), and laws under the Migration Act 1958 for certain employees on work visas.

Additional rights and obligations are also contained in the Migration Act 1958 for certain employees on work visas.

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

An employee works for the employer under a contract of employment in return for regular pay. A contractor or consultant operates an independent business and generally issues an invoice for the provision of services.

An independent contractor is not entitled to the same minimum rights that apply to employees. For example, they will not be entitled to paid annual and personal/carer's leave, redundancy pay or other employee benefits.

It is important that the relationship is accurately characterised as either an employment or contracting relationship, as there are significant penalties for 'sham contracting' under the FW Act. "Sham contracting" occurs when an employment relationship is misrepresented as a contractor relationship.

Australian Courts use a multi-factor test to determine whether a relationship is a genuine contractor relationship, applying factors such as whether the worker is able to generate goodwill, is paid a contract price on invoice and can delegate or sub-contract work (factors that point towards a contractor relationship).

What options exist if we want to terminate an employee's contract with us? Can we make them redundant?

When terminating an employment contract, employers need to be mindful of any statements or promises made to an employee at the commencement of employment, the specific terms of the employment contract and the unfair dismissal and general protections regime under the FW Act.

Under the unfair dismissal jurisdiction, an employer may dismiss the employee for performance or misconduct (ensuring that the dismissal is not harsh, unjust or unreasonable), or for genuine redundancy. Certain employees are not covered by the unfair dismissal jurisdiction.

A redundancy will only be genuine if the employer can demonstrate that it no longer required the job to be performed by anyone because of changes in the operational requirements of the business, it has complied with any obligations in a modern award or enterprise agreement to consult and it cannot reasonably redeploy the employee.

The general protections provisions provide that employers must not dismiss an employee for a prohibited reason.

TAX AND INVESTMENT QUESTIONS

Are there any restrictions on foreign investment into Australia?

Foreign investment in Australia is principally governed by the Foreign Acquisitions and Takeovers Act 1975 (Cth) (FATA).

There are different approval requirements for foreign persons, entities or governments investing in Australia. These depend on factors such as the:

- Type of investment (eg. land, share, unit trust, business etc)
- Industry in which the business operates
- Size of the investment as a percentage
- Value of the investment in monetary terms

If an acquisition requires approval under the FATA then the approval must be sought before the acquisition, or the acquisition must be subject to the approval as a condition precedent. Significant penalties apply for any breach.

The Australian Treasurer will prohibit foreign investment if it is against the national interest. The Foreign Investment Review Board (FIRB) examines foreign investment proposals and advises the Australian Treasurer of their impact on the national interest. The following are generally considered in assessing the national interest:

- National security
- Competition
- Other Government policies
- Economic and community impact
- The character of the investor

For more detailed information on foreign investment in Australia see the FIRB website: https://firb.gov.au/

Do you have any currency or exchange controls in place?

The Australian Dollar has a floating exchange rate and is widely traded.

There are no limits on the amount of currency that can be moved into and out of Australia but there are reporting requirements. Reports are generally made to the Australian Transactions Reports and Analysis Centre (AUSTRAC). Failing to uphold reporting requirements can result in imprisonment and large fines.

The movement of physical currency into or out of Australia equivalent to AUD$10,000 or more must be reported by the person moving the money to the Australian Government in accordance with the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) (AML/CTF Act).

The AML/CTF Act requires reporting entities providing designated services report certain transactions. Designated services include:

- Financial
- Leasing
- Currency exchange
- Gambling
- Bullion exchange services

How are employees taxed in Australia?

Income tax must be paid by employees under the Income Tax Assessment Act 1936 (Cth) and Income Tax Assessment Act 1997 (Cth). Australian resident employees must pay Australian income tax on their income from all sources, while non-resident employees only pay Australian income tax on

Australian source income. The residency requirements for taxation purposes differ to those for immigration requirements.

Employers are required under the pay as you go (PAYG) withholding tax rules to withhold income tax from payments they make to employees. Employers pay this amount to the Australian Taxation Office to assist employees in meeting their income tax liability.

What are the current rates of tax for employees?

Employees who are Australian residents for tax purposes will be taxed at the following rates for the financial year ending 30 June 2017:

Taxable income	Tax amount
0 - $18,200	Nil
$18,201 - $37,000	19c for every $1 over $18,200
$37,001 - $87,000	$3,572 plus 32.5c for every $1 over $37,000
$87,001 - $180,000	$19,822 plus 37c for every $1 over $87,000
$180,001 and above	$54,232 plus 45c for every $1 over $180,000

In addition to this there is a Medicare (public health services) levy of 2%. Employees with incomes over $180,000 will also be subject to a temporary budget repair levy of 2%. This levy is expected to cease on 1 July 2017.

Employees who are non-residents for tax purposes will be taxed at the following rates for the financial year ending 30 June 2016:

Taxable income	Tax amount
0 – $87,000	32.5c for each $1
$87,001 – $180,000	$28,275 plus 37c for each $1 over $87,000
$180,001 and over	$62,685 plus 45c for each $1 over $180,000

Non-resident employees with incomes over $180,000 will also be subject to the temporary budget repair levy of 2%, but do not pay the Medicare levy.

What taxes apply to the business models you have identified above?

Entities carrying on business in Australia are subject to income tax as follows:

- Companies are typically subject to tax at 30% on assessable income in Australia. However, small businesses (i.e. companies with an aggregate annual turnover of less than $2 million) are subject to tax at 28.5%.
- Discretionary/unit trusts are typically flow-through entities for Australian tax purposes. Broadly if the trust distributes all its income during a financial year, the income will be taxed in the hands of the beneficiaries (however there are withholding rules that can apply to distributions to foreign residents).
- Subject to the application of any double tax agreement, foreign companies carrying on a permanent establishment in Australia are generally subject to tax at 30% on the assessable income referable to the permanent establishment.

Goods and Services Tax (GST) can apply to transactions involving the supply of goods, services, intangibles, rights and real property in Australia at a rate of 10%. Stamp duty is a tax imposed at a State level on certain transactions over land and other prescribed assets.

Other taxes and costs related to the remuneration of employees include:

- Fringe benefits tax (a tax on non-cash benefits provided to employees, which are taxed in the hands of employers).
- Payroll tax (a general tax that can apply to employers for employing staff).
- Superannuation (a compulsory amount paid by employers to provide for their employees' retirement).

How are dividends to foreign companies/shareholders taxed?

Australia has an imputation system that applies to the payment of tax by Australian resident companies. The payment of tax by an Australian company gives rise to franking credits which can be attached to dividends distributed to shareholders (which are then called franked dividends). Franking credits provide Australian resident shareholders with a tax credit for the tax paid by the company in respect of the profits used to pay the dividend.

A foreign resident receiving a franked dividend is not entitled to a tax credit. However, franked dividends distributed to foreign residents are typically not subject to withholding tax.

An unfranked dividend does not have any franking credits attached to it. Unfranked dividends paid to foreign residents are subject to withholding tax. The withholding tax rate is 30%. If Australia has a double taxation agreement in place with the country of residence of the foreign resident shareholder, the withholding tax rate may be reduced (generally to 15%).

Are there transfer pricing rules in place?

Australia has transfer pricing rules under the Income Tax Assessment Act 1997 (Cth). They operate to ensure that Australian entities are dealing with related foreign entities at arm's length. Arm's length conditions are conditions which would be expected to operate between unrelated parties.

The rules aim to ensure the amount of taxation paid by an entity reflects the economic contribution of its Australian operations. This should reflect the functions the entity performed, the assets used and risks taken by the entity's Australian operations.

We note that the transfer pricing rules and documentation requirements are currently being reviewed as part of the OECD's BEPS Actions.

Do you have double taxation treaties in place with foreign jurisdictions. If so where can we find out details?

Australia has double taxation treaties in place with over 40 countries. You will only be affected by the tax treaty if you are a resident of Australia or the other treaty country.

More information on double taxation treaties can be found on the website of the Treasury of the Australian Government. See: http://www.treasury.gov.au/Policy-Topics/Taxation/Tax-Treaties/HTML

Maddocks

MADDOCKS

www.maddocks.com.au

MELBOURNE
Collins Square, Tower Two
Level 25, 727 Collins Street
Melbourne VIC 3008
DX 259 Melbourne

KEY CONTACT:
Geoffrey Musgrove
Partner
T: +61 3 9258 3530
geoff.musgrove@maddocks.com.au

COLIN BIGGERS & PAISLEY LAWYERS

COLIN BIGGERS & PAISLEY

http://www.cbp.com.au

SYDNEY
Citigroup Tower
Level 42
2 Park Street
SYDNEY NSW 2000
DX 280 Sydney

KEY CONTACT:
Jon Meadmore
Partner & National Head Corporate and Commercial Group
T: +61 7 3002 8744
jon.meadmore@cbp.com.au

COOPER GRACE WARD LAWYERS

COOPER GRACE WARD

www.cgw.com.au

BRISBANE
Level 21
400 George Street
Brisbane QLD 4000

KEY CONTACT:
Chris Ward
Managing Partner
T: +61 7 3231 2444
chris.ward@cgw.com.au

KOTT GUNNING LAWYERS

KOTT GUNNING

www.kottgunn.com.au

PERTH
Level 8, AMP Building,
140 St George's Terrace
Perth
6000

KEY CONTACT:
Tom Darbyshire
Partner
T: +61 8 93213755
tdarbyshire@kottgunn.com.au

Norman Waterhouse SINCE 1920 LAWYERS

NORMAN WATERHOUSE LAWYERS

www.normans.com.au

ADELAIDE
Level 15
45 Pirie Street
Adelaide SA 5000

KEY CONTACT:
Sathish Dasan
Partner
T: +61 8 8210 1200
sdasan@normans.com.au

New Zealand

We are looking to set up a New Zealand trading company. What structures/business vehicles do you use?

Broadly, there are three main business structures commonly used by overseas entities that establish a business in New Zealand:

1. Incorporating a limited liability company as a subsidiary.
2. Registering as an overseas company, and setting up a New Zealand branch of that company.
3. Entering into a limited partnership.

Which structure is the most appropriate for any given company or business venture will often be driven by issues regarding legal structure, taxation consequences (both in New Zealand and overseas) and other commercial considerations.

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

In our experience, it is most common for an overseas entity to incorporate a New Zealand limited liability company as a subsidiary.

By incorporating a new entity in New Zealand, the shareholder(s) of the subsidiary company will get the benefit of limited liability protections from the actions of that subsidiary company.

Not all companies in New Zealand are required to prepare and file annual financial statements. However, subsidiaries of overseas entities will need to prepare financial statements, have those statements audited and file the audited statements with the Registrar of Companies if, in the last two financial years, the company had assets of over NZ$20 million or turnover of over NZ$10 million.

Additional reporting obligations will apply if the Company undertakes any activity that makes it an “FMC reporting entity” (i.e. companies that issue shares to the public, operate as a credit union, operate an equity crowd funding service, etc).

What are the rules on capitalisation of entities in New Zealand?

New Zealand does not place any restrictions on the size of a company’s share capital, and companies are not required, and not permitted, to have par or nominal value attached to their shares.

What information are we required to provide businesses/consumers with when trading with us?

The type of information that must be provided to customers will depend on the nature of goods and/or services that you will offer in New Zealand. For example, financial service providers, charities and insurance providers are all required to make available to the public certain information about themselves.

Under New Zealand’s consumer protections law, businesses must ensure that all information that they give to customers is accurate, and that no material information is withheld. Therefore, you will need to ensure that customers are provided with all the material information about your business and the goods or services you provide, to allow them to make an informed choice regarding your products.

Note that if goods and services are offered for sale to consumers on the internet, and that offer is capable of acceptance via the internet, you must clearly identify to potential consumers whether or not you are in trade.

We would prefer to avoid having an actual physical presence in New Zealand and instead are looking to appoint an agent or distributor to sell our products and/or services. What are the legal implications for appointing a distributor?

An agent can be appointed to act on your behalf. The duties of agents are regulated through the rules of equity, common law, statute and any terms of appointment. The appointment of a distributor is also permissible, and the relationship with the distributor is governed by the terms of a contract.

New Zealand consumer protection laws make businesses responsible for actions of their agents, meaning they can be held liable for false or misleading behaviour of their agents in New Zealand. This may not apply to the relationship between the overseas entity and an independent distributor.

Note that under New Zealand law a company that is “carrying on business” in New Zealand must register as an overseas company. While the term “carrying on business” is not defined, relevant factors to consider include:

- Physical presence in New Zealand
- Employees in New Zealand
- A degree of regular involvement with transactions in New Zealand

We intend to sell goods via our online website. What are the legal requirements if we wish to sell into New Zealand?

The Fair Trading Act 1986, which broadly prohibits persons who are “in trade” from engaging in conduct that is or may be misleading or deceptive and from making false or unsubstantiated representations about their products, applies to any person which offers goods for sale to New Zealanders, regardless of where in the world that person is located.

Further, you should be aware that when importing into New Zealand:

1. Goods that are banned or restricted by New Zealand law will be seized at the border by customs.
2. Customers that order goods online may be required to pay duties and/or Goods and Services Tax (“GST”) on those goods.

A list of goods that are prohibited and restricted in New Zealand is available at the following website: http://www.customs.govt.nz/features/prohibited/Pages/default.aspx

Do you have legislation in respect of the use of electronic signatures?

The Electronic Transactions Act 2002 provides that a legal requirement for a signature can, in most instances, be met by electronic means and will be considered just as valid as a written signature.

In order for an electronic signature to be acceptable it must adequately identify the signer as the signatory, adequately indicate their approval of the information which they are signing, and be as reliable as appropriate, given the circumstance in which the signature is required.

We intend to import goods into New Zealand for sale. What are the legal requirements for doing this?

New Zealand has strict biosecurity requirements and therefore, prior to the importation of any goods, the importer must satisfy New Zealand's Ministry for Primary Industry that the goods meet New Zealand's import rules and do not pose a biosecurity risk. Note that some goods may be required to undergo cleaning or treatment to make sure no unwanted pests or diseases are introduced to New Zealand.

In addition to this requirement, importers will also need to register with New Zealand customs and declare all of their imports. In most cases this declaration must be made prior to the date the goods arrive in New Zealand.

Importers that are looking to import certain types of products (for example, food or pharmaceutical products) may be required to satisfy more stringent import requirements.

What rights do consumers have when selling to them?

Consumer rights in New Zealand are protected by two key pieces of legislation: the Fair Trading Act 1986 and the Consumer Guarantees Act 1993.
The Fair Trading Act prohibits persons who are "in trade" from engaging in conduct that is misleading or deceptive; likely to mislead or deceive; liable to mislead as to the nature, characteristics, suitability for purpose or quality of services; or make any false or unsubstantiated representations about their products.

The Consumer Guarantees Act sets out certain minimum standard guarantees that goods and services must meet when sold by someone in trade, and requires businesses to meet certain quality guarantees when they sell goods and services to consumers. Under the Consumer Guarantees Act consumers can seek remedies from either the retailer or the manufacturer of the goods.

Consumers may also have more specific rights, depending on the nature of the goods and services provided to them.

What are a customers rights in so far as returning goods (whether or not they are faulty)?

Customers in New Zealand do not have a general right to return goods just because they have changed their mind. However, individual retailers may elect to have a returns policy that allows such returns.

Customers do, however, have a right to return goods to a retailer and request that they be replaced, refunded or the consumer compensated if (among other things) the goods are not of acceptable quality, are faulty, or do not match the description given for them. Under New Zealand law goods must last a "reasonable time", being the period in which it would be reasonable to expect defects with the goods to become apparent.

Are we required to ensure that all customers have agreed to our terms of business in writing?

No. Terms of business can be accepted via conduct (i.e. by using your website or services). However, it is good practice to ensure customers do sign the terms of business, especially if these terms include anything that may undermine a right that consumers would usually, or may expect to, have.

EMPLOYMENT QUESTIONS

We are looking to set-up a business in New Zealand and intend to bring some of our current employees into New Zealand to work. Do we require work/residency permits?

An employer's current employees will most likely require a visa to be able to enter and/or work in New Zealand, but it will depend on numerous factors and specialist immigration and/or legal advice should be sought.

What formalities do we need to comply with when recruiting employees in New Zealand?

An employer must not breach an employee's privacy under the Privacy Act 1993 and must not discriminate against any employee or prospective employee.

When recruiting an employee or prospective employee, the employer must do at least the following things:

1. Provide to the employee a copy of the intended individual employment agreement.
2. Advise the employee that he or she is entitled to seek independent advice about the intended agreement.
3. Give the employee a reasonable opportunity to seek that advice.
4. Consider any issues that the employee raises and respond to them.

The employment agreement must comply with New Zealand legislation. The employer must retain a signed copy of the employee's individual employment agreement or a copy of the intended agreement even if the employee has not signed the intended agreement or agreed to any of the terms and conditions specified in the intended agreement.

What are the minimum rights we have to adhere to for employees in New Zealand?

1. Employment Relations Act 2000: Main piece of legislation governing employment law in New Zealand.
2. Human Rights Act 1993: Prohibits discrimination on various grounds.
3. Minimum Wage Act 1983: Establishes minimum wages for workers.
4. Equal Pay Act 1972: Prohibits unequal payment for work of substantially the same type for men and women.
5. Holidays Act 2003: Provides minimum entitlements to sick leave, bereavement leave, annual holidays and recognises eleven public holidays.
6. Parental Leave and Employment Protection Act 1987: Provides for up to 52 weeks parental leave.
7. Wages Protection Act 1983: Sets out how an employee's wage must be paid and what deductions can and cannot be made.
8. Privacy Act 1993: Governs how personal information is collected, stored, used and disclosed.
9. Health and Safety at Work Act 2015: Sets requirements to keep the workplace safe.

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

Pursuant to the Employment Relations Act 2000, whether someone is an employee or a contractor depends on the real nature of the relationship. The intention of the parties and the contract between the parties are factors to consider, but may not be determining factors.

Contractors have a different legal status to employees in New Zealand and most employee minimum rights and entitlements do not apply to contractors.

What options exist if we want to terminate employees contracts with us? Can we make them redundant?

Termination of New Zealand employment requires substantive justification (cause) and procedural fairness. The legal test is whether the employer's actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred. The employee's employment agreement must also be complied with. Possible reasons to propose the termination of an employee's employment include misconduct, serious misconduct, redundancy, poor performance, medical incapacity and incompatibility.

Are there any restrictions on foreign investment into New Zealand?

Overseas investment in New Zealand is generally welcomed, but transactions involving "Overseas persons" may require the consent of the overseas Investment Office if the transaction involves an overseas person acquiring 25% or more (either by way of direct or indirect ownership) of one or more of the following:

- Significant business assets (assets worth NZ$100 million (or $498 million, in the case of Australian non-government investors) or more)
- "Sensitive" New Zealand land
- Farm land
- Fishing quotas

Land will be "sensitive" if it comes within the types of land and area thresholds detailed in Part 1 of Schedule 1 of the Overseas Investment Act 2005. The size, location, uses, nature, and surrounding geography will all be taken into account when determining if land is "sensitive" or not.

Do you have any currency or exchange controls in place?

New Zealand has a largely unrestricted currency exchange regime. Almost all exchange controls were lifted at the end of 1984. Since March 1985, the New Zealand dollar, known as the "Kiwi", has been allowed to float freely.

How are employees taxed in New Zealand?

Employees that are New Zealand residents will be taxed under New Zealand's Pay As You Earn (PAYE) system, whereby income tax on salary and wage earners is deducted at the source from the employer. Non-cash benefits provided to employees are subject to fringe benefit tax which is also payable by the employer.

What are the current rates of tax for employees?

There are currently four income tax rates used in New Zealand:

Taxable income	Tax rate
Up to $14,000	10.50%
Over $14,000 and up to $48,000	17.50%
Over $48,000 and up to $70,000	30.00%
Remaining income over $70,000	33.00%

Note that employees that have more than one source of taxable income may be subject to different levels of income tax.

What taxes apply to the business models you have identified above?

Companies in New Zealand are taxed at a flat rate of 28%. As a general rule, companies that are New Zealand tax residents will be taxed on their worldwide income, whereas non-residents are only taxed on income derived from New Zealand sources.

Companies will be taxed as a New Zealand tax resident if:

- They are incorporated in New Zealand;
- They have their head office situated in New Zealand;
- They have their centre of management in New Zealand; or
- Control of the company by their directors is exercised in New Zealand whether or not decision-making by their directors is confined to New Zealand.

How are dividends to foreign companies/shareholders taxed?

New Zealand imposes a withholding tax that applies to non-residents that receive certain types of non-resident withholding income derived from New Zealand, namely interest, dividends and royalties.

The following exceptions should be noted in respect of non-resident withholding tax:

1. All of the double tax agreements to which New Zealand is a party provide that the maximum withholding tax rate that New Zealand can impose on dividend income is 15%.
2. Most of the double tax agreements to which New Zealand is a party provide a maximum withholding tax rate on interest and royalties of 10%.
3. Special rules apply to payments made to related overseas parties.

Are there transfer pricing rules in place?

New Zealand has both transfer pricing and thin capitalisation rules in place. The two main features are:

1. The transfer pricing regime requires that an arm's length price be applied to any supply of goods and services to and from New Zealand between associated parties.
2. Under the thin capitalisation regime, a business which is controlled by a single non-resident or, non-residents acting together who own or control 50% or more of the company, will only be entitled to deduct interest expenditure on borrowings to the extent that total debt does not exceed 60% of total assets.

Do you have double taxation treaties in place with foreign jurisdictions. If so where can we find out details?

New Zealand has entered into double tax agreements with a number of countries including Australia, Austria, Belgium, Canada, China, Chile, Czech Republic, Denmark, Fiji, Finland, France, Germany, Hong Kong, India, Indonesia, Ireland, Italy, Japan, Korea (Repubic of), Malaysia, Mexico, Netherlands, Norway, Papua New Guinea, Philippines, Poland, Russian Federation, Samoa, Singapore, South Africa, Spain, Sweden, Switzerland, Thailand, Taiwan, Turkey, the United Arab Emirates, the United States of America, the United Kingdom and Vietnam.

Further information is available from the following website: http://taxpolicy.ird.govt.nz/tax-treaties#dta

Hesketh Henry The Art of Law

HESKETH HENRY

www.heskethhenry.co.nz

AUCKLAND
Level 14, PwC Tower
188 Quay Street
Auckland 1010
New Zealand

KEY CONTACTS:
Erich Bachmann
Managing Partner
T: + 64 9 375 8709
erich.bachmann@heskethhenry.co.nz

Asia

ADVOC ASIAN COUNTRIES

- Bangladesh
- China
- Hong Kong
- India
- Japan
- Pakistan
- Malaysia
- Singapore
- South Korea
- Thailand
- Vietnam

Bangladesh

We are looking to set up a Bangladeshi trading company. What structures/business vehicles do you see?

In Bangladesh, a trading business can be operated through a proprietorship, partnership or limited company. However, for proprietorship and partnership business, the proprietor or the partner(s), as applicable, may be liable for the activities of the trading entity, as unlike other jurisdictions the concept of Limited Liability Partnerships or a single member Company does not exist in Bangladesh. Moreover, approaching clients and/or the banks/financial institution for business through proprietorship and partnership can be challenging in Bangladesh. Therefore, in consideration of the legal and financial practical complexities, incorporating and registering a limited liability company with the Registrar of Joint Stock Companies and Firm is the most appropriate business vehicle for running a trading business. A limited company incorporated and registered in Bangladesh may have 100% foreign ownership.

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

Foreign companies have the option to establish a branch office, a liaison office, or to form joint venture companies with local entrepreneurs or to establish a new limited liability Company in Bangladesh. For a foreign enterprise the most common form of establishing a business in Bangladesh is to establish a foreign owned limited liability company. Establishment of a foreign owned company shall make the process easier to obtain necessary approval from Bangladesh Bank and National Board of Revenue (NBR), to repatriate profit of the business and capital investments of the foreign enterprise. Following establishment of such an entity, the foreign investment needs to be registered with the Board of Investment (BOI) for compliance and monitoring. In addition, the Schedule Bank of Bangladesh, through which the investment amount has been brought to Bangladesh, shall report to the Bangladesh Bank, confirming establishment of the said Company in Bangladesh, and shall produce necessary incorporation documents of that Company to the central Bank. Apart from these obligations, the Company shall also be obliged to report NBR on its taxation, VAT and Customs issues on a monthly, quarterly or yearly basis, as applicable depending upon the nature of the business and it's income.

What are the rules on capitalisation of entities in Bangladesh?

There is no minimum paid capital requirement for operating and carrying out a trading business. To raise capital of a private company limited by shares, any permission shall not be required for establishing the company or issuing shares of the same up to an amount of BDT 100 Million (USD 1,219,500.00), or if it is a public limited company the exemption amount limited to BDT 10 Million (USD 121,950.00). Any capital rising beyond such limit shall be subject to the provision of prior permission from the Bangladesh Securities and Exchange Commission.

Application for such permission can be made by the company itself, or through a Merchant Bank, in case the unlisted capital is being issued to a person other than existing shareholders. It is also to be noted that if the paid up capital of a private company exceeds BDT 400 Million (USD 4,878,050), the Company shall have to convert itself into a public company and if the paid up capital limit exceeds BDT 500 Million (USD 6,097,560), the Company shall have to issue shares to the public through initial public offering (IPO), unless it is exempted otherwise. Companies with foreign ownership are exempted from such mandatory IPO requirement.

What information is required to provide business/ consumers with when trading with us?

The requirement to share information will depend upon the nature of business of the company and the products involved in a transaction with the consumers. If the products are consumable, the manufacturer or importer shall be responsible to comply with certain packaging requirements, applicable for such type of products, measurement of the product, MRP of the same, the date of its manufacture and its last consumable date etc. Moreover, the company should also share information by displaying its Trade License, Electronic Tax Identification Number (e-TIN) and VAT registration certificate in its place of business, so that the consumer can get notification of such information.

We would prefer to avoid having an actual physical presence in Bangladesh and instead are looking to appoint an agent or distributor to sell our products and/ or services. What are the legal implications?

In Bangladesh there are different ways to run s business without having any physical presence in the country and one of these is by appointing an agent in Bangladesh who will sell the products on behalf of the parent company. To appoint an agent, it is required to comply with Chapter X of the Contract Act of 1872, which describes the qualification of an agent and narrates the applicable principles of agency (similar to English Law). An agency agreement is required to be executed between the Principal and the Agent in a non-judicial stamp paper valued BDT 300.00 and the business modalities/procedure of the agency will be governed by the rules stated in the agency agreement. The legal implication of doing business through agency is comparable, if not similar, to that of rest of the world, i.e. the agent will have the authority to bind the principal through direct or apparent authority.

We intend to sell goods via our online website. What are the legal requirements if we wish to sell into Bangladesh?

For selling goods online, like any other business, a business entity must be formed and due process for forming such entity must be adhered to. Necessary licences and certificates, as applicable, must be obtained for the business entity. However, these requirements are not specific to selling goods online but generic in nature.

Although there are no codified guidelines for selling goods online, Section 15 of the Sale of Goods Act, 1930 confirms that, where any goods are to be sold on the basis of their descriptions, the goods are required to comply with the description provided for the said goods. Therefore, vendors are required to provide the right description of the goods on their website in order to sell such goods.

Do you have legislation in respect of the use of electronic signatures?

Yes. The Information & Communication Technology Act 2006 has given legal recognition to digital or electronic signatures in order to bring digital signatures under complete legal and evidential scrutiny. Pursuant to the provision of Section 7 of the 2006 Act, it is provided that (a) any information or any other matter shall be authenticated by affixing the signature; or (b) any document shall be authenticated by signature or bear the signature of any person; then such information or matter may be authenticated by means of digital signature.

We intend to import goods into Bangladesh for sale. What are the legal requirements for doing this?

For importing goods into Bangladesh, in addition to the licences and documentations as required for running day to day business of the company, an Import Registration Certificate (IRC) should be obtained in the name of the company from the office of the Chief Controller of Import and Export. The certificate is issued by setting up the limit on the amount to be utilised for importation of Goods by that particular company. The company will be permitted to import goods that are not prohibited by the Customs Act 1969 and Import Policy from abroad by way of opening letters of credit up to that limit and at the time of importation, the Company shall have to pay Customs Duty, Regulatory Duty (if applicable), Value Added Tax (VAT), Advance Traded Vat (ATV), Supplemental Duty (if applicable) etc. The company has the option to increase such limits upon payment of appropriate licensing fees.

What rights do consumers have when selling to them?

Under the Sale of Goods Act 1930, consumers have the usual rights conferred by implied terms as to quality, description and sample. They also have rights related to rejection of goods and replacement/repair. The Consumer Rights Protection Act, 2009 imposes certain obligations onto the seller, which in turn confers rights onto the consumers, having the effect of protecting their interest. The obligations of the sellers are:

1. The seller shall be responsible to package a product properly, and the details of the product (including the weight, quantity, elements, instructions, retail price, date of manufacturing, date of wrapping and the date of the validity) shall be properly specified on the packaging of the product.
2. Price chart of the products shall be put in a visible place.
3. The seller shall determine the excess price of any product, medicine or any other products as determined by any existing laws or rules of the county.
4. The seller shall not be entitled to mix any medicine or chemical that is injurious to health.
5. The measurement machine shall not be defective.
6. Documented proof of payment of VAT.

What are a customers rights in so far as returning goods (whether or not they are faulty)?

According to the Sale of Goods Act, 1930, a customer has the right to return the goods on the following grounds:

1. For lesser amount of delivery.
2. Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole.
3. If the goods don't match with the standard of the contracted goods.

It is pertinent to mention that the buyer shall not be entitled to reject any product wrongfully, and in the event of doing so the seller may sue him for damages for non-acceptance.

