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INTRODUCTION


GUIDE TO GOING GLOBAL SERIES

To compete and be successful today, companies need to develop and scale their businesses globally. Each country presents its own set of unique laws, rules and regulations and business practices that companies must understand to be successful. In order to help clients meet the opportunities and challenges of expanding internationally, we have created a handy set of global guides that cover the basics companies need to know when going into and doing business in new countries. The Guide to Going Global series reviews business-relevant corporate, employment, intellectual property and technology, executive compensation, and tax laws in key jurisdictions around the world.

CORPORATE

The Guide to Going Global – Corporate has been created based on our research, our experience and feedback we have received from clients in both established and emerging businesses that have expanded internationally. We hope it will be a helpful resource for you.

The Guide to Going Global – Corporate covers corporate basics in 54 key jurisdictions across the Americas, Asia Pacific, Europe and the Middle East. We touch on a wide range of corporate issues for companies expanding internationally, including establishing a corporate presence and choice of entity, liability considerations, tax presence and tax filings, capital requirements, the formation process, director, officer and shareholder requirements, registration processes, office lease processes and possible exit strategies.

With more than 600 lawyers, DLA Piper’s global Corporate group is one of the largest in the world, with one of the widest geographical footprints of any global law firm and experience across the legal areas companies need as they expand internationally. With both global experience and local knowledge, we partner with our clients wherever they do business to find solutions and manage their risk in relation to their challenges and objectives.

While this guide provides high-level guidance, it is not a substitute for legal advice, and we encourage you to seek advice regarding the specific matters that concern you. If you wish to speak to any of our contributors, you may find their contact details at the end of the guide.

We hope you find this guide valuable, and we welcome your feedback.
This publication is provided to you as a courtesy, and it does not establish a client relationship between DLA Piper and you, or any other person or entity that receives it.

This is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

DLA Piper and any contributing law firms accept no liability for errors or omissions appearing in this publication and, in addition, DLA Piper accepts no liability at all for the content provided by the other contributing law firms. Please note that corporate law is dynamic, and the legal regime in the countries surveyed could change.

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ARGENTINA

Last modified 12 July 2022

FORM OF ENTITY

Corporation (Sociedad Anónima or SA)
Separate and distinct legal entity. Admits a minimum of 2 shareholders. Managed by a board of directors who are elected by the stockholders of the corporation.

Single-Shareholder Corporation (Sociedad Anónima Unipersonal or SAU)
Separate and distinct legal entity. Admits exclusively 1 shareholder. SAUs are not allowed to be incorporated or wholly owned by SAUs. Managed by a board of directors who are elected by the only stockholder of the corporation.

Simplified Corporation (Sociedad por Acciones Simplificada or SAS)
Separate and distinct legal entity. Admits 1 or more shareholders. Managed by a board of directors who are elected by the stockholders. Its incorporation and development are entirely digital.

Limited Liability Company (Sociedad de Responsabilidad Limitada or SRL)
Separate and distinct legal entity. Admits a minimum of two members and a maximum of fifty. Managed by a single manager or several managers with full powers who may act individually, or by a Board of Managers acting by majority, appointed by the members.

ENTITY SET UP

Corporation (Sociedad Anónima or SA)

- Two or more shareholders

- The local management is in charge of a board of directors, which may have at least one member with no maximum number (at least three directors and one alternative director in case the company’s capital stock
exceeds ARS50 million). Directors shall last between one and three years in office, as provided in the bylaws. They may be re-elected. The majority of the board of directors must be composed of Argentine residents.

- The president of the board is the legal representative of the company
- Statutory auditor is optional. Mandatory if capital stock exceeds ARS50 million
- Typical charter document: bylaws
- Corporate Books: stock ledger, shareholders’ meeting minutes, board of directors’ meeting minutes and attendance records book
- Should cash be paid out as consideration for the stock: only 25 percent must be paid up front, and the balance is paid within two years after that. When considerations for the stock are contributions in kind, the stock must be fully paid off at the time of subscription of the shares

Single-Shareholder Corporation (Sociedad Anónima Unipersonal or SAU)

- Only one shareholder
- The local management is in charge of a board of directors, which may have at least one member with no maximum number (at least three directors and one alternative director in case the company’s capital stock exceeds ARS50 million). Directors shall last between one and three years in office, as provided in the bylaws. They may be re-elected. The majority of the board of directors must be composed of Argentine residents
- The president of the board is the legal representative of the company
- Permanent control by government
- Statutory auditor is mandatory (at least one regular and one alternate statutory auditor)
- Typical charter document: bylaws
- Corporate books: stock ledger, shareholders’ meeting minutes, board of directors’ meeting minutes and attendance records book
- Capital stock shall be fully paid up upon execution of bylaws
- SAUs are not allowed to be incorporated or wholly owned by another SAU

Simplified Corporation (Sociedad por Acciones Simplificada or SAS)

- One or more shareholders
- The managers must be individuals, who may be appointed for an indefinite period. At least one director must be an Argentinean resident (provided that the Argentinian resident director is the legal representative
of the company)

- Statutory auditor is optional

- Corporate books: carried by electronic means (stock ledger, minutes and attendance records book)

- Should cash be paid out as consideration for the stock: only 25 percent needs to be paid up front, and the balance is paid within two years after that. When considerations for the stock are contributions in kind, the stock must be fully paid off at the time of subscription of the shares

**Limited Liability Company (Sociedad de Responsabilidad Limitada or SRL)**

- Two or more members

- The local management is in charge of single or several managers with full powers who may act individually, or a board of managers acting by majority. Managers may be appointed for an indefinite term. The majority of the board of managers must be composed of Argentine residents

- The legal representative of the company may be a single manager. All managers or a president of the board of managers are entitled with full powers

- Statutory auditor is optional. Mandatory if capital stock exceeds ARS50 million (at least one regular and one alternate member)

- Typical charter document: bylaws

- Corporate books: manager and quotaholders’ meeting minutes.

- Should cash be paid out as consideration for the stock: only 25 percent must be paid up front, and the balance is paid within two years after that. When considerations for the stock are contributions in kind, the stock must be fully paid off at the time of subscription of the shares.

**MINIMUM CAPITAL REQUIREMENT**

**Corporation (Sociedad Anónima or SA)**

Minimum capital of SA is ARS100,000.

**Single-Shareholder Corporation (Sociedad Anónima Unipersonal or SAU)**

Minimum capital of SAU is ARS100,000.

**Simplified Corporation (Sociedad por Acciones Simplificada or SAS)**

Minimum capital of SAS shall be twice the national minimum vital and mobile wage established at the time of its incorporation (as of February 2022: ARS66,000).

**Limited Liability Company (Sociedad de Responsabilidad Limitada or SRL)**
No minimum capital requirement.

**LEGAL LIABILITY**

*Corporation (Sociedad Anónima or SA)*

Directors must act honestly and in good faith in best interests of the company. Directors may be held personally liable to the company, shareholders and third parties if they fail to comply with their general legal duties or specific duties contained in Argentine Law 19,550.

*Single-Shareholder Corporation (Sociedad Anónima Unipersonal or SAU)*

Directors must act honestly and in good faith in best interests of the company. Directors may be held personally liable to the company, shareholders and third parties if they fail to comply with their general legal duties or specific duties contained in Argentine Law 19,550.

*Simplified Corporation (Sociedad por Acciones Simplificada or SAS)*

Liability of directors of a corporation under Law 19,550 is applicable to SAS managers. In addition, individuals who are not managers or legal representatives of an SAS, or legal persons acting as managers, are liable in the same way as managers, and their liability will be extended to the acts in which they did not intervene but which they habitually performed.

*Limited Liability Company (Sociedad de Responsabilidad Limitada or SRL)*

In case of SRLs, when articles allow distribution of management powers among individual members of the board of managers, the board's liability depends on the individual performance of each manager.

**TAX PRESENCE**

*Sociedad Anónima (Corporation) and SRL (LLC)*

An SA, same as an SRL (LLC), is considered an Argentine resident for tax purposes and is obligated to pay taxes on income obtained worldwide, whether earned within Argentina or abroad. An SA may take the sums effectively paid abroad for analogous taxes for activities carried out abroad as a payment for taxes (within certain limits).

**INCORPORATION PROCESS**

*Corporation (Sociedad Anónima or SA)*

File bylaws for registration with the Public Registry. An "urgent" registration process may be followed to obtain the company's registration and its tax ID within 20 business days, in case no observations are made by the Public Registry in the City of Buenos Aires.

*Single-Shareholder Corporation (Sociedad Anónima Unipersonal or SAU)*
File bylaws for registration with the Public Registry. An "urgent" registration process may be followed to obtain the company’s registration and its tax ID within 20 business days, in case no observations are made by the Public Registry in the City of Buenos Aires.

**Simplified Corporation (Sociedad por Acciones Simplificada or SAS)**

File bylaws for registration with the Public Registry. There is an established form of bylaws and public notice that, if used, shall enable the registration of the SAS within 20 business days through digital means in the City of Buenos Aires.

**Limited Liability Company (Sociedad de Responsabilidad Limitada or SRL)**

File bylaws for registration with the Public Registry. An "urgent" registration process may be followed to obtain the company’s registration, its tax ID and corporate books within 20 business days, in case no observations are made by the Public Registry in the City of Buenos Aires.

**BUSINESS RECOGNITION**

**Corporation (Sociedad Anónima or SA)**

Well regarded and widely used.

**Single-Shareholder Corporation (Sociedad Anónima Unipersonal or SAU)**

This corporate type was introduced in Argentina in August 2016 pursuant the Argentine Civil and Commercial Code modification and is beginning to be used. Well regarded and widely used.

**Simplified Corporation (Sociedad por Acciones Simplificada or SAS)**

This corporate type aims to be a more agile and economic alternative, both in its incorporation and in administration and management. Its incorporation and development are required to be entirely in digital form. However, some provinces or jurisdictions have restored the use of digital corporate documents for this type of company.

**Limited Liability Company (Sociedad de Responsabilidad Limitada or SRL)**

Well regarded and widely used. This is the type of company is usually preferred by foreign shareholders due to tax purposes.

**SHAREHOLDER MEETING REQUIREMENTS**

**Corporation (Sociedad Anónima or SA)**

Required to hold an annual meeting of shareholders to approve the financial statements of the company.

**Single-Shareholder Corporation (Sociedad Anónima Unipersonal or SAU)**

Required to hold an annual meeting of shareholders to approve financial statements of the company.
Simplified Corporation (Sociedad por Acciones Simplificada or SAS)

Required to hold an annual meeting of shareholders to approve financial statements of the company.

Limited Liability Company (Sociedad de Responsabilidad Limitada or SRL)

Required to hold an annual meeting of members to approve financial statements of the company.

BOARD OF DIRECTOR MEETING REQUIREMENTS

Corporation (Sociedad Anónima or SA)

The board shall meet at least once every 3 months.

Single-Shareholder Corporation (Sociedad Anónima Unipersonal or SAU)

Periodical meetings of the board are not required.

Simplified Corporation (Sociedad por Acciones Simplificada or SAS)

Periodical meetings of the board are not required.

Limited Liability Company (Sociedad de Responsabilidad Limitada or SRL)

Periodical meetings of managers are not required.

ANNUAL COMPANY TAX RETURNS

All corporations must annually file tax returns with federal and state tax authorities.

BUSINESS REGISTRATION FILING REQUIREMENTS

Corporation (Sociedad Anónima or SA)

Initial registration is required, as well as annual filings (ie, financial statements of the company before the Public Registry and the Tax Authority). Every appointment or resignation of directors, change of domicile or bylaws’ amendments must be filed with the Public Registry for registration.

Single-Shareholder Corporation (Sociedad Anónima Unipersonal or SAU)

Initial registration is required, as well as annual filings (ie, financial statements of the company before the Public Registry and the Tax Authority). Every appointment or resignation of directors, change of domicile or bylaws’ amendments must be filed with the Public Registry for registration.

Simplified Corporation (Sociedad por Acciones Simplificada or SAS)

Initial registration is required, as well as annual digital filings (ie, Financial statements of the Company before the
Public Registry and the Tax Authority). Every appointment or resignation of directors, change of directors, change of domicile or bylaws’ amendments must be filed with the Public Registry for registration.

**Limited Liability Company (Sociedad de Responsabilidad Limitada or SRL)**

Initial registration is required. Only SRLs which capital stock exceeds ARS50 million shall file their annual financial statements with the Public Registry. However, all SRLs must file their financial statements with the tax authorities.

**BUSINESS EXPANSION**

**Corporation (Sociedad Anónima or SA)**

No need to change as business expands.

**Single-Shareholder Corporation (Sociedad Anónima Unipersonal or SAU)**

If the number of shareholders exceeds 1, the SAU must convert to an SA or SAS.

**Simplified Corporation (Sociedad por Acciones Simplificada or SAS)**

No need to change as business expands.

**Limited Liability Company (Sociedad de Responsabilidad Limitada or SRL)**

If the number of members exceeds 50, the SRL must convert to an SA or SAS.

**EXIT STRATEGY**

Any corporate type shall file dissolution documents with the Public Registry.

**ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Corporations and single-shareholder corporations must pay annual fee to the Public Registry.

**DIRECTOR / OFFICER REQUIREMENTS**

Not applicable for this jurisdiction.

For more information on directors’ duties, see our Global Guide to Directors’ Duties.

**LOCAL CORPORATE SECRETARY REQUIREMENT**
Not applicable for this jurisdiction.

**LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT**

Not applicable for this jurisdiction.

**LOCAL OFFICE LEASE REQUIREMENT**

In some circumstances, the Tax Authority requires evidence of the declared domicile.

**OTHER PHYSICAL PRESENCE REQUIREMENTS**

Not applicable for this jurisdiction.

**SUFFICIENCY OF VIRTUAL OFFICE**

Not applicable for this jurisdiction.

**PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

A company must provide its registered address. In certain circumstances, a law firm office may provide the registered address until the local entity hires an office. In this case, the company is requested to move its registered office to its new location.

**PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

A company shall provide a local director. In certain circumstances, a law firm may provide a local director service at a monthly rate.

**NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS**

*Corporation (Sociedad Anónima or SA)*

Majority of members of the board must be Argentinean residents.

*Single-Shareholder Corporation (Sociedad Anónima Unipersonal or SA)*

Majority of the members of the board must be Argentinean residents.
Simplified Corporation (Sociedad por Acciones Simplificada or SAS)

At least 1 director must be Argentinean resident (provided that the Argentinean resident director is the legal representative of the company).

Limited Liability Company (Sociedad de Responsabilidad Limitada or SRL)

Majority of the members of the board must be Argentinean residents.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Not applicable for this jurisdiction.

SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF

Not applicable for this jurisdiction.

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

Not applicable for this jurisdiction.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

Corporation (Sociedad Anónima or SA)

- 2 or more shareholders
- Board of directors, which must have at least 1 member with no maximum number requirement (at least 3 directors and 1 alternative director in case the company’s capital stock exceeds ARS50 million)

Single-Shareholder Corporation (Sociedad Anónima Unipersonal or SAU)

- 1 shareholder
- Board of directors, which must have at least 1 member with no maximum number requirement (at least 3 directors and 1 alternative director in case the company’s capital stock exceeds ARS50 million)

Simplified Corporation (Sociedad por Acciones Simplificada or SAS)

- 1 or more shareholders
- The managers must be individuals, who may be appointed for an indefinite period
Limited Liability Company (Sociedad de Responsabilidad Limitada or SRL)

- 2 or more members (within a maximum of 50 members)
- The local management is maintained by a single manager, several managers with full powers who may act individually, or a board of managers acting by majority. Managers may be appointed for an indefinite term.

**MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

Corporation (Sociedad Anónima or SA)

At least 2 or more shareholders.

Single-Shareholder Corporation (Sociedad Anónima Unipersonal or SAU)

Only 1 shareholder is admitted.

Simplified Corporation (Sociedad por Acciones Simplificada or SAS)

At least 1 shareholder.

Limited Liability Company (Sociedad de Responsabilidad Limitada or SRL)

At least 1 or more members.

**REMOVAL OF DIRECTORS OR OFFICERS**

Removal of directors or managers shall be approved by the shareholders meeting and then registered in the Public Registry.

**REQUIRED AND OPTIONAL OFFICERS**

Not applicable for this jurisdiction.

**BOARD MEETING REQUIREMENTS**

Not applicable for this jurisdiction.

**QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

Corporation (Sociedad Anónima or SA)

The Board makes decisions by a simple majority of directors present at the relevant meeting, with a quorum of an absolute majority of total number of directors, unless the company’s articles provide for a higher quorum and
majority.

In case of annual or regular shareholders' meetings, the required quorum shall be constituted by shareholders representing the majority of the voting shares. If quorum is not reached, the meeting may be held at a second call. In this case, the meeting is duly constituted with any number of shareholders present. On the other hand, special meetings require the presence of shareholders representing 60 percent of the voting shares, unless the articles provide for a higher quorum. If quorum is not reached, the meeting may be held at a second call. In this case, the meeting is duly constituted with the presence of shareholders representing 30 percent of the voting shares, unless the articles provide otherwise.

Single-Shareholder Corporation (Sociedad Anónima Unipersonal or SAU)

The board makes decisions by a simple majority of directors present at the relevant meeting, with a quorum of an absolute majority of total number of directors, unless the company’s articles provide for a higher quorum and majority.

In the case of shareholders' meeting, quorum is reached if at least 1 shareholder of the company is present.

Simplified Corporation (Sociedad por Acciones Simplificada or SAS)

Meetings may be held physically or through digital means (ie, video or teleconference). Managers and members may call themselves to hold deliberations, with no need of prior notice. The management body’s resolutions are valid as long as all members attend, and the majority as stated in the bylaws approve the agenda. Member’s resolutions will be valid, provided that all partners attend and the agenda is passed unanimously.

Limited Liability Company (Sociedad de Responsabilidad Limitada or SRL)

The board makes decisions by a simple majority of the managers present at the relevant meeting, with a quorum of an absolute majority of total number of directors, unless the company's articles provide for a higher quorum and majority.

In case of annual or regular members' meetings, required quorum is constituted by the shareholders representing the majority of the voting shares. If quorum is not reached, the meeting may be held at a second call. In this case, the meeting is duly constituted with any number of shareholders present. On the other hand, special meetings require the presence of members representing 60 percent of voting shares, unless articles provide for a higher quorum. If quorum is not reached, a meeting may be held at a second call. In this case, the meeting is duly constituted with the presence of members representing 30 percent of voting shares, unless the articles provide otherwise.

**MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?**

Not applicable for this jurisdiction.

**AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT**
LOCALLY?

All companies must have at least annual financial statements audited. The auditor must be located in Argentina and the company’s corporate and accounting books must be kept locally.

REQUIREMENT REGARDING PAR VALUE OF Stock

Not applicable for this jurisdiction.

INCREASING OF CAPITALIZATION IF NEEDED

Not applicable for this jurisdiction.

SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)

When approving annual financial statements, shareholders’ meeting may resolve to distribute dividends, which will be transferred to respective shareholders.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

Corporation (Sociedad Anónima or SA)

No restrictions, unless otherwise provided in bylaws. Transfers are reported to the company and recorded in the Stock Ledger Book.

Single-Shareholder Corporation (Sociedad por Acciones Unipersonal or SAU)

No restrictions, unless otherwise provided in bylaws. Transfers are reported to the company and recorded in the Stock Ledger Book.

Simplified Corporation (Sociedad por Acciones Simplificada or SAS)

No restrictions, unless otherwise provided in bylaws. Transfers are reported to the company and recorded in the Stock Ledger Book.

Limited Liability Company (Sociedad de Responsabilidad Limitada or SRL)

No restrictions, unless otherwise provided in bylaws. Transfers shall be reported and registered with the Public Registry of Commerce.

OBTAINING A NAME AND NAMING REQUIREMENTS

Corporate name must contain the type of company it adopted. Name may be reserved before registering the
company by paying and filing a form with the Public Registry, in case the chosen name is available.

**SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS**

Not applicable for this jurisdiction.

**APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

Amendments to bylaws in all companies must be approved by shareholders or members’ meeting and then filed for registration by the Public Registry.

**LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

Not applicable for this jurisdiction.

**PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY**

Not applicable for this jurisdiction.

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FORM OF ENTITY

Branch

It is possible for foreign companies to conduct business in Australia through a branch office. A foreign company may establish a branch in Australia by registering with the Australian Securities and Investments Commission (ASIC) as a foreign company carrying on business in Australia. It must also appoint a local agent who will be responsible for ensuring the foreign company’s compliance with the Corporations Act 2001 (Cth).

Proprietary company

A proprietary company is a limited liability company designed for 50 shareholders or fewer. It is the most common type of company in Australia, and it has the advantage of being simpler and less expensive to administer than a public company. It is managed by a board of directors, which is responsible for making business decisions and overseeing the general affairs of the company. Directors may be appointed by other directors or by shareholders and may be removed by an ordinary resolution of the shareholders.

Public company

Similar in concept to a proprietary company, but there is no limit on the number of shareholders. There is also no limit on the ability of a public company to raise funds from the public, subject to satisfying applicable disclosure requirements.

ENTITY SET UP

Branch

- To establish a branch, the foreign company must be registered with ASIC and assigned an Australian Registered Body Number (ARBN).

- A branch is not a separate legal entity. The foreign company has full legal responsibility for the actions of the Australian branch.

- Must appoint at least 1 local agent.
• The local agent is responsible for the foreign company’s compliance with the Corporations Act and may be personally liable for any breaches or penalties.

• Must maintain a registered office in Australia.

• Taxed as a separate entity in Australia; taxed on all income sourced from Australia.

• Foreign Investment Review Board approval may be required before agreements to acquire shares, assets or real property can be entered into.

Proprietary company

• Must have at least 1 but no more than 50 shareholders, excluding employee shareholders.

• Generally, no personal liability of the shareholders beyond the amount agreed to be subscribed for shares.

• Taxed on its earnings at the corporate level; can frank dividends distributed to shareholders.

• Usually has a constitution setting out operational procedures.

• Board of directors has overall management responsibility.

• Shareholders purchase shares in the company at an issue price per share which is generally determined by the board of directors from time to time by reference to their directors’ duties. May have numerous classes of shares.

• Cannot engage in fundraising activities that would require disclosure to investors under the Corporations Act (eg, requiring a prospectus to be issued).

Public company

• Must have at least 1 shareholder, but there is no maximum.

• Generally, no personal liability of the shareholders beyond amount agreed to be subscribed for shares.

• Taxed on its earnings at the corporate level; can frank dividends distributed to shareholders.

• Usually has a constitution setting out operational procedures.

• Board of directors has overall management responsibility.

• Shareholders purchase shares in the company at an issue price per share which is generally determined by the board of directors from time to time by reference to their directors’ duties. May have numerous classes of shares.

• Can offer shares to the public, but must comply with requirements of the Corporations Act, including issuing a disclosure document, such as a prospectus.
Note: In addition to the above, there are other legal entities that can be established under Australian law, such as unlimited liability companies, companies limited by guarantee and no-liability companies. However, these are very rarely used for business purposes and are not considered further.

MINIMUM CAPITAL REQUIREMENT

Branch
No specified minimum capital requirement.

Proprietary company
No specified minimum capital requirement.

Public company
No specified minimum capital requirement.

LEGAL LIABILITY

Branch
A foreign company has full legal responsibility for the actions of the Australian branch and can sue and be sued in Australia. A local agent may also be personally liable for penalties imposed on the foreign company for contraventions of the Corporations Act.

Proprietary company
A company’s shareholders’ liability is generally limited to the extent of their initial investment, and the amount, if any, of the issue price of their shares which is unpaid.

Public company
A company’s shareholders’ liability is generally limited to the extent of their initial investment, and the amount, if any, of the issue price of their shares which is unpaid.

TAX PRESENCE

Branch
A foreign company is taxed as a separate entity in Australia and taxed on all income sourced from Australia. As the foreign company is carrying on an enterprise in Australia, it will also be required to register for Goods and Services Tax (GST).
Proprietary company

The company is taxed at a fixed rate on its income and capital gains. Profits are usually distributed by way of dividend. Dividends may be "franked" in effect to give Australian tax resident recipient shareholders a credit for the tax paid by the company.

Public company

The company is taxed at a fixed rate on its income and capital gains. Profits are usually distributed by way of dividend. Dividends may be "franked" in effect to give Australian tax resident recipient shareholders a credit for the tax paid by the company.

INCORPORATION PROCESS

Branch

A foreign company's registration with ASIC has the effect of establishing a branch office. The foreign company wishing to apply for registration should reserve the company's name to ensure that it is available in Australia and must lodge with ASIC an application form, together with a certified – and translated, if not in English – copy of the company's certificate of registration and constituent documents. Once the application is lodged, processing may take up to 28 days.

Proprietary company

An application for registration as an Australian company is required to be lodged with ASIC with the prescribed fee. Upon incorporation, ASIC will issue to the company a certificate of incorporation and an Australian company number (ACN). Taxation registrations are separate from the incorporation process.

Public company

An application for registration as an Australian company is required to be lodged with ASIC with the prescribed fee. Upon incorporation, ASIC will issue to the company a certificate of incorporation and an ACN. Taxation registrations are separate from the incorporation process.

BUSINESS RECOGNITION

Branch

Less common – and thus less well known to third parties – than a subsidiary.

Proprietary company

Well regarded and widely used.

Public company

Well regarded and widely used. All Australian companies listed on the Australian Securities Exchange (ASX) are public companies.
SHAREHOLDER MEETING REQUIREMENTS

Branch
Not applicable for this jurisdiction.

Proprietary company

Not required to hold an annual general meeting, but actions requiring shareholder approval require a resolution to be passed by the shareholders holding the requisite majority of voting shares at a shareholders’ meeting or approved by all shareholders by way of a written resolution. The requisite majority is most commonly a simple majority, but it is 75 percent for certain matters.

Public company

Must hold an annual general meeting within 18 months of incorporation and within 5 months of the end of its financial year.

Other meetings may be held as required.

BOARD OF DIRECTOR MEETING REQUIREMENTS

Branch
Not applicable for this jurisdiction.

Proprietary company

As required (no prescribed minimum). Usually at least 1 meeting is held each year (eg, to approve accounts or confirm solvency).

Public company

As required (no prescribed minimum). Usually at least 1 meeting is held each year (eg, to approve accounts or confirm solvency).

ANNUAL COMPANY TAX RETURNS

Branch
Must lodge a (federal only) company tax return each year, even if the business does not expect to pay any income tax.

Proprietary company

Must lodge a (federal only) company tax return each year, even if the business does not expect to pay any income tax.
Public company

Must lodge a (federal only) company tax return each year, even if the business does not expect to pay any income tax.

BUSINESS REGISTRATION FILING REQUIREMENTS

Branch

A balance sheet, profit and loss account, and cash flow statement must be lodged with ASIC each year.

Proprietary company

A company must confirm its corporate details and pay a review fee to ASIC each year. See also "Annual Corporate Maintenance Requirements."

Public company

A company must confirm its corporate details and pay a review fee to ASIC each year. See also "Annual Corporate Maintenance Requirements."

BUSINESS EXPANSION

Branch

No need to change as business expands.

Proprietary company

No need to change as business expands, but financial statement filing requirements depend on revenue, gross assets and number of employees.

Public company

No need to change as business expands.

EXIT STRATEGY

Branch

Cessation: Within 7 days after ceasing to carry on business in Australia, a registered foreign company must lodge written notice that it has so ceased.

Dissolution of foreign company: If ASIC receives notice from a local agent of a registered foreign company that the foreign company has been dissolved or deregistered in its place of incorporation, ASIC must remove the foreign company’s name from the register.
Proprietary company

Deregistration: If there are no liabilities and minimal assets. Application to deregister is lodged with ASIC.

Liquidation: If there are insolvent or significant assets or liabilities to be dealt with. A formal process involving the appointment of a liquidator, providing proof of debts, realizing assets, paying creditors and distributing any surplus to shareholders.

Public company

Deregistration: If there are no liabilities and minimal assets. Application to deregister is lodged with ASIC.

Liquidation: If there are insolvent or significant assets or liabilities to be dealt with. A formal process involving the appointment of a liquidator, providing proof of debts, realizing assets, paying creditors and distributing any surplus to shareholders.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

Branch

Once the foreign company is registered, it is required to lodge the following with ASIC at least once every calendar year and at intervals of not more than 15 months:

- A copy of its balance sheet, profit and loss statement, and cash flow statement
- Any other documents it is required by law to lodge in its country of origin and
- Payment of the ASIC the prescribed lodgment fee.

Changes to directors of the foreign company must be notified as they occur.

Proprietary company

A proprietary company must confirm its corporate details and pay a review fee to ASIC each year. Depending on whether it qualifies as a "large proprietary company" (determined by reference to revenue, gross assets and number of employees), financial statements may need to be filed each year. The accounting requirements imposed on a proprietary company under the Corporations Act depend on whether the company is classified as a "small proprietary company" or a "large proprietary company." Unless granted relief from ASIC, large proprietary companies are required to prepare an annual financial report which must be audited. A company is classified as a large proprietary company for a particular financial year if it satisfies at least 2 of the following tests:

- Consolidated revenue of the company and the entities it controls is AUD50 million or more for the financial year
- Value of the gross assets of the company and the entities it controls is AUD25 million or more at the end of the financial year and
- The company and the entities it controls have 100 or more employees at the end of the financial year.
Public company

A company must confirm its corporate details and pay a review fee to ASIC each year. An annual financial report must be prepared and audited.

**DIRECTOR / OFFICER REQUIREMENTS**

**Branch**

Not required to have a local director, but a registered foreign company must have 1 local agent.

**Proprietary company**

Must have at least 1 director, and at least 1 director must ordinarily reside in Australia.

**Public company**

Must have at least 3 directors, at least 2 of whom must ordinarily reside in Australia.

For more information on directors’ duties, see our [Global Guide to Directors’ Duties](https://www.dlapiperintelligence.com/goingglobal/).

**LOCAL CORPORATE SECRETARY REQUIREMENT**

**Branch**

Not required to have a secretary.

**Proprietary company**

Not required to have a company secretary, but if a company has 1 or more, at least 1 of them must ordinarily reside in Australia.

**Public company**

Must have at least 1 company secretary, and at least 1 company secretary must ordinarily reside in Australia.

**LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT**

**Branch**

None beyond the required local agent.

**Proprietary company**
None beyond the required director.

Public company

None beyond the required directors and company secretary.

**LOCAL OFFICE LEASE REQUIREMENT**

Branch

Must have a registered office in Australia. This does not have to be owned or leased by the foreign company.

Proprietary company

Must have a registered office in Australia. This does not have to be owned or leased by the company, but the person who owns or leases that property must consent to it being the registered office of the company. Corporate records are generally required to be maintained at the registered office.

Public company

Must have a registered office in Australia. This does not have to be owned or leased by the company, but the person who owns or leases that property must consent to it being the registered office of the company. Corporate records are generally required to be maintained at the registered office.

**OTHER PHYSICAL PRESENCE REQUIREMENTS**

Branch

Not applicable for this jurisdiction.

Proprietary company

Not applicable for this jurisdiction.

Public company

Not applicable for this jurisdiction.

**SUFFICIENCY OF VIRTUAL OFFICE**

Branch

No. A registered foreign company must display its name in a conspicuous position outside every office and place of business in Australia. It must also display its place of origin and the words "Registered Office" at its registered office.

Proprietary company
No. Each proprietary company must have a registered office in Australia. On registration, the address specified in the application for registration becomes the address of the registered office. The registered office can be changed by resolution of directors, and any change must be notified to ASIC.

Public company

No. Each company must have a registered office in Australia. On registration, the address specified in the application for registration becomes the address of the registered office. The registered office can be changed by resolution of directors, and any change must be notified to ASIC.

A public company must have its registered office open to the public during specified hours.

**PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

**Branch**

Allowed.

**Proprietary company**

Allowed.

**Public company**

Allowed, but the registered office of a public company must be open to the public each business day from at least 10:00am to noon and from at least 2:00pm to 4:00pm, or for at least 3 hours between 9:00am and 5:00pm – exact times may be chosen by the company. A public company must also display its name and the words "Registered Office" prominently at its registered office.

**PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

**Branch**

Provision of a local agent by a third-party service provider is allowed, but internal rules or insurance limitations may restrict law firm professionals from taking on this role.

**Proprietary company**

Allowed, but internal rules or insurance limitations may restrict law firm professionals from taking on this role.

**Public company**

Allowed, but internal rules or insurance limitations may restrict law firm professionals from taking on this role.

**NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS,**
DIRECTORS AND OFFICERS

Branch

Must have at least 1 local agent – an Australian company or resident in Australia.

Proprietary company

Must have at least 1 director who must ordinarily reside in Australia. If a company has 1 or more company secretaries, at least 1 of them must ordinarily reside in Australia.

There are no nationality requirements for shareholders, but certain acquisitions of shares by non-Australian persons may require notification and approval under Australia’s Foreign Investment regime (commonly referred to as FIRB approval).

Public company

Must have at least 3 directors, at least 2 of whom must ordinarily reside in Australia. Must have at least 1 company secretary, and at least 1 company secretary must ordinarily reside in Australia.

There are no nationality requirements for shareholders, but certain acquisitions of shares by non-Australian persons may require notification and approval under Australia’s Foreign Investment regime (commonly referred to as FIRB approval).

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Branch

Not applicable – this is subject to the requirements of the foreign company’s place of incorporation.

Proprietary company

None.

Public company

None.

SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF

Branch

A local agent is answerable for the doing of all acts, matters and things that the foreign company is required by or under the Corporations Act to do.

Proprietary company
Board of directors has overall management responsibility. Shareholders have no direct management rights but can appoint and remove directors by ordinary resolution.

**Public company**

Board of directors has overall management responsibility. Shareholders have no direct management rights but can appoint and remove directors by ordinary resolution (notwithstanding anything to the contrary in the constitution of the company or anything to the contrary agreed between the company and the relevant director), and shareholders may be required to approve certain corporate actions and significant transactions.

**PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS**

For all company types, directors are required to verify their identity with the ‘Australian Business Registry Services’ (ABRS) as part of a new director identification number (director ID) requirement. A director ID is a 15-digit identifier and directors will have one director ID (even where they are directors for more than one company). Director IDs cannot be searched by the public, and ABRS may only disclose a director ID with consent, or to certain government bodies or courts and tribunals.

Foreign directors will need to provide notarized copies of the identification documents when applying for a director ID. From 5 April 2022, newly appointed directors will require their director ID prior to their appointment as a director.

**Branch**

Details of the foreign company’s director(s) and local agent(s) are publicly available on ASIC’s database.

**Proprietary company**

Details of directors and shareholders are publicly available on ASIC’s database.

**Public company**

Details of directors are publicly available on ASIC’s database. Although public companies are not required to advise ASIC of changes relating to individual shareholders, the share register must still be updated for all shareholders’ changes.

**MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS**

**Branch**

Not applicable – this is subject to the requirements of the foreign company’s place of incorporation.

**Proprietary company**

There must be a minimum of 1 shareholder and a maximum of 50 shareholders, not including employee shareholders. For directors, there must be at least 1 director who must ordinarily reside in Australia.
Public company

There must be a minimum of 1 shareholder, and there is no maximum number. For directors, there must be at least 3 directors, at least 2 of whom must ordinarily reside in Australia.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

Branch

Not applicable – this is subject to the requirements of the foreign company's place of incorporation.

Proprietary company

A proprietary company must have at least 1 shareholder.

Public company

A public company must have at least 1 shareholder.

REMOVAL OF DIRECTORS OR OFFICERS

Branch

Not applicable – a registered foreign company must always have a local agent who is responsible for any obligations that the foreign company must meet. If a local agent ceases, the foreign company must appoint another agent and notify ASIC of the removal and appointment via lodgment of a form.

Proprietary company

Generally, directors may be removed by shareholders.

Public company

Generally, directors may be removed by shareholders.

REQUIRED AND OPTIONAL OFFICERS

Branch

Not applicable for this jurisdiction.

Proprietary company

Not applicable for this jurisdiction.

Public company
A public company must have at least 1 company secretary, who must ordinarily reside in Australia.

**BOARD MEETING REQUIREMENTS**

**Branch**

Not applicable – this is subject to the requirements of the foreign company's place of incorporation.

**Proprietary company**

Formally nil, but there is usually at least 1 board meeting per year. Decisions of directors can be effected by a written resolution signed by all directors.

**Public company**

Formally nil, but there is usually at least 1 board meeting per year. Decisions of directors can be effected by a written resolution signed by all directors.

**QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

**Branch**

Not applicable – this is subject to the requirements of the foreign company's place of incorporation.

**Proprietary company**

Unless otherwise specified in the company’s constitution, at least 2 shareholders must be present for the full meeting. A company may pass a resolution without a general meeting being held if all the shareholders entitled to vote on the resolution sign a document containing a statement that they are in favor of the resolution set out in the document.

Unless otherwise specified in the company’s constitution, the quorum for a directors' meeting is 2 directors. The directors of a company may pass a resolution without a directors' meeting if all the directors entitled to vote on the resolution sign a document containing a statement that they are in favor of the resolution set out in the document.

**Public company**

Unless otherwise specified in the company’s constitution, at least 2 shareholders must be present for the full meeting. A company may pass a resolution without a general meeting being held if all the shareholders entitled to vote on the resolution sign a document containing a statement that they are in favor of the resolution set out in the document.

Unless the directors determine otherwise, the quorum for a directors' meeting is 2 directors, and the quorum must be present at all times during the meeting. The directors of a company may pass a resolution without a directors' meeting if all the directors entitled to vote on the resolution sign a document containing a statement that they are in favor of the resolution set out in the document.
MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?

Branch

Not necessary in order to register a foreign company.

Proprietary company

Not necessary in order to incorporate.

Public company

Not necessary in order to incorporate.

AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?

Branch

A foreign company must lodge the following financial statements with ASIC once a year, unless the foreign company satisfies certain criteria which enables it to rely on the financial reporting relief provided under ASIC Corporations (Foreign-Controlled Company Reports) Instrument 2017/204:

- Balance sheet
- Profit and loss statement
- Cash flow statement and
- Any other document the company is required to prepare by the law of its place of origin.