Adhering to the minimum standard of law, the seller can always provide additional contractual right to the buyer for returning certain goods within reasonable time.

Are we required to ensure that all customers have agreed to our terms of business in writing?

There is no such legislation currently enforced in Bangladesh requiring the terms of business to be accepted in writing by the customer of the business for legal enforcement. However, the evidentiary value is increased when the acceptance is in writing. The main difficulty is that it is not possible to take any written confirmation from the customers, especially in online businesses. Therefore, an acknowledgement stating acceptance of the terms of the business will be deemed equivalent to written acceptance. The only requirement is to make the terms & conditions part of the contract by including them with the contract and giving the buyers notification of the terms & conditions prior to the transaction. Subject to the above, associated documents, e.g. paid invoice or sale receipt, will constitute acceptance of the terms & conditions.

We are looking to set-up a business in Bangladesh and intend to bring some of our current employees into Bangladesh to work. Do we require work/residency permits?

The visa Policy dated April 04, 2007 stated that, the foreign national should arrive in Bangladesh with an "E" (for employees) or "PI" (for investor) type visa. In Bangladesh, a work permit is mandatory for every foreign national for legal employment. There are three government authorities who issue work permits, and they are as follows:

Purpose	Issuing Authority
For private sector industrial enterprise, branch office and liaison office, outside of Export Processing Zone (EPZ)	Board of Investment (BOI)
For employment of foreign national in the Export Processing Zone (EPZ)	Bangladesh Export Processing Zones Authority (BEPZA)
For employment of foreign national in any Non Government Organisation (NGO)	NGO Affairs Bureau

What formalities do we need to comply with when recruiting employees in Bangladesh?

The Bangladeshi Labour Law has distinguished employees into two broad categories: Labourers and Administrators/ Management. Employees appointed in administrative or managerial posts are not subject to and governed by any legislation. A company is free to follow its own internal process for recruiting such employees.

However, for employees categorised as Labourers, the recruitment and employment process must comply with the governing legislation, the Labour Act 2006 and Labour Rules 2015. Section 3 of the Labour Act 2006 states that the company may have its own rules but such rules must be approved by the Chief Inspector before coming into force. The courts have always taken a lenient view in determining the status of an employee as a labourer, therefore following the spirit of the Labour Law even for employees at managerial posts will be suggested.

What are the minimum rights we have to adhere to for employees in Bangladesh?

In reference to the difference stated above, rights of employees in managerial posts will be governed by the internal rules of the company and the employment contract. However, for labourers, Sec 3(1) of the Labour Act 2006 states that, "any establishment may have its own rules regulating employment of workers, but no such rules shall be less favourable to any worker than the provisions of this chapter".

Therefore, every company shall be required to comply with the rights and benefits provided by the said Act. The minimum requirements are: defined working hours, different types of leave, reasonable severance package, restriction on employment of adolescents, maternity benefits, health and safety, welfare, right of association, due process for termination or investigation and different welfare funds, e.g. provident funds etc.

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

Consultants are not employees of the company and are not entitled to the rights or benefits of employees. Consultants are independent contractors and they are governed by their individual contracts. No legislative obligations are applicable for consultants. Tax rates and collection method for consultants differ to the rates applicable for employees and normally, at the time of payment to the Consultant, the company shall be responsible to collect Advance Income Tax (AIT) and VAT, at the prescribed rate as applicable. Employees are taxed on their annual income as per the applicable rate, while Consultants are taxed on each individual transaction at a fixed rate of 25%.

What options exist if we want to terminate employees contracts with us? Can we make them redundant?

There are several ways of terminating an employee's contract and one of the options is redundancy, applicable for both labourers and managers. In accordance with section 20 of the Labour Act of 2006, a worker may be retrenched from his service on the ground of redundancy. Additionally, an employer may terminate any worker by providing notice of a certain period along with benefits or salary in lieu, and the employer is not required to show any ground for such termination. It is also possible that the employer may terminate any worker by way of discharging even without any notice, but necessary conditions and due process must be satisfied before doing so.

Are there any restrictions on foreign investment into the country?

According to chapter 9 of the Foreign Exchange Guideline issued by Bangladesh Bank (Central Bank of Bangladesh), apart from a few reserved sectors foreign investors are free to make investment in Bangladesh, which can be set up in collabouration with local investors or independently by the foreign investors. No permission from Bangladesh Bank is required to set up such ventures if the entrepreneurs use their own funds. However, to avail the facilities and institutional support provided by the government of Bangladesh, entrepreneurs/sponsors may secure registration with the Board of Investment. According to the Industry Policy of 2016, the reserved sectors are as following:

1. Arms and ammunition and other defence equipment and machinery
2. Forest Plantation and mechanized extraction within the bounds of reserved forests
3. Production of nuclear energy
4. Security printing (currency notes) and minting

Do you have any currency or exchange controls in place?

Yes, there are several legislations, including Monetary Policy, Foreign Exchange Regulations Act 1947, Money Laundering Prevention Act 2012, Anti-Terrorism Act 2009, Guidelines on Money Laundering and Terrorist Financing Risk Management for Banks, Guidelines Note on Prevention of Money Laundering for Banks, Guidelines on Implementing of the UN Security Council Resolutions Concerning Targeted Financial Sanctions, Travel Ban, and Arms Embargo and, Foreign Exchange Guideline etc., to control and regulate the currency and exchange matters, and the Bangladesh Bank as the Central Bank of Bangladesh has the authority to regulate and monitor matters related to currency and foreign exchange.

How are employees taxed in Bangladesh?

The tax of an employee is calculated on the basis of his yearly income. However, if the employee has invested a certain amount in a prescribed manner and in the prescribed sector he will be entitled to the benefit of a tax rebate as per Income Tax Ordinance 1984. According to the Ordinance, the income of an employee is subject to the provision of Advance Income Tax (AIT), and therefore the person responsible for making any payment that constitutes income of the payee must deduct tax on the amount so payable at a rate representing the averages of the applicable to the estimated total income of the payee under that head. Following expiry of the financial year, total income of the employee and tax liability will be calculated and, if any amount of tax remains due, shall have to be paid while submitting tax returns or at the time of assessment by NBR, as applicable, for that financial year. The taxable income of an employee shall be determined in accordance with the following chart:

Type of Income	Status	Remarks
Basic Salary	Taxable	Fully taxable
Special Salary	Taxable	Fully taxable
Dearness Allowance	Taxable	Fully taxable
Travel Allowance	Taxable	Yearly BDT. 30,000.00 is non-taxable
House Rent	Taxable	50% from the basic salary or monthly BDT. 25,000.00 whichever is lower is non-taxable.
Medical Allowance	Taxable	10% of basic salary or yearly BDT. 120,000.00 whichever is lower is non-taxable.
Director's Remuneration	Taxable	Fully Taxable
Leave Allowance	Taxable	Fully Taxable
Honorarium	Taxable	Fully Taxable
Over Time	Taxable	Fully Taxable
Gratuity	Taxable	Fully Taxable
Any Income from Provident Fund	Non-Taxable	Fully Taxable
Any Income from the Workers' Profit Participation Fund	Non-Taxable	Fully Taxable

What are the current rates of tax for employees?

The tax rate shall vary in relation to the yearly income of an employee as an individual. Current tax rates for individuals are as follows:

Steps	Total Income (Yearly)	Tax Rate
First Step	Income up to BDT. 250,000.00	Nill
Second Step	Next BDT. 400,000.00	10%
Third Step	Next BDT. 500,000.00	15%
Fourth Step	Next BDT. 600,000.00	20%
Fifth Step	Next BDT. 3,000,000.00	25%
Sixth Step	Remaining Amount of the Income	30%

However, it is pertinent to mention that the rate of the income tax may vary from one assessment year to another, depending on the legislative changes brought about by Parliament through the Finance Act.

What taxes apply to the business models you have identified above?

According to the Finance Act 2016, thefollowing tax rates shall be applicable for doing business in Bangladesh:

Type of Company	Tax Rate
Non-publicly traded Company	35%
Publicly Traded Company	25%
Bank, Insurance Company, Financial institution: 1. Listed in SEC 2. Not listed in SEC 3. Bank, Insurance Company or Financial institution approved in the year 2013	 1. 40% 2. 42.5% 3. 40%
Merchant Bank	37.5
Cigarette/tobacco (including Biri & Chewing Tobacco) Manufacturing Company	45%
Mobile phone operator company	45%

However, it is pertinent to mention that the rate of income tax may vary from one assessment year to another, depending on the legislative changes brought about by Parliament through the Finance Act.

How are dividends to foreign companies/shareholders taxed?

According to Section 56 of the Income Tax Ordinance 1984, before paying dividends to a foreign company or shareholder (non-resident), tax shall be deducted at the following rate:

1. For a company the amount shall be 20%.
2. For an individual non-resident person the amount shall be 30%.

However, it is pertinent to mention that the rate of the income tax may vary from one assessment year to another, depending on the legislative changes brought about by Parliament through the Finance Act.

Are there transfer pricing rules in place?

Chapter-XIA (sections 107A to 107J) of the Income Tax Ordinance, 1984 of Bangladesh contains the relevant rules relating to transfer pricing. According to this chapter, the amount of any income or expenditure arising from an international transaction shall be determined having regard to the arm's length price. In the event of the international transaction the aforesaid price shall be determined by the following methods:

- Comparable uncontrolled price method
- Resale price method
- Cost plus method
- Profit split method
- Transactional net margin method

However, in determining the arm's length price following the above methods, the determined price cannot be lower than the declared price for the international transaction.

Do you have double taxation treaties in place with foreign jurisdictions. If so where can we find out details?

There are provisions for double taxation relief in Bangladesh. Chapter XVII and Schedule 7 of the Income Tax Ordinance, 1984 deals with the provision for double taxation relief. According to this chapter, the government may enter into an agreement with the government of any other country for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income. The Government may from time to time publish the treaty by notification in the official Gazette, At present, Bangladesh has executed double taxation treaties with 33 countries.

A.S & Associates
Every Legal Help

A.S & ASSOCIATES

www.as-associates.net/

BANGLADESH
Suite D-5, Mukti Bhaban (Third Floor)
2 No Comrade Monisingh Sharak
21/1 Purana Paltan, Dhaka -1000

KEY CONTACTS:
A. S.A Bari
Managing Partner
T: +88 019139 24194
a.bari@as-associates.net

China

BUSINESS QUESTIONS

We are looking to set up a Chinese trading company. What structures/business vehicles do you use?

The company with foreign investment is termed a foreign invested company. Depending on the percentage of foreign investment, you can choose to set up a WOFE (Wholly Foreign Owned Enterprise), which the entire investment is deriving from outside China, or a Sino-foreign equity joint venture, whose foreign investment shall be no less than 25% of the total shareholding. There are also some other structures, such as Sino-foreign cooperative joint venture (contractual relation) and foreign invested partnerships (wholly or partially by foreign investors). There are some limitations on the shareholding structure for special industries and sectors.

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

WOFE, if Chinese partners do not have to be involved (e.g. for some special sectors, there is a mandatory requirement for Chinese participation or control of majority shareholding). WOFE, as a limited liability company, is treated as a common company as a Chinese company, but it has some special liabilities under foreign investment law.

What are the rules on capitalisation of entities in China?

For some industries, there is a requirement on minimum registered capital and special requirement on paying in the subscribed capital. Otherwise, the capital is subscribed and can be paid in according to the schedule prescribed in the articles of association.

What information are we required to provide businesses/ consumers with when trading with us?

The information disclosure requirements vary with category and nature of the company. The business counterparty may also request different information as needed. The public has access to some basic company information on the government website or through the Administration of Industry and Commerce.

We would prefer to avoid having an actual physical presence in China and instead are looking to appoint an agent or distributor to sell our products and/or services. What are the legal implications?

Firstly, the manufacturer (even if he has no presence in China) and seller of a product are both under product quality liabilities; therefore the control and management of the agent or distributor is very important. Secondly, if the selling of products or provision of service requires special certification, approval etc. under Chinese law you need to be aware of the legal implications.

We intend to sell goods via our online website. What are the legal requirements if we wish to sell into China?

First of all, please check if such goods are allowed to be sold into/delivered into China. Second, if your goods are “imported” into China, there will be Customs regulations and import laws involved. Thirdly, duties and taxes could be levied from the recipient/consumers when the goods arrive in China, even it is not an import (such as online shopping by consumers), which may lessen the eagerness for consumers to shop on your website.

Do you have legislation in respect of the use of electronic signatures?

Yes. The Electronic Signatures Law (2004, amended in 2015).

We intend to import goods into China for sale. What are the legal requirements for doing this?

Depending on what kind of goods you intend to import into China, legal requirements are quite different. Customs declaration, import inspection, compulsory certification and product quality liability are the most important legal requirements that the manufacturer/supplier and importer shall have a good understanding of.

What rights do consumers have when selling to them?

Consumer’s Protection Law (1994, amended in 2014) provides consumers with various rights (right to product information, 7-day’s refund (unconditionally) for online shopping, personal information protection, triple compensation for fraudulence) etc.

What are customers rights in so far as returning goods (whether or not they are faulty)?

For online shopping, consumers can return the goods (without presenting any reason) within 7 days upon receiving the same, unless the product is not suitable for return due to its nature.

For faulty products, consumers can return the goods according to agreement with the manufacturer/seller, or demand change and repair of the goods. Without any statute or agreement, the refund period is 7 days, however, after 7 days consumers may still be entitled to return, change or repair as the law provides for certain circumstances.

Are we required to ensure that all customers have agreed to our terms of business in writing?

No. Consumer Protection Law provides basic and guideline terms to regulate business behaviour, so in the absence of such agreed terms, the law will step in. Your terms of business must comply with statutory regulations. If you wish your customers to agree to your terms of business in writing, you need to ensure that you have explained those terms to consumers so they are aware of the content that are of material interest to them. The “format” terms provided by you would be interpreted in favour of customers.

EMPLOYMENT QUESTIONS

We are looking to set-up a business in China and intend to bring some of our current employees into China to work. Do we require work/residency permits?

Yes. For foreigners working in mainland China, both work permit and residency permits will be required.

What formalities do we need to comply with when recruiting employees in China?

Firstly, you must obtain "qualification" as an employer to recruit employees. Such process includes registration with HR and Social Insurance Department, attending training as an employer, opening the employer's social insurance account etc. Secondly, after you decide to recruit one particular candidate, the recruitment will be operated and filed on the official website. There are some other formalities to be followed if the employee's residence registration is in the same city. The employer also has to meet more requirements if he wants to recruit foreign employees and apply for their visas.

What are the minimum rights we have to adhere to for employees in China?

Generally, the labour law system is more in employees' favour. There are a lots of employees' rights that are mandatory that employers have to adhere to, including labour protection measures, special protection for females, and there are also "high" preconditions for dismissal.

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

Yes. Employee vs. employer is an employment relationship and regulated by labour law, labour contract law and other related regulations, but consultant vs. client is a service relationship and regulated by contract law and related civil law.

What options exist if we want to terminate employees contracts with us? Can we make them redundant?

To terminate employees, you need to prove lawful reasons and follow certain procedures. Redundancy is not definitely a lawful reason to terminate employees, and if the number of redundant employees exceeds 20 or 10% of the total number of employees, special requirements and procedures apply.

TAX AND INVESTMENT QUESTIONS

Are there any restrictions on foreign investment in to China?

Yes, in some specific industries and sectors. There are "prohibited", "limited", "allowed" and "encouraged" lists for foreign investment. In free trade zones across China, the "negative" lists are shorter.

Do you have any currency or exchange controls in place?

Yes. State Administration of Foreign Exchange ("SAFE") is the main regulator and banks are also in the position to supervise the foreign exchange. You may find information on SAFE's website.

How are employees taxed in the China?

Individual income tax is well in details in China.

What are the current rates of tax for employees?

Current individual income tax rate is based on the progressive rates. Mostly, a higher income is prone to a higher tax rate.

What taxes apply to the business models you have identified above?

VAT, business tax, enterprise income tax and other taxes (consuming tax, resources tax etc.) due to business category, and withholding individual income tax for employees or other tax players. Please consult with your China tax consultant.

How are dividends to foreign companies/shareholders taxed?

Currently, it is subject to withholding tax at the rate of 10%. However, if the country in where the foreign companies/ shareholders are residents has a double taxation treaty with China, which provides an even lower tax rate, and all the criteria in the treaty are met, the lower tax rate will apply.

Are there transfer pricing rules in place?

Yes. Tax authorities have implemented taxation rules on price transferring.

Do you have double taxation treaties in place with foreign jurisdictions? If so where can we find out details?

Yes. You can find details on the government website.

JINCHENG TONGDA & NEAL

www.jtnfa.com/EN

BEIJING
10th Floor,
China World Tower 3,
No.1 Jianguo Menwai Avenue,
Beijing

KEY CONTACTS:
Chelsea Li
Senior Partner
T: + 86 10 5706 8022
chelseali@jtnfa.com

SHANGHAI UNITED LAW FIRM

www.unitedlawfirm.com

SHANGHAI
17th Floor Bund Center,
222 Yan An Road (East),
Huangpu District,
Shanghai, China
200002

KEY CONTACTS:
Feng Wang
Senior Partner
T: + 86 21 6841 9377
fengwang@unitedlawfirm.com

Violet Chen
T: + 86 21 6841 9377
violetchen@unitedlawfirm.com

Hong Kong

BUSINESS QUESTIONS

We are looking to set up a Hong Kong trading company. What structures/business vehicles do you use?

You can incorporate a company limited by shares in Hong Kong. This is the usual way for setting up a trading entity in Hong Kong. As an alternative, a foreign company may register as a non-Hong Kong company and trade in Hong Kong directly.

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

Forming a Hong Kong company limited by shares is the most common business vehicle. Liability of its shareholders is limited to the amount they have paid (i.e. share capital of the company). There are reporting obligations under the Companies Ordinance, such as filing of annual returns, return of allotment, changes in company particulars, etc.

What are the rules on capitalisation of entities in Hong Kong?

For a HK company limited by shares, there is no minimum price at which shares must be issued. There are many HK companies with an issued capital of HKD 1 only.

What information are we required to provide businesses/ consumers with when trading with us?

A HK limited company must disclose its status of limited liability by stating its full company name (with the word “limited” or “Ltd”) in communication/transaction documents and on any website of the company.

We would prefer to avoid having an actual physical presence in Hong Kong and instead are looking to appoint an agent or distributor to sell our products and/ or services. What are the legal implications?

The rights and duties of a distributor are mainly governed by contract, while those of an agent are also governed by the common law of agency.

One important legal implication for appointing an agent is that you will be liable (as the principal) for the acts/omissions of your agent.

If you want to avoid a presence in Hong Kong, you should choose to appoint distributors (and sign contracts with them) for selling your products/services.

We intend to sell goods via our online website. What are the legal requirements if we wish to sell into Hong Kong?

In general, there are no specific legislations governing online sales and websites in Hong Kong.

There are import restrictions on specific goods (e.g. drugs) and import licenses are required.

Do you have legislation in respect of the use of electronic signatures?

Yes, the Electronic Transactions Ordinance (cap.553).

We intend to import goods into Hong Kong for sale. What are the legal requirements for doing this?

Hong Kong is a free port. Many products can be imported into Hong Kong freely.

Import licences are required for specific items only (e.g. drugs).

The safety and labelling requirements of certain products (e.g. food products) must also be complied with.

What rights do consumers have when selling to them?

Consumers are entitled to certain implied terms under the Sale of Goods Ordinance (Cap. 26). For example, there are implied conditions that the goods are of merchantable quality and are reasonably fit for their purpose.

What are customers rights in so far as returning goods (whether or not they are faulty)?

There is no statutory right to return goods. The customer’s rights to return goods are governed by contract law (and based on the relevant express or implied terms of the contract).

Are we required to ensure that all customers have agreed to our terms of business in writing?

There is no such legal requirement.

EMPLOYMENT QUESTIONS

We are looking to set-up a business in Hong Kong and intend to bring some of our current employees into Hong Kong to work. Do we require work/residency permits?

Yes. They will need to obtain a working permit from the Immigration Department before starting their employment in Hong Kong.

What formalities do we need to comply with when recruiting employees in Hong Kong?

Employment contracts should be signed with the employees. Their Hong Kong identity cards should be checked to ensure that they are employable.

What are the minimum rights we have to adhere to for employees in Hong Kong?

Employees are entitled to minimum wages (currently not less than HKD 32.5 per hour).

There are statutory entitlements and benefits under the Employment Ordinance, such as rest days, holidays, annual leave, sick leave, etc.

You also have to enrol your employees to a mandatory provident fund scheme.

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

Yes. A consultant's rights are governed by contract only. He or she will not be protected by the Employment Ordinance and will not enjoy other rights of an employee.

What options exist if we want to terminate employees contracts with us? Can we make them redundant?

The options include summary dismissal, termination by notice /payment in lieu of notice and termination by agreement.

Yes, redundancy is a legal ground of termination. Severance payments have to be made to the redundant employees. There are no specific redundancy procedures that have to be followed.

TAX AND INVESTMENT QUESTIONS

Are there any restrictions on foreign investment into Hong Kong?

In general, there are no restrictions on foreign investment.

Do you have any currency or exchange controls in place?

No.

How are employees taxed in Hong Kong?

Hong Kong employees are subject to a salaries tax. The net chargeable income derived from the employment in Hong Kong, i.e. assessable income after deductions and allowances is charged.

What are the current rates of tax for employees?

An employee's net chargeable income is charged at progressive rates (or at the standard rate, if this is more favourable to the employee).

Progressive Rate

	Net chargeable Income	Rate	Tax
On the First	$40,000	2%	$800
On the Next	$40,000	7%	$2,800
	$80,000		$3,600
On the Next	$40,000	12%	$4,800
	$120,000		$8,400
Remainder		17%	

Standard Rate is 15%

What taxes apply to the business models you have identified above?

Profits tax – corporations carrying on any trade or business in Hong Kong are chargeable to tax on profits arising in or derived from Hong Kong. The current tax rate is capped at 16.5%.

How are dividends to foreign companies/shareholders taxed?

There is no withholding tax on dividend distributions from a Hong Kong company.

Are there transfer pricing rules in place?

Yes, there are Transfer Pricing Guidelines in place in Hong Kong – see DIPN 46.

Do you have double taxation treaties in place with foreign jurisdictions? If so where can we find out details?

Yes, you may find out the details at the Hong Kong Inland Revenue Department website: http://www.ird.gov.hk/eng/tax/dta_inc.htm

FRED KAN & CO.
簡家驄律師行

FRED KAN & CO.

www.fredkan.com

HONG KONG
Suite 3104-06,
31/F, Central Plaza,
18 Harbour Road,
Hong Kong

KEY CONTACTS:

Fred Kan
Senior Partner
T: + 852 2598 1318
ka-chong@fredkan.com

Timothy Cheung
Consultant
T: + 852 2598 1318
timothycheung@fredkan.com

India

BUSINESS QUESTIONS

We are looking to set up an Indian trading company. What structures/business vehicles do you see?

In India basically there are three types of business structures, namely Sole proprietorship, Partnership firms and Company (private or public). However there's also a hybrid form of partnership firm and company known as Limited Liability Partnership (LLP).

Note: A foreign company planning to set up business operations in India may:

- Incorporate a company under the Companies Act, 2013, as a Joint Venture or a Wholly Owned Subsidiary.
- Set up a Liaison Office/Representative Office or a Project Office or a Branch Office of the foreign company which can undertake activities permitted under the Foreign Exchange Management (Establishment in India of Branch Office or Other Place of Business) Regulations, 2000.

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

A presence in India can be established in the form of both incorporated entities and unincorporated entities.

Incorporated entities: These include JVs and WOSs. JVs and WOSs are incorporated as either private or public companies. WOSs are the preferred vehicle where 100% foreign direct investment (FDI) is allowed and the JV is the preferred vehicle where 100% FDI is not allowed.

Unincorporated entities: Foreign companies can also set up an unincorporated entity in the form of a branch office, liaison office or project office. The procedure to establish one of these offices is guided by the Foreign Exchange Management Act (FEMA) Regulations.

What are the rules on capitalisation of entities in India?

Till 25th May 2015 to incorporate a private company limited by shares in India, the minimum capital requirement was INR 100,000 (Rupees One Lac) and in the case of a public company the minimum capital requirement was INR 500,000 (Rupees Five Lac). The Companies (Amendment) Act 2015 removed the compulsion of minimum paid up share capital for setting up a Company .

In addition to that foreign investment beyond prescribed percentages is not permitted without prior government approval in Regulated Sectors.

What information is required to provide business/ consumers with when trading with us?

There are no requirements to provide with the information to business/consumers when trading with them other than providing them with information of the business you are doing with them.

We intend to sell goods via our online website. What are the legal requirements if we wish to sell into India?

As an e-commerce business you have to register a company or firm in India such as:

- Joint ventures
- Wholly owned subsidiaries
- As an office of a foreign entity through
  - Liaison Office / Representative Office
  - Project Office
  - Branch Office

Business registration is important for an online venture for getting a payment and for invoicing. The legal requirement for undertaking e-commerce in India also involves compliance with other laws like contract law, Indian penal Code, etc, and further, online shopping in India also involves compliance with the banking and financial norms applicable in India.

Note: Guidelines for Foreign Direct Investment on e-commerce sector:

1. 100% FDI under automatic route is permitted in marketplace model of e-commerce.
2. FDI is not permitted in inventory based model of e-commerce.

(Above given guideline is provided in Press Note- 3 for which the link is provided below) For further clearance on the topic following is the link of Press Note No. 3 on guidelines for Foreign Direct Investment (FDI) on E-commerce. http://dipp.nic.in/English/acts_rules/Press_Notes/pn3_2016.pdf

Do you have legislation in respect of the use of electronic signatures?

Yes, Information Technology Act, 2008 provides legal recognition for the use of electronic signature in India.

Section 2(ta) - Defines Electronic Signature
"Electronic signature" means authentication of any electronic record by a subscriber by means of the electronic technique specified in the second schedule and includes digital signature.

The following is a link for Information Technology Act, 2008. http://www.tifrh.res.in/tcis/events/facilities/IT_act_2008.pdf

We intend to import goods into India for sale. What are the legal requirements for doing this?

Importers are required to register with the DGFT to obtain an Importer Exporter Code Number (IEC) issued against their Permanent Account Number (PAN), before engaging in EXIM activities. However, there are some categories of importers or exporters who are exempted from obtaining IEC. Mandatory documents required for import of goods into India

1. Bill of Lading
2. Commercial Invoice

3. Bill of Entry
- For import of specific goods, which are subject to any restrictions or require NOC or product specific compliances under any statute, the regulatory authority concerned may notify additional documents for purposes of import.
- In specific cases of import, the regulatory authority concerned may electronically or in writing seek additional documents or information, as deemed necessary to ensure legal compliance.

What rights do consumers have when selling to them?

The right to have information about the quality, potency, quantity, purity, price and standard of goods or services other than the above mentioned consumers have the following rights:

- Right to Safety
- Right to Information
- Right to Choose
- Right to be Heard
- Right to Redressal
- Right to Consumer Education

If there is infringement of any rights of a consumer then a complaint can be made to the designated consumer court.

What are customers rights in so far as returning goods (whether or not they are faulty)?

The Consumer has the right to return the goods whether or not they have fault in them, but that also depends on company policy if they allow refund/exchange of sold goods.

Sellers also have some terms to follow; for instance, the right to return goods that have not been used, within a specified time for a refund if one does not like the product he has purchased or they have a fault.

Are we required to ensure that all customers have agreed to our terms of business in writing?

Every business has a right to draft their terms and conditions for doing business which should be within the jurisdiction of Law. Terms and conditions are agreed between the business and buyer, when the buyer buys the product and has knowledge about the product/goods.

EMPLOYMENT QUESTIONS

We are looking to set-up a business in India and intend to bring some of our current employees into India to work. Do we require work/residency permits?

Foreign nationals may apply for the following broad categories of visas for entry into India, depending on their intended activity:

- Business “B” visa. This allows the establishment of an industrial/business venture or the exploration of business possibilities and other business activities. A B-visa with a multiple entry facility can be granted for up to five years.
- Employment “E” visa. This allows employment in India for:
  - Persons executing projects or contracts in India in the power and steel sectors
  - Consultants on a contract basis
  - Self-employed foreign nationals providing engineering, medical, accounting and other highly skilled services

Note: Foreign nationals arriving in India for employment must hold a valid employment visa. The Indian Embassy/High Commission located in various countries, issues employment visas to foreign nationals. For a Foreign Resident it is mandatory to have a work permit to work in India, the requirements and procedures are set by the Ministry of External Affairs, Government of India.

What formalities do we need to comply with when recruiting employees in India?

Employers should offer employees working in India a clear written contract of employment. Often an “Offer Letter” is used for this purpose – however appropriate terms and conditions should be inserted in this Offer Letter to avoid ambiguity. Further, contracts can be for a fixed term or open term, although it is common to use a fixed term contract as it can assist with termination strategies.

Companies should ensure they comply with all foreign direct investment and exchange control regulations in India when structuring employment agreements in India. In addition, employers must ensure that all handbooks, rules and policies are suitable for use in India and enforceable under Indian law.

What are the minimum rights we have to adhere to for employees in India?

In India there are various labour laws enacted by the Government that can be classified into the following different categories. They are as follows:

Laws relating to industrial relations:
- Industrial Disputes Act (1947)
- Trade Unions Act (1926)

Laws relating to wages:
- Minimum Wages Act (1948)
- Payment of Wages Act (1936)
- Payment of Bonus Act (1965)

Laws relating to social security:
- Employees’ Provident Funds and Miscellaneous Provisions Act (1952)
- Employees’ State Insurance Act (1948)
- Payment of Gratuity Act (1972)

Laws relating to working hours, conditions of service and employment:

- Factories Act (1948)
- Industrial Employment (Standing Orders) Act (1946)
- Shops and Establishments Act (of respective states)
- Contract Labour (Regulation and Abolition) Act (1970)
- Employees' Compensation Act (1923)

Laws relating to equality and empowerment of women: Maternity Benefit Act (1961)

- Prohibitive labour laws: Child Labour (Prohibition & Regulation) Act (1986)
- Laws relating to employment and training: Apprentices Act (1961)

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

Employees are usually entitled to "employment benefits", including group medical, disability and life insurance coverage, stock option/share compensation programs and profit sharing or other bonus plans.

Consultants do not participate in typical employment benefits and plans or periodic employee events, and have no entitlements to sick pay, vacation pay, etc.

What options exist if we want to terminate employees contracts with us? Can we make them redundant?

The Industrial Disputes Act (IDA) sets out the rules, processes and procedures to be followed by employers when terminating the employment of workmen. Certain categories of employees such as managers and those discharging supervisory duties and earning more than INR 10,000 per month are exempt from this statutory protection set out in the IDA. In such cases the terms and conditions of individual contracts of employment, or the applicable Shops and Establishment Act (SEA), will dictate the process of termination.

All employers must comply with the minimum statutory requirements for notice periods and payments in lieu of notice as set out in the applicable SEA.

Redundancy (commonly known as retrenchment) or termination without cause is permitted under Indian law subject to necessary compliances. Further, in the case of proven misconduct, or termination for cause, an employer may be entitled to terminate without notice or payment in lieu. Rules and procedures can vary depending on the nature of activity of the entity, or state where operations are based and the number of employees employed.

TAX AND INVESTMENT QUESTIONS

Are there any restrictions on foreign investment into the country?

An Indian company may receive Foreign Direct Investment under the two routes as given below:

1. Automatic Route

FDI is allowed under the automatic route without prior approval either of the Government or the Reserve Bank of India in activities/sectors as specified in the consolidated FDI Policy, issued by the Government of India from time to time.

2. Government Route

FDI in activities not covered under the automatic route requires prior approval of the Government, and are considered by the Foreign Investment Promotion Board (FIPB), Department of Economic Affairs, Ministry of Finance.

Note:

- The Indian company having received FDI either under the Automatic route or the Government route is required to comply with provisions of the FDI policy including reporting the FDI to the Reserve Bank.
- There are some sectors where FDI is not allowed in India, both under the Automatic Route as well as under the Government Route, such as those involving lotteries, gambling and betting, the manufacturing of cigarettes, the real estate business, construction of farm houses, atomic energy, railway operations (other than "railway infrastructure"), trading in transferable development rights, chit funds and "Nidhi" companies.

Do you have any currency or exchange controls in place?

Reserve Bank of India Act, 1934 and Foreign Exchange Management Act, 1999

The government sets India's exchange control policy in conjunction with the RBI, which administers foreign exchange (forex) regulations. The Foreign Exchange Management Act, 1999 established a simplified regulatory regime for forex transactions and liberalized capital account transactions. The RBI is the sole monitor of all capital account transactions.

The rupee is fully convertible on the current account, and forex activities are permitted unless specifically prohibited.

The RBI allows branches of foreign companies operating in India to freely remit net-of-tax profits to their head offices through authorised forex dealers, subject to RBI guidelines.

How are employees taxed in India?

The tax in India is regulated by Income Tax Department and an individual's income is taxed from 0% to 30% (depending on the Income tax slab). An Education tax (CESS) of 3% is imposed too. There is a 10% surtax for income exceeding Rs. 10,00,000/-. (Table is provided in next Answer).

What are the current rates of tax for employees?

Income Range	General Category below the age of 60	Citizens between the ages of 60 - 80 years old	Citizens ages 80+
Upto Rs. 2,50,000	Nil	Nil	Nil
Rs. 2,50,001 to Rs. 3,00,000	10%	Nil	Nil
Rs. 3,00,001 to Rs. 5,00,000	10%	10%	Nil
Rs. 5,00,001 to Rs. 10,00,000	20%	20%	20%
Above Rs. 10,00,000	30%	30%	30%

What taxes apply to the business models you have identified above?

In the case of domestic companies, the rate of income-tax shall be 29% of the total income if the total turnover or gross receipts of the company in the previous year does not exceed Rs. 5 crores and in all other cases the rate of income-tax shall be 30% of the total Income.

Surcharge in the case of domestic companies having total income above 1 crores rupees but not above 10 crores rupees shall be levied at the rate of 7%. In the case of domestic companies having total income above 10 crores rupees, surcharge shall be levied at the rate of 12% and Including Education Cess and Secondary and Higher Education Cess at 2% and 1% respectively.

How Are Dividends To Foreign Companies/Shareholders Taxed?

Dividends paid by a domestic company are exempt from tax in the hands of the recipient if Dividend Distribution Tax (DDT) has been paid by the distributing company, but dividends on which DDT has not been paid are taxed as income in the hands of the recipient at the normal rates (unless otherwise provided for in an applicable tax treaty).

Are there any transfer pricing rules in place?

There are transfer pricing laws in India that are regulated by the Income Tax Department Government of India. The Finance Act (2012) has extended the scope of transfer pricing provisions to cover specified domestic transactions.

Do you have double taxation treaties in place with foreign jurisdictions? If so where can we find out details?

India has Double Taxation Avoidance Agreement (DTAA) with 42 countries. For further details following is the link for website of Income tax department (DTAA):

http://www.incometaxindia.gov.in/Pages/international-taxation/dtaa.aspx

O.P. KHAITAN & CO.
SOLICITORS & ADVOCATES

O.P. KHAITAN & CO

www.opkhaitan.com

NEW DELHI
Khaitan House,
B-1, Defence Colony,
New Delhi -
110 024,
India

KEY CONTACTS:

Guatam Khaitan
Managing Partner
T: +91 11 4650 1000
gkhaitan@opkhaitan.com

Suparna Sachar
Senior Partner
T: +91 11 4650 1000
ssachar@opkhaitan.com

Japan

We are looking to set up a Japanese trading company. What structures/business vehicles do you see?

You may establish a branch office, subsidiary company or joint venture; otherwise you may consider equity participation in a Japanese enterprise (M&A).

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

Foreign companies generally engage in business operations by establishing a subsidiary company. A foreign company establishing a subsidiary company in Japan generally chooses to establish a joint-stock corporation (Kabushiki-Kaisha (K.K.)) or limited liability company (Godo-Kaisha (G.K.)), of which liability is limited to the assets contributed by equity participants. Regardless of the type of subsidiary, an ex post facto report must be made to the Bank of Japan in accordance with the Foreign Exchange and Foreign Trade Act.

What are the rules on capitalisation of entities in Japan?

No minimum capital is required to establish a branch office. Capital of 1 yen or more is required to establish a subsidiary company.

What information is required to provide business/ consumers with when trading with us?

Business operators shall provide necessary information about the rights and duties of consumers and other matters set forth in consumer contracts when they enter into consumer contracts. A consumer may rescind the manifestation of his/her intention to offer or accept a consumer contract, pursuant to the Consumer Contract Act, if a business operator misrepresents important matters such as quality, purpose of use, price and other details of the objects of a consumer contract. Business operators don't have to provide such information when they enter into a contract with another business operator.

We would prefer to avoid having an actual physical presence in Japan and instead are looking to appoint an agent or distributor to sell our products and/or services. What are the legal implications?

Provisions regarding sales contracts in the Civil Code are applied to distributorship agreements. Other than provisions regarding mandates in the Civil Code, the Commercial Code is also applied to agent agreements. In Japan, termination of agent agreements and distributorship agreements is sometimes restricted under court precedents. In addition, the Civil Code and the Commercial Code have some provisions to protect an agent or distributor. Exclusive distributorship or agent agreements should also be in accordance with the Antitrust Law.

We intend to sell goods via our online website. What are the legal requirements if we wish to sell into Japan?

Foreign companies do not need to obtain permissions or make reports in order to sell goods into Japan via online websites; however, sales of specific goods such as alcoholic drinks may require permissions or reporting in accordance with laws or regulations regarding such goods. Foreign companies selling goods into Japan via online websites shall abide by provisions regarding advertisements in the Act on Specified Commercial Transactions.

Do you have legislation in respect of the use of electronic signatures?

Electronic Signatures that satisfy necessary requirements under the Act on Electronic Signatures shall be treated as hand-written signatures. In other words, any electromagnetic record that is made in order to express information shall be presumed to be established authentically, if the Electronic Signature is performed by the principal with respect to information recorded in such electromagnetic record.

We intend to import goods into Japan for sale. What are the legal requirements for doing this?

Import of goods is not restricted as a general rule; however, import of specific goods (such as goods subject to Import Quotas) requires approval of the Minister of Economy.

What rights do consumers have when selling to them?

As mentioned above, if a business operator misrepresents important matters of a consumer contract, a consumer may rescind the manifestation of his/her intention to offer or accept a consumer contract pursuant to the Consumer Contract Act. Moreover, the Cooling-Off Rule that allows a consumer to terminate a sales contract is provided in individual laws.

What are customers rights in so far as returning goods (whether or not they are faulty)?

The Act on Specified Commercial Transactions that is applied to Door-to-Door Sales, Telemarketing Sales, etc., Insurance Business Act, Financial Instruments and Exchange Act, etc., provide the Cooling-Off Rule. A consumer may terminate a contract or withdraw application for a contract before eight days have passed from the date on which a consumer received the document regarding application or conclusion of a contract.

Are we required to ensure that all customers have agreed to our terms of business in writing?

Door-to-Door Sales, sales of financial instruments, etc. should be agreed in writing. Moreover, a business operator who engages in such sales should deliver a document containing important matters before concluding the contract.

EMPLOYMENT QUESTIONS

We are looking to set-up a business in Japan and intend to bring some of our current employees into Japan to work. Do we require work/residency permits?

Foreigners who intend to work in japan need a working visa and a status of residence. Such foreigners generally apply to Japan's Immigration Bureau for the Certificate of Eligibility first. After issuance of such certificate, they apply to the Japanese diplomatic mission in their country for a working visa.

What formalities do we need to comply with when recruiting employees in Japan?

When hiring workers, companies shall notify employees in writing of the term of the agreement, workplace, duties that the employee will have to perform, working hours, wages and resignation, etc. The companies shall clearly indicate other conditions as much as they can.

What are the minimum rights we have to adhere to for employees in Japan?

Guarantee for minimum wages, compliance with statutory working hours and statutory holidays, payment of extra wages and grant of paid holidays are important. In addition, termination of employment agreements with indefinite term is strictly restricted.

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

If someone is hired as a labourer under an employment agreement, the Labour Standards Act and other relevant labour laws that protect employees from dismissal are applied to such person. On the other hand, if someone is hired as a contractor under a mandate agreement, relevant labour laws shall not be applied. Japanese courts distinguish between a labourer under an employment agreement and a contractor under a mandate agreement based on the actual situation of service provided by such person.

What options exist if we want to terminate employees contracts with us? Can we make them redundant?

Under the Labour Contracts Act, if a dismissal lacks objectively reasonable grounds and is not considered to be appropriate in general societal terms, it is treated as an abuse of rights and is invalid. As this provision shows, dismissal is strictly restricted in Japan. Therefore companies generally urge their employees to resign voluntarily by offering monetary incentives.

Moreover, when making employees redundant, it is necessary to meet the following four criteria in order for the redundancies to be deemed reasonable: (i) Necessity; (ii) Effort to avoid redundancy; (iii) Reasonable selection; and (iv) Reasonable process. Note that payment of money does not justify making employees redundant.

TAX AND INVESTMENT QUESTIONS

Are there any restrictions on foreign investment in to Japan?

Under the Foreign Exchange and Foreign Trade Act, advance notification must be made to the Bank of Japan if foreign companies invest in business types involving national security, maintenance of public order etc. Except for these types of businesses, an ex post facto report must be made to the Bank of Japan.

Do you have any currency or exchange controls in place?

Japan does not conduct currency or exchange controls as a general rule; however, payment of more than 30,000,000 JPY or its equivalent needs an ex post facto report to the Bank of Japan.

How are employees taxed in Japan?

Employees hired by a subsidiary company should pay income tax and inhabitant tax. A subsidiary company must withhold income tax when it pays wages to its employees.

What are the current rates of tax for employees?

Employees should pay income tax and inhabitant tax. The current rates of income tax divide in to seven levels (5% to 45%) depending on taxable income. For instance, if taxable income is more than 6,950,000 JPY (at the maximum 9,000,000 JPY), the tax rate is 23%; if taxable income is more than 9,000,000 JPY (at the maximum 18,000,000 JPY), the tax rate is 33%. Inhabitant tax is basically calculated according to taxable income and its tax rate is 10%.

What taxes apply to the business models you have identified above?

A subsidiary company should pay corporate tax, corporate inhabitant tax, enterprise tax, etc. ("corporate tax"). Corporate tax is calculated according to taxable income of each business year. Effective tax rates of corporate tax vary according to capital or income (if capital of a company is more than one hundred million JPY, it should be 29.97% as of May 2016.)

How are dividends to foreign companies/shareholders taxed?

A subsidiary company should withhold income tax, when it pays a dividend to its parent company. If said parent company is located in a country with which Japan has not concluded a treaty, then Japan's tax law is applied to such payment. In this case, income tax (20.42%) is withheld under Japan's tax law.

Are there transfer pricing rules in place?

Transfer pricing rules are applied to transactions between a subsidiary company and its parent company. Moreover, from the business year starting from 1 April 2016, transactions between Japan's branch office and a foreign head office shall be treated as transactions conducted at the arm's length price.

Do you have double taxation treaties in place with foreign jurisdictions. If so where can we find out details?

Japan has concluded tax treaties with many countries for the purposes of avoiding double taxation of income internationally. You can find the list of contracting countries and the text of tax treaties concluded with major contracting countries at the website of the Ministry of Finance.

The list of contracting countries:
http://www.mof.go.jp/english/tax_policy/tax_conventions/international_182.htm

The text of tax treaties concluded with major contracting countries:
http://www.mof.go.jp/english/tax_policy/tax_conventions/international_269.htm

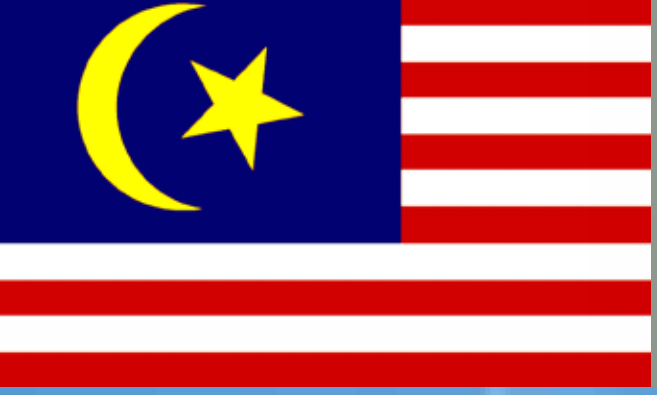
Soga Law Office
曾我法律事務所

SOGA LAW OFFICE

www.sogalaw.com

TOKYO
2F, Yotsuya Y's Bldg.
7-6 Honshiocho Shinjuku-ku
Tokyo 160-0003

KEY CONTACTS:
Shingo Morikawa
Partner
T: +81-3-5919-3022
morikawa@sogalaw.com



Malaysia

We are looking to set up a Malaysian trading company. What structures/business vehicles do you see?

The following are the business vehicles used in Malaysia:

1. Company limited by shares

A company limited by shares may be a private company (Sendirian Berhad or Sdn Bhd) or a public company (Berhad or Bhd). It is a legal entity separate from its members. The liability of its members is limited to the amount unpaid, if any, on the shares. There must be a minimum of two resident directors and two subscribers to the shares of the company to incorporate a company limited by shares. This requirement will be changed to one subscriber and one director under the new Companies Act 2016 which has been gazetted on 15 September 2016 but has not yet come into force.

2. Company limited by guarantee

A company limited by guarantee limits its members' liability to the amount the members undertake to contribute to the company in the event the company is wound up. It is typically used for non-profit purposes.

3. Unlimited company

The liability of members in an unlimited company is unlimited. A past member is liable to contribute to the debts of the company only if he ceased to be a member less than one year before the commencement of the winding up of the company and he is not liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member.

4. Sole proprietorship

A sole proprietorship is a business wholly owned by a single owner. A sole proprietor is entitled to all profits of the business and is personally liable for all debts and obligations of the business without limit. A sole proprietor is taxed on an individual basis.

5. Limited liability partnership ("LLP")

LLP is regulated under the Limited Liability Partnerships Act 2012 ("LLPA"). An LLP is a body corporate and has a separate legal personality. The liabilities of the partners are limited. Every LLP must have at least two partners, who can be an individual or body corporate. An LLP must appoint at least one compliance officer who is a Malaysian citizen or permanent resident of Malaysia and ordinarily resides in Malaysia.

6. Partnership

A partnership does not have a separate legal entity. Partners have unlimited liability for the debts and obligations of the partnership, jointly and severally. The profits of the partnership are attributed to the partners who are taxed individually. A partnership cannot have more than 20 partners.

7. Branch of a foreign company

A branch office is an extension of a foreign company and not a separate legal entity. The parent company is liable for all debts and liability of the branch office.

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

A private limited company is the most common business vehicle in Malaysia. Its members' liability is limited to the amount unpaid on the shares held by them.

A private limited company must lodge an annual return accompanied by an audited balance sheet (to which a directors' report is attached), audited profit and loss account and auditors' report with the Registrar of Companies within one month of the annual general meeting. An exempt company (i.e. a private company in the shares of which no beneficial interest is held directly and indirectly by any corporation and which has not more than twenty members), may be exempted from the requirement to submit audited financial statements to the Registrar of Companies. At its annual general meeting the directors must lay before the company accounts of the company not later than eighteen months after the incorporation of the company and subsequently once every calendar year at not more than fifteen month intervals. Under the new Companies Act 2016, every company must send a copy of its financial statements and reports for each financial year to its members.

What are the rules on capitalisation of entities in Malaysia?

There is no minimum capital requirement upon incorporation of a company under the Malaysian Companies Act 1965. Although foreign shareholders are permitted to hold all the shares in a Malaysian company, there are certain regulated sectors which are subject to local equity participation requirements. There are also requirements of minimum paid up share capital for some regulated sectors.

What information is required to provide business/ consumers with when trading with us?

1. The Personal Data Protection Act 2010 requires a data user to notify a data subject in writing of certain information relating to protection of personal data.
2. The Direct Sales and Anti-Pyramid Scheme Act 1993 ("Direct Sales Act") provides the particulars that must be contained in a direct sales contract including a term which states that the contract is subject to a cooling-off period of ten working days.
3. Under the Goods and Services Tax Act 2014, a supplier who is a "registered person" who makes any taxable supply of goods or services in the course or furtherance of any business in Malaysia must issue a tax invoice containing the prescribed particulars in respect of the supply.
4. The Consumer Protection (Electronic Trade Transactions) Regulations 2012 require any person who operates a business for the purpose of supply of goods or services through a website or in an online marketplace to disclose on the website where the business is conducted, and the information specified in the said regulation.

We would prefer to avoid having an actual physical presence in Malaysia and instead are looking to appoint an agent or distributor to sell our products and/or services. What are the legal implications?

Sale of certain products and/or services is governed by specific legislations or guidelines issued by the relevant government ministries. The agent or distributor may be required to be registered with the relevant authorities or hold the relevant licences, permits or otherwise issued by the relevant authorities.

The Guidelines on Foreign Participation in the Distributive Trade Services Malaysia ("**DTS Guidelines**") require all proposals for foreign involvement in distributive trade to obtain the approval of the Ministry of Domestic Trade, Cooperatives and Consumerism. The DTS Guidelines provide that a foreign branch is not allowed to establish a place of business or carry on business in wholesale and retail trade in Malaysia. The DTS Guidelines also provide, amongst others, that all distributive trade companies with foreign participation must appoint Bumiputera directors, hire personnel to reflect the racial composition of the Malaysian population and formulate policies to assist Bumiputera participation in the distributive trade sector.

We intend to sell goods via our online website.What are the legal requirements if we wish to sell into Malaysia?

Online businesses must be registered with the Registrar of Businesses pursuant to the Registration of Businesses Act 1956. Online business operators are subject to taxation in the same manner as conventional businesses under the Income Tax Act 1967. The Consumer Protection Act 1999 ("**CPA**") extends to goods or services that are offered or supplied to consumers in any trade transaction conducted through electronic means. The Consumer Protection (Electronic Trade Transactions) Regulations 2012 require a person who operates a business for the purpose of supply of goods or services through a website or in an online marketplace to disclose certain information, provide appropriate means for buyers to rectify errors and acknowledge receipt. The said regulations also set the requirements for maintenance of record by online marketplace operators.

Do you have legislation in respect of the use of electronic signatures?

The Digital Signature Act 1997 regulates the use of digital signature. The Electronic Commerce Act 2006 provides for legal recognition of electronic messages in commercial transactions, the use of the electronic messages to fulfil legal requirements and enables and facilitates commercial transactions through the use of electronic means.

We intend to import goods into Malaysia for sale. What are the legal requirements for doing this?

Import permits or licences or approvals from the relevant government ministries may be required to import certain goods into Malaysia. Some of the products must also be registered with the relevant government ministries. For example, under the Control of Drugs and Cosmetics Regulations 1964, drugs for medicinal purpose must be registered with the Drug Control Authority and an import licence must be obtained from the Drug Control Authority prior to importation of drugs into Malaysia.

What rights do consumers have when selling to them?

Where a contract is concluded to be unfair under the CPA by a court or Tribunal for Consumer Claims ("**Tribunal**"), the contract or part thereof may be unenforceable or void. The Tribunal may make an award including resupply or repair the goods or pay the other party to the proceedings. There are various guarantees implied by the CPA into contracts for supply of goods to consumers. Where goods fail to comply with the implied guarantees, a consumer has a right of redress against a supplier, which include requiring the supplier to remedy the failure within a reasonable time or where the failure cannot be remedied, obtaining compensation or rejecting the goods. The Direct Sales Act provides that a sample of goods to be supplied by mail order must be made available for public inspection at such places and at such times as may be specified in the advertisement.

What are customers rights in so far as returning goods (whether or not they are faulty)?

The CPA provides that where goods supplied to a consumer do not comply with the implied guarantees and the supplier refuses or neglects to remedy the failure, the consumer may reject the goods. Where the consumer exercises the right to reject goods conferred under the CPA, the consumer may choose to have a refund or replacement of the goods.

Are we required to ensure that all customers have agreed to our terms of business in writing?

The contracts that must be reduced in writing include:

1. A contract in respect of a door-to-door sale and a contract in respect of a mail order sale for the supply of goods or services having a value of Ringgit Malaysia Three Hundred or more.
2. A security (such as charge or encumbrance) or agreement to supply, where if there is a variation to the guarantees as to title implied by the CPA, the supplier must first orally explain the variation to the consumer and then give the consumer a written copy of the security or agreement for supply or a part thereof which provides for the variation, as explained to the consumer.
3. A credit sale agreement (where the purchaser is a consumer) must be printed.

EMPLOYMENT QUESTIONS

We are looking to set-up a business in Malaysia and intend to bring some of our current employees into Malaysia to work. Do we require work/residency permits?

Yes. A foreign citizen is required to obtain a pass to stay and work legally in Malaysia. Generally, there are three types of passes issued by the Immigration Department of Malaysia, namely a residence pass, employment pass and visit pass for temporary employment or professional visit, for staying and working in Malaysia.

A residence pass is issued for those who have professional or specialist qualification, i.e. expatriates, for a period not exceeding five years.

An employment pass is issued for those who will be employed for a minimum period of two (2) years and are entitled to a monthly salary of not less than RM1,200. The holder of such pass can only engage in such particular employment, business or professional occupation as specified in the pass.

A visit pass is issued for those who will be employed for a period of one (1) year, such as foreign workers and foreign domestic helpers.

What formalities do we need to comply with when recruiting employees in Malaysia?

Generally, an employer in Malaysia would need to register with the Social Security Organisation ("**SOCSO**") and the Employees Provident Fund ("**EPF**") Board and make monthly contributions to the SOCSO and EPF for the benefit of its employee unless the employment falls outside the ambit of the Employees' Social Security Act 1969 ("**ESSA**") and Employees Provident Fund Act 1991 ("**EPF Act**").

To recruit a foreign employee in Malaysia, an employer shall furnish the Director General of Labour with particulars of the foreign employee within fourteen days of employment.

To recruit an expatriate, who is qualified to fulfil a professional post, an employer shall take note of the Guidelines on Employment of Expatriate Personnel issued by the Malaysian Investment Development Authority. The employer shall submit an application form to the relevant governing authority for approval and proceed with the endorsement of the employment pass at the Immigration office thereafter.

What are the minimum rights we have to adhere to for employees in Malaysia?

Employment of employees earning RM2,000 and below per month in Malaysia is governed by the Employment Act 1955 ("**EA**") which regulates the minimum terms and conditions of employment, including, amongst others, leave entitlement, hours of work and notice of termination.

An employment contract for a period exceeding one month shall be in writing and shall provide employment terms that are no less favourable than those prescribed by the EA, failing which, such terms will be rendered void and of no legal effect.

For employees who earn more than RM2,000, the minimum rights that the employer has to adhere to would be the terms as stipulated in the individual employment contract.

Generally, employees in Malaysia are entitled to EPF and SOCSO monthly contributions from their employers, the amount of which is as set out in the EPF Act and the ESSA respectively.

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

If someone is contracted as a consultant under a contract for service, he is different from an employee. As an independent contractor, he maintains a high degree of discretion as to the manner of performing work. There is no compulsory EPF and SOCSO monthly contributions by an employer for a consultant employed under a contract for service. He is not entitled to the statutory protection under the EA and the remedies for unfair dismissal under the Industrial Relations Act 1967 ("IRA").

If the consultant is employed under a contract of service, there is no difference to an employee. The consultant is entitled to the statutory protection under the EA (if his salary is RM2,000 or below), EPF and SOCSO monthly contributions from his employer and the remedies available under the IRA in the event of unjust dismissal.

The degree of control of an employer is often used to differentiate between a contract of service and for service.

What options exist if we want to terminate employees contracts with us? Can we make them redundant?

Malaysian industrial law provides recourse to employees who have been dismissed by an employer without just cause and excuse. The Industrial Courts generally recognise retrenchment of employees on grounds of redundancy, such as slowdown in business and corporate restructuring, is sufficient cause and excuse to dismiss the employees. In other words, the retrenchment must be bona fide. Reasonable notice and severance payment must be provided to the affected employees.

Under the EA, if an employer is required to reduce his workforce by reason of redundancy, the employer shall not terminate the services of local employees unless he has first terminated the services of all foreign employees employed in a similar capacity.

The employer should also select employees to be retrenched in accordance with objective criteria by applying the last-in-first-out principle or taking into account their age, ability, experience, skill, etc. In any event, a retrenchment exercise must be notified to the nearest Labour Office.

Are there any restrictions on foreign investment into Malaysia?

The foreign investment restrictions are sector specific and may be imposed by the relevant governmental departments regulating the sector. These restrictions include those which restrict foreign ownership of equity in a company, and some that require prior regulatory approval before the commencement of business operations. Such regulatory approval may be subject to equity conditions to ensure local equity participation.

The principal industries that are subject to restrictions on foreign investment include education, water, tourism, transportation, wholesale and distribution trade and the petroleum industry.

In the manufacturing sector, 100% foreign equity is generally allowed subject to compliance with certain requirements such as the entity applying for the license being a locally incorporated entity.

Aside from restrictions limiting the extent of foreign investment in the above mentioned sectors, there are also provisions requiring a minimum ownership by and/or requiring a minimum number of directors to be of certain indigenous ethnic groups in Malaysia, known as bumiputera. These policies exist to safeguard the interests of these indigenous groups.

Do you have any currency or exchange controls in place?

Yes. Foreign exchange controls are governed by notices issued by the Central Bank of Malaysia ("**BNM**") and contain provisions applicable to "Residents" and "Non-Residents" as defined in the Financial Services Act 2013.

How are employees taxed in Malaysia?

Employees are taxed on their employment income which is derived from Malaysia. The income is deemed derived from Malaysia where the employee is employed in Malaysia, is on paid leave which is attributable to the exercise of an employment in Malaysia, performs duties outside Malaysia which are incidental to the exercise of an employment in Malaysia, is a director of a company resident in Malaysia or is employed to work on board an aircraft or ship operated by a person who is resident in Malaysia.

Taxes are collected from employees through compulsory monthly deductions from remuneration under the Monthly Tax Deduction ("MTD") system.

What are the current rates of tax for employees?

The income tax rate for assessment year 2016 is as follows:

Chargeable Income	Rate %
5,001 - 20,000	1
20,001 - 35,000	5
35,001 - 50,000	10
50,001 70,000	16
70,001 - 100,000	21
100,001 - 250,000	24
250,001 - 400,000	24.5
400,001 - 600,000	25
600,001 - 1,000,000	26
Exceeding 1,000,000	28

What taxes apply to the business models you have identified above?

The taxes applicable to a private limited company include:

1. Corporate income tax (resident and non-resident companies are treated differently). This is generally payable by 12 monthly instalments.

2. Withholding tax (where applicable).

3. Real property tax (states in Malaysia impose "quit rent" and "assessment" levy on properties).

4. Stamp duty (imposed at varying rates pursuant to the instrument executed) is generally payable on instruments specified in the Stamp Act 1949 within 30 days of its execution if executed within Malaysia, or within 30 days after it has been first received in Malaysia if it has been executed outside of Malaysia.

How are dividends to foreign companies/shareholders taxed?