Audit is generally not required provided the statements lodged by the foreign company are considered sufficient by ASIC. ASIC may request audited financial statements to be lodged if previously lodged statements are insufficient.

Proprietary company

A company may decide where to keep the financial records, but, if kept outside Australia, sufficient written information must be kept in Australia to enable true and fair financial statements to be prepared, and the company must give ASIC written notice of the place where the information is kept.

A small proprietary company does not have to have its accounts audited unless:

- It is a "disclosing entity"
• It is controlled by a foreign company and its financial results are not included in any consolidated accounts of the foreign company lodged with ASIC (some exemptions apply) or

• Shareholders holding at least 5 percent of ordinary shares require it to do so, or ASIC requires it to prepare audited financial statements.

All other proprietary companies (e.g., large proprietary companies) are required to have their accounts audited unless they obtain audit relief from ASIC. The auditor must be registered in Australia. If various criteria are satisfied, foreign companies are entitled to apply to ASIC for relief from the requirement to have their accounts audited.

Public company

All public companies are required to have their annual financial statements audited. The auditor must be registered in Australia.

REQUIREMENT REGARDING PAR VALUE OF STOCK

Branch

Not applicable – this is subject to the requirements of the foreign company's place of incorporation.

Proprietary company

Shares of a proprietary company have no par value. The "issue price" is determined by directors at the time of issue, and whether a share is fully or partly paid is determined by reference to the amount of the issue price that has been paid to the company.

Public company

Shares of a public company have no par value. The "issue price" is determined by directors at the time of issue, and whether a share is fully or partly paid is determined by reference to the amount of the issue price that has been paid to the company.

INCREASING OF CAPITALIZATION IF NEEDED

Branch

Not applicable – this is subject to the requirements of the foreign company's place of incorporation.

Proprietary company

There is no concept of authorized or maximum capital. Increased capitalization may occur at any time and must be authorized by ordinary resolution of directors.

Public company

There is no concept of authorized or maximum capital. Increased capitalization may occur at any time and must be
authorized by ordinary resolution of directors.

**SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)**

**Branch**

Repatriation of funds may generally be undertaken at any time. There is no withholding tax payable on the remittance of branch profits to the foreign holding company.

**Proprietary company**

Funds may be repatriated by dividends or return of capital.

**Public company**

Funds may be repatriated by dividends or return of capital.

**RESTRICTIONS ON TRANSFERABILITY OF SHARES**

**Branch**

Not applicable – this is subject to the requirements of the foreign company's place of incorporation.

**Proprietary company**

A signed share transfer form is required to transfer shares (note: duty may apply in certain circumstances).

The constitutions of some proprietary companies contain pre-emptive rights which require that a transferor of shares offers those shares to other shareholders before those shares may be offered to third parties. Frequently, those constitutions will also give the directors the right to refuse to register a share transfer, without them necessarily being required to give a reason for a refusal to register (although it is common for this power to contain an exception which prevents the directors from refusing to register a transfer of a share which occurs in connection with the enforcement of a security interest over a share).

**Public company**

Pre-emptive rights provisions are far less common in public company constitutions and cannot be contained in the constitution of an ASX-listed company.

Shareholders’ agreements may also provide restrictions on the transfer of shares, with such restrictions typically expressed to take precedence over restrictions found in the company’s constitution.

**OBTAINING A NAME AND NAMING REQUIREMENTS**

**Branch**
A foreign company must determine that the business name it wishes to use in Australia is available and must reserve that name with ASIC. Once registered, the foreign company must display its name in a conspicuous position and in legible characters outside every office and place of business in Australia that is open and accessible to the public.

**Proprietary company**

A new company must have a name that is different from the name of a company that is already registered. A proprietary company limited by shares must have the words "Proprietary Limited" or "Pty Limited" as part of its name.

**Public company**

A new company must have a name that is different from the name of a company that is already registered.

A public company must have the words "Limited" or "Ltd" as part of its name. A company must display its name prominently at every place at which the company carries on business and that is open to the public.

**SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS**

**Branch**

Financial institutions; professionals working within the financial sector, bullion and gambling sectors; and other regulated entities (ie, reporting entities) are required to satisfy their respective KYC obligations. Legal service providers may have their own internal KYC requirements.

**Proprietary company**

Financial institutions; professionals working within the financial sector, bullion and gambling sectors; and other regulated entities (ie, reporting entities) are required to satisfy their respective KYC obligations. Legal service providers may have their own internal KYC requirements.

**Public company**

Financial institutions; professionals working within the financial sector, bullion and gambling sectors; and other regulated entities (ie, reporting entities) are required to satisfy their respective KYC obligations. Legal service providers may have their own internal KYC requirements.

**APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

**Branch**

Not applicable – this is subject to the requirements of the foreign company’s place of incorporation.

**Proprietary company**

Any changes to a company’s constitution must be made by a special resolution (ie, passed by shareholders holding at least 75 percent of the voting shares).
Public company

Any changes to a company’s constitution must be made by a special resolution (ie, passed by shareholders holding at least 75 percent of the voting shares). For a public company, a copy of the resolution must be lodged with ASIC within 14 days after the special resolution is passed.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

Branch

Apart from the usual tax registrations applicable to all trading companies, namely:

- An Australian Business Number (ABN)
- An Australian Tax File Number (TFN) and
- GST registration,

There are no general registrations, licenses or permits that are required to conduct business in Australia.

Proprietary company

Apart from the usual tax registrations applicable to all trading companies, namely:

- An ABN
- A TFN and
- GST registration,

There are no general registrations, licenses or permits that are required to establish a company or conduct business in Australia.

Public company

Apart from the usual tax registrations applicable to all trading companies, namely:

- An ABN
- A TFN and
- GST registration,

There are no general registrations, licenses or permits that are required to establish a company or conduct business in Australia.
PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

Branch

Not applicable for this jurisdiction.

Proprietary company

A shelf company may be purchased from third-party suppliers but, given the speed and ease of incorporation, this is rarely used. It is common to incorporate a company from scratch because, once a person has the relevant member, director and registered office consents, the process may be completed on the same day.

Public company

A shelf company may be purchased from third-party suppliers but, given the speed and ease of incorporation, this is rarely used.

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FORM OF ENTITY

General Partnership (Offene Gesellschaft, OG)

An entity performing trading activities, the partners of which are fully liable for its debts with their entire assets. At the same time, all partners are managers of the business. Individuals or entities who are not partners must not be involved in the partnership’s management.

Limited Partnership (Kommanditgesellschaft, KG)

An entity performing trading activities, with 1 or more general partners who have unlimited joint and several liability for all debts of the partnership, and 1 or more limited partners who restrict their liability for its debts to a certain amount which they pay to the entity. Those whose liability is restricted are excluded from the management of the limited partnership. External managers must not be appointed.

Limited Liability Company (Gesellschaft mit beschränkter Haftung, GmbH)

Separate and distinct legal entity. Managed by its managers (may be shareholders or external individuals) who are responsible for making business decisions and the operations of the company. Managers may be elected by the shareholders of the company or may be appointed in the articles of association. Managers may be shareholders of the company.

Stock Corporation (Aktiengesellschaft, AG)

Separate and distinct legal entity. Managed by its management board (comprising of at least 1 individual) which is responsible for making major business decisions and overseeing general affairs of a corporation. The management board is elected by the supervisory board of a corporation. The supervisory board (mandatory for stock corporations) must comprise at least 3 individuals and is responsible for the supervision of the management board.

ENTITY SET UP

Stock corporation (Aktiengesellschaft or AG)

- In theory, unlimited number of shareholders (limited only by the number of shares as 1 share must
correspond to at least EUR 1).  

- Generally, there is no personal liability of the shareholders.

- Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends.

- Minimum stated capital: EUR 70,000; 1 share must at least correspond to EUR 1.

- Two-tier board system: the management board is responsible for the day-to-day management, the supervisory board supervises management and grants its consent (in some cases mandatory) to certain business and transactions.

- Typical charter documents include: articles of incorporation, standing orders and organizational resolutions by the management board, the supervisory board and the AGM/EGM. Shares must be registered shares (except for listed entities which must (in nearly all instances) have bearer shares); therefore, a share register is required.

- Shareholders typically purchase stock in the corporation. Usually common stock but rarely preferred stock.

  Annual financial statements must be audited by an auditor and filed with Austrian companies registry.

**Limited liability company (Gesellschaft mit beschränker Haftung, GmbH)**

Unlimited number of shareholders allowed (limited only by the number of shares since 1 share must at least correspond to EUR 70).

Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends Minimum stated capital: EUR 35,000; 1 share must at least correspond to EUR 70.

One-tier management or two-tier board system, depending on the size of the company: the management is responsible for the day-to-day management; the supervisory board, if established, supervises management and grants its consent (in some cases mandatory) to certain business and transactions.

Typical charter documents include:

- Articles of incorporation
- Standing orders and
- Organizational resolutions by the management board, if applicable, the supervisory board and the AGM/EGM.

The shares of each shareholder is registered with the Austrian companies registry.

Depending on the size (established by the balance sheet total, turnover and number of employees), annual financial statements must be audited by an auditor and filed with the Austrian companies registry.

**MINIMUM CAPITAL REQUIREMENT**

General Partnership and Limited Partnership
No minimum capital requirement.

**Limited Liability Company**

- EUR35,000 minimum share capital, with at least EUR17,500 paid up in cash
- A GmbH privileged at foundation may be established: the minimum share capital is EUR10,000, with at least EUR5,000 paid up in cash. The status as a GmbH privileged at foundation ends after 10 years after registration at the latest.
- Formation by contribution in kind is possible.

**Stock Corporation**

- EUR70,000 is the minimum share capital, with 25 percent of the minimum issue amount fully paid up in cash.
- Formation by contribution in kind is possible.

**LEGAL LIABILITY**

**Limited Liability Company and Stock Corporation**

Generally no personal liability of the shareholders (except for payment of minimum share contributions).

**General Partnership and Limited Partnership**

Partners of an OG are fully liable for its debts and liabilities with their entire assets.

Partners of a KG include 1 or more general partners who have unlimited joint and several liability for all debts of the KG and 1 or more limited partners with restricted liability for its debts to a certain amount.

**TAX PRESENCE**

**Limited Liability Company and Stock Corporation**

AG and GmbH are taxed at 2 levels. First, the company/corporation pays a corporate income tax on its corporate income; then, the company/corporation distributes profits to stockholders, who are then taxed with income tax (withholding tax).

**General Partnership and Limited Partnership**

OG and KG are treated as being transparent for income tax purposes as there is only 1 level of taxation. The corporate profits "pass through" to the owners, who pay taxes on the profits at their individual tax rates.

**INCORPORATION PROCESS**
**Stock corporation (AG)**

Filing an application with the local court (companies registry) for registration, together with articles of association in the form of a notarial deed, notarized resolutions on the appointment of the management board and the supervisory board, and a written confirmation by the founders (i.e., the future shareholder), the members of the management board and the supervisory board that the AG has been properly set up, as well as a confirmation by a local bank that the stated capital has been paid.

**Limited liability company (GmbH)**

Filing an application with the local court (companies registry) for registration, together with the articles of association in the form of a notarial deed, notarized resolutions on the appointment of the managing directors, and a confirmation by a local bank that the stated capital has been paid.

**BUSINESS RECOGNITION**

OG, KG, GmbH and AG are well regarded and widely used. GmbH is the most used form of a corporate entity in Austria.

**SHAREHOLDER MEETING REQUIREMENTS**

An ordinary shareholders' meeting must be held within the first 8 months of a business year.

A shareholders' meeting must also be held if requested by minority shareholders who hold in aggregate 5 percent of the corporation's entire share capital by providing the proposed agenda and a proposal for shareholders' resolutions to each item on the agenda.

Minutes of all shareholders' meetings must be taken in front of an Austrian notary public. A certified copy of the minutes must be filed with the companies register.

**Limited liability company (GmbH)**

An ordinary general meeting must be held annually at the seat of the company if the resolution by circular consent is not permitted.

Minutes of general meetings must be taken and kept with the company's records. The same applies to written shareholders' resolutions; certain resolutions require minutes in the form of a notarial deed or notarization.

Extraordinary meetings must be held whenever required in the interest of a company and, in particular, in the event that either:

- More than half the share capital has been used or
- The company's equity ratio falls below 8 percent and its fictitious debt repayment term exceeds 15 years. In the latter cases, the commercial register must be notified of the shareholders' resolutions that have been passed.
BOARD OF DIRECTOR MEETING REQUIREMENTS

Stock corporation (AG)
Any time a management decision is required.

Limited liability company (GmbH)
Any time a management decision is required; however, it can be (and usually is) quite informal.

ANNUAL COMPANY TAX RETURNS

General Partnership and Limited Partnership
Profits "pass through" to the shareholders, who pay taxes at their individual level. However, the OG or KG may be required to file an annual tax declaration for calculation of profits which are passed through.

Limited Liability Company and Stock Corporation
Annually file corporate income tax returns.

BUSINESS REGISTRATION FILING REQUIREMENTS

Stock corporation (AG)
Initial registration as well as annual filings are required.

Limited liability company (GmbH)
Initial registration as well as annual filings are required.

BUSINESS EXPANSION

Stock corporation (AG)
No need to change as business expands, unless any such expansion is not covered by the articles of association – in that case, approval by the shareholders' meeting with a 75-percent majority of the votes cast is necessary.

Limited liability company (GmbH)
No need to change as business expands, unless any such expansion is not covered by the articles of association – in that case, approval by the shareholders' meeting with a 75-percent majority of the votes cast is necessary (unless the articles of association provide for a different majority, but in no case less than 50 percent of the votes cast).

EXIT STRATEGY
Stock corporation (AG)

Sell shares or a resolution on dissolution which is passed by the shareholders' meeting.

Limited liability company (GmbH)

Sell shares or a resolution on dissolution which is passed by the shareholders' meeting.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

Stock corporation (AG)

Annual shareholders' meeting and at least 4 meetings of the supervisory board (at least each calendar quarter).

Limited liability company (GmbH)

Annual shareholders' meeting and, if any, at least 4 meetings of the supervisory board (at least each calendar quarter).

DIRECTOR / OFFICER REQUIREMENTS

Stock corporation (AG)

At least 1 member of the management board is required and at least 3 members of the supervisory board (individuals only).

Limited liability company (GmbH)

At least 1 managing director is required and, if at all, at least 3 members of the supervisory board are required.

For more information on directors’ duties, see our Global Guide to Directors’ Duties.

LOCAL CORPORATE SECRETARY REQUIREMENT

Stock corporation (AG)

Not applicable for this jurisdiction.

Limited liability company (GmbH)

Not applicable for this jurisdiction.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT
Stock corporation (AG)

Not applicable for this jurisdiction.

Limited liability company (GmbH)

Not applicable for this jurisdiction.

**LOCAL OFFICE LEASE REQUIREMENT**

Stock corporation (AG)

None required for incorporation; however, an address must be filed with the companies registry (can be the address of a law firm).

Limited liability company (GmbH)

None required for incorporation; however, an address must be filed with the commercial registry (can be the address of a law firm).

**OTHER PHYSICAL PRESENCE REQUIREMENTS**

Stock corporation (AG)

Not applicable for this jurisdiction.

Limited liability company (GmbH)

Not applicable for this jurisdiction.

**SUFFICIENCY OF VIRTUAL OFFICE**

Stock corporation (AG)

An address for must be filed with the companies registry (can be the address of a law firm).

Limited liability company (GmbH)

An address for service of documents must be filed with the companies registry (can be the address of a law firm).

**PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

Stock corporation (AG)

Allowed for incorporation.
Limited liability company (GmbH)

Allowed for incorporation.

**PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

Stock corporation (AG)

In theory, yes. In practice, hardly ever seen.

Limited liability company (GmbH)

In theory, yes. In practice, hardly ever seen.

**NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS**

Stock corporation (AG)

In most cases, no, except for certain areas of business (e.g., airline businesses, where at least 50 percent of the shares must be held by European shareholders).

Limited liability company (GmbH)

In most cases, no, except for certain areas of business (e.g., airline businesses, where at least 50 percent of the shares must be held by European shareholders).

**RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS**

Stock corporation (AG)

No. However, please note that any member of the management board or the supervisory board is fully liable, whether acting as nominee or not.

Limited liability company (GmbH)

No. However, please note that any managing director or the supervisory board is fully liable, whether acting as nominee or not.

**SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF**

Stock corporation (AG)
Members of the management board are elected by the supervisory board and are the highest authority in the management of the corporation. Members of the management board may only be dismissed for certain reasons – for example, inability to manage or a vote against a member of the management board by the shareholders’ meeting. Members of the management board must not be given orders by shareholders, and, in case such orders are given, they must be ignored.

**Limited liability company (GmbH)**

Managing directors are elected by the shareholders’ meeting and are the highest authority in the management of the corporation. Managing directors may be dismissed at any time, without stating any reasons (irrespective of any employment agreement). Managing directors can be given orders, and they are required to obey such orders (unless in conflict with the law).

**PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS**

**Stock corporation (AG)**

Identity of members of the management board and the supervisory board is publicly disclosed; identity of shareholders of private, non-listed companies is not publicly disclosed (unless there is only 1 single shareholder; in that case, the identity of that single shareholder is to be disclosed in the companies registry).

**Limited liability company (GmbH)**

Identity of managing directors (and the members of the supervisory board, if any) is publicly disclosed; identity of shareholders is also disclosed in the companies registry.

**MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS**

**Stock corporation (AG)**

There must be a minimum of 1 shareholder, and there is no maximum number. For members of the management board, the minimum number is 1, and there is no maximum number.

**Limited liability company (GmbH)**

There must be a minimum of 1 shareholder, and there is no maximum number. For members of the supervisory board, the minimum number is 3; there must be at least 1 managing director.

**MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

**Stock corporation (AG)**

One shareholder is sufficient.

**Limited liability company (GmbH)**
One shareholder is sufficient.

REMOVAL OF DIRECTORS OR OFFICERS

Stock corporation (AG)

Removal of the members of the supervisory board requires a vote by the shareholders’ meeting (usually 75 percent of the votes cast, unless lowered by the articles of association; however, in no case less than 50 percent of the votes cast). Removal of the members of the management board requires a vote by the supervisory board, limited to important reasons.

Limited liability company (GmbH)

Removal of the members of the supervisory board, as well as managing directors, requires a vote by the shareholders’ meeting (usually 75 percent of the votes cast).

REQUIRED AND OPTIONAL OFFICERS

Stock corporation (AG)

A management board and supervisory board are required; in addition, a holder of special power of representation (called a Prokurist) may be appointed by the management board with the approval of the supervisory board.

Limited liability company (GmbH)

Managing directors and, as the case may be, a supervisory board, are required; in addition, a holder of special power of representation (called a Prokurist) may be appointed by the managing directors.

BOARD MEETING REQUIREMENTS

Stock corporation (AG)

An annual shareholders’ meeting and at least 4 supervisory board meetings (at least each calendar quarter) are required.

Limited liability company (GmbH)

An annual shareholders’ meeting and, if at all, at least 4 meetings of the supervisory board (at least each calendar quarter) are required.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

Stock corporation (AG)

For a shareholders’ meeting, the presence of 1 single shareholder is sufficient. Resolutions are passed with the simple majority of the votes cast, except for important decisions – for example, change of articles. A 75-percent
majority vote is required.

Limited liability company (GmbH)

For a shareholders’ meeting, the presence of at least 10 percent of the shareholders (shareholders holding 10 percent of the shares) is required. Resolutions are passed with the simple majority of the votes cast, except for important decisions – for example, change of articles. A 75-percent majority vote is required.

MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?

Stock corporation (AG)

Yes, an Austrian bank account is required for incorporation. The stated capital must be paid to that bank account, and the bank must provide a confirmation that the stated capital is available. Without such confirmation, the companies registry will not register the stock corporation. (But registration, no local bank account is required for the operation of the business).

Limited liability company (GmbH)

Yes, an Austrian bank account is required for incorporation. The stated capital must be paid to that bank account, and the bank must provide a confirmation that the stated capital is available. Without such confirmation, the companies registry will not register the stock corporation. (But registration, no local bank account is required for the operation of the business).

AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?

Stock corporation (AG)

Yes.

Limited liability company (GmbH)

Yes; only very small companies with limited liability (ie, a balance sheet total of less than EUR4.84 million, annual turnover of less than EUR9.68 million and not more than 50 employees) are exempt from the mandatory audit.

REQUIREMENT REGARDING PAR VALUE OF STOCK

Stock corporation (AG)

The statutory minimum par value of stock is EUR1.

Limited liability company (GmbH)
The statutory minimum par value per share is EUR70.

**INCREASING OF CAPITALIZATION IF NEEDED**

**Stock corporation (AG)**

Effectuated by amending the articles of association, which requires a 75-percent majority of the shareholders (unless the articles of association provide for a different majority, but in no case less than 50 percent of the votes cast).

**Limited liability company (GmbH)**

Effectuated by amending the articles of association, which requires a 75-percent majority of the shareholders.

**SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)**

**Stock corporation (AG)**

Funds can be repatriated abroad from Austria via dividends or redemption.

**Limited liability company (GmbH)**

Funds can be repatriated abroad from Austria via dividends or redemption.

**RESTRICTIONS ON TRANSFERABILITY OF SHARES**

**Stock corporation (AG)**

Shares can generally be transferred between shareholders via a written agreement. *Vis-à-vis* the stock corporation, only those are deemed to be shareholders who are registered in the share register. In case of a listed company, shares are usually made out as bearer shares, so no share register is required.

**Limited liability company (GmbH)**

Shares can generally be transferred between shareholders via a written agreement, where such agreement must be made in the form of a notarial deed.

**OBTAINING A NAME AND NAMING REQUIREMENTS**

**Stock corporation (AG)**

The name must not be misleading and must not cause confusion. The name must include a reference to the legal entity of a stock corporation in German; therefore, either "Aktiengesellschaft" or an abbreviated form, such as "AG," must be included.
Limited liability company (GmbH)

The name must not be misleading and must not cause confusion. The name must include a reference to the legal entity of a limited liability company in German; therefore, either "Gesellschaft mit beschränkter Haftung" or an abbreviated form, such as "GmbH," must be included.

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

Stock corporation (AG)

The stock corporation is not subject to any KYC rules.

Limited liability company (GmbH)

The company is not subject to any KYC rules.

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

Stock corporation (AG)

Any amendment requires the consent of the majority of the shareholders' meeting – usually 75 percent of the votes cast.

Limited liability company (GmbH)

Any amendment requires the consent of the majority of the shareholders' meeting – usually 75 percent of the votes cast.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

Stock corporation (AG) and Limited liability company (GmbH)

A business license is required to conduct business. The type of license necessary depends on the type of business which will be run. The license can be obtained after registration of the company with the companies register.

Depending on the type of business – free (eg, trade of simple goods), regulated (eg, crafts) or sensible (eg, production of explosives) – and the trader (individual or company), the requirements for registering a business vary. Stock corporations and limited liability companies must appoint a managing director under trade law ( ie, an individual who fulfills the respective requirements for a certain type of business).

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

Stock corporation (AG)

Shelf companies can be purchased from third-party service providers, but aren’t widely used in Austria.
Limited liability company (GmbH)

Shelf companies can be purchased from third-party service providers.

KEY CONTACTS

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BAHRAIN

FORM OF ENTITY

If entities wish to conduct business in Bahrain, they must establish a presence in the country. The most commonly adopted legal structures in Bahrain are with limited liability companies (WLL), closed shareholding companies (BSC(c)) and foreign branches (branch).

With Limited Liability (WLL)

A WLL in Bahrain is a private company with one or more shareholders; each of them shall only be liable to the extent of their respective shareholding in the company. A WLL can be owned by a single natural or legal person. WLLs can neither engage in banking and insurance activities nor can they issue any shares, negotiable warrants or debentures to the public.

Closed Shareholding Company (BSC(c))

A BSC(c) is a company that consists of at least 2 shareholders who underwrite negotiable shares among themselves without underwriting such shares to the public. The shares of a BSC(c) cannot be offered to the public. Unlike a WLL, a BSC(c) is allowed to carry out banking and insurance activities.

Foreign Branch (Branch)

A foreign company that is incorporated abroad may establish a branch office in Bahrain if it provides a guarantee letter from the parent company to take full responsibility of the branch.

ENTITY SET UP

With Limited Liability (WLL)

- No minimum or maximum number of shareholders.
- Shareholder’s liability limited to their share in the capital.
• May not engage in the business of insurance and banking on behalf of other parties.

• Parties may not issue any shares, negotiable warrants or debentures to the public.

• Capital must be divided into shares of equal value.

• A percentage of the profits of the WLL must be set aside each year for depreciation.

• Ten percent of the profits thereafter must be set aside to build-up a compulsory reserve until the amount of the reserve equals 50 percent of the capital of the company.

Closed Shareholding Company (BCS(c))

• Incorporated with no fewer than 2 shareholders.

• Shares cannot be offered to the public.

• Allowed to carry out banking and insurance activities.

• Minimum capital of BHD 250,000 divided into equal shares.

Foreign Branch (Branch)

• The competent department at the Ministry of Industry, Commerce and Tourism (MOICT) shall maintain a special register to enter the names of the foreign companies incorporated abroad and undertaking its activities in Bahrain.

• Legally regarded as part of its parent company (no separate legal identity).

• Activities limited to those of its parents, as stated in its parents’ objects.

MINIMUM CAPITAL REQUIREMENT

With Limited Liability (WLL)

No minimum capital requirement as it depends on the activity/objective that will be undertaken.

Closed Shareholding Company (BSC(c))

Not less than BHD 250,000.

Foreign Branch (Branch)

No minimum capital required.
LEGAL LIABILITY

With Limited Liability (WLL)

A shareholder’s liability is limited to the extent of their capital in the company.

Closed Shareholding Company (BSC(c))

A shareholder’s liability is limited to the extent of their capital in the company.

Foreign Branch (Branch)

A parent company would bear all the liabilities of the branch office and operations in Bahrain.

TAX PRESENCE

- No personal income tax or corporate taxes payable.

- A corporate tax of 46 percent is imposed on oil, gas and related companies.

- As of January 1, 2022, Bahrain has increased value added tax (VAT) to a standard rate of 10 percent. Some suppliers, however, are exempt or zero-rated. VAT generally applies on the supply of goods and services by domestic taxpayers as well as on the import of such goods and services. Under certain circumstances, foreign businesses with supplies in Bahrain may also fall within the scope of VAT.

INCORPORATION PROCESS

With Limited Liability (WLL)

- All the cash and in-kind contributions have to be distributed amongst the shareholders and paid in full and the in-kind contributions have to be delivered to the company.

- Submit a shareholder resolution along with a draft memorandum of association to the MOICT and Central Bank of Bahrain (CBB) (if the company exercises CBB regulated activities).

Closed Shareholding Company (BSC(c))

- Submit a shareholder resolution along with a draft memorandum of association and articles of association to the MOICT and CBB (if the company exercises CBB regulated activities).

- A minimum of 50 percent of the capital must be paid initially at the time of incorporation; the remaining to be paid within 3 years.

Foreign Branch (Branch)
A resolution must be obtained from the parent company to establish a branch office in Bahrain and must be submitted to the MOICT and CBB (if the company exercises CBB regulated activities).

**BUSINESS RECOGNITION**

**With Limited Liability (WLL)**

Well regarded and widely used.

**Closed Shareholding Company (BSC(c))**

Well regarded and widely used.

**Foreign Branch (Branch)**

Well regarded and widely used.

**SHAREHOLDER MEETING REQUIREMENTS**

**With Limited Liability (WLL)**

The general assembly shall convene at least once a year within the 6 months following the end of the fiscal year of the company.

**Closed Shareholding Company (BSC(c))**

The general assembly shall convene at least once per year during the 3 months following the end of the fiscal year of the company.

**Foreign Branch (Branch)**

Not applicable.

**BOARD OF DIRECTOR MEETING REQUIREMENTS**

**With Limited Liability (WLL)**

The meeting requirements would be in accordance with that stated in the company’s memorandum of association.

**Closed Shareholding Company (BSC(c))**

The board of directors shall meet at least 4 times in the fiscal year, unless the company’s memorandum of association provides otherwise.
Foreign Branch (Branch)

Not applicable.

**ANNUAL COMPANY TAX RETURNS**

With Limited Liability (WLL)

A company who is registered for VAT must submit a tax return for each taxable period to the National Taxation Authority (NTA). Taxable periods vary depending on the annual supplies of the company's business.

Closed Shareholding Company (BSC(c))

A company who is registered for VAT must submit a tax return for each taxable period to the NTA. Taxable periods vary depending on the annual supplies of the company's business.

Foreign Branch (Branch)

A company who is registered for VAT must submit a tax return for each taxable period to the NTA. Taxable periods vary depending on the annual supplies of the company's business.

**BUSINESS REGISTRATION FILING REQUIREMENTS**

With Limited Liability (WLL)

Various documents required to be submitted to the MOICT and CBB (if the company exercises CBB regulated activities), including the application form for initial license approval, the board resolutions and corporate documents, passport copies of the individual shareholders and the directors.

Closed Shareholding Company (BSC(c))

Various documents required to be submitted to the MOICT and CBB (if the company exercises CBB regulated activities), including the application form for initial license approval, the board resolutions and corporate documents, passport copies of individual shareholders and directors.

Foreign Branch (Branch)

Various documents required to be notarized, legalized and submitted to the MOICT and CBB (if the company exercises CBB regulated activities), including a resolution of the parent company, guarantee letter from the parent company, bylaws of the parent company and passport copies of the authorized signatory(s) and director(s).

**BUSINESS EXPANSION**
With Limited Liability (WLL)

License and memorandum of association are required to be updated. For this purpose approval from the MOICT and CBB (if the company exercises CBB regulated activities) is necessary.

Closed Shareholding Company (BSC(c))

License and memorandum of association and articles of association are required to be updated. For this purpose, approval from the MOICT and CBB (if the company exercises CBB regulated activities) are necessary.

Foreign Branch (Branch)

License is required to be updated. For this purpose, approval from the MOICT and CBB (if the company exercises CBB regulated activities) is necessary.

EXIT STRATEGY

With Limited Liability (WLL)

Internal procedures to be followed such as shareholder approvals and undertakings that the company has met its debts and obligations. The dissolution must be registered with the Commercial Register at the MOICT and published in one of the local daily newspapers in the Arabic language.

Closed Shareholding Company (BSC(c))

Internal procedures to be followed such as shareholder approvals and undertakings that the company has met its debts and obligations. The dissolution must be registered with the Commercial Register at the MOICT and published in one of the local daily newspapers in the Arabic language.

Foreign Branch (Branch)

Internal procedures to be followed such as shareholder approvals and undertakings that the company has met its debts and obligations. The dissolution must be registered with the Commercial Register at the MOICT and published in one of the local daily newspapers in the Arabic language.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

With Limited Liability (WLL)

A company who is registered for VAT must submit a tax return for each taxable period to the National Bureau for Revenue (NBR). Taxable periods varies depending on the annual supplies of the company's business.

Closed Shareholding Company (BSC(c))
A company who is registered for VAT must submit a tax return for each taxable period to the NBR. Taxable periods vary depending on the annual supplies of the company's business.

**Foreign Branch (Branch)**

A company who is registered for VAT must submit a tax return for each taxable period to the NBR. Taxable periods vary depending on the annual supplies of the company's business.

**DIRECTOR / OFFICER REQUIREMENTS**

**With Limited Liability (WLL)**

At least 1 director to be appointed by the shareholders.

**Closed Shareholding Company (BSC(c))**

At least 3 directors to be appointed by the shareholder.

**Foreign Branch (Branch)**

At least 1 director to be appointed by the parent company.

**LOCAL CORPORATE SECRETARY REQUIREMENT**

**With Limited Liability (WLL)**

Not applicable.

**Closed Shareholding Company (BSC(c))**

Not applicable.

**Foreign Branch (Branch)**

Not applicable.

**LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT**

**With Limited Liability (WLL)**

Not applicable.

**Closed Shareholding Company (BSC(c))**

Not applicable.
Foreign Branch (Branch)

Not applicable.

**LOCAL OFFICE LEASE REQUIREMENT**

**With Limited Liability (WLL)**

A local office lease is required.

**Closed Shareholding Company (BSC(c))**

A local office lease is required.

Foreign Branch (Branch)

A local office lease is required.

**OTHER PHYSICAL PRESENCE REQUIREMENTS**

**With Limited Liability (WLL)**

No other express provisions.

**Closed Shareholding Company (BSC(c))**

No other express provisions.

Foreign Branch (Branch)

No other express provisions.

**SUFFICIENCY OF VIRTUAL OFFICE**

**With Limited Liability (WLL)**

A virtual office can be established depending on the commercial activity and approval of the MOICT and Municipalities Affairs at the Ministry of Works, Municipalities Affairs & Urban Planning (MA).

**Closed Shareholding Company (BSC(c))**

A virtual office can be established depending on the commercial activity and approval of the MOICT and MA.
Foreign Branch (Branch)

A virtual office can be established depending on the commercial activity and approval of the MOICT and MA.

**PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

**With Limited Liability (WLL)**

In the absence of an existing commercial address, the company cannot use the address of a law firm. However, it can use the address of a third-party service provider – registered with the MOICT – as a temporary address for a period of 3 months, after which the company must change its commercial address to a permanent address of its own.

**Closed Shareholding Company (BSC(c))**

In the absence of an existing commercial address, the company cannot use the address of a law firm. However, it can use the address of a third-party service provider (registered with the MOICT) as a temporary address for a period of 3 months, after which the company must change its commercial address to a permanent address of its own.

**Foreign Branch (Branch)**

In the absence of an existing commercial address, the company cannot use the address of a law firm. However, it can use the address of a third-party service provider (registered with the MOICT) as a temporary address for a period of 3 months, after which the company must change its commercial address to a permanent address of its own.

**PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

**With Limited Liability (WLL)**

Not applicable.

**Closed Shareholding Company (BSC(c))**

Not applicable.

**Foreign Branch (Branch)**

Not applicable.
NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

With Limited Liability (WLL)

Nationality restrictions of shareholders are dependent on the business activity of the company. Generally speaking, no nationality restrictions when appointing directors.

Closed Shareholding Company (BSC(c))

Nationality restrictions of shareholders are dependent on the business activity of the company. Generally speaking, no nationality restrictions when appointing directors.

Foreign Branch (Branch)

Generally speaking, no nationality restrictions when appointing directors.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

With Limited Liability (WLL)

Generally speaking, there are no restrictions for the appointment of nominee shareholders or directors.

Closed Shareholding Company (BSC(c))

Generally speaking, there are no restrictions for the appointment of nominee shareholders or directors.

Foreign Branch (Branch)

Generally speaking, there are no restrictions for the appointment of nominee directors.

SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF

With Limited Liability (WLL)

Directors are appointed by shareholders. Directors have an overall management responsibility. Shareholders have no direct management rights but can appoint and remove directors. Shareholders may be required to approve certain corporate actions and significant transactions.

Closed Shareholding Company (BSC(c))

Directors are appointed by shareholders. Directors have an overall management responsibility. Shareholders have no direct management rights, but can appoint and remove directors. Shareholders may be required to approve certain corporate actions and significant transactions.
Foreign Branch (Branch)

Directors are appointed by the parent company. Directors have an overall management responsibility.

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

With Limited Liability (WLL)

Details of directors and shareholders are publicly available on the MOICT database.

Closed Shareholding Company (BSC(c))

Details of directors and shareholders are publicly available on the MOICT database.

Foreign Branch (Branch)

Details of directors and parent company are publicly available on the MOICT database.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

With Limited Liability (WLL)

At least one director. No minimum and maximum number of shareholders.

Closed Shareholding Company (BSC(c))

A minimum of three directors. A minimum of two shareholders.

Foreign Branch (Branch)

At least one director to be appointed by the parent company.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

With Limited Liability (WLL)

No minimum shareholders required.

Closed Shareholding Company (BSC(c))

A minimum of two shareholders.
Foreign Branch (Branch)

Not applicable.

REMOVAL OF DIRECTORS OR OFFICERS

With Limited Liability (WLL)

Resolution from the company or a general meeting by the shareholders is required.

Closed Shareholding Company (BSC(c))

Resolution from the company or a general meeting by the shareholders is required.

Foreign Branch (Branch)

Resolution from the parent company is required.

REQUARED AND OPTIONAL OFFICERS

With Limited Liability (WLL)

No officers strictly required.

Closed Shareholding Company (BSC(c))

No officers strictly required.

Foreign Branch (Branch)

No officers strictly required.

BOARD MEETING REQUIREMENTS

With Limited Liability (WLL)

The meeting requirements would be in accordance with that stated in the company’s memorandum of association.

Closed Shareholding Company (BSC(c))

The board of directors shall meet at least 4 times in the fiscal year, unless the company’s memorandum of association and articles of association provide for more times.

Foreign Branch (Branch)

Not applicable for this jurisdiction.
QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

With Limited Liability (WLL)

The quorum for the general assembly of the shareholders shall not be valid unless shareholders holding at least 50 percent of share capital are present, unless the company’s memorandum of association provides for a larger majority.

No quorum required for board meetings, unless stated in the company’s memorandum of association.

Closed Shareholding Company (BSC(c))

For general assembly of the shareholders, typically the quorum for the meeting will only be valid if attended by a number of shareholders who have the right to vote and representing more than half the capital.

For board of directors meetings, typically the quorum for the meeting will only be valid if attended by at least half of the directors, provided that no fewer than 3 directors will be present, unless the company’s articles of association require a higher number or percentage.

Foreign Branch (Branch)

Not applicable.

MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?

With Limited Liability (WLL)

A bank account is not required to be opened prior to incorporation. A local bank account is a must.

Closed Shareholding Company (BSC(c))

A bank account is not required to be opened prior to incorporation. A local bank account is a must.

Foreign Branch (Branch)

Not required to open a local bank account.

AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?

With Limited Liability (WLL)

Audited financial statements are required. The auditor is required to be in Bahrain and must be licensed to practice the profession. Company's books must be kept locally.
Closed Shareholding Company (BSC(c))

Audited financial statements are required. The auditor is required to be in Bahrain and must be licensed to practice the profession. Company’s books must be kept locally.