Malaysia adopts the single-tier tax system. Under this system, corporate income is taxed at the corporate level and this is a final tax. This would mean that no tax is payable on a dividend paid or distributed to shareholders.

Are there transfer pricing rules in place?

Yes, under the Income Tax Act 1967 and the Income Tax (Transfer Pricing) Rules 2012 ("TP Rules 2012").

The Income Tax Act 1967 requires taxpayers to determine and apply the arm's length price on transactions with an associated person and allows the Director General of Inland Revenue of Malaysia to make adjustments to reflect the arm's length price, or interest rate, for that transaction by substituting or imputing the price or interest. Pursuant to the Transfer Pricing Guidelines issued by the Inland Revenue Board of Malaysia, two companies are associated with each other if one of the companies participates directly or indirectly in the management, control or capital of the other company; or the same persons participate directly or indirectly in the management, control or capital of both companies.

The TP Rules 2012 require preparation of contemporaneous transfer pricing documentation to justify the arm's length nature of the transactions. Such documentation is not required to be submitted with the taxpayer's tax return. However, the documentation should be made available to the Inland Revenue Board of Malaysia within 30 days upon request.

Do you have double taxation treaties in place with foreign jurisdictions. If so where can we find out details?

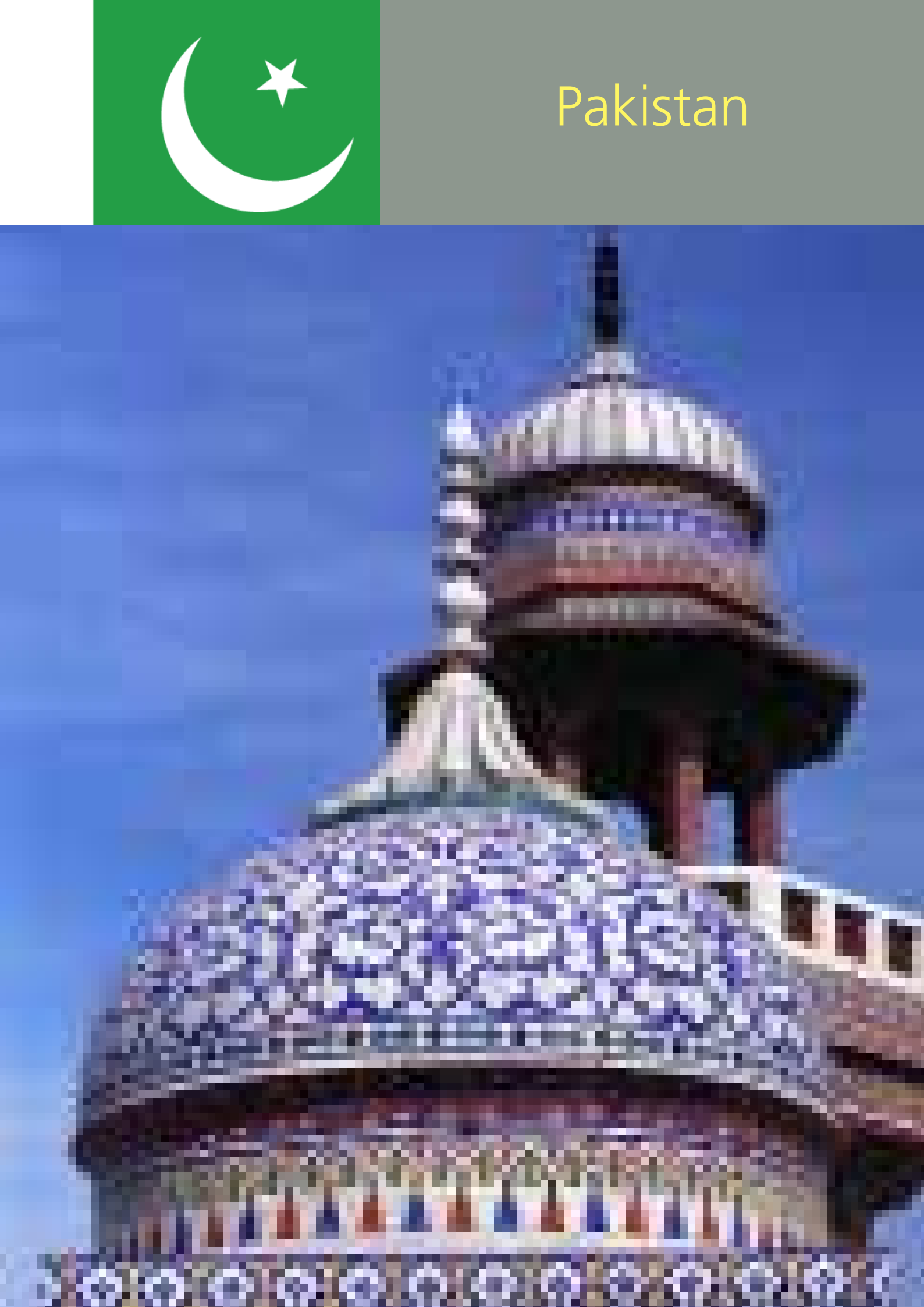
Yes. As of 14 October 2016, Malaysia has entered into 73 double taxation treaties with among others, China, India, Germany, Spain, Singapore and the United States of America, which are currently in force. Copies of double taxation agreements entered into by Malaysia can be found at http://www.hasil.gov.my/bt_goindex.php?bt_kump=5&bt_skum=5&bt_posi=4&bt_unit=1&bt_sequ=1. Further information can be sought from the Inland Revenue Board of Malaysia.

CHEANG & ARIFF

www.cheangariff.com

MALAYSIA
39 Court@Loke Mansion
273A, Jalan Medan Tuanku
50300 Kuala Lumpur

KEY CONTACTS:
YOON MING SUN
Partner
T: +603 2698 1199
yms@cheangariff.com


Pakistan

BUSINESS QUESTIONS

We are looking to set up a Pakistan trading company. What structures/business vehicles do you see?

There are three main types of business vehicles used for trading, as follows:

1. Private limited company
2. Single Member Company (SMC)
3. Partnership

The SMC and private limited company are to be duly registered under the Companies Ordinance 1984 in the Security and Exchange Commission of Pakistan (SECP). Usually SMC or private limited company are the vehicles that are used for properly registered and regulated business structures in Pakistan.

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

In Pakistan the most common business vehicle used by foreign companies is the Private limited company registered in the SECP. Single member companies and other private companies are not required to file their annual and quarterly accounts with the Commission or the Registrar SECP.

What are the rules on capitalisation of entities in Pakistan?

Keeping in view the minimum bench mark of Rs.200 million paid-up capital, the size of issue and allocation to various categories of investors has been set as below:

1. In case the post issue paid-up capital of the issuing company is up to Rs.500 million, at least 50% of such capital shall be offered to the general public.
2. In case the capital of the issuing company is beyond Rs.500 million, public offer shall be at least Rs.250 million or 25% of the post issue paid-up capital, whichever is higher.
3. In case of an offer for sale of shares by an existing shareholder, the offer size shall be at least Rs.100 million or 25% of the paid up capital of the company, whichever is lower.
4. Up to 5% of the issue size can be allocated to employees of the issuing company.
5. Up to 20% of the issue size can be allocated to overseas Pakistanis.
6. In case of Modarabas at least 70% of the issue size shall be allocated to general public/retail investors.

Keeping in view the appetite for Initial Public Offerings, the offer price, nature of business of the issuer and issuer's pattern of shareholding, the requirement of minimum allocation to retail investors can be relaxed as deemed appropriate by SECP.

What information is required to provide business/ consumers with when trading with us?

- Invoice of shipment
- Packing list
- Bill of lading
- Copy of the Letter of Credit or Contract
- Copy of the Sales Tax Registration Certificate as an importer
- Copy of the National Tax Number
- Copy of the most recent sales tax return

Note: There is no import/export license

We would prefer to avoid having an actual physical presence in Pakistan and instead are looking to appoint an agent or distributor to sell our products and/or services. What are the legal implications?

The Contract Act 1872 sections 182-238 briefly explains the legal aspects of the principal and agent relationship. An "agent" is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such an act is done, or who is so represented, is called the "principal".

The authority of an agent may be expressed or implied. The principal may revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal but the principal cannot revoke the authority given to his agent after the authority has been partly exercised so far as regards such acts and obligations as arise from acts already done in the agency. Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause. In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

We intend to sell goods via our online website. What are the legal requirements if we wish to sell into Pakistan?

If a company sells its goods in Pakistan via online website then it is imperative for the company to register itself with the SECP. In addition to that the company must also register its intellectual property rights with the Intellectual Property Organisation. In this regard it shall be noted that selling goods online is not heavily regulated and most of the related services are left to mutual agreements and contracts.

Do you have legislation in respect of the use of electronic signatures?

No, there is no legislation regarding electronic signatures so far.

We intend to import goods into Pakistan for sale. What are the legal requirements for doing this?

Upon arrival of the goods at the customs port, the port authorities issue the Import General Manifest (IGM) to each shipment. It is a number indicating the serial of the shipment arrived during the year. Upon receipt of the IGM the consignment is further indexed to allow for a systematic reference of all goods received. After issuing this number, the shipment is off-loaded and sent back to port warehouse. In the case of land customs station i.e. dry port etc. the IGM is issued not at the time the goods reach the land customs station but at the time the goods are off-loaded at the sea or airport. Upon arrival of the off loaded goods, the clearance process starts.

Clearance Procedure for Imports:
The following documents are required to be provided for processing:

- Invoice of shipment
- Packing list
- Bill of lading
- Copy of the Letter of Credit or Contract
- Copy of the Sales Tax Registration Certificate as an importer
- Copy of the National Tax Number
- Copy of the most recent sales tax return

Note: There is no import/export license

Checklist of documents for import
First phase (ordering):

- Purchase order
- Order acknowledgement
- Performa invoice
- Letter of credit
- Shipment advice and plan

Second phase (documentation):
- Commercial invoices
- Packing list
- Bill of lading/airway bill
- Weight note
- Health certificate
- Halal certificate
- Certificate of analysis
- Sanitary certificate
- Insurance cover note or marine insurance

Third phase (clearance)
- Bill of entry (goods declaration)
- Duty receipt
- Excise duty receipt
- Transportation, if any
- Submission of documents

Fourth phase
- Remittance
- Telex
- Payment done

Note: bill of lading/airway bill is the most important document; without this the consignment cannot be released by the bank.

What rights do consumers have when selling to them?

The law protects consumers from any loss caused due to a faulty product. The manufacturer of a product shall be liable to a consumer for damages proximately caused by a characteristic of the product that renders the product defective when such damage arose from a reasonably anticipated use of the product by a consumer. Where the consumer has not suffered any damage from the product except the loss of utility, the manufacturer shall not be liable for any damages except a return of the item or a part thereof and the costs. The liability of a person by virtue of this part to a consumer who has suffered damage shall not be limited or excluded by terms of any contract or by any notice. The return and refund policy of the seller shall be disclosed to the buyer clearly before the transaction is completed by means of a sign at the point of purchase.

Options that the seller has to remove the defect from the products in question are:

1. To replace the products with new products of similar description which shall be free from any defect.
2. To return to the claimant the price or, as the case may be, the charges paid by the claimant.
3. To do such other things as may be necessary for adequate and proper compliance with the requirements of this Act.
4. To pay reasonable compensation to the consumer for any loss suffered by him due to the negligence of the defendant.
5. To award damages where appropriate.
6. To award actual costs including lawyers' fees incurred on the legal proceedings.
7. To recall the product from trade or commerce.
8. To confiscate or destroy the defective product.
9. To remedy the defect in such period as may be deemed fit.

What are a customer's rights in so far as returning goods (whether or not they are faulty)?

The return and refund policy of a seller shall be disclosed to the buyer clearly before the transaction is completed by means of a sign at the point of purchase.

Are we required to ensure that all customers have agreed to our terms of business in writing?

Usually the terms of business are written on the receipt and are considered to be agreed to by the buyer if these terms are not inconsistent with any prevailing law in force.

EMPLOYMENT QUESTIONS

We are looking to set-up a business in Pakistan and intend to bring some of our current employees into Pakistan to work. Do we require work/residency permits?

Yes, Work Visas are granted to foreign technical and managerial personnel for the purpose of imparting technical know-how and skills to the local population. The duration of a work visa is one to two years. As per Visa Policy, cases of grant and extension of Work Visas are processed within 4 weeks by BOI.

What formalities do we need to comply with when recruiting employees in Pakistan?

Every employer in an industrial or commercial establishment is required to issue a formal appointment letter at the time of employment for each worker. The obligatory contents of each labour contract, if written, are confined to the main terms and conditions of employment; namely nature and tenure of appointment, pay allowances and other fringe benefits admissible, and terms and conditions of appointment.

What are the minimum rights we have to adhere to for employees in Pakistan?

- Working time and rest time
- Paid leave
- Maternity leave and maternity protection
- Other leave entitlements
- Minimum age and protection of young workers
- Equality
- Pay issues
- Worker representation in the enterprise
- Freedom of association
- Registration of trade union
- Collective bargaining and agreements
- Resolution of labour disputes through conciliation and arbitration
- Strikes and lock-outs
- Settlement of individual labour disputes

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

Yes there is a difference, as the contracted consultant is not an employee and is not entitled to the benefits of employees and the labour courts do not recognise the consultant as an employee. On the other hand, the employee has all the benefits according to its class and has the right to go to labour court against the establishment.

What options exist if we want to terminate employees contracts with us? Can we make them redundant?

The services of a permanent worker cannot be terminated for any reason other than misconduct unless one month's notice or wages in lieu thereof has been furnished by the employer or by the worker if he or she so chooses to leave his or her service. One month's wages are calculated on the basis of the average wage earned during the last three months of service. Other categories of workers are not entitled to notice or pay in lieu of notice.

All terminations of service in any form must be documented in writing, stating the reasons for such an act. If a worker is aggrieved by an order of termination he or she may proceed under Section 46 of the Industrial Relations Ordinance 2002, aimed at regulating the labour-management relations in the country, and bring his or her grievance to the attention of his or her employer, in writing, either him or herself, through the shop steward or through his or her trade union. This must happen within three months of the occurrence of the cause of action. Forms of termination have been described as removed, retrenched, discharged or dismissed from service. To safeguard against any colourful exercise of power, victimisation or unfair labour practices, the Labour Courts have been given powers to examine and intervene to find out whether there has been a violation of the principles of natural justice and whether any action by the employer was bonafide or unjust.

TAX AND INVESTMENT QUESTIONS

Are there any restrictions on foreign investment in to Pakistan?

The State Bank of Pakistan (SBP) regulates remittances in and out of Pakistan under legislature. There is no restriction on inward remittances by the State Bank of Pakistan (SBP) but any outward remittances, whether a royalty, technical fee or dividend, have to have prior approval from the SBP, which the authorising bank/agent would do on the company's behalf.

Do you have any currency or exchange controls in place?

Foreign exchange dealings are regulated under the Foreign Exchange Regulation Act, 1947. Foreign currencies are made available to persons / companies doing business in Pakistan for all purposes under rules which have been clearly defined by the SBP. There are no restrictions on availability of foreign currency for imports (except for import of banned items).

How are employees taxed in Pakistan?

Per Year Taxable Income Rates are as follows:

Chargeable Income	Rate %
Taxable income does not exceed Rs.400,000	0

Taxable income exceeds Rs.400,000 but does not exceed Rs.500,000	2% of the amount exceeding Rs.400,000
Taxable income exceeds Rs.500,000 but does not exceed Rs.750,000	Rs.2,000+5% of the amount exceeding Rs.500,000
Taxable income exceeds Rs.750,000 but does not exceed Rs.1400,000	Rs.1,400,000 Rs.14,500+10% of the amount exceeding Rs.750,000
Taxable income exceeds Rs.1,400,000 but does not exceed Rs.1,500,000	Rs.79,500+12.5% of the amount exceeding Rs.1,400,000
Taxable income exceeds Rs.1,500,000 but does not exceed Rs.1,800,000	Rs.92,000+15% of the amount exceeding Rs.1,500,000
Taxable income exceeds Rs.1,800,000 but does not exceed Rs.2,500,000	Rs.137,000+17.5% of the amount exceeding Rs.1,800,000
Taxable income exceeds Rs.2,500,000 but does not exceed Rs.3,000,000	Rs.259,500+20% of the amount exceeding Rs.2,500,000
Taxable income exceeds Rs.3,000,000 but does not exceed Rs.3,500,000	Rs.359,500+22.5% of the amount exceeding Rs.3,000,000
Taxable income exceeds Rs.3,500,000 but does not exceed Rs.4,000,000	Rs.472,000+25% of the amount exceeding Rs.3,500,000
Taxable income exceeds Rs.4,000,000 but does not exceed Rs.7,000,000	Rs.597,000+27.5% of the amount exceeding Rs.4,000,000
Taxable income exceeds Rs.7,000,000	Rs.1,422,000+30% of the amount exceeding Rs.7,000,000 **

Where the income of an individual chargeable under the head—salary exceeds fifty percent of his taxable income, the rates of tax to be applied shall be 'salary tax rates'

What are the current rates of tax for employees?

As above

What taxes apply to the business models you have identified above?

- Income Tax
- General Sales Tax
- Value Added Tax

How are dividends to foreign companies/shareholders taxed?

Dividend by	Rate (Filer)	Rate (Non-filer)
In the case of dividends declared or distributed by purchaser of a power project privatised by WAPDA or on shares of a company set up for power generation or on shares of a company, supplying coal exclusively to power generation projects.	7.5%	7.5%
In all other cases including dividend in specie		17.5%

Further, proviso is proposed to be amended to take Dividend received by a person from Development of REIT Scheme in tax rates, Division I, Part III of 1st Schedule as;

- Proviso
- Dividend received by a (Individual, Company & AOP) from a stock fund,10% for Stock fund 12.5% for tax year 2016 and onwards, if dividend receipts are less than capital gains.
- Dividend received by person from Collective Investment Scheme, Real Estate Investment Trust (REIT) Scheme or Mutual Fund other than Stock Fund from tax year 2015 onwards
  - Individual 10%
  - AOP 10%
  - Company 25% respectively

Are there transfer pricing rules in place?

No there are no transfer pricing rules; however there is a general anti-avoidance rule in Pakistan tax law that applies to transfer pricing; section 108 of the Income Tax Ordinance 2001.

Do you have double taxation treaties in place with foreign jurisdictions. If so where can we find out details?

Yes, there are double taxation treaties in place with foreign jurisdictions. You can find out details at the address given: http://www.fbr.gov.

WINSTON & SALEEM
Advocates, Solicitors & Consultants

KEY CONTACTS:
M. SALEEM IQBAL
Partner
T: +92 42 35741007
yms@cheangariff.com

WINSTON & SALEEM

www.winstonandsaleem.com

PAKISTAN
90-G, 2nd Floor,
H Block Commercial Area,
Phase 1, DHA , Lahore
Punjab
54810

Singapore

We are looking to set up a Singaporean trading company. What structures/business vehicles do you use?

There are various business vehicles to use – private limited company, partnership, sole proprietorship or a foreign branch.

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

The most common vehicle is the private limited company. It is a separate legal entity from its shareholders and the liability of shareholders is limited to the amount of share capital contributed. The private limited company can sue or be sued in its own name.

If a private limited company qualifies as a "small company" under the Singapore Companies Act, it is exempted from audit requirements.

A private limited company is a small company in respect of a financial year if it satisfies any 2 of the following 3 quantitative criteria for each of the 2 financial years immediately preceding the financial year:

1. The revenue of the company for each financial year does not exceed $10 million.
2. The value of the company's total assets at the end of each financial year does not exceed $10 million.
3. It has at the end of each financial year no more than 50 employees.

Companies that do not qualify as small companies are required to do annual reporting.

What are the rules on capitalisation of entities in Singapore?

There are no rules on capitalisation of entities in Singapore. There is no control over thin capitalisation. This allows flexibility in using debt to fund the acquisition of subsidiaries of a holding company in Singapore.

What information are we required to provide businesses/consumers with when trading with us?

There are no set rules or practices on this. It will be up to you and will depend on what the businesses /consumers want to see when trading with you. An extract from the company registry which sets out the share capital and shareholding/director and the constitution of the company will be helpful if the other party intends to enter into a contract with you. If the business is a new start-up, there will be no financial statements to produce at the early stage.

We would prefer to avoid having an actual physical presence in Singapore and instead are looking to appoint an agent or distributor to sell our products and/or services. What are the legal implications?

The relationship will be purely contractual with the agent or distributor. In Singapore it is very common for suppliers to sell their products and/or services through local agent/distributors. Depending on the terms agreed between the parties, the agent or distributor has to ensure the permits, if required, for products to be sold or distributed are obtained. The agent will act on behalf of the principal and the terms will be governed by a contract between the agent and principal. As for a distributor, it will usually be deemed as an independent contractor and operate under the terms of a distributorship agreement entered into with the supplier of the products or services.

We intend to sell goods via our online website. What are the legal requirements if we wish to sell into Singapore?

Notwithstanding that goods may be sold via online website, depending on the type of goods to be sold, certain goods can only be brought into Singapore if the requisite permits are obtained.

Goods imported by post or courier incur Goods and Service Tax and/or duty.

We intend to import goods into Singapore for sale. What are the legal requirements for doing this?

All goods imported into Singapore are regulated under the Customs Act, the Goods and Services Tax (GST) Act and Regulation of Imports and Exports Act, and subject to GST and duty payment. A customs permit is required to account for the import and tax payment of the goods. Dutiable goods, which incur both GST and duty, are:

- Intoxicating liquors
- Tobacco products
- Motor vehicles
- Petroleum products

For such goods, specific duty rates may be applied.

All other goods are non-dutiable and incur GST only, levied at 7% of the CIF (cost, insurance and freight) value, which includes duties (if it is a dutiable good) and other charges, costs and expenses incidental to the sale and delivery of the goods into Singapore, whether or not shown on the invoice.

What rights do consumers have when selling to them?

Under the Act, consumers may require the business to repair, replace, reduce the price of the goods or perform a refund if the goods are found to be defective. For defects that occurred within a period of six months from the date of delivery, it is presumed that the goods failed to conform to the implied condition of satisfactory quality at the date of delivery. Goods are not returnable if they are not faulty.

Are we required to ensure that all customers have agreed to our terms of business in writing?

You are not required to ensure that all customers agree to your terms of business in writing. Retail customers, for instance, do not enter into any terms of business in writing. If, however, there is going to be a long contractual or ongoing relationship with the customer, it will be advisable to have customers agree to your terms of business in writing.

EMPLOYMENT QUESTIONS

We are looking to set-up a business in Singapore and intend to bring some of our current employees into Singapore to work. Do we require work/residency permits?

Yes, foreign employees will be required to apply for a work permit, special pass or employment pass, depending on the level of qualification of the employees in question and the salary scale. There is also a limited quota on the number of foreign employees vis-a vis local employees that can be employed in each company.

What formalities do we need to comply with when recruiting employees in Singapore?

Prior to recruitment of foreign employees, application must be made to the Ministry of Manpower for the various permits to be obtained. The Employment Act is Singapore's main labour law which provides for basic terms and conditions at work for employees covered by the Act. The Act does not cover:

- Manager or executive with monthly basic salary of more than SGD$4,500
- Seafarer
- Domestic worker
- Statutory board employee or civil servant

Foreign employees holding a work pass are also covered under the Employment of Foreign Manpower Act, which outlines an employer's responsibilities and obligations for employing foreigners. A contract is usually entered into between the employer and employee.

What are the minimum rights we have to adhere to for employees in Singapore?

The Employment Act governs the number of hours of work, leave and rest days and salary etc.

In summary:

An employee under the Employment Act is not allowed to work more than 12 hours a day. But exceptions can be made under certain circumstances. Salary must be paid at least once a month and within 7 days after the end of the salary period. There are exceptions to overtime, resignation without notice and other situations.

As a matter of national policy, the Ministry of Manpower does not prescribe minimum wages for all workers in Singapore, whether local or foreign. Singapore takes the position that whether wages should increase or decrease is best determined by market demand and supply for labour, skills, capabilities and competency to perform the task.

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

Consultants are engaged by contract, and their fees are not part of the company's payroll. Hence the contractual terms apply. Parties are free to stipulate terms.

What options exist if we want to terminate employees contracts with us? Can we make them redundant?

There are minimal notice periods for termination, which vary according to the period of employment where the Employment Act applies. Otherwise, the notice period will be governed by the terms of the employment contract. Depending on the industry, there may be a collective agreement with the union. If a notice period is not defined in the collective agreement with the union, the company should contact the union as soon as the retrenchment date has been decided. The notice period for employees should be spelled out in their contract.

Are there any restrictions on foreign investment into Singapore?

With the exception of restrictions in financial services, professional services, and media sectors, Singapore maintains a predominantly open investment regime. The World Bank's "Doing Business 2014" report ranked Singapore as the easiest country in which to do business.

Do you have any currency or exchange controls in place?

There are no exchange control restrictions for purposes of trading in, or repatriating funds from Singapore.

How are employees taxed in Singapore?

Income tax is payable by local employees on the income earned. For foreign employees, tax liability will depend on the tax residency status. Foreign employees issued with a work pass that is valid for at least one year will be treated as a tax resident upfront. A foreigner will be regarded as a tax resident if he stays or works in Singapore:

1. For at least 183 days in a calendar year; or
2. For at least 183 days for a continuous period over two years (applies to foreign employees who have entered Singapore from 1 Jan 2007 but excludes directors of a company, public entertainers or professionals); or
3. Continuously for three consecutive years.

Tax residency will be reviewed at the point of tax clearance when the employment is ceased, based on the tax residency rules. If the stay in Singapore is less than 183 days, that foreigner will be regarded as a non-resident.

What are the current rates of tax for employees?

Non-resident employees:

- Employment income is taxed at 15% or progressive resident rates, whichever results in a higher tax amount.
- Director's fees and other income are taxed at the prevailing rate of 20% (22% from Year of Assessment 2017).
- Not entitled to tax reliefs.

Tax resident employees:

- Income is taxed at progressive resident rates – the higher income earners pay a proportionately higher tax, with the current highest personal income tax rate at 20%.

What taxes apply to the business models you have identified above?

Private Limited Company

- A company is either a tax resident or a non-resident of Singapore. In Singapore, the tax residency of a company is determined by where the business is controlled and managed. The residency status of a company may change from year to year. The place of incorporation of a company is not necessarily indicative of the tax residence of a company.
- A company is a tax resident in Singapore when the control and management of the company is exercised in Singapore. "Control and management" is the making of decisions on strategic matters, such as those on company policy and strategy. Where the control and management of a company is exercised is a question of fact. Location of the company's Board of Directors meetings, during which strategic decisions are made, is a key factor in determining where the control and management is exercised. A company is a non-resident when the control and management of the company is not exercised in Singapore.

Partnership or Sole Proprietorship

- Such a business set up is not a separate entity from its partners/owner. Income derived from the business is deemed to be personal income of the partners/owner.

Foreign Branches

- Singapore branches of foreign companies are controlled and managed by their foreign parent and are, therefore, regarded as non-residents. However, they may still be treated as Singapore tax residents if they are able to satisfy the Inland Revenue Authority of Singapore (IRAS) that certain conditions have been met and can avail themselves to some tax benefits which are offered to Singapore tax residents.

How are dividends to foreign companies/shareholders taxed?

Foreign dividends received in Singapore on or after 1 Jan 2004 by resident individuals are not taxable. Foreign-sourced dividends derived by individuals through a partnership in Singapore are taxable.

If an individual resident in Singapore receives foreign-sourced dividends through a partnership in Singapore, these dividends may be exempt from Singapore tax if certain conditions are met.

Are there transfer pricing rules in place?

The IRAS endorses the internationally accepted standard of arm's length principle as the guide for transfer pricing between related parties. Where the pricing of related party transactions is not at arm's length and results in a reduced profit for the Singapore taxpayer, IRAS may adjust and tax the profit of the Singapore taxpayer under the relevant provisions of the Income Tax Act.

The arm's length principle requires that transfer prices between related parties are equivalent to prices that unrelated parties would have charged in the same or similar circumstances. It involves identifying situations or transactions undertaken by unrelated parties that are comparable to the situations or transactions between related parties.

Tax-payers are advised to prepare and keep contemporaneous transfer pricing documentation to show that their related party transactions are conducted at arm's length.

Do you have double taxation treaties in place with foreign jurisdictions. If so where can we find out details?

Singapore has concluded Avoidance of Double Taxation Agreements ("DTAs") with many countries. Currently, Singapore has more than 80 comprehensive DTAs and 8 limited DTAs in force. The list of countries is available at the following link: https://www.iras.gov.sg/irashome/Quick-Links/International-Tax/

Further details are available at http://www.mof.gov.sg/MOF-For/Individuals/Tax-Treaties-Double-Taxation-Agreements

JOSEPH TAN JUDE BENNY LLP

www.jtjb.com

SINGAPORE
6 Shenton Way,
OUE Downtown 2,
#23-08,
Singapore 068809

KEY CONTACTS:
Dato Jude Philomen Benny
Senior Partner & Arbitrator
T: +65 6324 1980
judebenny@jtjb.com

South Korea

We are looking to set up a South Korean trading company. What structures/business vehicles do you use?

Establishment of a Foreign-Invested Company Under the Foreign Investment Promotion Act

The establishment of a local corporation in Korea by a foreigner (individual or corporation) is regulated by the Foreign Investment Promotion Act and the Commercial Act. For a local corporation to be recognised as a foreign-invested company under the Foreign Investment Promotion Act, a foreigner must invest not less than 100 million won in the local corporation and acquire not less than 10 percent of the company's stocks with voting rights.