Foreign Branch (Branch)

Audited financial statements are required. The auditor is required to be in Bahrain and must be licensed to practice the profession. Company’s books must be kept locally.

**REQUIREMENT REGARDING PAR VALUE OF STOCK**

With Limited Liability (WLL)

No express provision.

Closed Shareholding Company (BSC(c))

The company’s articles of association shall specify the nominal value of the share.

Foreign Branch (Branch)

No express provision.

**INCREASING OF CAPITALIZATION IF NEEDED**

With Limited Liability (WLL)

Typically a general assembly is required and a draft amended memorandum of association pertaining to the capital increase must be submitted to the MOICT and CBB. An approval from the MOICT and CBB (if applicable) must be obtained.

Closed Shareholding Company (BSC(c))

Typically a general assembly is required and a draft amended memorandum of association and articles of association pertaining to the capital increase must be submitted to the MOICT and CBB (if the company exercises CBB regulated activities). An approval from MOICT and CBB (if applicable) must be obtained.

Foreign Branch (Branch)

Not applicable.

**SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)**

With Limited Liability (WLL)
The redemption of the shares will be made in accordance with the company’s memorandum of association. The value of the redeemed shares must be paid from the profits or the distributable reserves. The redemption of the shares will not result in a capital reduction.

Closed Shareholding Company (BSC(c))

The redemption of the shares will be made in accordance with the company’s memorandum of association or articles of association. The value of the redeemed shares must be paid from the profits or the distributable reserves. The redemption of the shares will not result in a capital reduction.

Foreign Branch (Branch)

Not applicable for this jurisdiction.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

With Limited Liability (WLL)

Share transfer documents are required and must be approved by the MOICT and CBB (if applicable).

Closed Shareholding Company (BSC(c))

Share transfer documents are required and must be approved by the MOICT and CBB (if applicable).

Foreign Branch (Branch)

Not applicable.

OBTAINING A NAME AND NAMING REQUIREMENTS

With Limited Liability (WLL)

A WLL can have a special commercial name, which can be derived from its business objectives and include the name of a partner or partners, followed by the phrase or abbreviation "(With Limited Liability)" or "(WLL)."

Closed Shareholding Company (BSC(c))

A BSC(c) must derive their name from their business objective. The name of the company must always be followed by the phrase or abbreviation: "(Bahrain Closed Shareholding Company)" or "(BSC (Closed))."

Foreign Branch (Branch)

A branch of a foreign company that is established in Bahrain shall have a commercial name which must be identical to the name of the parent company.

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS
With Limited Liability (WLL)

Not required by law; however, may be required if stated in the company's internal regulations. If the company exercises CBB regulated activities, then it must follow the guidelines set by the CBB to prevent money laundering.

Closed Shareholding Company (BSC(c))

Not required by law; however, may be required if stated in the company's internal regulations. If the company exercises CBB regulated activities, then it must follow the guidelines set by the CBB to prevent money laundering.

Foreign Branch (Branch)

Not required by law; however, may be required if stated in the company's internal regulations. If the company is exercising CBB regulated activities, then it must follow the guidelines set by the CBB to prevent money laundering.

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

With Limited Liability (WLL)

Typically a resolution made in the general assembly of shareholders would be passed by the majority of shares represented in the meeting.

Closed Shareholding Company (BSC(c))

The approval requirements would be in accordance with that stated in the company’s articles of association.

Foreign Branch (Branch)

Not applicable.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

With Limited Liability (WLL)

License required from the MOICT and CBB, (if the company exercises CBB regulated activities). Additional approvals may be required from other competent authorities depending on the nature of activities.

Closed Shareholding Company (BSC(c))

License required from the MOICT and CBB (if the company exercises CBB regulated activities). Additional approvals may be required from other competent authorities depending on the nature of the business activities.

Foreign Branch (Branch)

License required from the MOICT and CBB (if the company exercises CBB regulated activities). Additional approvals may be required from other competent authorities depending on the nature of the business activities.
PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

With Limited Liability (WLL)

A shelf company must obtain the licenses and approvals from the MOICT and CBB (if applicable) before engaging in any business activity, and such business activity must be registered in the Commercial Register at the MOICT. A shelf company can be in the form of a WLL.

Closed Shareholding Company (BSC(c))

A shelf company must obtain the licenses and approvals from the MOICT and CBB (if applicable) before engaging in any business activity, and such business activity must be registered in the Commercial Register at the MOICT. A shelf company can be in the form of a BSC(c).

Foreign Branch (Branch)

Not applicable.

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BELGIUM

Last modified 14 July 2021

FORM OF ENTITY

Public limited company (société anonyme/naamloze vennootschap)

Separate and distinct legal entity. There are 2 types of board structures that may be chosen (ie, monistic board structure or dualistic board structure).

In the event the monistic board structure is chosen, the public limited company may be managed by either:

- A collegial board of at least 3 directors, or 2 directors in case there are less than 3 shareholders, or
- If provided by the articles of association, a sole director.

The collegial board is responsible for making major business decisions and overseeing the general affairs of the company. Managing directors (or general managers), who run the day-to-day operations of the company, are appointed by the directors. The sole director must be a public limited company with a collegial board when:

- The public limited company with a sole director is listed or
- When a legal provision requires a collegial board.

The dualistic board structure must be provided for in the articles of association and consists of a board of supervision and an executive board. The board of supervision is a collegial board of at least 3 members and is elected by the shareholders of the company. Members of the board of supervision cannot at the same time be members of the executive board. The board of supervision is responsible for the general policy and strategy of the public limited company and has reserved competences. The executive board is a collegial board of at least 3 members. Members of the executive board are appointed by the members of the board of supervision. The executive board has full management competence except for the ones reserved by the law for the shareholders’ meeting and the ones reserved for the board of supervision.

Limited company (société à responsabilité limitée/besloten vennootschap)

Separate and distinct legal entity. Managed by either a sole director, a non-collegial board of directors or a collegial board of directors (if provided in the articles of association), who are responsible for making major business
decisions and overseeing the general affairs of the limited company. Directors are elected by the shareholders of the limited company. The management body may appoint 1 or more persons who can act alone, jointly or collegially, and who are responsible for the daily management. If no daily management is appointed by the management body, the day-to-day operations of the company are run by the director(s), who has/have, in principle, full authority.

Often used by USA companies for tax reasons since it qualifies as check-the-box in the USA. Steps to be taken to ensure that the old IRS taxpayer identification number is made available to the new entity.

Belgian branch office of a foreign company

No separate and distinct legal entity from the foreign company. The legal representative must represent the foreign company with regard to the activities of its Belgian branch office.

**ENTITY SET UP**

Public limited company (société anonyme/naamloze vennootschap)

- 1 incorporator (natural person or legal entity) — unlimited number of shareholders
- Limited liability of the shareholders
- Subject to corporate income tax
- Typical charter documents include:
  - Articles of incorporation
  - Bylaws
  - Shareholders’ resolutions
  - Board resolutions and
  - Share register
- Subject to the board structure that is chosen (ie, monistic or dualistic), the board of directors or the sole director has the overall management responsibility. In the dualistic board structure, the board of supervision has the reserved competences, and the executive board has the residual as well as the operational competences
- Shareholders typically purchase shares in the company (either registered or dematerialized) – shares are freely transferable
- Different types of stock may be issued (eg, shares with or without voting rights, profit sharing certificates or stock options) – can issue financial instruments such as bonds
Limited company (société à responsabilité limitée/besloten vennootschap)

- 1 incorporator (natural person or legal entity) – unlimited number of shareholders
- Limited liability of the shareholders
- Subject to corporate income tax
- Typical charter documents include:
  - Articles of incorporation
  - Bylaws
  - Shareholders’ resolutions
  - Board resolutions and
  - Share register
- Every director has the authority to conduct all acts which are necessary or useful to realize the limited company’s corporate purpose, unless the law provides that such acts are the exclusive responsibility of the general meeting. Daily management may be attributed to 1 or more persons acting alone, jointly or as a college
- Shareholders typically purchase shares in the company (in principle registered) – shares are not freely transferable – form less used for joint ventures
- Different types of stock may be issued (eg, shares with or without voting rights, profit sharing certificates or stock options) – can issue financial instruments such as bonds
- Annual accounts to be filed with the National Bank of Belgium

Belgian branch office of a foreign company

- The competent corporate body of a foreign company may decide to open a Belgian branch office
- No separate legal entity; therefore, the foreign company shall be liable for all the obligations entered into
- Physical existence in Belgium for a branch office in which a foreign company carries out its activities
- Presence in Belgium of a legal representative who may bind the foreign company
- Regular exercise activities in Belgium
- Various documents related to the foreign company must in principle be translated into one of the official
Belgian languages and filed with the clerk’s office of the competent enterprise court, such as the deed of incorporation or the latest version of the articles of association

- A legal representative must represent the foreign company in Belgium
- The (consolidated) annual accounts of the foreign company must, on an annual basis, be filed with the National Bank of Belgium

**MINIMUM CAPITAL REQUIREMENT**

Public limited company (société anonyme/naamloze vennootschap)

Minimum capital: EUR61,500 fully paid up at the time of incorporation.

Above the minimum, each share must be paid up to 25 percent.

Limited company (société à responsabilité limitée/besloten vennootschap)

There is no capital requirement. Obligation to have a net equity which is, taking into account other sources of financing, sufficient in the light of the envisioned activities.

Next to a cash contribution, also a contribution in kind or in industry can be made.

Belgian branch office of a foreign company

Not applicable for this jurisdiction.

**LEGAL LIABILITY**

Public limited company (société anonyme/naamloze vennootschap)

Limited liability of the shareholders – shareholders of a public limited company are in principle not liable for the debts of a public limited company aside from their financial contribution to the public limited company (with the exception of the incorporators' liability during the first 3 years in case of a misrepresentation of the financial plan).

Limited company (société à responsabilité limitée/besloten vennootschap)

Limited liability of the shareholders – shareholders of a limited company are in principle not liable for the debts of a limited company aside from their financial contribution to the limited company (with the exception of the incorporators' liability during the first 3 years in case of a misrepresentation of the financial plan).

Belgian branch office of a foreign company

The foreign company shall be liable for all the obligations entered into by the legal representative on behalf of the Belgian branch office.

**TAX PRESENCE**
Public limited company (société anonyme/naamloze vennootschap)

Subject to corporate income tax:

- Belgian public limited companies are in principle taxable on their worldwide income, less allowable deductions. The taxable income is determined on the basis of the approved Belgian GAAP annual accounts, subject to certain adjustments in accordance with the Belgian Income Tax Code.

- Resident public limited companies are subject to a standard corporate income tax rate of 29.58 percent. This rate was reduced to 25 percent as of 2020. The first income band of EUR100,000 of small public limited companies is subject to a lower rate of 20.40 percent (20 percent as from 2020) provided that certain conditions are met.

- A participation exemption regime exists for received dividends under which, subject to certain conditions, 100 percent of the received dividends are deductible. Capital gains realized on shares may be exempt provided that certain conditions are met.

- The payment of dividends, royalties and interest is in principle subject to a 30-percent withholding tax. Domestic law provides for reduced rates and exemptions in certain circumstances. The applicable rate may further also be reduced under an applicable double taxation treaty.

- Losses may in principle be carried forward indefinitely, but their use in a given tax year is limited to EUR1 million plus 70 percent of the taxable basis in excess of EUR1 million.

- A CFC regime and a group consolidation regime entered into force in 2019.

Limited company (société à responsabilité limitée/besloten vennootschap)

Subject to corporate income tax:

- Belgian limited companies are in principle taxable on their worldwide income, less allowable deductions. The taxable income is determined on the basis of the approved Belgian GAAP annual accounts, subject to certain adjustments in accordance with the Belgian Income Tax Code.

- Resident limited companies are subject to a standard corporate income tax rate of 29.58 percent. This rate will be reduced to 25 percent as from 2020. The first income band of EUR100,000 of small limited companies is subject to a lower rate of 20.40 percent (20 percent as from 2020) provided that certain conditions are met.

- A participation exemption regime exists for received dividends under which, subject to certain conditions, 100 percent of the received dividends are deductible. Capital gains realized on shares can be exempt provided that certain conditions are met.

- The payment of dividends, royalties and interest is, in principle, subject to a 30-percent withholding tax. Domestic law provides for reduced rates and exemptions in certain circumstances. The applicable rate may further also be reduced under an applicable double taxation treaty.
• Losses may in principle be carried forward indefinitely, but their use in a given tax year is limited to EUR1 million plus 70 percent of the taxable basis in excess of EUR1 million

• A CFC regime and a group consolidation regime will enter into force as from 2019

Belgian branch office of a foreign company

A Belgian branch office of a foreign company will, in principle, be subject to tax on income generated by the Belgian branch office and will thus be subject to the so-called corporate nonresident income tax. The applicable tax rates are identical to the tax rates for resident companies. If a double taxation treaty is in place between Belgium and the state of tax residence of the foreign company, such treaty should be consulted in order to verify whether Belgium has the authority to tax the income that is attributable to the branch.

The foreign company (via its branch office) may also be subject to certain other possible taxes, such as registration taxes on the purchase of real estate or communal taxes.

Depending on its activities, the Belgian branch office may also qualify as VAT taxpayer.

INCORPORATION PROCESS

Public limited company (société anonyme/naamloze vennootschap)

The public limited company will be incorporated at the occasion of an incorporation meeting. The meeting must be held in the presence of a notary public. The incorporation deed will be passed during this incorporation meeting and will not only incorporate the public limited company, but will also contain the public limited company’s articles of association.

Bank certificate in case the public limited company is incorporated by means of a contribution in cash. Prior to the incorporation of the public limited company, the notary public passing the deed of incorporation must be provided with a financial plan (see below), prepared and signed by the incorporator(s). In this financial plan, the incorporators justify the amount of the capital for a first period of at least 2 years.

The articles of association must, among others, contain the following information: name, region of registered office, corporate object, capital, shares, identity of the directors and the rules of representation of the public limited company, date of the annual shareholders’ meeting and the financial year. In case the public limited company’s registered office is located in the Brussels region, the choice exists between French and/or Dutch as language of the articles of association, but when the registered office is located in the Flemish or the Walloon region, the official language of the articles of association will, mandatorily, be respectively Dutch and French.

The incorporating shareholder(s) must be present or represented at the incorporation meeting which must be held in the presence of a notary public. The proxies do not need to be legalized (a private proxy is sufficient).

The new public limited company must be registered with the Crossroads Bank for Enterprises.

Public limited companies subject to the Belgian income tax regime must be affiliated with a Belgian social insurance fund. This formality should be complied with within a period of 3 months as of the incorporation of the public limited company.
The incorporation deed must be filed with the clerk’s office of the competent enterprise court for publication in the Annexes to the Belgian State Gazette.

Immediately after the incorporating meeting and included in the same notarial deed, a general shareholders’ meeting will be held, which will appoint the director(s) (at least 3 directors, or 2 directors if less than 3 shareholders, should be appointe; sole director if foreseen in the articles of association) or, in the event a dualistic board structure is chosen, the board of supervision and, if applicable, the statutory auditor.

Following the appointment of the director(s) at the occasion of the general shareholders’ meeting, a meeting of the board of directors can immediately be held as well, during which a managing director (or general manager) in charge of the daily management can be appointed or, in the event a dualistic board structure is chosen, the executive board. In case the directors cannot attend the meeting, they may be represented by way of proxy.

**Limited company (société à responsabilité limitée/besloten vennootschap)**

The limited company will be incorporated at the occasion of an incorporation meeting. The meeting must be held in the presence of a notary public the incorporation deed, which will be passed during this incorporation meeting and will not only incorporate the limited company, but will also contain the limited company’s articles of association.

Bank certificate in case the limited company is incorporated by means of a contribution in cash. However, such contribution is not required anymore and is voluntary.

Prior to the incorporation of the limited company, the notary public passing the deed of incorporation must be provided with a financial plan, prepared and signed by the incorporator(s). In this financial plan, the incorporator(s) justify the amount of the net equity for a first period of at least 2 years.

The financial plan must contain at least the following elements:

- A detailed description of the planned activities
- An overview of all sources of financing upon incorporation, where applicable, with an indication of the securities provided in this context
- An opening balance sheet as well as pro forma balance sheet after 12 and 24 months
- A pro forma profit and loss statement after 12 and 24 months
- A budget of the expected income and expenditure for a period of at least 2 years after its incorporation
- A description of the assumptions used to estimate the expected turnover and the expected profitability and
- If applicable, the name of the external expert who assisted in drawing up the financial plan.

The articles of association must, among others, contain the following information:

- Name
• Region of registered office
• Corporate object
• Net equity
• Shares
• Identity of the directors and the rules of representation of the limited company
• Date of the annual shareholders' meeting
• The financial year

In case the limited company’s registered office is located in the Brussels region, the choice exists between French and/or Dutch as language of the articles of association, but, when the registered office is located in the Flemish or the Walloon region, the official language of the articles of association will, mandatorily, be Dutch and French, respectively.

The incorporating shareholder(s) must be present or represented at the incorporation meeting which must be held in the presence of a notary public. The proxies do not need to be legalized (a private proxy is sufficient).

The new limited company must be registered with the Crossroads Bank for Enterprises for publication in the Annexes to the Belgian State Gazette.

Limited companies subject to the Belgian income tax regime must be affiliated with a Belgian social insurance fund. This formality should be complied with within a period of 3 months as of the incorporation of the limited company.

Incorporation deed must be filed with the clerk's office of the competent Enterprise Court.

Immediately after the incorporating meeting and included in the same notarial deed, a general shareholders’ meeting will be held, which will appoint the director(s) – if there are several directors, they form a (non-collegial) board – and, if applicable, the statutory auditor.

Belgian branch office of a foreign company

If the competent corporate body of the foreign company decides to open a Belgian branch office, such resolution should contain certain specific decisions, such as the address and description of the activities of the Belgian branch office and the appointment of a legal representative. The signature of the authorized officer(s) of the foreign company should be legalized and certified by a public notary (or the equivalent foreign authority), whose signature in turn should be legalized by way of an Apostille, which is a procedure provided for by The Hague Convention.

If the resolution has not been drafted in the official language of the region where the Belgian branch office will be located (i.e., Dutch in the Flemish Region, French in the Walloon Region and Dutch or French in the Brussels Capital Region), then the resolution must be translated by a Belgian sworn translator. The original resolution and, as the case may be, its sworn translation, together with certain other documents related to the foreign company, then must be filed with the clerk’s office of the competent enterprise court, which will arrange for its subsequent
publication in the Annexes to the Belgian State Gazette. In addition, the last annual accounts, which have been approved by the shareholders of the foreign company, and, as the case may be, the consolidated annual accounts, must be filed with the National Bank of Belgium. Finally, the Belgian branch office must be registered with the Crossroads Bank for Enterprises and the VAT administration.

**BUSINESS RECOGNITION**

Public limited company (*société anonyme/naamloze vennootschap*)

Well regarded and widely used.

Limited company (*société à responsabilité limitée/besloten vennootschap*)

Company of reference. Used by US companies for tax reasons as it qualifies for check-the-box election in the US.