A corporation established by a foreigner with an investment of not less than 100 million won is also recognised as a foreign investment under the Foreign Investment Promotion Act. (In the case of foreigners who have established a private business, issuance of the D-8 corporate investment visa is not permitted. However, a D-9 trade management visa can be issued for foreigners investing 300 million won or more.)

Domestic Branch of a Non-Resident (Foreign Company) Under the Foreign Exchange Transactions Act

A domestic branch of a foreign company can be classified into a branch and a liaison office depending on whether the entity engages in sales activities. A branch that operates a business that generates profit in Korea is not considered foreign direct investment because it is a branch of a foreign company, not a domestic company.

A liaison office does not carry out businesses that generate profit in Korea, but instead undertakes non-sales functions such as market research and R&D. Unlike a branch, a liaison office does not need to undergo registration, and is granted an identification number equivalent to the business registration number at a jurisdictional tax office in Korea.

	Foreign-Invested Company	Domestic Branch of a Foreign Company
Governing law	Foreign Investment Promotion Act	Foreign Exchange Transactions Act
Type of corporation	Domestic corporation	Foreign corporation
Identity	The foreign investor and foreign-invested company are separate entities (independent accounting & settlement)	The headquarters and branch are a single entity (consolidated accounting & settlement)
Delegated agency to process notification and grant permission.	Invest KOREA (KOTRA) or the headquarters or branch of a foreign exchange bank	A branch of a foreign exchange bank (notification), the Ministry of Strategy and Finance (permission to operate financial business, etc.)
Minimum (maximum) investment amount.)	100 million won or more per case, no upper limit	No limit on the investment amount
Scope of tax Obligations	Tax obligations for all domestic and overseas income Corporate tax rate: 10% for no more than 200m won; 20% for more than 200m won and no more than 20bn won; 22% for over 20bn won	Tax obligations for income from domestic sources only Corporate tax rate: Same as the left column In some cases, branch tax should be paid.

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

The Commercial Act recognises five different forms of companies - partnership company, limited partnership company, limited liability company, stock company and limited company. As most companies fall into the category of "stock company", the procedure for establishing a stock company will be explained here.

There are two ways of establishing a stock company: promotion of incorporation and subscriptive incorporation. Promotion of incorporation means that promoters subscribe to all of the shares issued at the time of incorporation. On the other hand, subscriptive incorporation means that promoters subscribe to only part of the shares issued at the time of incorporation and the remaining shares are offered for subscription.

What are the rules on capitalisation of entities in South Korea?

A Stock company must issue at least one share on incorporation. Issued shares can be any value, i.e. KRW 10,000 or KRW 1.

However, to get a benefit of foreign-invested company, the minimum capital shall be more than KRW 100,000,000.

What information are we required to provide businesses/ consumers with when trading with us?

Stock companies operating in the South Korea are legally obliged to provide certain information about themselves to the public or those with whom they trade with. This information includes:

- Name of the company
- Corporation Registration Number
- Business Registration Number
- Registered office address
- Name of Representative

We would prefer to avoid having an actual physical presence in South Korea and instead are looking to appoint an agent or distributor to sell our products and/ or services. What are the legal implications?

There is no specific regulation for agent or distributor. It depends on the contract between you and an agent or distributor. In many cases, an agent or distributor has a business registration in Korea.

We intend to sell goods via our online website. What are the legal requirements if we wish to sell into South Korea?

In most cases, legal regulations are imposed on importers, not exporters. If an online website is built in a foreign jurisdiction, the seller should follow the rules of its jurisdiction.

If the business is registered in Korea and the website is managed in Korea, the website should be made following the Act on the Consumer Protection Electronic Commerce, etc.

1. Where a business operator who conducts electronic commerce transactions makes it possible for a consumer to join a membership, to subscribe for a contract, or to provide information related to the consumer, etc. through an electronic document, he/she shall also make it possible to withdraw a membership, cancel an order, terminate, revoke or change a contract, or withdraw consent to the provision and use of information, etc. through an electronic document.
2. Where an electronic payment is made, the business operator, electronic settlement business operator, etc. shall clearly notify the following matters to confirm whether the consumer's intent of subscription is the declaration of his/her true will and shall prepare procedures for the consumer to confirm the notified matters, as prescribed by Presidential Decree:

    - Contents and kind of goods, etc.
    - Prices of goods, etc.
    - Service period.

Do you have legislation in respect of the use of electronic signatures?

The Digital Signature Act deals with the use of electronic signatures.

We intend to import goods into South Korea for sale. What are the legal requirements for doing this?

If a client is an importer, some reports are needed depending on the kinds of goods.

Basically, the importer should declare its importation following the Customs Act. The importer should pay V.A.T. Customs duty varies depending on the origin of the goods.

If imported goods are electric devices, it needs to get Authorisation following the Electrical Appliances Safety Control Act. If the electric devices use radio waves or bluetooth, it needs to get authorisation following the Radio Waves Act.

If the imported goods are Medical devices, it needs to get authorisation following the Medical Devices Act.

What rights do consumers have when selling to them?

Fundamental rights of consumers in the Framework Act on Consumers are as follows:

1. The right to have their lives, bodies or property protected against any danger and injury caused by goods or services (hereinafter referred to as "goods, etc.").
2. The right to be provided with the knowledge and information necessary for selecting goods, etc.
3. The right to select freely the other party in a transaction, purchasing place, price, conditions of transaction, etc. for using goods, etc.
4. The right to have their opinions reflected in policies of the State and local governments, business activities of enterprisers, etc. which have an influence on their daily lives as consumers.
5. The right to obtain proper compensation for damages sustained due to use of goods, etc. according to prompt and fair procedures.
6. The right to receive the education necessary for carrying on their rational lives as consumers.
7. The right to establish an organisation and work therein in order to promote their rights and interests as consumers.
8. The right to enjoy consumption in a safe and pleasant consumption environment.

What are a customer's rights in so far as returning goods (whether or not they are faulty)?

The Act on The Consumer Protection In Electronic Commerce, Etc. protects consumers' rights as follows:

1. A consumer who has concluded a contract with a mail or electric order distributor on the purchase of goods, may cancel within seven days from the day a document on the contents of the contract was received: Provided, that where the supply of the goods, etc. has been performed later than the delivery on the document, seven days from the day the goods, etc. having been supplied, or the supply of the goods, etc. has begun.

2. In the following cases, consumer's right to cancel is limited.
    - Where the goods, etc. have been destroyed or damaged due to a cause attributable to the consumer: Provided, that this shall not apply where the package, etc. has been damaged to confirm the contents of the goods, etc.;
    - Where the value of the goods, etc. has substantially decreased due to a cause attributable to the consumer;
    - Where the value of the goods, etc. has substantially decreased as to cause difficulty in resale due to the elapse of time;
    - Where the package of the reproducible goods, etc. has been destroyed;
    - Other cases prescribed by Presidential Decree for the safety of the transaction.

3. Notwithstanding paragraphs (1) and (2), where the contents of the goods, etc. are different from the contents of indication or advertisement, or have been performed contrary to the contents of the contract, the consumer may cancel the order, etc. within three months from the day the goods, etc. have been supplied, or within 30 days from the day he/she knew or could have known the fact.

Are we required to ensure that all customers have agreed to our terms of business in writing?

There is no general requirement for companies to ensure that all customers have agreed to terms of business in writing. But to avoid uncertainty, it is recommended to make written terms and conditions.

In e-commerce, there is a regulation about it.

Where an electronic payment is made, the business operator, electronic settlement business operator, etc. shall clearly notify the following matters to confirm whether the consumer's intent of subscription is the declaration of his/her true will and shall prepare procedures for the consumer to confirm the notified matters, as prescribed by Presidential Decree:

1. Contents and kind of goods, etc.
2. Prices of goods, etc.
3. Service period.

EMPLOYMENT QUESTIONS

We are looking to set-up a business in South Korea and intend to bring some of our current employees into South Korea to work. Do we require work/residency permits?

To work in a foreign investment company, foreigners should get a D-8 Vsia

A D-8 visa is issued to people who will work in a foreign investment company as executives, senior managers, or specialists.

What formalities do we need to comply with when recruiting employees in South Korea?

There is no special regulation for the formality but it is recommended to inform an employee of the components of wage, the methods of calculation and payment of wage, contractual working hours, weekly holidays, and paid annual leave.

What are the minimum rights we have to adhere to for employees in South Korea?

There are certain mandatory conditions that apply to all employees:

- Minimum wage: Minimum wage per hour in 2016 is KRW 6,030.
- Statutory working hours: eight hours a day.
- Recess time: 30 minutes or longger for four working hour, and one hour or linger for eight working hours.
- Overtime work: up to 12 hours per week under an agreement between the employer and employee.
- Maternity leave: 90 days with pay (partly covered by insurance)

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

Basically a consultant is an independent businessman. A consultant doesn't have rights which an employee has.

However, if a consultant's working conditions are the same as an employee, even though he/she is contracted as a consultant, he/she is treated as an employee and he/she can have rights as an employees.

What options exist if we want to terminate employees contracts with us? Can we make them redundant?

In order to justify dismissal for an economic reason, the employer should meet the following conditions:

1. There is an urgent economic need.
2. The employer has made every effort to avoid dismissal.
3. Reasonable and fair criteria are used to select employees to be dismissed.
4. The employer has consulted employee representatives in good faith.
5. A 50-day advance notice is given to the employee representatives on measures to avoid dismissal and criteria to select employees to be dismissed, and good-faith consultation is held on the measures and criteria.

Are there any restrictions on foreign investment into South Korea?

1. Unpermitted Categories of Business

The categories of business in which foreign investment is not permitted generally have public features, hence the difficulties in applying the Foreign Investment Promotion Act. The prohibition of foreign investment in the said categories is publicly announced by the Regulations on Foreign Investment and Technology Introduction and the Integrated Public Notice of Foreign Investment.

- Postal services, central banking, individual mutual aid organisations, pension funding, administration of financial markets, activities auxiliary to financial service activities, etc.
- Legislative, judiciary, administrative bodies, foreign embassies, extra-territorial organisations and bodies
- Education (pre-primary, primary, secondary, higher education, universities, graduate schools, schools for the disabled, etc.)
- Artists', religious, business, professional, environmental advocacy, political, and labour organisations

2. Restricted Categories of Business

Foreign investment is also prohibited in certain restricted categories of business in principle. However, when there are standards for permission, foreign investment is partially permitted. The restriction of foreign investment is publicly announced by the Regulations on Foreign Investment and Technology Introduction and the Integrated Public Notice of Foreign Investment.

No foreigner shall be permitted to invest in any company concurrently running both a category of business in which foreign investment is not permitted and a category of business in which foreign investment is only partially permitted. And, when intending to invest in any company operating not less than two categories of business in which foreign investment is only partially permitted, a foreign investor shall be prohibited from investing in the company in excess of the ratio of foreign investment in the category of business in which the ratio of permissible foreign investment is the lowest.

Do you have any currency or exchange controls in place?

No.

How are employees taxed in South Korea?

A withholding tax system is used.

When wage (including bonus) is paid every month, tax is withheld based on the table for simplified tax amounts. In February of the following year, employees submit documentary evidence for income deduction for year-end tax settlement.

After the year-end tax settlement period every year, the NTS checks the propriety of income deductions. In this regard, an important tax saving strategy is to avoid penalty tax imposed on excessive deductions.

What are the current rates of tax for employees?

It depends on the amount of income.

Chargeable Income	Tax Rate
Not more than KRW 12,000,000	6%
More than KRW 12,000,000	
~ no more than KRW 46,000,000	KWR 720,000 + 15% of more than KRW 12,000,000
More than KRW 46,000,000	
~ no more than KRW 88,000,000	KRW 5,820,000 + 24% of more than KRW 24,000,000
More than KRW 88,000,000	
~ no more than KRW 150,000,000	KRW 15,900,000 + 35% of more than KRW 88,000,000
More than KRW 150,000,000	KRW 37,600,000 + 38% of more than KRW 150,000,000

What taxes apply to the business models you have identified above?

1. Corporation Tax (2016)

Chargeable Income	Tax Rate
No more than KRW 200,000,000	10%
More than KRW 200,000,000	
~ no more than KRW 20,000,000,000	KWR 20,000,000 + 20% of more than KRW 200,000,000
More than KRW 20,000,000,000	KRW 420,000,000 + 22% of more than KRW 20,000,000,000

2. Value Added Tax (V.A.T): 10%
3. Local Tax: 10% of Corporation tax

How are dividends to foreign companies/shareholders taxed?

Dividend income is subject to either 9% (for a basic taxpayer, withholding tax) or 25% (for a higher rate taxpayer).

Are there transfer pricing rules in place?
Yes.

Do you have double taxation treaties in place with foreign jurisdictions. If so where can we find out details?

Korea made tax treaties with various countries. It is similar to the OECD Model Treaty.

https://txsi.hometax.go.kr/docs/customer/law/statutePact.jsp?gubun=3

K&P Law Firm
Smart, Wise and Different

K&P LAW FIRM

www.kimnpark.com/eng/

INCHEON
B2901, 323,
Incheon tower-daero, Yeonsu-gu,
Incheon, South Korea (406-840)

KEY CONTACTS:
Taejin Kim
Partner
T: +82 (0)32 864-8511
taejin.kim@kimnpark.com

Thailand

We are looking to set up a Thai trading company. What structures/business vehicles do you use?

We recommend using a limited private company. However, please note that Thailand has the Foreign Business Act B.E. 2542 (1999) that specifies certain businesses which foreigners are prohibited to carry out. The company will be deemed as a foreign national company if the majority of shares (≥50%) is held by foreign individuals or entities.

Unless the company's registered capital (on a fully paid-up basis) is more than Baht 100,000,000, a foreigner may not engage in the trade business, both wholesale and retail, in Thailand. If the foreign investor wishes to do trade business, a foreign business license from the Director General of the Department of Business Development of the Ministry of Commerce is required.

In permitting the foreigners to operate businesses under this Act, there are several factors to be taken into account, such as the advantages and disadvantages to the nation's safety and security, economic and social development, public order or good moral, art, and natural resource conservation.

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

A limited private company is the most common because the liability of the shareholders is limited to the amount unpaid on the shares respectively held by them. The company's financial statement will be examined by one or more auditors and submitted for adoption to a general meeting within four months after the end of each fiscal year. Moreover, directors have the duty to send to the competent registrar a copy of financial statements no later than one month after it has been adopted by the general meeting.

What are the rules on capitalisation of entities in Thailand?

With regards to a limited private company, the Thai Civil and Commercial Code ("CCC") currently prescribes that the company must have at least 3 shareholders, each of which shall hold at least one share. The amount of a share may not be less than Baht 5. Therefore, the minimum capitalisation of a limited private company is Baht 15. As for a limited public company, there is no rule in connection with the minimum capitalisation. However, the company must have at least 15 shareholders.

What information are we required to provide businesses/ consumers with when trading with us?

It depends on the type of goods. For example, if the goods are label-controlled goods pursuant to the Thai Consumer Protection Act B.E. 2522 (1979), the label of the label-controlled goods shall contain:

1. Truthful statements as to the material facts concerning such goods.
2. The following statements, as the case may be:
    - The name or trade mark of the manufacturer or the importer for sale.
    - The place of manufacturing or the place of operating import business.
    - The statements which indicate what the goods are.
    - In the case of imported goods, the name of the manufacturing country shall be specified.
3. Necessary statements such as price, quantity, usage, recommendation, caution and an expiry date in the case of goods which can be expired or in other cases to protect the consumer rights in accordance with the rules and conditions prescribed by the Committee on Labels.

We would prefer to avoid having an actual physical presence in Thailand and instead are looking to appoint an agent or distributor to sell our products and/or services. What are the legal implications?

Thailand does not have a law regarding distributors in particular. Instead, the agency law under the Thai Civil and Commercial Code will apply in this circumstance.

We intend to sell goods via our online website. What are the legal requirements if we wish to sell into Thailand?

Pursuant to Thai law, online retailers must apply for e-commercial registration with the competent official. The online retailers will then receive "DBD Registered" and "DBD Verified" marks from the Department of Business Development ("DBD") to be posted on their websites.

Do you have legislation in respect of the use of electronic signatures?

Yes. Thailand has the Electronic Transaction Act B.E. 2544 (2001) which prescribes the meaning of an electronic signature, requirements of reliable electronic signatures and other provisions in relation to electronic signatures.

We intend to import goods into Thailand for sale. What are the legal requirements for doing this?

There are various legal requirements to consider, depending on the types of goods. For example, the Department of Foreign Trade of Thailand stipulates measures related to imports and exports of goods such as standard of goods and required license. The importer must also comply with the import procedures of the Customs Department. There are also other legal requirements to be aware of, such as application for licenses from relevant government authorities like the Food and Drugs Administration, the Office of National Broadcasting and Telecommunication Commission, the Defence Industry Department, etc.

What rights do consumers have when selling to them?

The ownership of the property sold is transferred to the buyer from the moment when the contract of sale is entered into unless the contract of sale is subject to a condition or to a time clause. The buyer has the right to withhold the price if the buyer has discovered defects in the property sold or the buyer is threatened with an action by a person claiming the property is sold until the seller has caused danger with which he threatened to cease until the seller has given proper security.

The buyer is entitled to claim against the seller for defects in the property or the consequence of any disturbance caused to the peaceful possession of the buyer by any person having the right to the property sold.

The buyer can claim against all entrepreneurs for damages occurring from an unsafe product sold to the buyer.

What are a customer's rights in so far as returning goods (whether or not they are faulty)?

With respect to faulty goods, Thai law prescribes that the seller is liable if there is any defect in the goods. However, the parties to a contract of sale may agree that the seller shall not incur or be responsible for any liability for defects.

With respect to non-faulty goods, Thai law does not give customers the right to return the goods and get a refund if there is not defect in the goods. It solely depends on the policy of the seller.

Are we required to ensure that all customers have agreed to our terms of business in writing?

Pursuant to Thai law, if the parties have not agreed upon all points of a contract upon which, according to the declaration of even one party, agreement is essential, the contract is, in case of doubt, not concluded. An understanding concerning particular points is not binding, even if they have been noted down. If it is agreed that the contemplated contract shall be put into writing, the contract is not concluded until it is put in writing.

EMPLOYMENT QUESTIONS

We are looking to set-up a business in Thailand and intend to bring some of our current employees into Thailand to work. Do we require work/residency permits?

Yes. Under the Working of Alien Act B.E. 2551 (2008), a foreigner who intends to work in Thailand is required to obtain a work permit prior to commencing his employment. In addition, such a foreigner who is eligible to work in Thailand shall have place of residence in Thailand or have been permitted to enter into Thailand temporarily under the Immigration laws.

Thus, a foreigner who is eligible to apply for work permit must enter into Thailand with a Non-Immigrant B visa. Other than a Non-Immigrant B visa, a foreigner who has obtained a Non-Immigrant O visa (following Thai spouse) or a Non-Immigrant IB visa can also apply for a work permit. Once the foreigner has the Non-Immigrant B visa as mentioned above, he may begin to process the work permit by submitting the application to Department of Employment ("DOE") which takes approximately 7 business days to complete.

What formalities do we need to comply with when recruiting employees in Thailand?

Thai labour laws were enacted to specify rights and duties between the employer, the employee and the government authority with the purpose of protecting the employee from being taken advantage of. The labour laws stipulate the minimum standards that the employer must provide to the employee. Under Thai labour laws, the employment agreement is not required to be made in writing.

Fundamental labour law in Thailand is governed by a number of laws, including the Civil and Commercial Code, the Labour Protection Law, the Labour Relations Law, the Act Establishing the Labour Court and Labour Procedure; the Social Security Law, and the Workmen's Compensation Law

In case the juristic entity intends to employ the foreigner to work with the juristic entity in Thailand, the Alien Working law and Immigration law will apply.

What are the minimum rights we have to adhere to for employees in Thailand?

The Labour Protection Act B.E. 2541 (1998) prescribes the rights and duties of employers and employees, the significant rights and protections of the employees contained in this law include working hours and holidays, remuneration, leave, severance pay, termination of employment and employee welfare, etc.

The Workmen's Compensation Act B.E. 2537 (1994) prescribes that an employer must provide the necessary compensation benefits for employees who suffer injury or illness or who die as a result or in the performance of their work at the rates prescribed by law.

The Social Security Act of B.E. 2533 (1990) amended in B.E. (1999) requires that all employers withhold social security contributions from the monthly wages of each employee pursuant to the rate prescribed by the law.

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

Being contracted as a consultant could be deemed as hire of work or hire of service, mainly depending on duties, control of employer and remuneration. Pursuant to Thai law, the differences between the hire of work and hire of service can be concluded as follows:

	Hire of Work	Hire of Service
Objective	Focus on accomplishment of works and delivery of works.	Focus on labour and working hours of employees.
Control	Employers have no control power over the contractors.	Employers have control power over the employees.
Remuneration	Remuneration will be paid to contractor when the definite works are done.	Remuneration will be paid to the employees based on working period e.g., hourly, monthly or daily basis.

Therefore, if the contract made between the company and the consultant is considered as a hire of work contract, the consultant is not regarded as an employee of the company and the Thai labour laws will not apply.

What options exist if we want to terminate employees contracts with us? Can we make them redundant?

The Civil and Commercial Code and the Labour Protection Act B.E. 2541 (1998) prescribe terms and conditions in connection with employment termination. In general, the employer is required to give a written notice and make a severance payment to the employee according to the length of employment. Alternatively, the employer can terminate the services of an employee immediately by making payment in lieu of notice.

However, the law also stipulates circumstances where the employer may terminate the employment with the employee without notice and severance payment, e.g. due to the employee dishonestly performing his/her duty or intentionally committing a criminal offence against the employer, the employee intentionally causing damage to the employer, or the employee neglecting duty for 3 consecutive working days without justifiable reason.

In addition, an employee can bring an action against his/her employer in the Labour Court if the employee thinks the employment was terminated by unfair practices.

TAX AND INVESTMENT QUESTIONS

Are there any restrictions on foreign investment in to Thailand?

Yes, there are foreign investment restrictions in Thailand. Under the Foreign Business Act B.E. 2542 (the "Act"), foreigners who wish to carry out any restricted business activities stipulated in List 1 – 3 of the Act are subject to foreign ownership limitations of not more than 50 percent of the issuing share of the foreign enterprises. Business activities indicated in List 1 of the Act are strictly closed to foreigners, while, the business activities indicated in List 2 and 3 must obtain permission and/or approval from the competent authorities.

Alternatively, foreign enterprises granted promotional privileges by the Board of Investment or the Industrial Estate Authority of Thailand are permitted to engage in business activities specified in Lists 2 and 3 of the Act in accordance with the conditions prescribed by such authorities, provided that the Ministry of Commerce is notified and a certificate is applied for.

Do you have any currency or exchange controls in place?

Yes. Under the Exchange Control Act B.E. 2485, the Bank of Thailand ("BOT") has been entrusted by the Ministry of Finance with the responsibility of administering foreign exchange i.e. importing and repatriating personal funds, exchange controls on trading, importing and exporting investment funds.

In addition, a promoted person, or an investor in the promoted activity whose domicile is outside Thailand, shall be granted permission to take out or remit abroad money in foreign currency if it represents (i) an investment capital which the promoted person brought into Thailand and dividends or other returns on such capital; (ii) a foreign loan under a contract approved by the Board of Investment which the promoted person brought in to invest in the promoted activity, including the interest thereon; (iii) a payment for a foreign obligation of the promoted person under a contract for the use of rights and service relating to the promoted activity, provided that such contract was approved by the Board on Investment.

How are employees taxed in Thailand?

Under the Revenue Code, any person residing in Thailand for a period or periods aggregating more than 180 days in any tax (calendar) year shall be considered as "resident of Thailand" and shall be liable to pay personal income tax ("PIT") on income from sources in Thailand as well as on the portion of income from foreign sources that are brought into Thailand. A non-resident is, however, subject to tax only on income from sources in Thailand.

Any benefits provided by an employer or other persons, such as a rent-free house or the amount of tax paid by the employer on behalf of the employee, are also treated as assessable income of the employee for the purpose of PIT. Moreover, the income of the employees shall be subjected to withholding tax which shall be withheld by the employers or the payer of the income.

What are the current rates of tax for employees?

PIT rate is a progressive tax rate which are as follows:

Taxable Income (Baht)	Tax Rate (percent)
0-150,000	Exempt
more than 150,000 but less than 300,000	5%
more than 300,000 but less than 500,000	10%
more than 500,000 but less than 750,000	15%
more than 750,000 but less than 1,000,000	20%
more than 1,000,000 but less than 2,000,000	25%
more than 2,000,000 but less than 4,000,000	30%
Over 4,000,000	35%

Withholding Tax Rate on some categories of income are as follows:

Taxable Income (Baht)	Tax Rate (percent)
Employment income	5 - 35%
Rents and prizes	5%
Ship rental charges	1%
Service and professional fees	3%
Public entertainer remuneration • Thai resident • Non resident	 5% 5-37%
Advertising fees	2%

What taxes apply to the business models you have identified above?

A company registered under Thai law is subjected to the following taxes in Thailand:

1. Corporate Income Tax of 20% of net profit
2. Withholding Tax on some categories of income is applied as follows:

Taxable Income (Baht)	Tax Rate (percent)
Dividends	10%
Interest	1%
Royalties	3%
Advertising Fees	2%
Service and professional fees • If paid to Thai company or foreign company having permanent branch in Thailand • If paid to foreign company not having permanent branch in Thailand	 3% 5%
Prizes	5%

3. Value Added Tax
   Any entity who regularly supplies goods or provides services in Thailand and has an annual turnover exceeding 1.8 million Baht is subject to VAT in Thailand at 7% and must register to be a VAT registered entity before the operation of business or within 30 days after its income reaches the threshold.

How are dividends to foreign companies/shareholders taxed?

Individual shareholders are subject to withholding tax as follows:

1. 10% on dividends paid from listed or non-listed companies.
2. Tax-exempt if the dividends are paid from the BOI-promoted company.

Juristic shareholders are subject to withholding tax as follows:

1. 10% if the juristic shareholder is a non-listed company.
2. Tax-exempt if the juristic shareholder is a listed company and holds shares or investment units for three or more months before and after the date of dividend payment.
3. Tax-exempt if:
   - The juristic shareholder is holding 25% or more of the votable shares of the non-listing company who paid dividends to the juristic shareholder for three or more months before and after the date of dividend payment.
   - The non-listing company does not hold any share in the juristic shareholder.
   - Tax-exempt if the dividends are paid from the BOI-promoted company.

Are there transfer pricing rules in place?

There is currently no specific transfer pricing provision under Thai Revenue Code, but the Revenue Department has issued transfer pricing guidelines requiring companies to transact on an arm's length basis. The guideline includes a definition of the term "market price", details of acceptable transfer methods, transfer pricing documentation requirements and advance pricing agreements program. However, the guidelines do not have the status of legislation but are used internally by the Thai revenue official.

Do you have double taxation treaties in place with foreign jurisdictions. If so where can we find out details?

Yes, we have double taxation agreements ("DTA") with 58 countries. Please find English version of each DTA through http://www.rd.go.th/publish/766.0.html

a|6 APISITH & ALLIANCE lawyers

APISITH & ALLIANCE

www.apisithalliance.com

BANGKOK
57 Park Ventures Ecoplex,
9th Floor, Unit 907 Wireless Road,
Lumpini, Pathumwan, Bangkok 10330

KEY CONTACTS:
Worawut Anupornwattanakij
Partner
T: +82 (0)32 864-8511
taejin.kim@kimnpark.com

Vietnam

We are looking to set up a Vietnamese trading company. What structures/business vehicles do you use?

When a trading company is established in Vietnam, the owner can consider and decide its company structure within the following under the Laws of Vietnam:

- Limited liability companies include single-member limited liability companies (i.e. one member) and multi-member limited liability companies (i.e. from two members and more)
- Joint-stock company (i.e. from 3 members)
- Partnership (i.e. from 2 members)

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

The most common structure in foreign companies established under the Investment Law and Enterprise Law and under-law regulations in Vietnam is single-member limited liability companies where the foreign owner(s) can make their independent decision on every business activity and the structure of their companies.

The foreign owners are liable for debts and other liabilities of their established companies in Vietnam to the extent of their contribution to such companies' charter capital.

Most foreign companies have been established in Vietnam along with their investment projects. And as required by laws, the project owners/investors have responsibilities for periodical reports, including monthly, quarterly, and annual reports on their implementation of the investment projects (including the progress of their contribution to the projects) as well as the business operation of the established companies in Vietnam.

What are the rules on capitalisation of entities in Vietnam?

In Vietnam we have rules on the capitalisation of entities who are involving business activities required to have fully contributed legal capital, for example: legal charter capital applicable for commercial banks: VND 3 thousand billion, for auditing companies: VND 5 billion, for real estate trading companies: VND20 billion, for companies conducting debt collection service: VND2 billion, for companies conducting service to send Vietnamese employees to work abroad: VND5 billion, etc.

What information are we required to provide businesses/consumers with when trading with us?

After your company is established, the company's information shall be published in the National Business Registration Portal, where your consumers/partners can access the information. That means, except for special requests, that you don't have to provide your consumers/businesses with any information apart from product information.

We would prefer to avoid having an actual physical presence in Vietnam and instead are looking to appoint an agent or distributor to sell our products and/or services. What are the legal implications?

If an actual physical presence in Vietnam is not in your business plan at the moment, looking for an agent or distributor to sell your products is necessary. To legally import and distribute your products in Vietnam through agency, the agent must be an entity established and duly operating under the law of Vietnam whose business line is trading. Then, an agreement for agency shall be entered into by and between your company and this agent for import and distribution of your products in Vietnam. Upon agreement, this agent shall be responsible for obtaining licenses/permits as required (e.g. announcement of standard conformity and announcement of technical-regulation conformity).