Belgian branch office of a foreign company

Regularly used.

**SHAREHOLDER MEETING REQUIREMENTS**

Public limited company (*société anonyme/naamloze vennootschap*)

In principle, the shareholders' meeting has limitative authority over:

- The appointment or dismissal of the directors and the members of the board of supervision
- The appointment of the statutory auditor(s)
- The approval of the annual accounts
- Discharge of the directors, the members of the board of supervision and the statutory auditor
- Net asset test
- A merger or demerger of the company
- A capital increase (without prejudice to the competence of the board of directors to increase the share capital within the authorized capital) or a capital decrease
- The issuance of shares below fractional value
- The acquisition by the company of its own shares (without prejudice to the competence of the board of directors in this respect, within the limits set by the general shareholders' meeting)
- The cancellation or limitation of the preferential subscription right
• The dissolution of the company and

• Any modification to the articles of association of the company.

Required to hold a meeting of shareholders at least once a year to vote on the approval of the annual accounts, the allocation of the results and to (re)appoint the directors and the members of the board of supervision and grant release to the directors and the members of the board of supervision and the statutory auditor.

After the annual meeting of shareholders has been held, the annual accounts (printed on a prescribed form or in electronic version), the annual report of the board of directors or the members of the board of supervision to the shareholders and the auditor’s report must be filed with the Belgian National Bank within 1 month after the approval of the annual accounts by the annual shareholders’ meeting and in no event later than 7 months after the closing of the financial year.

**Limited company (société à responsabilité limitée/besloten vennootschap)**

In principle, the shareholders’ meeting has limited authority over:

• The appointment or dismissal of the director(s)

• The appointment of the statutory auditor(s)

• The approval of the annual accounts

• Discharge of the director(s) and the statutory auditor

• A merger or demerger of the company

• Net asset test

• The acquisition by the company of its own shares

• The dissolution of the company and

• Any modification to the articles of association of the company.

Required to hold a meeting of shareholders at least once a year to vote on the approval of the annual accounts, the allocation of the results and to (re)appoint the director(s) and grant release to the director(s) and the statutory auditor.

After the annual meeting of shareholders has been held, the annual accounts (printed on a prescribed form or in electronic version), the annual report of the board of directors/sole director to the shareholders and the auditor’s report must be filed with the Belgian National Bank within 1 month after the approval of the annual accounts by the annual shareholders’ meeting and in no event later than 7 months after the closing of the financial year.

**Belgian branch office of a foreign company**

Not applicable, as this will be arranged at the level of the foreign company.
BOARD OF DIRECTOR MEETING REQUIREMENTS

Public limited company (société anonyme/naamloze vennootschap)

In principle, the board of directors has residual authority (ie, the management of the public limited company).

The board of directors or the board of supervision of the public limited company must meet at least once a year to prepare the annual accounts and to convene the annual shareholders’ meeting.

The meeting of the board of directors or the board of supervision cannot be held until the draft of an annual management report to the shareholders and a set of the draft annual accounts (including a balance sheet, a profit and loss statement and explanatory notes) for the relevant financial year have been prepared.

Other meetings are possible each time the interest of the public limited company requires it in the interest of the public limited company.

Limited company (société à responsabilité limitée/besloten vennootschap)

In principle, the (board of) director(s) has residual authority (ie, the management of the limited company).

The (board of) director(s) of the limited company must meet at least once a year to prepare the annual accounts and to convene the annual shareholders' meeting.

The meeting of the (board of) director(s) cannot be held until the draft of an annual management report to the shareholders and a set of the draft annual accounts (including a balance sheet, a profit and loss statement and explanatory notes) for the relevant financial year have been prepared.

Other meetings are possible each time the interest of the limited company so requires.

Belgian branch office of a foreign company

Not applicable for this jurisdiction.

ANNUAL COMPANY TAX RETURNS

Public limited company (société anonyme/naamloze vennootschap)

Annual corporate income tax return and a VAT return on a monthly or quarterly basis (depending on turnover).

Limited company (société à responsabilité limitée/besloten vennootschap)

Annual corporate income tax return and a VAT return on a monthly or quarterly basis (depending on turnover).

Belgian branch office of a foreign company

Annual non-resident corporate income tax return and a VAT return on a monthly or quarterly basis (depending on turnover).
BUSINESS REGISTRATION FILING REQUIREMENTS

Public limited company (société anonyme/naamloze vennootschap)

Registration with the Crossroads Bank for Enterprises.

Limited company (société privée à responsabilité limitée/besloten vennootschap)

Registration with the Crossroads Bank for Enterprises.

Belgian branch office of a foreign company

Registration with the Crossroads Bank for Enterprises.

BUSINESS EXPANSION

Public limited company (société anonyme/naamloze vennootschap)

No need to change as business expands.

Limited company (société privée à responsabilité limitée/besloten vennootschap)

No need to change as business expands.

Belgian branch office of a foreign company

No need to change as business expands.

EXIT STRATEGY

Public limited company (société anonyme/naamloze vennootschap)

Voluntary dissolution with immediate closure of the liquidation:

- Statement of assets and liabilities, which may not be older than 3 months on the date the extraordinary shareholders’ meeting deciding to dissolve and immediately close the liquidation, is held

- Special report of the management body on the proposal to dissolve and immediately close the liquidation. The statement of assets and liabilities has to be attached to the special report

- Meeting of the management body:
  - Approving the statement of assets and liabilities and the special report
  - Giving the statutory auditor the task to draft a report on the statement of assets and liabilities
  - Convening an extraordinary shareholders meeting
Waiving the convocation periods and formalities to this extraordinary shareholders' meeting

- Special report of the statutory auditor
- Extraordinary shareholders' meeting held in the presence of a notary public, deciding to dissolve and immediately close the liquidation

**Limited company (société à responsabilité limitée/besloten vennootschap)**

Voluntary dissolution with immediate closure of the liquidation:

- Statement of assets and liabilities, which may not be older than three months on the date the extraordinary shareholders' meeting deciding to dissolve and immediately close the liquidation, is held
- Special report of the management body on the proposal to dissolve and immediately close the liquidation. The statement of assets and liabilities has to be attached to the special report
- Meeting of the management body:
  - Approving the statement of assets and liabilities and the special report
  - Giving the statutory auditor the task to draft a report on the statement of assets and liabilities
  - Convening an extraordinary shareholders meeting
  - Waiving the convocation periods and formalities to this extraordinary shareholders' meeting
- Special report of the statutory auditor
- Extraordinary shareholders' meeting held in the presence of a notary public, deciding to dissolve and immediately close the liquidation

**Belgian branch office of a foreign company**

The competent corporate body of the foreign company may decide to close the Belgian branch office.

**ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

**Public limited company (société anonyme/naamloze vennootschap)**

Annual meeting of the management body, the shareholders and subsequently the annual filing of the annual accounts with the Belgian National Bank.

**Limited company (société à responsabilité limitée/besloten vennootschap)**

Annual meeting of the management body, the shareholders and subsequently the annual filing of the annual accounts with the Belgian National Bank.
Belgian branch office of a foreign company

Annual filing of the consolidated annual accounts with the Belgian National Bank.

The following documents and information must be filed with the clerk's office of the competent enterprise court within 30 days and, as the case may be, published in the Annexes to the Belgian State Gazette:

- Changes to the foreign company's articles of association
- Changes to the foreign company's name or legal form
- Changes to the foreign company's registration with the Commercial Register
- Changes to the address, name and activities of the Belgian branch office
- Appointments and resignations of persons authorized to represent the foreign company
- Appointments and resignations of the legal representative(s) of the Belgian branch office
- The dissolution of the foreign company, the appointment of liquidators and the scope of their powers and the closing of the liquidation
- The bankruptcy, judicial composition or similar procedure affecting the foreign company and
- The closing of the Belgian branch office.

Annually, within 1 month as of the annual shareholders' meeting and at the latest within 7 months as of the closing of the financial year, the annual accounts and, as the case may be, the consolidated annual accounts of the foreign company must be filed with the National Bank of Belgium.

DIRECTOR / OFFICER REQUIREMENTS

Public limited company (société anonyme/naamloze vennootschap)

The directors can be either Belgian or foreign natural persons or legal entities.

If a legal entity is appointed as director, this legal entity must appoint a "permanent representative" in charge of performing the mandate of the director/legal entity on behalf and for the account of the director/legal entity. The permanent representative should be a natural person (ie, employee, director or shareholder of the legal entity), and they will bear the same civil and criminal liability as the director or company which they represent.

Limited company (société à responsabilité limitée/besloten vennootschap)

The directors can be either Belgian or foreign natural persons or legal entities.

If a legal entity is appointed as director, this legal entity must appoint a "permanent representative" in charge of performing the mandate of the director or legal entity on behalf and for the account of the director or legal entity. The permanent representative should be a natural person (ie, employee, director or shareholder of the legal
entity), and they will bear the same civil and criminal liability as the director or company which they represent.

**Belgian branch office of a foreign company**

Directors are required to be appointed in the Belgian branch office. However, 1 or more legal representatives must be appointed.

For more information on directors’ duties, see our Global Guide to Directors’ Duties.

**LOCAL CORPORATE SECRETARY REQUIREMENT**

Public limited company (*société anonyme/naamloze vennootschap*)

Not applicable for this jurisdiction.

Limited company (*société à responsabilité limitée/besloten vennootschap*)

Not applicable for this jurisdiction.

Belgian branch office of a foreign company

Not applicable for this jurisdiction.

**LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT**

Public limited company (*société anonyme/naamloze vennootschap*)

Not applicable for this jurisdiction.

Limited company (*société à responsabilité limitée/besloten vennootschap*)

Not applicable for this jurisdiction.

Belgian branch office of a foreign company

The legal representative must be present in Belgium on a regular basis in order to enter into contracts with third parties in Belgium. There is the requirement that the legal representative must reside in Belgium.

**LOCAL OFFICE LEASE REQUIREMENT**

Public limited company (*société anonyme/naamloze vennootschap*)

Service agreement or lease agreement for registered office or property.

Limited company (*société privée à responsabilité limitée/besloten vennootschap*)
Service agreement or lease agreement for registered office or property.

Belgian branch office of a foreign company

A Belgian branch office must have a physical existence in Belgium (i.e., an office in which the foreign company carries out its activities in Belgium). Third-party service providers can provide a Belgian branch office with such local office.

OTHER PHYSICAL PRESENCE REQUIREMENTS

Public limited company (société anonyme/naamloze vennootschap)

A company is a tax resident of Belgium if its principal establishment, registered office or place of management is located in Belgium. In order to avoid discussions about the company’s tax residence, it is key that that the place of management of the company be located in Belgium (i.e., substance-over-form approach). The notion and features of a place of management may vary depending on the company’s size and activities. As a strict minimum, the key management decisions of the company should be taken in Belgium, which would generally require shareholders’ and board meetings at which such decisions are taken, to be held in Belgium.

When examining the physical presence requirements, it is important to also bear in mind the requirements and views held by the relevant foreign tax authorities.

Limited company (société à responsabilité limitée/besloten vennootschap)

A company is a tax resident of Belgium if its principal establishment, registered office or place of management is located in Belgium. In order to avoid discussions about the company’s tax residence, it is key that that the place of management of the company be located in Belgium (i.e., substance-over-form approach). The notion and features of a place of management may vary depending on the company’s size and activities. As a strict minimum, the key management decisions of the company should be taken in Belgium, which would generally require shareholders’ and board meetings at which such decisions are taken, to be held in Belgium.

When examining the physical presence requirements, it is important to also bear in mind the requirements and views held by the relevant foreign tax authorities.

Belgian branch office of a foreign company

None.

SUFFICIENCY OF VIRTUAL OFFICE

Public limited company (société anonyme/naamloze vennootschap)

The registered address of the public limited company can be set with the accountant or can be a postbox office with a third-service provider.

Limited company (société à responsabilité limitée/besloten vennootschap)
The registered address of the public limited company can be set with the accountant or can be a postbox office with a third-service provider.

Belgian branch office of a foreign company

See local office lease requirement.

**PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

Public limited company (*société anonyme/naamloze vennootschap*)

A public limited company must have a local registered address. This can be obtained with the help of a third-party service provider or an accountant and cannot be the address of a law firm. Regarding the language requirements, please see above.

Limited company (*société à responsabilité limitée/besloten vennootschap*)

A limited company must have a local registered address. This can be obtained with the help of a third-party service provider or an accountant and cannot be the address of a law firm. Regarding the language requirements, please see above.

Belgian branch office of a foreign company

As mentioned in the “Local office lease requirement” section, a third-party service provider can provide a local registered office.

**PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

Public limited company (*société anonyme/naamloze vennootschap*)

By a third-party service provider against certain fee.

Limited company (*société à responsabilité limitée/besloten vennootschap*)

By a third-party service provider.

Belgian branch office of a foreign company

There are no directors or a corporate secretary appointed in a Belgian branch office. Since the legal representative of the Belgian branch office must be able to represent the foreign company in Belgium (for example, by signing agreements), third-party service providers will, based upon our experience, not provide these services.

**NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS**
Public limited company (société anonyme/naamloze vennootschap)

The shareholders or directors can be either Belgian, foreign natural persons or legal entities.

Should non-Belgian nationals, not having an official residence in Belgium, be appointed as directors, a copy of the identity card or international passport of the directors must be communicated to the clerk’s office of the enterprise court. The following information must be given to the clerk’s office, if it is not mentioned on the copy:

- Surname
- First name
- Place of residence
- Date of birth
- Place of birth

In case the directors are not EU nationals and will not officially reside in Belgium, a declaration on honor is needed.

Limited company (société à responsabilité limitée/besloten vennootschap)

The shareholders or directors can be either Belgian, foreign natural persons or legal entities.

Should non-Belgian nationals, not having an official residence in Belgium, be appointed as directors, a copy of the identity card or international passport of the directors must be communicated to the clerk’s office of the enterprise court. The following information must be given to the clerk’s office, if it is not mentioned on the copy: surname, first name, place of residence, date of birth and place of birth.

In case the directors are not EU nationals and will not officially reside in Belgium, a declaration of honor is needed.

Belgian branch office of a foreign company

Not applicable for this jurisdiction.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Public limited company (société anonyme/naamloze vennootschap)

With respect to the monistic board structure, the sole director must be a public limited company with a collegial board when:

- The public limited company with a sole director is listed or
- When a legal provision requires a collegial board.
With respect to the dualistic board structure, the members of the board of supervision cannot at the same time be members of the executive board and vice versa.

**Limited company (société à responsabilité limitée/besloten vennootschap)**

Not applicable for this jurisdiction.

**Belgian branch office of a foreign company**

Not applicable for this jurisdiction.

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**SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF**

**Public limited company (société anonyme/naamloze vennootschap)**

When it comes to the representation of the public limited company vis-à-vis third parties, Belgian company law provides that, in the monistic board structure with a board of directors, the directors of a public limited company represent the public limited company as a board (ie, by the majority of the board members). The possibility exists, however, to include certain deviating representation rules in the public limited company's articles of association (eg, representation by 2 directors).

In the dualistic board structure, it is the executive board which represents the public limited company vis-à-vis third parties. The possibility exists, however, to include certain deviating representation rules in the public limited company's articles of association (eg, representation by 2 members of the executive board).

Shareholders have no authority to represent the public limited company.

**Limited company (société à responsabilité limitée/besloten vennootschap)**

When it comes to the representation of the limited company vis-à-vis third parties, Belgian company law provides that each director, or, in case of a collegial board of directors, the board, represents the limited company vis-à-vis third parties. It is, however, possible to include certain deviating representation rules in the limited company's articles of association.

Shareholders have no authority to represent the closed limited liability company.

**Belgian branch office of a foreign company**

The legal representative will have the authority to represent the foreign company in Belgium. In the resolution of the competent corporate body of the foreign company, their authority may be limited.

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**PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS**

**Public limited company (société anonyme/naamloze vennootschap)**
The appointment and the resignation of the directors, managing directors or general managers must be published in the Annexes to the Belgian State Gazette.

In the framework of the ultimate beneficial ownership or UBO registration, the details of the ultimate beneficial owners of the public limited company will be published in the UBO register.

With regard to listed companies, each natural person or legal entity that, directly or indirectly, acquires securities with voting rights of an issuer should inform the issuer and the Financial Services and Markets Authority of the number and of the percentage of the existing voting rights that they own as a result of the acquisition when the voting rights they own reaches 5 percent or more of the total of the existing voting rights. This notification is also required in the event of a direct or indirect acquisition of securities with voting right that results in the number of voting rights reaching or exceeding 10 percent, 15 percent, 20 percent and each consecutive 5 percent tranche. Furthermore, notification is required in the event of a direct or indirect disposal of securities with voting rights that results in a decrease of the voting rights below one of the named thresholds. The articles of association of an issuer under Belgian law can also determine that the notification also applies to lower or intermediate thresholds, it being understood that only 1 percent, 2 percent, 3 percent, 4 percent and 7.5 percent can be used.

Limited company (société à responsabilité limitée/besloten vennootschap)

The appointment and the resignation of the directors, managing directors or general managers must be published in the Annexes to the Belgian State Gazette.

In the framework of the ultimate beneficial ownership or UBO registration, the details of the ultimate beneficial owners of the public limited company will be published in the UBO register.

Belgian branch office of a foreign company

The identity of the legal representative and the directors of the foreign company will be publicly disclosed. The identity of the shareholders of the foreign company will in principle not be publicly disclosed but may be public via the (consolidated) annual accounts depending on the information included therein.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

Public limited company (société anonyme/naamloze vennootschap)

In the event a monistic board structure is chosen and the public limited company has less than 3 shareholders, the board of directors can be composed of only 2 directors, and, if more than 2 shareholders, at least 3 directors. If so provided for in the articles of association, the public limited company can also have a sole director. The sole director must be a public limited company with a collegial board when:

- The public limited company with the sole director is listed or
- When a legal provision requires a collegial board

In the event of a dualistic board structure, both the board of supervision and the executive board must consist of at least 3 members who cannot be members of the board of supervision and the executive board at the same time.
Can be incorporated by only 1 shareholder.

**Limited company (société à responsabilité limitée/besloten vennootschap)**

Managed by 1 or more directors.

Can be incorporated by only 1 shareholder.

**Belgian branch office of a foreign company**

A Belgian branch office has no directors. At least 1 legal representative should be appointed. There are no shareholders of a Belgian branch office.

**MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

**Public limited company (société anonyme/naamloze vennootschap)**

In principle, only 1 shareholder.

**Limited company (société à responsabilité limitée/besloten vennootschap)**

In principle, only 1 shareholder.

**Belgian branch office of a foreign company**

See minimum and maximum number of directors and shareholders (with respect to the foreign company, this will be determined by the laws governing the foreign company).

**REMOVAL OF DIRECTORS OR OFFICERS**

**Public limited company (société anonyme/naamloze vennootschap)**

*Monistic board structure - collegial board of directors*

The directors can be dismissed by the shareholders’ meeting ad nutum. Unless the articles of association provide otherwise, the shareholders’ meeting can at the time of dismissal decide to give a notice period or severance pay. The articles of association can provide that a director may only be dismissed with a notice period or a severance pay. In any event, the shareholders’ meeting may always dismiss a director without notice period or severance pay due to legal reasons.

*Monistic board structure - sole director*

The articles of association can foresee that the sole director must agree with its own dismissal. In any event, the shareholders’ meeting can, without the approval of the sole director, dismiss the sole director taking into account the necessary majorities for the amendment of the articles of association. Shareholders (with voting rights) which hold at least 10 percent of the capital (or 3 percent for a listed company) can appoint a special proxyholder, whether or not a shareholder, charged with the introduction of a claim regarding the dismissal of the sole director for legal reasons.
Dualistic board structure - board of supervision

The members of the board of supervision can be dismissed by the shareholders’ meeting ad nutum. Unless the articles of association provide otherwise, the shareholders’ meeting can, at the time of dismissal, decide to give a notice period or severance pay. The articles of association can provide that a member of the board of supervision can only be dismissed with a notice period or a severance pay. In any event, the shareholders’ meeting can always dismiss a member of the board of supervision without notice period or severance pay due to legal reasons.

Dualistic board structure - executive board

The board of supervision is competent for the dismissal of members of the executive board.

In any event, the removal of a director must in all cases be published in the annexes to the Belgian State Gazette.

Limited company (société à responsabilité limitée/besloten vennootschap)

If the director has been appointed in the articles of association, an amendment of the articles of association will be necessary in order to dismiss the director.

If the director has not been appointed in the articles of association, the shareholders’ meeting can at any time without justification dismiss a director with immediate effect (ad nutum) unless the articles of association or the minutes of the shareholders’ meeting appointing the director state otherwise.

Unless the articles of association provide otherwise, the shareholders’ meeting can decide at the time of dismissal to grant a notice period or severance pay.

In any event, the shareholders’ meeting can decide to dismiss a statutory or non-statutory director in case of legal reasons without notice period or severance pay.

Removal of a director must be published in the annexes to the Belgian State Gazette.

Belgian branch office of a foreign company

The legal representative of the Belgian branch office can be removed by a decision of the competent corporate body of the foreign company.

REQUIRED AND OPTIONAL OFFICERS

Public limited company (société anonyme/naamloze vennootschap)

Not applicable for this jurisdiction.

Limited company (société à responsabilité limitée/besloten vennootschap)

Not applicable for this jurisdiction.

Belgian branch office of a foreign company
Not applicable for this jurisdiction.

**BOARD MEETING REQUIREMENTS**

See "Board of director meeting requirements."

**QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

Public limited company (*société anonyme/naamloze vennootschap*)

Without prejudice to the law and the articles of association, the shareholders’ meeting decides with majority of votes.

If the directors form a college, in principle, majority of votes.

Limited company (*société à responsabilité limitée/besloten vennootschap*)

Without prejudice to the law and the articles of association, the shareholders’ meeting decides with majority of votes.

If the directors form a college (if more than one director), in principle, majority of votes.

**Belgian branch office of a foreign company**

Not applicable as there are no shareholders or directors in a Belgian branch office.

**MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?**

Public limited company (*société anonyme/naamloze vennootschap*)

In case the public limited company is incorporated by means of a contribution in cash, the amount that must be fully paid in must be deposited on a blocked bank account with a bank in Belgium or a bank in the European Economic Area as meant in article 4, paragraph 1, point 1) Regulation (EU) no. 575/2013 opened in the name of the public limited company in incorporation. The amount will be released once the notarial deed has been signed.

The public limited company must have a bank account.

Limited company (*société à responsabilité limitée/besloten vennootschap*)

In case the limited company is incorporated by means of a contribution in cash, the amount that is fully paid in must be deposited in a blocked bank account with a bank in Belgium or a bank in the European Economic Area as meant in article 4, paragraph 1, point 1) Regulation (EU) no. 575/2013 opened in the name of the limited company in incorporation. The amount will be released once the notarial deed has been signed.
The limited company must have a Belgian bank account.

Belgian branch office of a foreign company

The Belgian branch office must have a Belgian bank account, which in principle must be opened before the establishment of the Belgian branch office as the bank account number should in principle be mentioned on the publication forms. The forms should be filed with the clerk’s office of the competent enterprise court in order to open the Belgian branch office.

AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?

Public limited company (société anonyme/naamloze vennootschap)

Only "large" companies are obliged to appoint a statutory auditor. A Belgian company is considered a "large company" if it exceeds at least 2 out of the following criteria during the 2 previous financial years:

- A yearly turnover, VAT excluded, of EUR9 million
- A minimum of 50 employees or
- A total balance sheet of EUR4.5 million.

Belgian public limited companies part of a group which is required to draft and publish consolidated annual accounts must appoint a statutory auditor in Belgium.

- The statutory auditor will be appointed for a term of 3 financial years.
- The statutory auditor must be recognized by the competent Belgian authorities.
- The company’s books should be kept at the registered office of the company.

Limited company (société à responsabilité limitée/besloten vennootschap)

Only "large" companies are obliged to appoint a statutory auditor. A Belgian company is considered a "large company" if it exceeds at least 2 out of the following criteria during the 2 previous financial years:

- A yearly turnover, VAT excluded, of EUR9 million
- A minimum of 50 employees or
- A total balance sheet of EUR4.5 million.

Belgian limited companies which are part of a group which is required to draft and publish consolidated annual accounts must appoint a statutory auditor in Belgium.
The statutory auditor will be appointed for a term of 3 years.

The statutory auditor must be recognized by the competent Belgian authorities.

The company’s books should be kept at the registered office of the company.

Belgian branch office of a foreign company

The Belgian branch office must keep its own separate books in view of its tax filings. No auditors need to be appointed.

REQUIREMENT REGARDING PAR VALUE OF STOCK

Public limited company (société anonyme/naamloze vennootschap)

Unless the articles of association or the decision concerning the issue of shares provides otherwise, the fractional value of all issued shares without nominal value and which are of the same class will be equal, regardless whether the shares are issued below, above or equal to the fractional value of the shares of the same class.

A detailed report on the transaction must be drawn up by the board of directors, which relates in particular to the issue price and the consequences of the transaction with respect to the membership and financial rights of the shareholders.

A report is drawn up by a statutory auditor or, in their absence, by a company auditor appointed by the board of directors, or appointed by an external auditor in the same manner, in which they declare that the financial statements and accounting data included in the report of the board of directors are true and sufficient to inform the shareholders meeting that votes on the proposal.

Limited company (société à responsabilité limitée/besloten vennootschap)

As the limited company does not have any capital, the shares in a limited company have no par value or nominal value.

Belgian branch office of a foreign company

Not applicable as a Belgian branch office has no issued shares.

INCREASING OF CAPITALIZATION IF NEEDED

Public limited company (société anonyme/naamloze vennootschap)

In case, due to the losses sustained, the net assets of the public limited company should have dropped below 1/2 of the public limited company’s share capital, the general shareholders’ meeting must meet within no more than 2 months after the loss has or should have been established, as the case may be, in order to deliberate and resolve on a winding up of the public limited company.

The board of directors must justify its proposals in a special report such as Article 7:228 (and Article 7:229 of the
If the board of directors proposes to continue the activities of the public limited company, it must set out in its report the measures it is considering to redress the financial condition of the public limited company.

If the net assets of the public limited company have fallen below the minimum required capital, any interested party or the public prosecutor’s office can demand the dissolution of the public limited company in court.

**Limited company (société à responsabilité limitée/besloten vennootschap)**

In case, due to the losses sustained, the net assets of the limited company have become negative or threaten to become negative, the general shareholders’ meeting must meet within no more than 2 months after the situation has been discovered in order to deliberate and resolve on a winding up of the limited company. The board of directors must justify its proposals in a special report such as Article 5:153 of the BCCA.

If the board of directors proposes to continue the activities of the limited company, it has to set out in its report the measures it is considering redressing the financial condition of the limited company.

After having complied with the abovementioned duties, the board of directors is not obliged to convene the general shareholders’ meeting for the same reason in the next 12 months after such convocation.

**Belgian branch office of a foreign company**

Not applicable as a Belgian branch office has no capital.

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**SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)**

**Public limited company (société anonyme/naamloze vennootschap)**

Shareholders’ meeting can decide on capital decrease and dividend distribution. The amount of dividends is limited by certain criteria.

Board of directors: Interim dividend out of the results of the current financial year as well as out of the results of the previous financial year as long as the annual accounts of the previous financial year have not yet been approved. In such case, decreased with the loss carried forward or increased with the profit carried forward without deducting the existing reserves and taking into consideration the reserves which are established due to legal provisions or provisions of the articles of association, if provided for in the articles of association.

Capital decreases must be proportionally allocated between the company’s fiscal capital and certain of its reserves. The part of the decrease that is allocated to the reserves will be treated for tax purposes as a dividend distribution.

The payment of dividends is in principle subject to a 30-percent withholding tax. Domestic law provides for reduced rates and exemptions in certain circumstances. The applicable rate may further also be reduced under an applicable double taxation treaty.

**Limited company (société à responsabilité limitée/besloten vennootschap)**
A shareholders’ meeting may decide on allocation of the profit and the determination of distributions. The articles of association can provide the board of directors with the authority to move forward with the distribution of profits of the current financial year as well as profits of the previous financial year as long as the annual accounts of the previous financial year have not yet been approved, in such case decreased with the loss carried forward or increased with the profit carried forward. The amount of the dividend is limited by certain criteria.

The payment of dividends is in principle subject to a 30-percent withholding tax. Domestic law provides for reduced rates and exemptions in certain circumstances. The applicable rate may further also be reduced under an applicable double taxation treaty.

Belgian branch office of a foreign company

In Belgium, there are no restrictions on how funds can be repatriated by a Belgian branch office to the foreign company.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

Public limited company (société anonyme/naamloze vennootschap)

Shares are freely transferable unless otherwise provided for in the articles of association, the issuance conditions of the titles or agreements.

Limited company (société à responsabilité limitée/besloten vennootschap)

Unless otherwise provided for in the articles of association, transferability is restricted as shares may be transferred to another shareholder or a direct ascendant or descendant of the shareholder.

Any transfer of shares to another person or company than the above mentioned must be approved by at least half of the shareholders representing at least 3/4 of the capital, not including the shares the transfer of which is being proposed.

The articles of association can foresee that the shares are freely transferable.

Belgian branch office of a foreign company

Not applicable as a Belgian branch office has no issued shares.

OBTAINING A NAME AND NAMING REQUIREMENTS

Public limited company (société anonyme/naamloze vennootschap)

Almost any name can be used, provided that it is not the same as, or similar to, another corporate name and that the use of the corporate name does not cause any confusion with or infringe on another company’s name or trademark.

A company may require another company, having adopted the same or a very similar name which may cause confusion, to change its name and to pay for the damage caused by such confusion. Therefore, a preliminary
search to determine whether the proposed name will create confusion with another company’s name is required.

**Limited company (société à responsabilité limitée/besloten vennootschap)**

Almost any name can be used, provided that it is not the same as, or similar to, another corporate name and that the use of the corporate name does not cause any confusion with or infringe on another company’s name or trademark.

A company may require another company, having adopted the same or a very similar name which may cause confusion, to change its name and to pay for the damage caused by such confusion. Therefore, a preliminary search to determine whether the proposed name will create confusion with another company’s name is required.

**Belgian branch office of a foreign company**

Almost any name can be used, provided that it is not the same as, or similar to, another corporate name and that the use of the corporate name does not cause any confusion with or infringe on another company’s name trademark. Names cannot be reserved in Belgium. In practice, Belgian branch offices use the name of the foreign company and add "Belgian branch office."

**SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS**

**Public limited company (société anonyme/naamloze vennootschap)**

Know-your-client requirement (ie, anti-money laundering): notary public, bank and law firm.

**Limited company (société à responsabilité limitée/besloten vennootschap)**

Know-your-client requirement (ie, anti-money laundering): notary public, bank and law firm.

**Belgian branch office of a foreign company**

It is possible that the Belgian bank has certain know-your-client requirements in view of opening a Belgian bank account.

**APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

**Public limited company (société anonyme/naamloze vennootschap)**

First meeting: Attendees of the extraordinary shareholders’ meeting must represent at least half of the share capital, and 3/4 of the votes is needed if attendance quorum is not reached a second meeting will be held.

Second meeting: No attendance quorum, but 3/4 of the votes are needed.

In case it concerns a change of the corporate object or its corporate purpose:

- First meeting: Attendees of the extraordinary shareholders’ meeting must represent at least half of the share capital (and, if applicable, half of the total amount of profit certificates), and 4/5 of the votes are needed. If attendance quorum is not reached, a second meeting will be held.
• Second meeting: No attendance quorum, but 4/5 of the votes are needed.

Limited company (société à responsabilité limitée/besloten vennootschap)

Attendees of the extraordinary shareholders’ meeting must represent at least half of the total issued shares, and 3/4 of the votes are needed. If attendance quorum is not reached, a second meeting will be held.

Second meeting: No attendance quorum, but 3/4 of the votes are needed.

In case it concerns a change of the corporate object, its corporate purpose, its finality or the values:

• First meeting: Attendees of the extraordinary shareholders’ meeting must represent at least half of the total issued shares, and 4/5 of the votes are needed. If the attendance quorum is not reached, a second meeting will be held.

• Second meeting: No attendance quorum, but 4/5 of the votes are needed.

Belgian branch office of a foreign company

Any modification to, for example, the activities of the Belgian branch office must be adopted by the competent corporate body of the foreign company.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

Public limited company (société anonyme/naamloze vennootschap)

In principle, not required, unless for very specific sectors such as banking, insurance or gambling.

Limited company (société à responsabilité limitée/besloten vennootschap)

In principle, not required, unless for very specific sectors such as banking, insurance or gambling.

Belgian branch office of a foreign company

In principle, not required, unless for very specific sectors such as banking, insurance or gambling.

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

Public limited company (société anonyme/naamloze vennootschap)

Rarely used in Belgium.

Limited company (société à responsabilité limitée/besloten vennootschap)

Rarely used in Belgium.

Belgian branch office of a foreign company
Not applicable for this jurisdiction.

**KEY CONTACTS**

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View bio
FORM OF ENTITY

Limited liability company ( Sociedade Limitada)

Sociedades Limitadas are regulated by Law 10,406/02 (Brazilian Civil Code) and residually, whenever set forth in their articles of organization, by Law 6,404/76, as amended, which regulates Brazilian corporations.

A Sociedade Limitada is simple to incorporate and operate as very few formalities are required for its organization and management.

The Sociedade Limitada is managed by the officers/managers, who run the day-to-day operations of the corporation, and may also have a board of directors, which, if appointed, will be responsible for making major business decisions and overseeing the general affairs of the company. The officers must be individuals appointed by the board of directors or by the quotaholders’ meeting, in case the company does not have a board of directors, whilst the directors are elected by the company’s quotaholders. The management structure of a Sociedade Limitada is established in the company’s articles of association.

Corporation ( Sociedade Anônima)

Legal entity suitable for several types of businesses and investments. Non-listed corporations are simple to incorporate and operate, but more formalities are required for its organization and management when compared to the Sociedade Limitada. One example is the mandatory publication of certain corporate acts.

The Sociedade Anônima is managed by the officers, who run the day-to-day operations of the corporation, and, in certain cases, by a board of directors, which is responsible for making major business decisions and overseeing the general affairs of the corporation. The officers must be individuals appointed by the board of directors or by the shareholders’ meeting, in case the corporation does not have a board of directors, whilst the directors are elected by the corporation’s shareholders. The management structure of a Sociedade Anônima is established in the corporation’s bylaws and certain corporations, such as the publicly held corporations, shall, mandatorily appoint a board of directors.

ENTITY SET UP
Although the Brazilian Law sets forth other types of companies, the Brazilian companies usually adopt the form of a limited liability company, *(Sociedade Empresária Limitada)* or of a corporation, *(Sociedade Anônima)*.

**Limited liability company (Sociedade Limitada)**

- A *Sociedade Limitada* may have one or more quotaholders.
- Capital divided into quotas. The ownership of quotas and any burden over such quotas are reflected in the articles of organization. It is possible to issue preferred quotas.
- In principle, the liability of the quotaholders is limited to the total subscribed capital which has not been paid in by them.
- Managers (quotaholders or not) are responsible for the day-to-day management of the company's business and for representing the company before third parties.
- A *Sociedade Limitada* can also have a Board of Directors, with overall management responsibility;
- An annual meeting shall be held by the quotaholders in the first 4 months after the end of the previous fiscal year in order to approve the management's accounts as well as the company's balance sheet and economical results.
- No public subscription or participation in the capital is allowed and a *Sociedade Limitada* cannot publicly trade its quotas or list on a stock exchange.
- Taxed on its profits and gross revenues at a corporate level and quotaholders are exempt from income tax on dividend distribution.

Note: Pursuant to the enactment of Law No. 13.874/19, which converted Provisional Measure No. 881/2019 into law and instituted the Declaration of Economic Freedom Rights, the *Sociedade Limitadas* were allowed to be incorporated by a sole quotaholder. Prior to such law, Brazilian Civil Code established that a *Sociedade Limitada* should have a minimum of two quotaholders.

**Corporation (Sociedade Anônima)**

- A *Sociedade Anônima* must have at least two shareholders. Exception is made to the incorporation of a whole owned subsidiary (sole shareholder company) provided that the incorporation must be made through a public deed and the sole shareholder must be a Brazilian company.
- Capital divided into shares. Different classes of shares allowed.
- Generally, the ownership of shares and any burden over such shares are reflected in the corporate books.
• The liability of the shareholders is limited to the total subscribed capital which has not been paid in by them.

• Typical charter documents include: bylaws, minutes of shareholders' general meetings, resolutions of the board of officers and board of directors, corporate books.

• Board of directors, if existing, has overall management responsibility; officers have day-to-day responsibility.

• Shareholders typically subscribe and pay for stock issued by the corporation, either common or preferred.

• An annual meeting shall be held by the shareholders in the first 4 months after the end of the previous fiscal year in order to approve the management's accounts and the corporation's financial statements.

• A Sociedade Anônima may be a publicly traded company and offer its securities for sale to the general public.

• Taxed on its profits and gross revenues at a corporate level and shareholders are exempt from income tax on dividend distribution.

**MINIMUM CAPITAL REQUIREMENT**

_Limited liability company (Sociedade Limitada)_

In principle, there is no legal requirement concerning the minimum capital for a Sociedade Limitada (except if a foreign person is expected to work as manager of the Brazilian company, in which case a minimum capital of BRL150,000 –approximately US$27,300 – plus the commitment to create 10 job positions within 2 years or a paid-in foreign capital amounting to at least, BRL600,000 – approximately US$109,000 – is required for visa purposes).

_Corporation (Sociedade Anônima)_

In general, there is no minimum capital requirement (except if a foreign person is expected to work as officer of the Brazilian company, in which case a minimum capital of BRL150,000 – approximately US$27,300 – plus the commitment to create 10 job positions within 2 years or a paid-in foreign capital amounting to at least BRL600,000 – approximately US$109,000 – is required for visa purposes).

Depending on the corporate purpose, there might be a minimum capital requirement, such as in the case of insurance companies and certain financial institutions.