We intend to sell goods via our online website. What are the legal requirements if we wish to sell into Vietnam?

For the business lines of online trading, you are required to satisfy the following:

1. Being a legal entity that is duly incorporated under Vietnamese laws with reasonable functions and duties.
2. Owning the website with duly registered domain and complying with Vietnamese rules in terms of information management on internet.
3. Having already notified the Ministry of Industry and Trading on the establishment of a commercial website for goods sale.

If your online trading website is an E-commerce website permitting traders, organisations or individuals that are not the website owners to conduct a portion or the whole process of buying and selling goods and services on that website, that means your website is an E-commerce trading floor; besides the conditions as set forth in points (i) and (ii) above, you have to register to set up an E-commerce service with the Ministry of Industry and Trade, and ensure that such registration has been certified by said Ministry.

Do you have legislation in respect of the use of electronic signatures?

Yes, we do. We have law on e-transactions, under-law decree providing e-transactions of digital signatures and digital signature certification service.

We intend to import goods into Vietnam for sale. What are the legal requirements for doing this?

Assuming that you have your commercial presence in Vietnam, such commercial presence shall fulfil the following conditions for importing of goods for distribution into Vietnam:

1. Supplementing the rights to import, distribute your products in Vietnam into the business lines in the enterprise registration certificate, the project scale in the investment registration certificate;
2. Carrying out procedures for the issuance of business

permit for goods purchase and sale activities; and
3. Carrying out custom procedures when your products enter into Vietnam.

What rights do consumers have when selling to them?

After buying the products, if the consumers are not end users, e.g. trading companies, agencies, or branches of trading companies of which business lines are trading, they shall be able to distribute and/or export the purchased products to the end user or other non end users.

What are customers' rights in so far as returning goods (whether or not they are faulty)?

Based on the principles of protecting and respecting interests of consumers timely, fairly, transparently and lawfully, the law on consumer protection of Vietnam and the under-law regulations allow the consumer to enjoy and force the seller to:

1. Provide the consumer with similar goods, components or accessories for temporary use or provide other forms of settlement accepted by consumers during implementation of the warranty.
2. Exchange new, similar goods, components or accessories or take back goods, components or accessories and return money to consumers in the case where time for warranty implementation would run out while failing to repair or solve the error.
3. Exchange new, similar goods, components or accessories, or take back the goods and give money back to consumers in the case where the warranty is implemented three times or more within the warranty duration as to goods, components or accessories without fixing the error.
4. Bear the cost of repairs and bear freight to transport goods, components or accessories to the place of warranty, and freight to transport them from the place of warranty to the residence of the consumer.
5. Be responsible for the warranty of goods, components or accessories to consumers even in the event of authorizing other organisations or individuals to perform the warranty.

Are we required to ensure that all customers have agreed to our terms of business in writing?

In the context of e-commerce, it is required that all customers must agree to the provider's terms published on the provider's website in electronic form. That means when such customers' orders are clicked and sent to the provider, the orders are understood as proposals to enter into purchase contracts and when the provider sends its confirmations in return, such proposals are accepted. In other words, the provider and the customer have entered into the contracts in legally accepted electronic form. The time which is legally defined that parties have successfully entered into the contracts is the time such customers receive confirmation

EMPLOYMENT QUESTIONS

We are looking to set-up a business in Vietnam and intend to bring some of our current employees into Vietnam to work. Do we require work/residency permits?

Yes, it is required. When your foreign employees enter into Vietnam for work, they shall be granted work permits [except for exempted cases specified by laws], and a temporary resident card by the Vietnam competent authorities. The maximum term of a work permit, temporary resident card is two years.

What formalities do we need to comply with when recruiting employees in Vietnam?

When recruiting employees in Vietnam, the recruiter must comply with the following formalities:

Step 1: The employers must announce demands for labour recruitment indicating such information as jobs, professional qualifications, and working conditions for each position at least 5 days before receiving the dossiers from labourers.

Step 2: When receiving the dossiers, the employers must keep the dossiers and notify the employees about the time of labour recruitment.

Step 3: The employers must announce the results of labour recruitment within 5 working days from the day they have had the result of recruitment.

In cases when the employees fail or do not sit in the recruitment examination, the employers shall have to return the dossiers to such employees\labourers within 5 working days since the day the employers receive requests to return the dossiers from such employees.

When the labourers are recruited after the probation period, the employer and the employee must enter into a labour contract.

What are the minimum rights we have to adhere to for employees in Vietnam?

The following minimum rights should be considered when recruiting employees in Vietnam:

1. Equal or over minimum salary as provided upon areas from VND2.4 million to VND3.5 million per month.;
2. Compulsory social insurance accounting to 26% of the monthly salary, wherein 18% by the employer and the other 8% by the employee.
3. Compulsory health insurance accounting to 4.5% of the monthly salary wherein 3% by the employer and the other 1.5% by the employee.
4. Compulsory unemployment insurance accounting to 2% of the monthly salary wherein 1% by each.
5. Regimes for pregnant female employees, parental leave, employees having accidents during their performance, and older employees.

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

Consultant contract may be referred to as a service contract where the relationship between the consultant and your company may not be subject to the labour laws. Thanks to this, your company is not required to fulfil a lot of obligations as if it were the employer [applicable to a labour contract] such as compulsory insurance payment for its employee, ensuring the labour and safety conditions, obtaining work permit (for foreign employee), etc. Accordingly, the relationship between your company and consultant should be subject to commercial relationship where the regulations in terms of quality of service provision and/or payment agreement shall be respected. The consultant as a foreign individual shall be responsible for conducting necessary procedures for his/her legally working and residing in Vietnam.

What options exist if we want to terminate employees' contracts with us? Can we make them redundant?

The termination of employment contract is not easy in Vietnam except for bilateral agreement between the employee and employer. To provide clear guidance on the possibly unilateral termination cases from the employer, the following cases should be noted:

- The employee regularly fails to complete the works under the labour contract.
- The employee suffering from sickness or as the result of an accident that cannot recover after having received treatment for 90 consecutive days in case such employee works under a definite-term labour contract (i.e. a contract within 12 to 36 months), or for a quarter of the contract's term in case such employee works under a labour contract for a seasonal job or a specific job under 12 months.
- The employer has to reduce the production and vacancies after taking all measures to overcome the consequences from natural disasters, fire or other force majeure.
- The employee fails to be present at the workplace after the labour contract suspension duration for military service, being detained as prescribed by law provisions on criminal procedures, compulsory treatment and education in reformatories, detoxification centers or educational facilities, pregnancy of female employees and agreement.

And in any case of above, the employer must notify the employee at least 45 days for indefinite-term labour contract (i.e. a contract in which both parties do not specify the term and the expiry date of the contract), 30 days for definite-term labour contract, 30 working days for a seasonal or work-specific labour contract that has a duration under 12 months.

TAX AND INVESTMENT QUESTIONS

Are there any restrictions on foreign investment in to Vietnam?

The investment law of Vietnam provides the following factors that can restrict foreign investment into Vietnam:

1. Capital contribution ratio of foreign investor
   In accordance with WTO's commitment and other international multilateral, bilateral treaties of which Vietnam and investors are members, the investor shall be able to be limited to contribute its investment capital in some committed areas. For example, under WTO's commitment, advertising services (CPC 871, excluding advertising for cigarettes) upon accession, joint ventures shall be allowed with foreign capital contribution not exceeding 51% of the legal capital of the joint venture. As of 1 January 2009, there shall be no limitation on foreign capital contribution in joint ventures.

2. Industries and trades
   The investment shall be completely restricted if the industries and trades belong to those banned under Art. 6 of investment law or shall be conditionally limited if the investors do not satisfy specific conditions namely license, certificate of eligibility, practising certificate, certificate of professional liability insurance, written certification.

Do you have any currency or exchange controls in place?

Yes, we have. Foreign exchange controls play a significantly important role for all foreign investors entering into Vietnam since the regulations on capital inflow and outflow have a great influence on operations and profit of the investors. Therefore, Vietnam has clear provisions on foreign transactions including transferring capital into and out of Vietnam, opening and using bank account, borrowing foreign loans and paying foreign debts, dealing with currency exchanges, and handling violations.

A foreign owned company is required to register a capital bank account at the legally operating commercial bank in Vietnam apart from the current account for daily payment. Such capital account is used to track the movement of capital flows in and out of Vietnam even foreign loans, transferring of profit back to the mother country.

How are employees taxed in Vietnam?

The employees have an obligation to pay their personal income tax ("PIT") under the law of Vietnam. For payment of such PIT, the employees can directly pay via their registered personal tax code but normally when paying monthly earnings the employer will deduct directly from the employee's salary and pays the PIT on behalf of the employee.

What are the current rates of tax for employees?

The rate tax for the PIT depends on the employee's earnings; for example 10% if the taxed incomes range from VND5/month mil. to VND10 mil/month, 35% if the taxed incomes is over VND80 mil./month.

What taxes apply to the business models you have identified above?

For a trading company, the following categories of taxes shall apply:

1. Registration tax
2. Enterprise income tax
3. Value added tax
4. Import tax
5. Special consumption tax (if any)

How are dividends to foreign companies/shareholders taxed?

Dividend refers to a net profit paid to each share in cash or other assets from the residual profit of the joint-stock company after all financial obligations are fulfilled. Therefore, the lawful income from dividend is tax-exempt income and shall not be liable to tax on the transfer of profits abroad provided that before transferring profits abroad, foreign economic organisations or individuals must make declarations on the transfer of profits abroad according to a set forms and submit them to the tax offices directly managing the enterprises where such foreign economic organisations or individuals invest their capital.

Are there transfer pricing rules in place?

Yes, we have transfer pricing rules in Vietnam.

Concerned about the issue of transfer pricing between associated enterprises, since 1997 the Government of Vietnam has issued guidance on taxes on foreign investors. By 2010, with the introduction of Circular 66/2010/TT-BTC, the issue of transfer pricing regulations has been applicable to all types of businesses, including foreign owned companies. Law on Tax Administration in 2006, as amended and supplemented through the years 2012 and 2014, providing that tax authorities have the right to fix tax on taxpayer who “Buy, sell, exchange and account the value of goods, services do not follow the normal trading value in the market”.

This provision has created certain legal basis for handling transfer pricing issues in Vietnam. Further, to reinforce the legal framework, in 2013 the Ministry of Finance issued Circular No. 201/2013/TT-BTC guiding the application of the advance pricing agreement (“APA”) on the method of determining the taxable price in tax administration. This APA allows taxpayers to enter into an agreement on the basis of unilateral, bilateral or multilateral with relevant tax authorities for the period not exceeding five (05) years. Taxpayers can extend the duration of the APA if there is absence of significant changes in the conditions and circumstances associated transaction.

Do you have double taxation treaties in place with foreign jurisdictions. If so where can we find out details?

Yes, we have, and to date Vietnam has entered into Double Taxation Avoidance Treaties with 73 countries. For your access to these Treaties, please click to the portal of General Department of Taxation as attached herewith. http://www.gdt.gov.vn/wps/portal/english

LUATVIET
ADVOCATES & SOLICITORS

www.luatviet.com

HANOI
Unit 03-0A, 3rd Floor, Pan Pacific Hanoi,
No.1 Thanh Nien street,
Hanoi, Vietnam

HCMC
6th Pax Sky, 34A Pham Ngoc Thach Street, Dist.3,
HCM City, Vietnam

KEY CONTACTS:

Mr Tran Duy Canh
Managing Partner
T: +(84.8) 3824 8440
canh.tran@luatviet.com

Ms Tran Thi Ngoc Linh
Partner
T: +(84.4) 3715 4305
linh.tran@hn.luatviet.com

South America

ADVOC SOUTH AMERICAN COUNTRIES

- Brazil
- Colombia
- Dominican Republic
- Ecuador
- Guatemala
- Panama
- Paraguay

Brazil

We are looking to set up a Brazilian trading company. What structures/business vehicles do you use?

The most common types of Companies in Brazil are the Sociedade Anonima ("S.A"), which most closely resembles a corporation in the United States, and the Sociedade Limitada ("limitada"), similar to a LLC in the United States.

In general, S.A's and limitadas may be wholly foreign-owned (by legal entities or individuals) and there are neither legal minimum capital requirements nor maximum capital limitations in relation to trading companies. A limitada may be transformed into a S.A and vice-versa.

The number of quotaholders in a limitada cannot be less than two, who may be Brazilian or foreign. S.A's may have just one shareholder, as long as the sole shareholder is a Brazilian legal entity. If the S.A has more than one shareholder, these may be either Brazilian or foreign. The foreign partner (person or entity) of a Brazilian company must be legally represented by a citizen domiciled in Brazil (individual) – Brazilian or foreign with a Permanent Visa.

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

It is usually more complex to set and run a S.A than a limitada due to the number of rules and formalities, as well as due to corporate governance. It will depend on costs, level of administration and internal controls to decide what structure will attend.

In relation to liability, except for abuse of control, fraud or acts against the law, both S.A and limitada have limitation of liability for its quotaholders/shareholders. In S.A, the liabilities of the shareholders are limited to the issue price of the subscribed or acquired shares. In limitadas, the liabilities are limited to the value of the respective paid up quotas.

In S.A, balance sheets and financial statements, as well as any corporate deed, must be published. This formality is not mandatory for limitada. S.A and limitadas are also required to file corporate books in its headquarters.

Except in the case of publicly held corporations and large sized companies (entities with total assets of over R$ 240 million or annual revenue over R$ 300 million), banks, insurance companies and other financial institutions, S.As and limitadas are not required to be audited by chartered independent public accountants.

What are the rules on capitalisation of entities in Brazil?

An S.A is the only corporate form that can be capitalised by private or public subscriptions and is the only type that can have its stock publicly traded.

The corporate capital must be stated in local currency and may be paid in cash or by credit assignment and/or any type of asset that is susceptible to a monetary assessment. The monetary value of an asset should be based on an appraisal report which must indicate the criteria and comparative data used, to be approved by the shareholders at a general meeting. Partners using assets to pay in capital may accept or reject the amount approved by the other partners.

Increases and decreases in capital are made through decision of the partners, as stated in the bylaws and according to the minimum quorum stated by law. Increases of capital may also result from capitalisation of profits and/or reserves, conversions of debts into equity and exercising of rights or options to purchase shares.

What information are we required to provide businesses/ consumers with when trading with us?

The Brazilian Consumer Defense Code ensures as a basic right of the consumer adequate and clear information about different products and services, with correct specification of quantity, characteristics, composition, quality and price, as well as the risks they could present. In addition, the Code prohibits any misleading or abusive advertising, including by default when failing to report essential information about a product or service.

We would prefer to avoid having an actual physical presence in Brazil and instead are looking to appoint an agent or distributor to sell our products and/or services. What are the legal implications?

The Brazilian legal concept of agent is translated into the form of a sales representative, i.e. an independent agent – individual or legal entity - who works as an intermediary in the sale of products. Law nº 4886/65 regulates the relationship between companies and the sales representatives performing such services in Brazil.

The law requires that sales representative agreements in Brazil include general terms and conditions of the representation; general or specific identification of the products or goods on which representation is based; the term of the agreement; compensation; territory; nature (exclusive or nonexclusive); and duties and responsibilities of the sales representative and the principal.

Distributors are entities who purchase products and resell them in their own name and for their own account and are solely ruled by the Brazilian Civil Code. Distribution agreements may also have determined conditions such as identification and price of the goods; term; territory; exclusivity; and duties and responsibilities of the parties.

We intend to sell goods via our online website. What are the legal requirements if we wish to sell into Brazil?

The e-commerce legislation is based on two mechanisms: the Brazilian Consumer Defense Code (known in Brazil as CDC), created in 1990, when e-commerce practically didn't exist, so without specific elements about trading on the Internet; and Decree 7.962/2013, which completed some gaps and went into effect along with the CDC, determining the following aspects:

1. Clear information about the product, service and supplier.

2. Facilitated customer service.
3. Respect to the right to repentance.

Do you have legislation in respect of the use of electronic signatures?

Provisional Measure 2.200-2/2001 stated that any digital document is legally valid if certified by the Brazilian Public Key Infrastructure ("ICP-Brasil").

ICP-Brasil sets forth that the electronic certificate is a virtual identity that allows an unequivocal identification of an author or transaction made through digital means. This digital document is generated and signed by a third reliable party – Certified Authority – which associates an entity with a pair of cryptographic keys. Thus, ICP-Brasil's electronic certificate allows the digital signature of documents in Brazil, with the same legal enforcement as documents that have been hand signed.

The digital signature is a method that identifies an electronic message. Within ICP-Brasil, digital signature has authenticity, integrity, reliability and non-repudiation – through legal and technological means, the author cannot deny that it is not liable for the content of such a document. However, electronic signatures are not used for setting up companies in Brazil, nor are they often used in transactions.

We intend to import goods into Brazil for sale. What are the legal requirements for doing this?

In order to perform any international trade transaction, entities established in Brazil must obtain an import/export permit (also known as RADAR). Legal entities that will act as acquirers on indirect import transactions must also bear a RADAR license.

This permit is granted by the Federal Revenue Services and enables entities to access the international trade electronic system, SISCOMEX, in which companies register their import declarations or export registrations.

The importer may be entitled to the Express, Limited or to Unlimited RADAR. The Express RADAR is granted in specific conditions set forth by Law. Limited RADAR consists of a limitation on imports up to an amount of USD 150,000,00 within a 6-month period. The Unlimited RADAR has no limit on the amount or frequency of imports.

The granting of the RADAR licenses by the Federal Revenue Services is discretionary. The decision on the modality considers the financial capacity of the company.

What rights do consumers have when selling to them?

To make effective the consumer protection, CDC adopted the theory of risk of the activity, in which the supplier is liable regardless of guilt (strict liability) by loss or damage arising out of defects and facts of the product or service.

In addition to the strict liability, from the theory of risk derives the legal guarantee of the products and services in relation to the defect of the product and service, and consumer relations.

The deadline for the exercise of the legal warranty is thirty (30) days to non-durable products and services, and ninety (90) days to durable products and services from the date of effective delivery of the product, or the end of the execution of the service, and in the case of hidden defects the deadline starts at the moment the defect is noticed.

What are a customer's rights in so far as returning goods (whether or not they are faulty)?

If the purchase occurs off-premises, the Brazilian Consumer Defense Code grants the right to regret (cancellation) within seven (7) days of signing the contract or the act of receiving the product or service, regardless of vice or defect of the product.

With respect to the physical purchase, in the event that the defect is not remedied within thirty (30) days, the consumer may require a replacement, refund of the amount paid, or a proportional reduction in price.

Are we required to ensure that all customers have agreed to our terms of business in writing?

The Brazilian Consumer Defense Code ensures the existence of the contractual warranty, which is written directly with the supplier (who is not required to offer, but if it does offer it has the duty to comply), by means of a written instrument, and the warranty may be partial (since clear and previously specified the limitations and restrictions to the warranty).

EMPLOYMENT QUESTIONS

We are looking to set-up a business in Brazil and intend to bring some of our current employees into Brazil to work. Do we require work/residency permits?

The Brazilian legal system authorizes the participation of foreign workers ("Expatriates") in the national labour market. However, the Consolidated Labour Laws provide, as a general rule, that local subsidiary companies shall have 2/3 of their staff and payroll reserved for Brazilian employees.

According to the Labour and Immigration legislations, foreign companies, through their subsidiaries in Brazil, shall request work permission and temporary visas on behalf of Expatriates assigned to work as employees in the Brazilian territory.

As per Normative Resolution n. 99/2012 of the National Council of Immigration, Expatriates´ employment agreements shall observe the same period of duration of their temporary visas: Two (02) years. Notwithstanding, the authorities may grant the prolongation of employment agreements and temporary visas.

Finally, the Expatriates have total equality of rights in comparison with Brazilian employees. Moreover, they are legally considered tax residents in Brazil due to the mere existence of their employment relationships.

What formalities do we need to comply with when recruiting employees in Brazil?

In Brazil, job recruitment processes shall comply with the Federal Constitution, the Consolidated Labour Laws and the Ministry of Labour and Social Security´s legislation.

The Federal Constitution states the dignity of the human person as a fundamental legal principle. Consequently, Employers cannot implement any discriminatory practice when recruiting for jobs, based on race, gender, age, marital status, sexual orientation, physical conditions etc. It is unlawful to require medical exams and research on criminal and financial records regarding job candidates.

Regarding the formalities of the job recruitment process, Employers cannot subject job candidates to any internal training programs and medical exams before the end of the process.

Furthermore, employment relationships shall be registered in Social Security Cards within the period of Forty-eight hours after the acceptance of job offers. Employers shall subject employees to hiring medical exams and set up individual employment contracts prior to the first day at work.

What are the minimum rights we have to adhere to for employees in Brazil?

In Brazil, the minimum labour rights derived from employment relationships are foreseen by the Federal Constitution and the Consolidated Labour Laws:

- The registration of employment relationship in Social Security Card
- Previous Notice
- Minimum wage
- Weekly Paid Rest
- Annual Paid Vacation
- Thirteenth Salary
- Protection against salary reduction
- Standard hours of work (8 hours per day and 44 hours per week)
- Health and Safety legislation
- Overtime Premium
- Night Shift Premium
- Risk Premium
- Insalubrity Premium
- Unemployment insurance
- Severance Indemnity Fund for Employees (FGTS)
- Workmen´s compensation insurance
- Maternity Leave
- Paternity Leave
- Social Security

It is worth to mention that the Federal Constitution also recognises the validity of Collective Bargaining Agreements in the Brazilian employment market.

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

As general rule, only employees have their legal relationships regulated by the Brazilian Labour legislation. Accordingly, consultants are not entitled to any labour rights foreseen by the Federal Constitution and labour laws.

The Consolidated Labour Laws define an employee as an individual person who renders onerous services, under the regular orders of an employer (company or individual person) with respect to the modus operandi of his services, on a habitual basis (non-sporadic work).

Differently, consultants are self-employed workers who set up civil (non-employment) relationships, simultaneously or not, with different clients, without exclusivity and any trace of subordination. Moreover, their specialised services are completely different from the main business activities of their clients.

Therefore, employment agreements present higher cost in comparison to consulting contracts, considering the extension of labour rights provided by the national legal system.

What options exist if we want to terminate employees contracts with us? Can we make them redundant?

It is possible to extract from the legal concept provided by the Consolidated Labour Laws, among other characteristics, that employers are the ones exclusively accountable for all risks related to their businesses, even in case of company´s losses, economic crisis etc.
Therefore, employers, at their will, have the right to dismiss without cause any employee so as to reduce costs or reorganize the internal structure, for example, provided that:

- The dismissed employee does not bear temporary job stability foreseen by the Law, Collective Bargaining Agreement, Internal Policy etc. at the moment of the dismissal.
- The dismissed employee´s medical exam declares his full condition (labour capacity) to return to the employment market.

Nowadays the most common legal hypothesis of temporary job stabilities in favour of employees derive from cases of pregnancy, employment related accident, election for the position of labour union leader and election for the Internal Commission for Accident Prevention (CIPA).

Are there any restrictions on foreign investment into Brazil?

Brazilian law imposes certain limitations on foreign direct investment in the following economic activities:

1. Exploitation and use of deposits, mines and other mineral resources and of hydraulic power potentials.
2. Coastal navigation for the transport of products, with some specific exceptions.
3. Ownership and administration of journalistic, TV and radio broadcasting companies, limited to thirty percent of the voting capital.
4. Investment in cable TV service, limited to forty-nine percent of the voting capital.
5. Opening of industries of interest to national security and the practice of certain activities at the border areas.
6. Purchase of rural real estate, if located in areas considered reserved for national security reasons.
7. National airline companies. The concession is only given to Brazilian entities, headquartered in Brazil, which may have up to one fifth (1/5) of its voting capital held by foreigners.
8. Health plans, except for some specific cases.
9. Incorporation or acquisition of financial institutions in Brazil.

Do you have any currency or exchange controls in place?

Foreign direct equity investment registration is carried out through Brazilian Central Bank's electronic system ("SISBACEN") by means of the declaratory electronic registration ("RDE-IED"). After the foreign currency funds are exchanged into local currency, the Brazilian company must register the investment with SISBACEN. This registration will allow the remittance of dividends and interest on equity to the foreign investor and the repatriation of foreign capital invested in Brazil, as well as additional registration of foreign investment upon the reinvestment of profits.

Foreign loans are also subject to registration with SISBACEN, through the Registration of Financial Operations ("ROF"). The ROF must set forth the main financial terms and conditions of the loan. Once the ROF is issued, the foreign lender is authorised to wire the funds to the borrower and also will allow payment by the borrower.

How are employees taxed in Brazil?

Broadly speaking, Brazilian residents (which include, for instance, temporary visa holders from the moment they enter Brazil to work under an employment agreement) are subject to progressive income tax rates based on their worldwide income. In this regard, they must fill out and deliver their annual tax return (reporting the income earned in the previous calendar year), occasionally in which several deductions, from taxable income, are allowed.

Particularly regarding employees, Brazilian entities paying them must withhold the personal income tax on a monthly basis in accordance with progressive tax rates.

Also, employees must make contributions to Social Security, based on a specific progressive table. Such contributions must be withheld monthly and paid to the Brazilian Social Security Department ("INSS") by the employer, and are deductible from individual taxable income.

What are the current rates of tax for employees?

As mentioned above, income tax on payments made to employees must be withheld on a monthly basis according to the progressive table below, with rates varying from 7.5% to 27.5%:

Range of income (R$)	WHT (%)	Deduction (R$)
Until 1,903.98	0	
From 1,903.99 until 2,826.65	7.5	142.80
From 2,826.66 until 3,751.05	15	354.80
From 3,751.06 until 4,664.68	22.5	636.13
Above de 4,664.68	27.5	869.36

Employee social security contributions are made at rates varying between 8% and 11% based on the following progressive table:

Wage	Rate Social Contribution (%)
Until 1,556.94	8
From 1,556.95 until 2,594.92	9
From 2,594.93 until 5,189.82	11
22.5	636.13
27.5	869.36

Note that for social security contributions due from the employee, the maximum rate (11%) is levied up until the ceiling of R$ 5,198.82, even if the employee's wage is higher than this.

What taxes apply to the business models you have identified above?

Income earned by Brazilian companies is subject to the assessment of corporate taxes (Corporate Income Tax - "IRPJ" and Social Contribution on Profit - "CSL") at the combined rate of 34% (being 15% of IRPJ, plus the additional 10% on the profit that exceeds R$ 20,000.00/ month, and 9% of CSL). Brazilian companies may generally adopt one of the two different systems for calculating them (the so-called "Real Profit Regime" or the "Presumed Profit Regime").

Companies also have to pay two federal contributions levied on monthly gross revenues ("PIS" and "COFINS"), for which there are two ascertaining systems, with different rules and rates.

Trading companies also usually pay:

- State Value Added Tax ("ICMS") - a tax levied on sales and import of goods, amongst other things, which rates vary from State to State and according to the type of goods sold/imported.
- Excise Tax ("IPI") - a federal tax levied on import and on sales of imported and manufactured goods at rates that vary according to their tariff code.
- Import Tax ("II) - a federal tax levied on the import of foreign goods, the rate of which varies according to their tariff code.

How are dividends to foreign companies/shareholders taxed?

According to Brazilian legislation, as from January 1 1996, profit and dividends distributed and paid to Brazilian or foreign companies/shareholders are not taxed by income tax.

This means that dividends distributed abroad are not subject to Withholding Income Tax ("IRRF") upon remittance.

On the other hand, from the paying company's perspective, dividends are not treated as deductible expenses for Corporate Income Tax purposes.

Are there transfer pricing rules in place?

Brazil has had transfer pricing rules in place since 1997, when Law No. 9,430/96 came into force. Such rules are unique in Brazil and do not conform to the OECD arm's length principle, since Brazil is not a part of such organisation.

In summary, the rules determine the maximum amounts of deductible expenses for import transactions, and the minimum amount of taxable income for export transactions.

They apply for Brazilian entities that are part (i) in transactions with related parties abroad, or (ii) in transactions with entities established in the so called low tax jurisdictions or in jurisdictions that are not open regarding shareholding structure.

Brazilian legislation provides different methods for transfer pricing calculations, for both import and export transactions concerning goods, rights and services; it is up to the taxpayer to choose the method that best fits its operation and provides them with the best results.

Do you have double taxation treaties in place with foreign jurisdictions. If so where can we find out details?

Brazil has many treaties in place with foreign jurisdictions aimed at avoiding dual taxation in international transactions (Double Taxation Treaties - DTT's). The most common method of tax relief under such DTT's is the foreign tax credit, although tax-sparing clauses are also found in most treaties.

So far, Brazil has entered DTT's with the following countries: Argentina, Austria, Belgium, Canada, Chile, China, the Czech Republic, Slovakia, Denmark, Ecuador, Finland, France, Hungary, India, Israel, Italy, Japan, Luxembourg, Holland, Mexico, Norway, Peru, the Philippines, Portugal, Spain, South Africa, South Korea, Sweden, Trinidad and Tobago, Turkey, Ukraine and Venezuela.

Details regarding such Treaties can be found at the Brazilian Federal Revenue Office ("RFB") website: http://idg.receita.fazenda.gov.br/acesso-rapido/legislacao/acordos-internacionais/acordos-para-evitar-a-dupla-tributacao/acordos-para-evitar-a-dupla-tributacao

SIQUEIRA CASTRO ADVOGADOS

www.siqueiracastro.com.br

RIO DE JANEIRO
Praça Pio X
#15, 3rd floor
Rio de Janeiro,
Brazil

KEY CONTACTS:

Carlos Roberto Siqueira Castro
Partner
T: +55 21 2223 8818
crsc@siqueiracastro.com.br

Fernando Villela de Andrade Vianna
Partner
T: +55 21 2514-7226
fvillela@siqueiracastro.com.br

Heitor Faro de Castro
Partner
T: +55 11 3704 9840
hfc@siqueiracastro.com.br

Colombia

BUSINESS QUESTIONS

We are looking to set up a Colombian trading company. What structures/business vehicles do you use?

If the intention of the investor is to conduct permanent activities in Colombia, it will be required to establish a local branch office.

For the incorporation of a company in Colombia, the investor needs to select a suitable corporate form. The Colombian Commerce Code provides a number of corporate forms, ranging from partnerships to stock corporations.

Usually foreign investors favour a stock corporation or a simplified stock corporation (see descriptions below) as the vehicle for their endeavours in Colombia. This is due to the fact that under such business entity forms, investor's liability is limited to the amount of its equity contribution.

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

Currently the most common vehicle for foreign companies to adopt is a corporation by shares, known as Sociedad por Acciones Simplificada "SAS". The main characteristics of this type of corporations are: (i) it allows the incorporation without a number of shareholders (it may be incorporated by a single individual or entity), and (ii) it is not required to record the company's by-laws or any amendments thereto in a public deed. The liability of shareholders is limited to the amount of the corresponding contribution and according to a legal provision the corporate veil is especially protected, which means the shareholder shall not be liable for the labour, tax or obligations of any other nature of the company, unless the vehicle is used to defraud third parties. Finally, this type of company allows shareholders to freely agree on the terms of the company's by-laws.

What are the rules on capitalisation of entities in Colombia?

The rules for the capitalisation of companies in Colombia depend on the corporate structure chosen to start permanent operations in the country, as explained below:

1. Stock Corporations: As a general rule, there is no minimum required capital stock. However, there are some exceptions regarding Financial Institutions and Insurance Companies. A minimum capital is also required if the company will sponsor visas of its own employees in Colombia.

   The capital of the company is formed by the authorised capital, the subscribed capital, and the paid in capital. At least fifty percent (50%) of the authorised capital of the corporation should be subscribed on the date of incorporation. In addition, at least one third (1/3) of the value of each subscribed share shall be fully paid. Payment of the remaining share price may be deferred for up to one (1) year.

   Stock Corporations must be incorporated with at least five (5) shareholders, none of whom may own ninety-five percent (95%) or more of the corporation' outstanding share capital.

2. In Simplified Stock Corporations the amount of authorised capital (treasury shares), subscribed and paid capital can be freely established by the shareholders, as well as the mode and term to pay the shares; however the term to pay subscribed shares shall not exceed two (2) years.

What information are we required to provide businesses/ consumers with when trading with us?

Information provided to businesses and consumers must be always clear, truthful, sufficient, timely, verifiable, comprehensive, precise and suitable for the products and services being offered.

It is important to mention that on the one hand manufacturers have to inform businesses and consumers at least about:

- Instructions for the use of the products and services.
- Quantity, weight or volume, if applicable.
- Expiration date, if applicable.
- Specifications of the product or service being offered.

On the other hand, suppliers have to inform businesses and consumers at least about the following:

- Warranties
- Price

We would prefer to avoid having an actual physical presence in Colombia and instead are looking to appoint an agent or distributor to sell our products and/or services. What are the legal implications?

In cases where the company is not intending to have actual physical presence in Colombia, the main effect is that the company will not be obliged to incorporate a branch or subsidiary in Colombia. In cases where the company is choosing to appoint an agent, the only considerable legal effect would be that upon termination of the agreement the company may be liable to pay a commercial severance payment, consisting in an amount equal to a twelfth part of the average of the commissions, royalties or profits earned during the three years before the termination date, as well as an additional compensation in case of a unilateral termination. In cases where there is a distribution agreement, no such payment is mandatory if the contract is not structured as an agency.

We intend to sell goods via our online website. What are the legal requirements if we wish to sell into Colombia?

When selling goods online in Colombia, companies have to comply with e-commerce regulations. In summary, companies will have to:

- Provide clear, sufficient and updated information about the products and/or services being offered. When the products and/or services offered are accompanied with images, they have to duly inform about the scale of such images.
- Inform about payment means, time of delivery of the product and/or service, the right of withdrawal and the procedure to exercise such right, as well as any other relevant information to make a purchase decision.
- Inform the total price of the products, including taxes and any other expenses applicable.
- Provide a summary of the purchase before the payment is required, that will be available for printing or downloading.
- Provide proof of the purchase.
- Provide security measures to guarantee the protection of personal information and the transaction.
- Provide mechanisms available to submit claims and queries.

Do you have legislation in respect of the use of electronic signatures?

Yes, Colombian legislation establishes that the electronic signature has the same legal effects of a written signature, although compliance with certain requirements must be assured:

- That the electronic signature uses a method that allows the identification of the originator of a data message, in order to verify that its content has its approval.
- That the method is trustworthy and appropriate for the purpose for which the message was generated and communicated.

We intend to import goods into Colombia for sale. What are the legal requirements for doing this?

According to the Colombian customs regulation, the single general requirement applicable for the importation of goods into Colombia is that the importer of record must be registered before the Tax Registry. Such registry must indicate that the importer of record will carry out import activities.

Additional requirements may apply depending on the particular conditions of the import(s) operation(s), the goods and the importer itself.

What rights do consumers have when selling to them?

Consumers have the rights to receive the adequate information mentioned above, as well as products that meet the quality, suitability and security characteristics of the products, both that are considered as inherent to the products according to the market conditions, and the ones announced by the manufacturer or the supplier.
In case consumers do not receive products or services that meet said conditions when they purchase, they can:

1. Request the warranty to be effective (directly to the manufacturer or supplier, who are jointly responsible; or before the Colombian Consumer Protection authority.
2. Bring suit against the manufacturer and the supplier for providing deceptive or insufficient information, as well as submit complaints before the same Colombian Consumer Protection authority.

What are a customers rights in so far as returning goods (whether or not they are faulty)?

If goods are not faulty and they do meet adequate conditions of quality, suitability and security, manufacturers and suppliers may accept or deny the returning of goods at their discretion.

However, if goods do not meet adequate conditions of quality, suitability and security, the manufacturer and supplier are jointly responsible for fulfilment of such conditions; consumers can request the warranty to be effective to the manufacturer and/or supplier, and to the Colombian Consumer Protection authority.

If products are defective (i.e. products that may be damaging, affect other goods, or pose a risk to life or health), consumers have the right to return the product, obtain their money or other good in exchange, and request compensation for damages caused by the manufacturer and/or supplier, and bring a law suit if the former do not fulfil their obligations.

Are we required to ensure that all customers have agreed to our terms of business in writing?

No, but at the very least tacit agreement must be shown to make the terms of business valid among the parties. This is also applicable to sales online. The terms of business should take into account consumer protection legal provisions as to minimum information for products and services. Additionally, the law establishes certain presumptions and minimum rights for costumers that cannot be overruled by mutual agreement or unilaterally by the company.

We are looking to set-up a business in Colombia and intend to bring some of our current employees into Colombia to work. Do we require work/residency permits?

Yes, any foreigner willing to work in Colombia is required to process the corresponding visa, and in the event that the foreigners will perform a regulated profession he/she must process the corresponding permission.

What formalities do we need to comply with when recruiting employees in Colombia?

Before sending offers of employment the candidate must go through an entry medical examination to confirm that the employee is able to work. Even though the employment contracts can be agreed verbally, we recommend entering into written employment agreements in order to define its terms properly as well as the rights and obligations of the parties since that will prevent future disputes. Please be aware that the Colombian Labour Regime tends to protect the employee as the weak party of the employment relationship.

There is no obligation to register upon any authority these kind of agreements. However, when recruiting an employee, the company must register him/her before the Social Security System.

What are the minimum rights we have to adhere to for employees in Colombia?

There are several minimum rights granted to the employees by article 53 of the Constitution and among the Colombian Labour Code, such as a legal minimum wage, equal opportunities, non-discrimination, freedom of association (unions), inalienable rights, vacations, paid rest, primacy of the reality principle, social security, and special protection of pregnant women and handicapped employees. These are the principal ones.

The minimum wage for 2016 has been set by the authorities on COP 737,717 – approx. USD 246 (at a rate of exchange of COP 3,000 per one US Dollar). Any employee receiving a regular salary equivalent to 10 minimum wages or less is entitled to fringe benefits such as premium services bonus, severance payment and its interests, employees with a salary of 2 minimum wages or less will be granted with dress and footwear aid as well as transportation aid if they have to commute by their own means. As mentioned before, all employees must be affiliated by its employer to the Social Security System.

Article 161 of the Colombian Labour Code provides 8 maximum working hours per day and 48 hours per week. However, overtime is authorised by 2 hours per day and 10 hours per week when the employer does not require work on Saturdays. The maximum number of work hours allowed in a workweek for ordinary employees, including overtime, is 10 hours per day and 60 hours per week. A weekly paid rest day is mandatory. There is a premium for overtime, Sunday and night work.

Pregnant women and employees with health issues cannot be dismissed without just cause and prior authorisation from the Ministry of Labour; the same restrictions apply for union directors (permanently) and founders (for 6 months as from the foundation of the union).

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

Yes, consultants are hired through services agreements and employees through employment agreements. The commercial relationships are governed by services agreements and therefore the labour laws do not apply. However, if the rendering of services by the consultant is not carried out in an independent manner and subordination is deemed to exist between the Company and the consultant, an employment relationship could be declared by a judge and the Company should have to comply with all the labour obligations arising therefrom.

What options exist if we want to terminate employees contracts with us? Can we make them redundant?

Redundancy terminations are allowed in Colombia by article 64 of the Colombian Labour Code given that the employer pays an indemnification to the dismissed employee. The amount of the indemnification will depend on the type of contract, the duration of it at the moment of the termination and the salary earned by the employee. For indefinite term employment agreements, the employer shall pay an amount equivalent to 30 days of salary if the termination occurs during the first year and 20 days of salary for every additional year and proportionally for any fraction thereof. If the employee earns a salary equivalent to 10 minimum wages or more he/she will be entitled to 20 days of salary for the first year and 15 days of salary for each additional year and proportionally for any fraction thereof. For fixed-term agreements the employer will have to pay a day of salary for every remaining day until the agreed termination date.

Are there any restrictions on foreign investment in to Colombia?

By and large, foreign investment is permitted in all economic sectors except for (i) national defence industry, and (ii) the processing or disposal of hazardous waste not produced in Colombia. In addition, there are limitations or licensing requirements applicable to oil and gas, financial, open television, and private security and surveillance sectors.

There are two (2) modalities of foreign investment: foreign direct investment and portfolio foreign investment. Foreign direct investment is defined as equity contributions made to the capital of local companies or branches with non-Colombian head offices, the acquisition of real estate by foreign investors or the investment in private equity funds. Foreign direct investment may be made through the contribution of currency and/or assets.

Portfolio foreign investment is the investment made through local capital markets, which under applicable regulations must be made through specially designated managers which hold portfolio foreign investment funds composed of investments made by individuals or legal entities.

Do you have any currency or exchange controls in place?

Yes, cross border transactions in foreign currencies must be registered with the Central Bank of Colombia (Banco de la República). The Colombian currency is not convertible, and may not be taken across the border whether physically or through banks.

In relation to foreign investment, the channelling of currencies in Colombia must be done either directly by the investor, or by an attorney duly authorised through a power of attorney, by submitting the corresponding form to the Central Bank.

The adequate registration of foreign investment grants the investor a legal right to remit proceeds and other yields (i.e. dividends), derived from the investment, outside of Colombia. Additional rights include the following:

- Reinvestment of all proceeds, if so desired by the investor.
- Capitalisation of investment proceeds.
- Remittance of investment sale proceeds or remaining funds after the local company is wound up or liquidated.

The foregoing exchange rights may not be diminished or curtailed, except as a consequence of temporary measures adopted by the Central Bank or the government whenever the country's international reserves are reduced to less than three (3) months of imports. This event has not occurred since the exchange regime was liberalised in 1991.

How are employees taxed in Colombia?

Under current Colombian tax law, employees that are tax residents are subject to income tax and capital gains tax for their Colombian source and worldwide source income. Please note that labour payments are subject to withholding income tax on a monthly basis.

What are the current rates of tax for employees?

The rate for employees progressively increases from 0% to 33%, depending on the revenue of each employee.

What taxes apply to the business models you have identified above?

The taxes that might apply to the business models identified above are:

- Income tax: Corporate profits are subject to income tax at a 34% rate for taxable year 2017 and 33%, as from taxable year 2018.
    - The income tax rate for free trade zones is 20% for industrial users and a transitional rate of 34% in 2017 and 33% in the following years for commercial users.
- Income tax Surcharge: should apply for taxable years 2017 and 2018 only.
    - Colombian companies classified as income tax taxpayers will be subject to the Surcharge if their income tax taxable base is equal to or higher than COP 800,000,000 (USD 266,000 approx., at a rate of COP 3,000 per one US Dollar).
    - Income tax Surcharge will only apply on tax profits that exceed COP 800,000,000 (USD 266,000 approx.)
    - The Income tax surcharge rate will decrease in the following years, as follows: (i) for 2017, the rate will be 6%; and (ii) for 2018, the rate will be 4%
- Capital gains tax: applies on profits which are not related with the taxpayer's ordinary economic activity. Capital gains taxable events are expressly defined by law. The rate is 10%.
    - VAT: Sales, services and imports are subject to VAT at a 19% rate (some exceptions apply).
- Municipal income tax (ICA): Gross income of Colombian companies, whose corporate purpose will include commercial and services activities, is taxable at the municipal level with ICA. ICA rates range between 0.2% and 1.1%. The rate will depend on the municipality where the activity is performed and the corresponding activity.

How are dividends to foreign companies/shareholders taxed?

From January 1st 2017, dividends distributed to Colombian individual tax residents will be subject to taxation when they exceed approximately USD 6.000, at a progressive rate that varies from 5% to 10%, if those dividends come from profits that were taxed at the corporate level.

When dividends out of profits that were taxed at the corporate level are distributed to both non-resident individuals and corporate entities, they will be subject to dividends tax withholding at a rate of 5%.

The dividends distributed out of profits that were not taxed at the corporate level and that are distributed to individuals tax residents in Colombia, will be subject to a progressive income tax rate from 35% to 41.5%, depending on the value of the dividends. When distributed to Colombian companies, these dividends will be subject to the general corporate income tax.

Finally, the distribution of dividends to foreign entities and individuals, out of profits that were not taxed at the corporate level, will be subject to an income tax rate of 38.25% from January 1st 2017.

Are there transfer pricing rules in place?

Yes. Transfer pricing rules govern how a Colombian company and its foreign related entities will set internal prices for the transfer of goods, intangible assets, services, and loans.

The regulations are designed to prevent tax avoidance among related entities and place a controlled party on a par with an non-controlled taxpayer by requiring an arm's-length standard. Colombian pricing rules follow OECD criteria.

Do you have double taxation treaties in place with foreign jurisdictions. If so where can we find out details?

Yes. As of today, Colombia has entered into double taxation treaties with Spain, Mexico, Canada, Switzerland, Chile, India, Portugal, South Korea, Czech Republic, France (currently not in force) and the United Kingdom (currently not in force).

POSSE HERRERA RUIZ

POSSE HERRERA RUIZ

www.phrlegal.com/

BOGOTÁ
Cra 7 No. 71-52, Tower A
5th Floor.
Zip Code 110231

MEDELLÍN
Cra 43A # 1 – 50 Tower 2
Office 864 8th Floor,
San Fernando Plaza

BARRANQUILLA
Cra 53 # 82 – 86, 4th Floor.

KEY CONTACTS:
Ernesto Cavelier
Partner
T: +57 - 1-3257300
ernesto.cavelier@phrlegal.com

Dominican Republic

BUSINESS QUESTIONS

We are looking to set up an Dominican Republic trading company. What structures/business vehicles do you use?

Limited Liability Company, Company, Limited Partnership, Limited Liability Partnership.

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

Limited Liability Company. The liability of the members is limited to what they have invested. After operations start it should report to the tax authority monthly.

What are the rules on capitalisation of entities in the Dominican Republic?

For a Limited Liability Partnership the minimum capital is US$2,300 approximately.

The capital increases through the subscription and payment of shares that have not been issued within the authorised capital of the entity. This is evidenced by the signing of receipts signed by the administrators.

The shareholders have a preference right to buy new shares.

What information are we required to provide businesses/ consumers with when trading with us?

All relevant information about the products/ services. All business should be conducted in good faith.

We would prefer to avoid having an actual physical presence in the Dominican Republic and instead are looking to appoint an agent or distributor to sell our products and/or services. What are the legal implications?

Under determinate circumstances the local agent/ distributor should be compensated in case of unilateral agreement termination.

We intend to sell goods via our online website. What are the legal requirements if we wish to sell into the Dominican Republic?

No special rules for sales online.

Do you have legislation in respect of the use of electronic signatures?

Yes. The law 126-02. This law allows the use of electronic signature and provides it with the same powers as the standard signature.

We intend to import goods into the Dominican Republic for sale. What are the legal requirements for doing this?

You will need an import permit and to pay the customs tax. Packaging rules instruct you to translate labels into the Spanish language.

What rights do consumers have when selling to them?

Dominican Republic has a special law that protects the rights of consumers. The main rights are: Protection of heath, education for the use of the product, accurate information of the products/services, protection of economic interest, and compensation for damages, among other collective rights.

What are a customer's rights in so far as returning goods (whether or not they are faulty)?

The customers have returning rights only for faulty goods.

Are we required to ensure that all customers have agreed to our terms of business in writing?

No.

EMPLOYMENT QUESTIONS

We are looking to set-up a business in the Dominican Republic and intend to bring some of our current employees into Dominican Republic to work. Do we require work/residency permits?

Yes. Also there is a limit of 20% of foreign employees.

What formalities do we need to comply with when recruiting employees in the Dominican Republic?

All employees must be over 18 and be registered at the Labour Department and Social Security Department.

What are the minimum rights we have to adhere to for employees in the Dominican Republic?

Pay the minimum salary and comply with the health and security regulations. The minimum salary is US $150 a month approximately. Employees have the right to a basic health insurance, that is financed by both parties.

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

Yes. Consultants are considered freelancers and are not protected by the labour code.

What options exist if we want to terminate employees' contracts with us? Can we make them redundant?

The contract can be cancelled for a breach by the employee. It is possible to make the employee redundant; in that case the employer must compensate the employee through monetary payment based on salary and the date of the contract.

TAX AND INVESTMENT QUESTIONS

Are there any restrictions on foreign investment into the Dominican Republic?

No restrictions.

Do you have any currency or exchange controls in place?

No.

How are employees taxed in the Dominican Republic?

The employer retains from the employee's salary the tax applicable and then pays it to the tax authority.

What are the current rates of tax for employees?

Between 15% - 25% of their taxable incomes.

What taxes apply to the business models you have identified above?

27% of the taxable income.

How are dividends to foreign companies/shareholders taxed?

The company that pays dividends to companies/ shareholders should retain and pay to the tax authority 10%.

Are there transfer pricing rules in place?

Yes. Articles 281 and 282 of the Tax Code set up the rules.

Do you have double taxation treaties in place with foreign jurisdictions. If so where can we find out details?

Yes. The information is available at website of the tax authority - www.dgii.gov.do/legislacion/acuerdos/Paginas/acuerdos.aspx

MESA & MESA ABOGADOS

www.mesalex.com

SANTO DOMINGO
Ave. Lope de Vega No. 13,
Plaza Progreso Business Center,
Suite 705, Ens. Naco,
Santo Domingo
Dominican Republic.

KEY CONTACTS:
Rodolfo Mesa Chávez
Managing Partner
T: +(809) 338-0444
rmch@mesalex.com

Ecuador

BUSINESS QUESTIONS

We are looking to set up an Ecuadorian trading company. What structures/business vehicles do you use?

The structures we use are limited companies, limited liability companies, or that the foreign company settles in Ecuador.

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

They may be established as limited companies for which they must sign a minimum capital of 800 dollars. In the case of limited liability companies the minimum capital is 400 dollars, and if the foreign company wants to settle in the country it must have a minimum capital of 2000 dollars. Notwithstanding the type of company that is adopted, this will have to be registered in the commercial register of the canton of domicile pointed by the founding members. Companies must submit monthly statements to the Internal Revenue Service (SRI) and submit annual balance sheets, reports of the Managing Director and Commissioner to the Superintendent of Companies.

What are the rules on capitalisation of entities in Ecuador?

The standards used for the capitalisation of entities are governed under the “IFRS” standards, International Financial Reporting Standards.

What information are we required to provide businesses/ consumers with when trading with us?

All goods to be sold must display their prices, weights and measures, according to the nature of the product. All information related to the value of goods and services shall include: the total price, the additional amounts for taxes and other fees, so that consumers can know the final value. In addition to the total price of the goods, it should also include, in cases where the nature of the product permits, the unit price expressed in measures of weight and / or volume.

We would prefer to avoid having an actual physical presence in Ecuador and instead are looking to appoint an agent or distributor to sell our products and/or services. What are the legal implications?

According to the Companies Act it is not necessary to establish a branch, but to appoint a special representative (without obligation of settling); it is required to get a RUC in either case. Any domestic or foreign company that negotiates or shall contract obligations in Ecuador shall have an agent or representative who can answer the demands and fulfil their respective obligations. If the activities that a foreign company will exercise in Ecuador are linked to the execution of public works, public service or the exploitation of natural resources in the country, it is obliged to settle in the country.

We intend to sell goods via our online website. What are the legal requirements if we wish to sell into Ecuador?

It should depend on where the product is. If the company is in Ecuador you must obtain the Unique Taxpayer Registration (RUC) and address. If the merchandise is abroad, it must be imported before it is sold. In both cases the company is subject to tax on profits and should acquire the RUC.

Do you have legislation in respect of the use of electronic signatures?

Yes, the Electronic Commerce Act.

We intend to import goods into Ecuador for sale. What are the legal requirements for doing this?

1. Get the Unique Taxpayer Registration (RUC) issued by the Internal Revenue Service (SRI).
2. Be registered as an importer to the customs of Ecuador (SENAE).
3. Within the ECUAPASS, register the authorised signature record for the Andean Declaration of Value (DAV).
4. It is necessary to determine that the type of product to import meets the requirements of the law.
5. Transmit a customs import declaration and pay the corresponding taxes.

What rights do consumers have when selling to them?

- The right to protection of life, health and safety.
- The right to adequate, accurate, clear, timely and complete information on goods and services offered on the market and their prices, features, quality, contract conditions and other relevant aspects, including the risks that might be present.
- The right to protection against misleading or abusive advertising, or coercive or unfair trading methods.
- The right to reparation and compensation for damages due to deficiencies and poor quality of goods and services.
- The right to follow administrative and / or legal actions.
- The right to a book of complaints to be available to the consumer, in which you will notice the corresponding claim, which will be maintained and properly regulated in companies or establishments.

What are a customer’s rights in so far as returning goods (whether or not they are faulty)?

The right to reparation and compensation for damages due to deficiencies and poor quality of goods and services.

Are we required to ensure that all customers have agreed to our terms of business in writing?

No, because customers are subject to free contract for which there is freedom for both parties to agree to the terms. This type of contract is accession.

EMPLOYMENT QUESTIONS

We are looking to set-up a business in Ecuador and intend to bring some of our current employees into Ecuador to work. Do we require work/residency permits?

Effectively and to achieve a work visa it is necessary to meet the requirements for that purpose determined by the migration and labour ministry.

What formalities do we need to comply with when recruiting employees in Ecuador?

You have to obtain an employer number in the Ecuadorian Institute of Social Security (IESS), register work contracts, and pay the minimum sectorial wage according to the job.

What are the minimum rights we have to adhere to for employees in Ecuador?

The workers' minimum rights are: the unified basic salary under the table by activity sector; 40-hour work week; payment of social benefits such as 13th salary (12th part of the gains in the year and payable in December); the 14th payment (equivalent to a unified basic wage, currently $ 366.00); and 15 paid days of vacation each year.

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

According to the constitution the employment relationship is direct and bilateral if it meets these characteristics: dependency relationship, workplace, regular working hours and regular payment.

What options exist if we want to terminate employees' contracts with us? Can we make them redundant?

A compensation of one month's salary must be paid for each year of service, plus 25% of the last salary multiplied by the years that the worker has in the company. -The minimum compensation is three months' salary.

TAX AND INVESTMENT QUESTIONS

Are there any restrictions on foreign investment into Ecuador?

There are no specific restrictions on foreign investment in Ecuador.

Do you have any currency or exchange controls in place?

No. The only currency control is the taxation of all overseas transfers (from Ecuador to any foreign territory), which are subject to a 5% Tax on Capital Outflows. Some exemptions apply, such as profit distribution (after Corporate Tax) to non-Ecuadorian tax residents.

How are employees taxed in Ecuador?

Depending on the employment contractual regime, employees could be taxed in two ways. If the employee works under a labour contract, the employer is obligated to file his/her Income Tax Return. On the other hand, when a person works exclusively on a consulting basis (independent worker), he/she is obligated to issue an invoice for every payment received and to charge VAT (which is normally 12%, but 14% for maximum one year); in this case the employee is also obligated to file his/her own Income Tax Return and VAT Return.

In both cases, a Withholding Tax and a progressive tax rate apply. Under labour contract, deduction of social security contributions applies.

What are the current rates of tax for employees?

As mentioned before, employees are taxed with a progressive tax rate, which is updated yearly by the Tax Authorities. The 2016 tax rate is:

2016 – in US Dollars			
Base amount	**Excess**	**Tax on base amount**	**Tax on excess**
0	11.170	0	0%
11.170	14.240	0	5%
14.240	17.800	153	10%
17.800	21.370	509	12%
21.370	42.740	938	15%
42.740	64.090	4.143	20%
64.090	85.470	8.413	25%
85.470	113.940	13.758	30%
113.940	Onwards	22.299	35%

What taxes apply to the business models you have identified above?

The general Corporate Tax rate is 22%. However, a 25% tax rate applies when shareholders domiciled in a Tax Haven own 50% or more of the stock. If the shareholders domiciled in a Tax Haven own less than 50% of the stock, the 25% rate will only apply to the tax base correspondent to their participation in dividends.

How are dividends to foreign companies/shareholders taxed?

After Corporate Tax, non-resident shareholders are not taxed for their dividends as a general rule. If the shareholder is domiciled in a Tax Haven, the dividends are taxed with a 35% rate.

Are there transfer pricing rules in place?

Transfer pricing rules apply when having transactions with related parties. When such transactions exceed USD 3,000,000.00, the taxpayer is obligated to file a Report of Transactions with Related Parties. If such accumulated transactions exceed USD$ 15,000,000.00, the taxpayer is obligated to file a Comprehensive Transfer Pricing Report.

Do you have double taxation treaties in place with foreign jurisdictions. If so where can we find out details?

Ecuador has ratified double taxation treaties with:

- Andean Community (Colombia, Peru and Bolivia)
- Argentina
- Belgium
- Brazil
- Canada
- Chile
- China
- France
- Germany
- Italy
- Korea
- Mexico
- Romania
- Singapore
- Spain
- Switzerland
- Uruguay

More information may be found at http://www.sri.gob.ec/web/guest/fiscalidad-internacional1 (Ecuadorian IRS official Web Page).

Apolo
ABOGADOS DESDE 1948
ATTORNEYS SINCE

APOLO ATTORNEYS

www.apolo.ec/en/

GUAYAQUIL
Junín 105, Vista al Río Bldg.
6th Floor, Guayaquil, Ecuador

KEY CONTACTS:
Dr José Modesto Apolo
Partner
T: +(593-4) 2560100
jmapolo@apolo.ec

Guatemala

We are looking to set up a Guatemalan trading company. What structures/business vehicles do you use?

The limited liability company is the most commonly used structure to set up a company in Guatemala.

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

The most common structure used by foreign companies is the limited liability company. Normally, its constitution is stages and its responsibility is limited to the provided capital.

Limited liability companies in Guatemala are obliged to maintain an internal record of its nominee shareholders and to register in the public registers the managers, administrators, dignitaries and legal representatives. These kind of companies have to track their accounting, and share with the tax authorities its billing (monthly) and its income (annually).

The minimum capital required is of around US$.660. The capitalisation of these companies can be done with monetary contributions and with no monetary contributions.

What information are we required to provide businesses/ consumers with when trading with us?

The information required to do business with someone that trades with us is: Number of tributary identification (NIT), the address or fiscal domicile, the identification document of the legal representative of the Company, and the documents that support that legal representation.

We would prefer to avoid having an actual physical presence in Guatemala and instead are looking to appoint an agent or distributor to sell our products and/ or services. What are the legal implications?

The agent or distributor will be submitted to the legal system of agents and distributors, which is contained in the Commercial Code.

Reasons why the contract can be ended can be found in the regulation mentioned. The one who unilaterally ends the contract will be penalised by paying compensation.

We intend to sell goods via our online website. What are the legal requirements if we wish to sell into Guatemala?

If the sale is made abroad, the goods will be considered imports and 12% of their value will have to be paid in respect of the “IVA” (VAT). Depending on the type of product, other fees may also have to be paid. These are the only requirements to sell in Guatemala, unless the products imported are regulated by sanitary or security dispositions.

Do you have legislation in respect of the use of electronic signatures?

The law in Guatemala has recognised electronic signatures since 2008, when the Congress of the Republic of Guatemala approved the Act for Recognition of Communications and Electronic Signatures (Decree 47-2008), which is based on UNCITRAL’S (United Nations Commission on International Trade Law’s) Model Law on Electronic Signatures. The main objective of this legislation is to equate the electronic signature to the written signature, regarding their validity and probative value.

We intend to import goods into Guatemala for sale. What are the legal requirements for doing this?

General requirements to import goods into Guatemala for sale are the following:

1. First, it is necessary to be registered as an importer. These are the requirements:

- Have an assigned Tax Identification Number.
- Have at least one business that is affiliated with taxes.
- The company’s patent should specify that the company is to import goods to Guatemala.
- Register with BANCASAT. This is an online platform that facilitates online tax payments through an authorised national bank.

2. Secondly, it is important to calculate the tax payment through an electronic policy.

- The import policy is the document that legalises the entry of goods into the country. Import policy should be extended and signed by the customs agent. It is important that the importer knows if your customs broker works with either electronic policy or traditional.
- The importer must enable a file where you take control of all their import policies as these would be very useful if they need to send goods to their provider (repair, replacement, etc.) or if the representatives of the SAT visit the company to conduct an audit. Policies are important to keep in good condition and to be made available for any eventuality.

3. It is important to note that there are some additional requirements depending on the type of goods that the company hopes to import. For example, if the company hopes to import food, it is necessary to obtain a sanitary registration.

What rights do consumers have when selling to them?

Consumer rights are contained in the Consumer and User Protection Law (Decree 06-2003), Article 4. The most important regarding imported goods, are the following:

- Repair, compensation, money back or exchange the asset for breach of the agreement on the transaction and the provisions of this and other laws or hidden defects which are the responsibility of the supplier.

- The replacement of the product or, alternatively, to opt for the bonus value in buying another or the refund of the price has been paid in excess, when the quality or quantity is less than indicated.

The Directorate of Attention and Assistance to the Consumer (DIACO) is the administrative unit responsible for the implementation of the Consumer Protection Act, which establishes the minimum consumer rights and guarantees that cannot be waived, as they are considered a matter of public order and interest.

What are a customer's rights in so far as returning goods (whether or not they are faulty)?

As stated in the previous question, Article 4 f) of the Consumer and User Protection Law (Decree 06-2003), establishes a consumers right, "The replacement of the product or, alternatively, to opt for the bonus value in buying another or the refund of the price has been paid in excess, when the quality or quantity is less than indicated".

Are we required to ensure that all customers have agreed to our terms of business in writing?

It is not a legal requirement to have a written acceptance of the terms of business. However, it is important to note that according to the Consumer and User Protection Law (Decree 06-2003), there are some obligations that the providers should comply with. For example, respect the product specifications, as well as offers, promotions and sales made on them; give the consumer or user products according to the specifications that are offered through advertising, etc.

EMPLOYMENT QUESTIONS

We are looking to set-up a business in Guatemala and intend to bring some of our current employees into Guatemala to work. Do we require work/residency permits?

Exactly, foreigners have to apply for temporary residence before the National Department of Migration of Guatemala and for employment permit before the Employment and Social Prevention Ministry of Guatemala.

What formalities do we need to comply with when recruiting employees in Guatemala?

- Sign the employment contract, which has to be sent within the next 15 days of its signature to the General Employment Inspection.
- If the main business of the company is transportation, the employer would have to process its inscription before the Guatemalan Institute of Social Security (IGSS).
- If the main business isn't transportation, the employer must process the inscription before the Guatemalan Institute of Social Security (IGSS) of his employees only if he has hired 3 or more permanent employees.
- Obtain authorisation before the Employment and Social Prevention Ministry (MTyPS) of the internal employment regulation, if the company has 10 or more hired employees.
- Obtain the enabilitation of the salary book before the MTyPs, if the Company has 10 or more employees.
- Create a health and occupational center integrated by the employees and representatives of the employers.
- The minute CSSO book of the company, must be authorised before the Occupational security and Health Department.

What are the minimum rights we have to adhere to for employees in Guatemala?

You must pay

- The minimum monthly wage must be paid. For 2016, for agricultural and non-agricultural companies this amount corresponds to Q.2,497.04 –national currency- (US$.324.30 aprox). For export activity and maquila companies it is Q.2,284.15 – national currency- (US$.296.64 aprox)
- A monthly encouragement bonus must be paid. Q.250.00 – national currency- (US$.32.47 aprox)
- There is an annual bonus for the public and private sector employees (known as Bono 14), and it is equivalent to a complete salary. This bonus has to be paid in the first fortnight of July.
- The Christmas Bonus is also equivalent to a complete month. The employee has had to work in the Company for a year, otherwise he will only perceive the equivalent to the time he has worked for that company. This bonus has to be paid: 50% within the first fortnight of December, and the other 50% in the second fortnight of the same month.
- Employees have the right to 15 days of paid vacation for every work year

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

There are some differences: if someone is contracted as a consultant, the employment relationship is inexistent. The only employment link they have is known as a contract of professional services, and the payment of the salary must be done supported by an accounting receipt issued by the consultant. The employer must know, that the court can consider that someone has been hired as an employee, if constant dependency and immediate or delegated direction can be prove.

What options exist if we want to terminate employees' contracts with us? Can we make them redundant?

The employment relationship may finish:

- Will of one of the partiess
  - The employee can present his resignation.
  - The employer can fire the employee without pleading fair cause.

- Mutual consent
  - Both parties agree to finish the employment relationship.
- Reason attributable to the other party
  - The employee can plead that he is being fired in an unjustified and indirect way.
  - The employer can plead that fair cause exists for the firing.

Each of these ways will have its particularities in relation to the monetary compensation and its procedures.

TAX AND INVESTMENT QUESTIONS

Are there any restrictions on foreign investment in to Guatemala?

There are no restrictions on foreign investment into Guatemala. In fact, there is a law that protects and promotes foreign investment, Ley de Inversion Extranjera, which indicates that the foreign investor will be treated as a domestic one, with equal rights and obligations. Nevertheless, the foreign investors shall comply with all the regulations of the economic activity where they plan invest.

Do you have any currency or exchange controls in place?

No, there is no controls regarding currency and its exchange. Actually, there is a law that protects the free market in the negotiation of currency. The Ley de Libre Negociacion de Divisas (Free negotiation of currency Act), protects and guarantees the right to obtain, dispose, own, transfer, exchange, and make transactions with any currency. Therefore, in Guatemala is valid the payments and contracts done in Quetzales (local currency) and any currency.

How are employees taxed in Guatemala?

Employees have to pay income tax (Impuesto sobre la Renta) which is retained by the employer. Additionally, the employee has to pay a percentage of their wage for the Social Security system. No other tax applies to the employee's incomes.

What are the current rates of tax for employees?

There are two types of rates of tax for employees. For the employees that have an annual income below Q300,000.00 (about US$39,000.00) the rate is 5%.

For employees that their annual income is above of Q300,000.00, they have to pay a fixed amount of Q15,000.00 (about US$2,000.00), and additionally for the earnings above of Q300,000.00, a rate of 7%.

For both cases, to determine the taxable amount, the law takes into consideration some expenses. The rate is applied to the annual amount and the employer has to pay to the Tax Authorities every month, with the obligation to do a final statement at the end of the year.

For the social security system, the employee has to pay a rate of 4.83% of their wage, amount that is retained by the employer and transferred directly to the Instituto Guatemalteco de Seguridad Social.

What taxes apply to the business models you have identified above?

The general Corporate Tax rate is 22%. However, a 25% tax rate applies when shareholders domiciled in a Tax Haven own 50% or more of the stock. If the shareholders domiciled in a Tax Haven own less than 50% of the stock, the 25% rate will only apply to the tax base correspondent to their participation in dividends.

What taxes apply to the business models you have identified above?

- Income Tax
- VAT
- Solidarity Tax
- Property Tax

How are dividends to foreign companies/shareholders taxed?

Any dividend paid to foreign companies or shareholders are taxed. The rate of this tax is 5%. No other tax applies to the dividends. The rate is equivalent for local shareholders.

Are there transfer pricing rules in place?

Yes. Since 2013, Guatemala has transfer pricing rules, and the Tax Authority (Superintendencia de Administración Tributaria) has been asking for information for 2013 and subsequent years. Nevertheless, the rules were enforceable until January 1st, 2015 because a waiver passed by the Congress of Guatemala. Last year the Tax Authority asked for information to some big companies, and those who they required sent them Transfer Pricing Technical Report. These companies include local subsidiaries, branches, and multinational enterprises with cross-border related parties.

The Tax Authority have created a whole new department for Transfer Pricing rules, but they are still in the process of learning and obtaining more information to proceed to take more actions regarding those rules.

Guatemala has 6 methods for transfer pricing: comparable uncontrolled price method, cost plus method, resale price method, profit split method, transactional net margin method and valuation for imports and exports of goods method.

Do you have double taxation treaties in place with foreign jurisdictions. If so where can we find out details?

Guatemala does not have any double taxation treaties in force. Nevertheless, Guatemala is in negotiations with Mexico, but the Tax Authorities and the Financial Ministry must issue a favourable opinion about the convenience of this treaty for the country.

LATAMLEX LAW FIRM

ARENALES & SKINNER-KLÉE – LATAMLEX

latamlex.com/Oficinas/guatemala

GUATEMALA
13 Calle 2-60 Zona
10 Edificio Topacio Azul
Of. 701.
Guatemala.

KEY CONTACTS:
Rodolfo Salazar
T: +502 2386-9300
guatemala@latamlex.com

Panama

BUSINESS QUESTIONS

We are looking to set up a Panamanian trading company. What structures/business vehicles do you use?

The main corporate structures established under Panama law are:

1. Corporations ("sociedades anónimas")
2. Limited Liability Companies ("sociedades de responsabilidad limitada")
3. Limited Partnerships (simple or by shares) ("sociedades en comandita")
4. Branch of a foreign corporation.

For estate planning purposes, other structures such as private interest foundations ("fundación de interés privado") and trusts ("fideicomisos"), are also available.

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

Corporations are the most used structure because of its expedite incorporation procedures, and limited liability of shareholders, directors and officers. If the corporation is engaged in business or operates in Panama, it will need to file income tax statements for its operations in Panama.

What are the rules on capitalisation of entities in Panama?

Entities in Panama are generally incorporated with an authorised corporate capital, which is different from the paid in capital. Each entity will capitalise in accordance with its business needs.

What information are we required to provide businesses/consumers with when trading with us?

Businesses/consumers will generally only require the entity's name and tax identification number, known in Spanish as "Registro Unico de Contribuyentes".

We would prefer to avoid having an actual physical presence in Panama and instead are looking to appoint an agent or distributor to sell our products and/or services. What are the legal implications?

Relationships of agency and distribution are regulated by Panama's Code of Commerce, Civil Code and the underlying contractual relationship between the parties. Panama no longer has legal protections in place for local distributors or agents.

We intend to sell goods via our online website. What are the legal requirements if we wish to sell into Panama?

Online sales of products are not expressly regulated in Panama. Tax and consumer protection norms applicable to sales at physical stores would apply to online sales, such as the requirement of providing a fiscal invoice to the buyer, charging 7% tax on the transfer of goods and services, and providing a warranty for the products sold.

Do you have legislation in respect of the use of electronic signatures?

Yes, electronic signatures are regulated by Law No. 51 of 22 July 2008, as further regulated by Executive Decree No. 40 of 19 May 2009. In practice, however, electronic signatures are not yet the norm in Panama.

We intend to import goods into Panama for sale. What are the legal requirements for doing this?

Goods imported into Panama will be assigned a customs classification by the National Customs Authority and assigned an import tax and a transfer of goods and services tax that needs to be paid to complete the import process into Panama. Import of goods is generally handled by licensed customs agents in Panama.

What rights do consumers have when selling to them?

Contracts between providers of goods and services and consumers are regulated by Law No. 45 of 31 October 2007, which dictates norms on consumer protection and defense of competition. This law creates the Consumer Protection and Competition Defense Authority ("Autoridad de Protección al Consumidor y Defensa de la Competencia").

Sale of products through adhesion contracts which has clauses that might imply a waiver of consumer rights are recognised in Law to be null and void. Consumer rights are specified in article 35 of Law No. 45 of 31 October 2007, and include:

- To be protected from products that endanger their life, health or safety.
- Receive clear and accurate information on the product's characteristics in order to decide whether to purchase it and to use or consume it.
- To have access to a variety of products competitively priced.
- To be protected in their economic interests.
- To be heard by institutions in defence of their interests.
- To receive guidance on their consumption relationships.

What are a customer's rights in so far as returning goods (whether or not they are faulty)?

Law No. 45 of 31 October 2007 provides that sales of new products are understood to have the implicit obligation to guarantee the buyer the normal functioning of the product in accordance with the purpose for which it was manufactured, and this obligation can be claimed in the event of product defect or by cause attributable to the manufacturer, importer, distributor or provider, for those products that do not function properly during the warranty period, in which case the products must be replaced or sums paid for the product returned when replacement is not possible.

Are we required to ensure that all customers have agreed to our terms of business in writing?

To the extent that you wish to enforce the terms of business at a court of law, agreement to the terms in writing is most recommended under any potential legal enforcement scenario. That being said, since the terms will most likely be considered to be an adhesion contract, any provision that goes against rights enshrined in Law No. 45 of 31 October 2007 will be deemed null and void.

EMPLOYMENT QUESTIONS

We are looking to set-up a business in Panama and intend to bring some of our current employees into Panama to work. Do we require work/residency permits?

All foreign workers living in Panama need to obtain a valid visa and their corresponding work permit in order to live and work in Panama.

As a general rule Panamanian law allows contracting foreign workers in a proportion of not more than 10% of the workforce, except for foreign technicians, whose percentage may increase up to 15%, prior approval and with the obligation to substitute them with Panamanians after five years.

Foreigners require a Work Permit issued by the Ministry of Labour and Labour Development. A Work Permit is valid for one year, renewable for similar periods. Exempted from said percentages are foreign staff of businesses established solely to supervise from Panama transactions executed, effected, and consummated abroad, prior official approval.

There are two separate applications that may be carried out simultaneously.

The first application is an immigration or residence permit application, which is applied for before the National Immigration Service and allows a foreigner to obtain immigration status in Panama, with which he may or may not obtain Panamanian residency.

1. The second application is a work permit application, which is applied for before the Ministry of Labour and which allows a foreigner to work in Panama by granting him a work permit. A foreigner can obtain a work permit in the following cases:
    - If it is sponsored by the company which wishes to employ him, and provided that the quotas are fulfilled.
    - If he is married to a Panamanian national.
    - If he has ten or more years of residence in Panama, counted from the first resolution that authorises the provisional residency of the foreigner in Panama.
    - If the foreigner applies for a work permit on a basis a specific immigration application which allows it.

What formalities do we need to comply with when recruiting employees in Panama?

Panamanian labour law is very protective of employees. To hire employees, employment contracts must be executed in writing in 3 copies (one each for the worker, employer and Ministry of Labour and Labour Development). In absence of such contract, worker allegations of facts and circumstances, which should have been contained thereon, shall be deemed proven, barring contrary proof from the employer.

Contracts can be entered into for specific or indefinite periods and for specific works. The maximum term for a specific contract is one year. It will nonetheless be held as effectively covering an indefinite period should the employee:

1. Continue working beyond the contract's expiration.
2. Continue working beyond conclusion of works agreed.
3. When successive contracts are entered into for definite terms or for specific works.

What are the minimum rights we have to adhere to for employees in Panama?

Employees in Panama are protected by Panama's Labour Code, which provides with them with many rights, amongst which are:

1. The right to minimum wage and equal pay.
2. Protection of women, unions and minors.
3. Right to strike.
4. Payment of salary on the 15th and 30th of every month.
5. Payment of thirteenth month bonus.
6. Payment of overtime.
7. Annual paid vacations determined at the rate of 30 days for every 11 months of continuous work or 1 day for every 11 days of service.
8. Seniority payments, due upon termination of employment, fixed at a rate of 1 week of wages per year of service from the commencement date of the relationship.
9. Employer contributions to social security fund and education tax.

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

Consultants are not entitled to the same benefits as employees, that is, payment of social security taxes, withholding of income tax, vacation time, amongst others. That being said, employers must take care when hiring consultants to prevent having their consultant contracts be considered labour contracts.

The concepts of juridical subordination and economic dependence are important in determining if a labour contract exists or not, because on many occasions both the employer and the worker desire that the labour relation not be considered to be just that, in virtue of the fact that it places a series of obligations and additional requirements on the parties signing the contract.

Under Panamanian law, the lack of a written contract presumes that the affirmations expressed by the worker are correct regarding the conditions of the labour relation, as long as the employer does not provide concrete proof to the contrary. (art. 69 L.C.).

Further, even if there is a written contract, to the extent that there is a relationship of juridical subordination or economic dependence, a consultant can be considered an employee and treated as such by labour courts and administrative agencies.

What options exist if we want to terminate employees' contracts with us? Can we make them redundant?

Under Panamanian law an employer cannot terminate without cause a permanent job relationship, barring justification provided by law and under legal formalities. Exceptions to this general rule include:

1. Workers with service of less than two consecutive years
2. Household staff
3. Ratings on vessels trading internationally
4. Apprentices, and others

The law prescribes a specific set of causes justifying dismissals, categorising them as disciplinary, not attributable, and economic.

Major grounds for dismissals include:

1. Incurring acts of violence or threats against an employer or his relatives, senior staff or co-workers.
2. Incur into grievous lack of probity or integrity or in the commission of property crimes to the detriment of the employer.
3. Sabotage of job-related machines, tools, and product, buildings and appurtenances.
4. Negligently imperil security of the workplace and of persons present there.
5. Wilfully and repeatedly refuse measures preventing occupational hazards.
6. Unjustifiable disobedience of management-related orders to the employer's detriment.
7. Repeated lack of attendance without employer authorisation.
8. Sexual harassment, lewd or criminal conduct by worker during working hours.
9. Repeated and unauthorised consumption of alcohol or drugs.
10. Evident deficiency in productivity against specific standards measured under technical and evaluation systems previously approved by the Ministry of Labour and Labour Development or agreed to in collective bargaining.
11. Self-evident lack of talent or inefficiency by the worker or his loss of legal qualifications for his specialty which preclude discharge of contractual obligations.
12. Force majeure or happenstance implying unavoidable, direct, definitive cessation of the employer's activities.
13. Employer's bankruptcy proceedings.
14. Contractually-defined job interruptions or decrease in employer activity, due to serious market downturns, partial profitability due to production losses or through innovations in production procedures and equipment or analogous causes, all subject to corroboration.

Payments for termination vary based on the termination method used and the type of contract the person has. The following termination methods exist:

1. Justified or Unjustified Dismissal
2. Justified or Unjustified Resignation
3. Mutual Consent.

Generally, for indefinite period contracts, the employee is entitled to a series of termination payments and may be entitled to reinstatement of his job.

In the case of an unjustified dismissal or justified resignation of an employee with an indefinite period contract with over two (2) years of employment, by law the employee is entitled to:

1. Any unpaid salary
2. Any unpaid vacation
3. Proportional thirteenth (XIII) month payment
4. Antiquity Premium, which corresponds to one week of salary for every year worked and any proportional sum for an uncompleted year
5. Indemnity, which corresponds to 3.4 weeks of salary per year worked during the first 10 years and then 1 week of salary per additional year
6. Action for reinstatement additional payment, if the reinstatement proceeding is requested before the Ministry of Labour

TAX AND INVESTMENT QUESTIONS

Are there any restrictions on foreign investment into Panama?

There are few restrictions on foreign investment into Panama. The main ones relate to ownership of property within 10 kilometres of the border with Costa Rica and Colombia, and the requirement of nationality for certain trades and professions, such as retail trade, medicine, law, and accounting.

Do you have any currency or exchange controls in place?

There are no currency or exchange controls in place.

How are employees taxed in Ecuador?

Employees are subject to income tax and social security contributions. The employer has to deduct the income tax from the employee's salary and pay it to the Tax Authorities, as well as make deductions and reports on social security payments.

We detail them as follows:

Income Tax Payments

Annual Salary	Tax Rate
Up to US$11,000.00	0%
From $11,000.00 to $50,000.00	15% (the first $11,000.00 are exempt)
Over $50,000.00	For the first $50,000.00 has to pay $5,850.00 and 25% for any amount over $50,000.00

Social Security Payments:
Employer: The employer will pay the Social Security Office 12% of the salary of each employee, to be increased to 12.25% in 2013.

Employee: The employee will pay the Social Security Office 9% of his/her salary, to be increased to 9.75% in 2013.

Educational Insurance Payment:
Employer: The employer will pay the Social Security Office 1.50% of the salary of each employee.

Employee: The employee will pay the Social Security Office 1.25% of his/her salary.

Unemployment Fund:
The employer must pay every 3 months an amount equal to 2.25% (1.923% Seniority Payment + .327% indemnity) of the salary of each employee to contribute to the Unemployment Fund. The employer has to make four payments during the year: March 31, June 30, September 30 and December 31.

Occupational Hazards:
The employer has to pay between 0.77% and 5.67% of the salary of each employee to the Social Security Office. The percentage depends on the kind of activity, more risk, higher the percentage.

What are the current rates of tax for employees?

Please see answer above.

What taxes apply to the business models you have identified above?

The hallmark of Panamanian taxation is strict adherence to the principle of tax territoriality. Thus Article 694 of the Fiscal Code specifies that only "taxable income generated from any source within the territory of the Republic of Panama regardless of where it is received" is subject to income tax. Currently, the general corporate tax rate is 25%.

Entities in which the Government owns above 40% of their shares shall pay income tax at the rate of 30%.
According to article 694 of the Tax Code certain activities as not taxable within Panamanian territory, since they are not considered to be income:

1. Invoicing from a business within Panama for the sale of merchandise or products for an amount greater than that for which such items had been invoiced to said business within Panama, whenever said merchandise or products do not physically enter Panama.
2. Supervise from an office within Panama business transactions performed, completed, or having effect abroad (offshore operations).
3. Distribute dividends or shares of juridical persons that do not require Notice of Operations or generate income in Panama, when such dividends or shares are produced from incomes that were not generated in Panamanian territory, including incomes described from the activities mentioned in points a) and b) of this paragraph.

If a natural or juridical person receives income from both Panamanian and non-Panamanian sources, tax is liable only against that portion obtained from a Panamanian source, except for dividends if the company has a notice of operation.

How are dividends to foreign companies/shareholders taxed?

Any legal entity that requires a Notice of Operation regulated by Law 5 of 2007 (equivalent to a license for doing business in Panama) is obligated to withhold the dividend or participation quota tax of ten percent (10%) of the sums distributed to its shareholders or partners when these sums are from a Panamanian source and of five percent (5%) when the income originates from:

- Foreign source
- Exterior or export operations
- Local income exempt from income tax as per sections e, f, l and n of article 708 of the Tax Code.

The legal person that distributes the dividends or participation quotas must always distribute first the Panamanian source-income before distributing dividends from foreign source income, export or exterior operations and local income.

In case of companies established or to be established in any free zone in the Republic of Panama, they shall pay the dividend or participation quota tax at a fixed rate of five percent (5%) of the sums distributed to shareholders or partners, regardless of the source of the income.

For companies that do not distribute dividends or where the total amount distributed as dividends or participation quota is less than forty percent (40%) of the total net income for the corresponding fiscal period, after deducting the taxes, the company must cover ten percent (10%) of the difference, or in other words, at a 4% rate of the total net income after taxes. This 4% rate is the Complimentary Dividend Tax. The other 6% will be paid when the dividends are actually paid or distributed.

Are there transfer pricing rules in place?

Yes, Law 33 of 30 June 2010 adds Chapter IX to Title I of Book IV of the Fiscal Code, named “Rules for the Adjustment to the Provisions Established in the Treaties or Conventions to Avoid International Double Taxation”.

Do you have double taxation treaties in place with foreign jurisdictions? If so where can we find out details?

Yes, current information on double taxation treaties in place can be located at the General Directorate of Income’s website http://dgi.mef.gob.pa.

35 YEARS
PATTON, MORENO & ASVAT
INTERNATIONAL LAWYERS

PATTON, MORENO & ASVAT

www.pmalawyers.com

PANAMA CITY
8th floor,
Capital Plaza Building,
Roberto Motta Ave.
Costa del Este,
Panama City,
Republic of Panama

KEY CONTACTS:
Khatiya Asvat
Senior Associate
T: +(507) 306-9600
kasvat@pmalawyers.com

Paraguay

BUSINESS QUESTIONS

We are looking to set up an Paraguayan trading company. What structures/business vehicles do you use?

There are several types of legal structures, but the most accepted and practiced would be corporations and LLCs.

Which structure/business vehicle is the most common one for foreign companies to adopt and what are the liability and reporting provisions for it?

Both, corporations and LLCs are widely accepted because the economic liabilities are limited to the capital.

What are the rules on capitalisation of entities in Paraguay?

To capitalise a society in Paraguay, members must bring cash or goods in kind, which will be represented by shares (of equal value) or membership fees, depending on the type of corporate structure.

What information are we required to provide businesses/ consumers with when trading with us?

Companies in Paraguay are required to submit to its bylaws and Board decisions concerning the legal act to be held.

We would prefer to avoid having an actual physical presence in Paraguay and instead are looking to appoint an agent or distributor to sell our products and/or services. What are the legal implications?

This decision is quite often used by foreign companies in Paraguay. There are no contingencies and this behaviour is allowed. The foreign company may act through a representative, who must answer for their acts before the Board of the foreign company.

We intend to sell goods via our online website. What are the legal requirements if we wish to sell into Paraguay?

To sell goods or services to Paraguayan residents, through websites, it is necessary to adopt the Paraguayan e-commerce law, which calls for physical identification of the provider, as well as some requirements concerning the retention of personal data of consumers.

Do you have legislation in respect of the use of electronic signatures?

Yes, we do. Law 4017/2017, Digital Signatures Act. The Digital signature Act refers to the use of digital signatures in Paraguay, without limitation of the legal acts that can be the object of this use.This reference is always for the private sector. The public sector is more restricted.

Full legal validity of a digital signature is acquired when the signature is certified by the certification authority; If the signature is not certified, its validity is limited exclusively to the parties intervening in the legal business.

We intend to import goods into Paraguay for sale. What are the legal requirements for doing this?

Depending on the type of merchandise to be imported, there are varying levels of administrative requirements. For example, drugs or food, have many requirements, while textiles have less.

What rights do consumers have when selling to them?

Paraguayan consumers rights are established by Law 1334/1998, Consumer Act and executed by the SEDECO (Ministry of Consumer Protection, in Spanish).

What are a customer's rights in so far as returning goods (whether or not they are faulty)?

Paraguayan customers are entitled to return goods until 7 days after purchase, whether they are defective or not, and regardless of the way in which these goods were acquired.

Are we required to ensure that all customers have agreed to our terms of business in writing?

We can´t guarantee that all customers agree with our terms of business in writing, but we are required to have those terms visible. From the moment customers accept the purchase and, if the terms are visible, there is a presumption that they have agreed to our terms.

EMPLOYMENT QUESTIONS

We are looking to set-up a business in Paraguay and intend to bring some of our current employees into Paraguay to work. Do we require work/residency permits?

Yes, you do require work/residency permits, in all cases.

What formalities do we need to comply with when recruiting employees in Paraguay?

When recruiting employees in Paraguay the company needs to be legally constituted, sign contracts with workers and register them in the social security.

What are the minimum rights we have to adhere to for employees in Paraguay?

Minimum rights for workers in Paraguay are: a) minimum legal wage; b) Social Security; c) holidays; d) annual bonus; e) legal permits (sickness, maternity, etc.)

Is there a difference if someone is contracted as a consultant as opposed to being an employee?

There are two categories of contract: a) civil; b) labour. The consultants come into the first category. They wouldn't be governed by labour laws, but civil. They would be freelancers who sell their services and issue legal bills, since they would receive professional fees and wouldn't be subject to work from 9 to 5.

What options exist if we want to terminate employees contracts with us? Can we make them redundant?

To terminate contracts, labour law requires the payment of compensation that is stipulated by the number of years worked for the same employer.

TAX AND INVESTMENT QUESTIONS

Are there any restrictions on foreign investment in to Paraguay?

There are no restrictions for foreign investment in Paraguay; on the contrary, there are numerous advantages.

Do you have any currency or exchange controls in place?

Currency exchanges are free in Paraguay.

How are employees taxed in Paraguay?

Employees are not taxed in Paraguay.

What are the current rates of tax for employees?

There are not rates of tax for employees in Paraguay, but freelancers must pay 10% of VAT and Personal Income Taxes.

What taxes apply to the business models you have identified above?

Business models identified above have the same taxes as individuals: VAT and Income Tax. In all cases, 10%.

How are dividends to foreign companies/shareholders taxed?

There are no taxes for dividends to foreign companies/ shareholders.

Are there transfer pricing rules in place?

Yes, there are. The Treasury has shown concern about transfer pricing rules since 2010, monitoring export prices for soybeans (and related operations), and these review processes have not yet been finalised.

As a consequence, Law 5061/2013 approved a price adjustment rule, but this is not a rule of transfer pricing properly, but a rule of price adjustments for commodity exports currently applied only to the export of Soy, regardless of whether the transactions are carried out between affiliated or non-affiliated companies.

Do you have double taxation treaties in place with foreign jurisdictions. If so where can we find out details?

No, we don´t have double taxation treaties. Paraguay has existing Treaties to avoid double taxation in Income Tax and Heritage Tax with Chile and with China and the treaties in force in air transport matters. So, the answer to this question has changed.

BERKEMEYER
ATTORNEYS AND COUNSELORS

BERKEMEYER ATTORNEYS & COUNSELORS

http://www.berke.com.py

ASUNCIÓN
Jacaranda Building
4th. Floor
Benjamin Constant 835
P.O. Box: 835
Asunción
Paraguay

KEY CONTACTS:
Hugo T Berkemeyer
Partner
T: +(507) 306-9600
hugo.tberkemeyer@berke.com.py

June 2017