Note: The Limited Liability Individual Company (EIRELI) is required to set up a corporate capital on the amount corresponding, at least, to 100 minimum wages in force in Brazil, which is currently equivalent to a total amount of R$110,000 (approximately US$20,000).

**LEGAL LIABILITY**

_Limited liability company (Sociedade Limitada)_
As a general rule, a quotaholder is not liable for the company’s obligation, but solely for the payment in full of the quotas subscribed by them. However, in the event of the company’s bankruptcy, each quotaholder is liable, jointly and severally with the others, for payment in full of the company’s capital not yet paid in.

Once all the quotas have been fully paid in, the quotaholders will have no further liability, except for certain cases of violation of law and of the articles of organization, in which case the company’s legal personality may be disregarded (i.e., piercing the corporate veil).

The managers of the company are not liable for obligations assumed on behalf of the company, unless they exceed their powers or violate the law or the articles of organization.

Corporation (Sociedade Anônima)

As a general rule, a shareholder is not liable for the corporation’s obligations, but solely for the payment in full of the subscribed shares.

Once all the shares have been fully paid in, the shareholders will have no further liability, except for certain cases of violation of law or of the bylaws, in which case the corporation’s legal personality can be disregarded (i.e., piercing the corporate veil).

The managers of the corporation are not liable for obligations assumed on behalf of the corporation, unless they exceed their powers or violate the law or the bylaws.

TAX PRESENCE

Limited liability company (Sociedade Limitada)

A legal entity incorporated in Brazil is treated as a domestic legal entity for tax purposes, and is subject to Brazilian income tax on its worldwide income.

Corporation (Sociedade Anônima)

A legal entity incorporated in Brazil is treated as a domestic legal entity for tax purposes, and is subject to Brazilian income tax on its worldwide income.

INCORPORATION PROCESS

Limited liability company (Sociedade Limitada)

The incorporation process of a Sociedade Limitada begins with the execution of the articles of organization by its quotaholder(s) (or its/their representatives, as the case may be) and the subsequent filing of this document with the respective state commercial registry.

Corporation (Sociedade Anônima)

Filing of the minutes of the shareholders’ meeting which approved the incorporation of the corporation and its bylaws with the respective state commercial registry. At least 10 percent of the initial capital shall be paid in at the
moment of incorporation.

**BUSINESS RECOGNITION**

Limited liability company (*Sociedade Limitada*)

Well regarded and widely used for a simpler and less expensive corporate structure.

Corporation (*Sociedade Anônima*)

Well regarded and widely used, especially for medium and large businesses.

**SHAREHOLDER MEETING REQUIREMENTS**

Limited liability company (*Sociedade Limitada*)

The quotaholders of a *Sociedade Limitada* must hold an annual Quotaholders’ Meeting in the first 4 months following the end of the previous fiscal year, in order to deliberate on subjects related to the administration of the company, the approval of the management accounts and of the balance sheet and economical result of the *Sociedade Limitada*.

Corporation (*Sociedade Anônima*)

The shareholders are required to hold annual shareholder’s meeting to vote on certain items, such as election of directors (or officers, in case the company does not have a board of directors), management accounts and approval of the financial statements.

**Note:** In 2020, Brazilian federal government enacted Provisional Measure No. 931/2020, which was regulated by Normative Rule No. 79/2020, issued by the National Business Registration Department (*Departamento Nacional de Registro Empresarial e Integração*). Pursuant to such new regulation, *Sociedades Limitadas* and *Sociedades Anônimas* are now expressly permitted to hold remote meetings, which may be semi-presential or fully virtual.

**BOARD OF DIRECTOR MEETING REQUIREMENTS**

Limited liability company (*Sociedade Limitada*)

The rules for the managers meeting, if applicable, shall be established in the articles of organization. Due to a recent change in the applicable rules, a *Sociedade Limitada* may now have a Board of Directors and the rules established in the Brazilian Corporations Law (Rule No. 6,404/76) regarding the Board of Directors shall be applied by analogy.

Corporation (*Sociedade Anônima*)
Requirements, if any, shall be established in the bylaws.

**ANNUAL COMPANY TAX RETURNS**

Limited liability company *(Sociedade Limitada)*

Legal entities must file several tax returns in the federal, state and local levels depending of their activities. Some of these returns must be presented on a monthly basis. A country-by-country report may also be required.

*Corporation (Sociedade Anônima)*

Legal entities must file several tax returns in the federal, state and local levels depending of their activities. Some of these returns must be presented on a monthly basis. A country-by-country report may also be required.

**BUSINESS REGISTRATION FILING REQUIREMENTS**

Limited liability company *(Sociedade Limitada)*

The corporate acts of a *Sociedade Limitada* (eg, amendments to the articles of organization and quotaholders' meetings) must be filed with the competent commercial registry.

*Corporation (Sociedade Anônima)*

Minutes of shareholders' meetings and certain board of directors and board of officers' resolutions must be filed with the competent commercial registry.

**BUSINESS EXPANSION**

Limited liability company *(Sociedade Limitada)*

No need to change as business expands.

*Corporation (Sociedade Anônima)*

No need to change as business expands.

**EXIT STRATEGY**

Limited liability company *(Sociedade Limitada)*

Once the dissolution occurs, by virtue of, among other events, approval of all quotaholders, a liquidator shall be appointed in order to manage the Company during the liquidation period. The liquidation procedures shall be in accordance with the provisions of the articles of organization.

In addition, a dissenting quotaholder has the right to, in certain cases expressly set forth in the Brazilian Civil Code, request the partial dissolution of the company and withdraw from it.
The quotaholders may also establish, by means of the execution of a quotaholders’ agreement, some exit strategies such as tag and/or drag along rights, put option right, redemption of quotas or other exit alternatives.

**Corporation (Sociedade Anônima)**

File dissolution documents with the appropriate commercial registry. Shareholders shall observe the procedures established in the bylaws and in the applicable law regarding the liquidation of the corporation.

The shareholders may also establish, by means of the execution of a shareholders’ agreement, some exit strategies such as tag and/or drag along rights, put option right, redemption of shares or other exit alternatives.

## ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

**Limited liability company (Sociedade Limitada)**

Annual quotaholders’ meeting to be held within 4 months after the end of the previous fiscal year.

**Corporation (Sociedade Anônima)**

Annual shareholders’ meeting to be held within 4 months after the end of the previous fiscal year.

## DIRECTOR / OFFICER REQUIREMENTS

**Limited liability company (Sociedade Limitada)**

A Sociedade Limitada shall have at least 1 manager, and they all must be individuals (Brazilian citizens or foreigners with an attorney-in-fact resident in Brazil, as further detailed below). Due to a recent change in the applicable rules, a Sociedade Limitada may now have a Board of Directors and the rules established in the Brazilian Corporations Law (Rule No. 6,404/76) regarding the Board of Directors shall be applied by analogy.

**Corporation (Sociedade Anônima)**

At least 2 officers are required, and they all must be individuals (Brazilian citizens or foreigners with an attorney-in-fact resident in Brazil, as further detailed below).

The board of directors shall have at least 3 members (Brazilian citizens or foreigners with an attorney-in-fact resident in Brazil, as further detailed below). In general, Directors are only mandatory in case of listed corporations and corporations with authorized capital.

For more information on directors’ duties, see our [Global Guide to Directors’ Duties](#).

## LOCAL CORPORATE SECRETARY REQUIREMENT

**Limited liability company (Sociedade Limitada)**
Not applicable for this jurisdiction.

**Corporation (Sociedade Anônima)**

Not applicable for this jurisdiction.

**LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT**

Limited liability company (Sociedade Limitada)

Not applicable for this jurisdiction.

**Corporation (Sociedade Anônima)**

Not applicable for this jurisdiction.

**LOCAL OFFICE LEASE REQUIREMENT**

Limited liability company (Sociedade Limitada)

The address of the company’s headquarters or branch must be adequate for the activities it will perform on such site.

**Corporation (Sociedade Anônima)**

The address of the corporation’s headquarters or branch must be adequate for the activities it will perform on such site.

**OTHER PHYSICAL PRESENCE REQUIREMENTS**

Limited liability company (Sociedade Limitada)

A foreign quotaholder (legal entity or an individual) or manager not resident in Brazil must constitute an attorney-in-fact resident in Brazil with powers to receive service of process on its behalf.

The company shall have an accountant responsible for its accounting.

**Corporation (Sociedade Anônima)**

A shareholder, director or officer not resident in Brazil must constitute an attorney-in-fact resident in Brazil with powers to receive service of process on their behalf.

The corporation shall have an accountant responsible for its accounting.

**SUFFICIENCY OF VIRTUAL OFFICE**
Limited liability company (Sociedade Limitada)

Depending on the activities performed by the company, it may have a virtual office.

Corporation (Sociedade Anônima)

Depending on the activities performed by the company, it may have a virtual office.

**PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

Limited liability company (Sociedade Limitada)

Allowed. The address of the company’s headquarters or branch must be adequate for the activities it will perform on such site.

Corporation (Sociedade Anônima)

Allowed. The address of the corporation’s headquarters shall be adequate for the activities it will perform on such site.

Note: Law firms do not usually render this type of service (to provide local registered address).

**PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

Limited liability company (Sociedade Limitada)

Allowed for incorporation.

Corporation (Sociedade Anônima)

Allowed for incorporation.

**NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS**

Limited liability company (Sociedade Limitada)

Under Brazilian Law, all foreign quotaholders (legal entities or individuals) must constitute an attorney-in-fact resident in Brazil with powers to receive service of process on their behalf, to be empowered to manage their assets in Brazil and to represent them with tax authorities. Also, the quotaholders must be registered with the Corporate Taxpayer Roll (CNPJ/ME).

Due to a recent change in the applicable legislation, managers of a Sociedade Limitada are no longer are required to be resident in Brazil, but managers who do not reside in Brazil must constitute an attorney-in-fact resident in Brazil with powers to receive service of process on their behalf.
Corporation (Sociedade Anônima)

Under Brazilian Law, all shareholders (legal entities or individuals) that are not Brazilian residents must constitute an attorney-in-fact resident in Brazil with powers to receive service of process on their behalf, to be empowered to manage their assets in Brazil and to represent them with tax authorities. Also, the shareholders must be registered with the Corporate Taxpayer Roll (CNPJ/ME).

Directors who do not reside in Brazil must constitute an attorney-in-fact resident in Brazil with powers to receive service of process on their behalf.

Due to a recent change in the applicable legislation, officers no longer are required to be resident in Brazil, but officers who do not reside in Brazil must constitute an attorney-in-fact resident in Brazil with powers to receive service of process on their behalf.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Limited liability company (Sociedade Limitada)

Legal entities cannot be appointed as manager or director.

Corporation (Sociedade Anônima)

Legal entities cannot be appointed as officer or director.

SUMMARY OF DIRECTOR'S, OFFICER'S AND SHAREHOLDER'S AUTHORITY AND LIMITATIONS THEREOF

Limited liability company (Sociedade Limitada)

The managers are elected by the quotaholders and are responsible for the day-to-day management of the company’s business. The managers are also responsible for representing the company before third parties, in accordance with the provisions of the articles of organization.

The articles of organization may set up certain limitations to the powers of the managers and keep major decisions to the approval of the quotaholders.

Corporation (Sociedade Anônima)

Directors are elected by the shareholders and are part of a decision-making body of the corporation which establishes broad policies and objectives. In contrast, officers are appointed by the directors to oversee day-to-day operations of the corporation. In case the corporation does not have a board of directors, the officers are elected by the shareholders’ meeting and have full authority.

The law establishes certain matters that shall be decided exclusively by the shareholders. The bylaws (and/or a shareholders’ agreement) may create additional limitations to the powers of the directors and officers.
PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

Limited liability company (Sociedade Limitada)

Identity of quotaholders and managers is publicly disclosed.

Corporation (Sociedade Anônima)

Identity of directors and officers is publicly disclosed; identity of shareholders of private, non-listed companies is not publicly disclosed.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

Limited liability company (Sociedade Limitada)

There must be a minimum of one quotaholder, and no maximum number of quotaholders. For managers, the minimum number is one.

Corporation (Sociedade Anônima)

There must be a minimum of two shareholders, and no maximum number. Exception is made to the incorporation of a whole owned subsidiary (sole shareholder company) provided that the incorporation must be made through a public deed and the sole shareholder must be a Brazilian company. For directors, if any, the minimum number is three, while there is no maximum number. For officers, the minimum number is two, and there is no maximum number.

Note: As mentioned above, the solely-owned business form named Empresa Individual de Responsabilidade Limitada (EIRELI), which required a minimum initial capital stock of equivalent to 100 times the highest minimum wage in force in Brazil to be paid in on the incorporation date, became extinct and the existing EIRELIs were transformed into solely-owned Sociedades Limitadas.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

Limited liability company (Sociedade Limitada)

There must be a minimum of 1 quotaholder.

Corporation (Sociedade Anônima)

As least 2 shareholders are required. Exception is made to the incorporation of a whole owned subsidiary (sole shareholder company) provided that the incorporation must be made through a public deed and the sole shareholder must be a Brazilian company.
REMOVAL OF DIRECTORS OR OFFICERS

Limited liability company (Sociedade Limitada)

Removal of managers depend on the approval of quotaholder(s) (quotaholders representing more than 1/2 of the company’s capital, unless if otherwise provided in the articles of organization).

Corporation (Sociedade Anônima)

Removal of directors is allowed by a vote of shareholders. Officers are removed by means of a resolution of the board of directors, if any, or the shareholders (the latter in case the corporation does not have a board of directors).

REQUIRED AND OPTIONAL OFFICERS

Limited liability company (Sociedade Limitada)

The quotaholders may set forth in the articles of organization different functions to be attributed to each manager.

Corporation (Sociedade Anônima)

At least 2 officers, with no specific designation, are required. The functions to be attributed to each officer may be established in the bylaws.

BOARD MEETING REQUIREMENTS

Limited liability company (Sociedade Limitada)

The rules for managers’ meetings, if applicable, shall be set forth in the articles of organization.

Corporation (Sociedade Anônima)

To be established in the bylaws, if applicable.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

Limited liability company (Sociedade Limitada)

The general rule for quotaholders’ meetings and managers’ meetings (the latter, if applicable) is the majority of the company’s capital and of the managers, respectively. The Brazilian Civil Code establishes higher quorum for some specific resolutions, and the articles of organization may also establish other rules concerning the approval of resolutions.

Corporation (Sociedade Anônima)

For a shareholder meeting, shareholders representing 1/4 of the capital shall be present. In general, decisions shall be taken by at least the majority of the shareholders present at the meeting. Certain matters, expressly set forth
in the law, require the approval by a higher quorum. The bylaws may establish other quorum requirements.

For the board of directors, the decisions shall be taken by the majority of directors. Other requirements shall be established by the bylaws.

**MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?**

**Limited liability company (Sociedade Limitada)**

Not necessary in order to incorporate. The company’s bank account shall be opened in Brazil only after the registration of the incorporation documents with the commercial registry and the registration of the company with the Brazilian Federal Revenue.

**Corporation (Sociedade Anônima)**

The corporation’s bank account shall be opened in Brazil after its incorporation. Nonetheless, in order to comply with the Brazilian Law, the incorporation of a corporation depends on the realization of at least 10 percent of the issuance price of the shares subscribed in national currency that shall be deposited at Banco do Brasil S/A., or at another bank authorized by the Brazilian Securities Commission.

**AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?**

**Limited liability company (Sociedade Limitada)**

An audit is not required for a Sociedade Limitada. Although the Brazilian Law sets forth corporate books for a Sociedade Limitada (book of quotaholders’ meeting, managers’ meeting and fiscal council meetings, if applicable), there is no penalty in case of not having them (in practice, most Sociedades Limitadas do not usually open corporate books). In case they are opened, they shall be kept at the company’s headquarters.

**Corporation (Sociedade Anônima)**

An audit is not generally required for private, non-listed companies. Corporate books (ie, share transfer book, registry of shares, book of attendance at shareholders’ meetings, book of shareholders’ meetings, book of board of officers meetings, book of board of directors meetings – if applicable, book of fiscal council meetings) shall be kept at the corporation’s headquarters.

**REQUIREMENT REGARDING PAR VALUE OF STOCK**

**Limited liability company (Sociedade Limitada)**

The quotas of a Sociedade Limitada must have a determined par value established in the articles of organization.
Corporation (Sociedade Anônima)

Par value is not required.

**INCREASING OF CAPITALIZATION IF NEEDED**

Limited liability company (Sociedade Limitada)

The company’s capital can only be increased once it is fully paid in and upon the registration of an amendment to the articles of organization. According to the Brazilian Civil Code, each quotaholder has the pre-emptive right to subscribe the new quotas issued in a capital increase, proportionally to the equity held by each of them in the company’s capital.

Corporation (Sociedade Anônima)

Effectuated by amending the bylaws, which requires authorization from the shareholders. If the corporation has a board of directors, the shareholders may establish an authorized capital. In this case, the capital may be increased within the limit of the authorized capital by means of a resolution of the board of directors, without the necessity of amending the bylaws.

A capital increase may only occur once, at least, 3/4 of the company’s capital is fully paid in.

**SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)**

Limited liability company (Sociedade Limitada)

Dividends, capital reduction, redemption of quotas, purchase and sale of quotas.

Corporation (Sociedade Anônima)

Dividends, capital reduction, redemption of shares, purchase and sale of shares.

**RESTRICTIONS ON TRANSFERABILITY OF SHARES**

Limited liability company (Sociedade Limitada)

All transfers of quotas must be done by means of an amendment to the articles of organization. A quotaholder may freely transfer the respective quotas if there is no opposition of quotaholders holding more than 1/4 of the company’s capital. However, the quotaholders usually set forth limitations to the transfer of quotas in the articles of organization (such as right of first refusal) or in the quotaholders’ agreement, if any.

Corporation (Sociedade Anônima)

As a general rule, shareholders may freely transfer their shares to other shareholders or third parties by means of an entry in the share transfer book. It is common to establish limitations to this right in the bylaws or in shareholders’ agreements, if any.
OBTAINING A NAME AND NAMING REQUIREMENTS

Limited liability company (Sociedade Limitada)

A Brazilian company may have any name which is not being currently used by another company or is in conflict with an existing trademark or trade name of a potential competitor or a relevant company.

The company's name must include either the word "Limitada" or its abbreviation "Ltda." as the last word and indicate the core business of the company.

Corporation (Sociedade Anônima)

A corporation may have any name which is not being currently used by another company or is in conflict with an existing trademark or trade name of a potential competitor or a relevant company.

The corporation's name shall include either the words "Companhia," "Sociedade Anônima" or its abbreviation "S.A.," which is most commonly used, and shall indicate the core business of the corporation.

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

Limited liability company (Sociedade Limitada)

During the procedure of opening the company's bank account, the documents required may vary from bank to bank.

Corporation (Sociedade Anônima)

During the procedure of opening the corporation's bank account, the documents required may vary from bank to bank.

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

Limited liability company (Sociedade Limitada)

Any amendment to the articles of organization depend on the approval of quotaholders representing at least 3/4 of the company's capital.

Corporation (Sociedade Anônima)

As a general rule, a majority of shareholders must formally approve, in a shareholders' meeting, any amendment to the bylaws.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

Limited liability company (Sociedade Limitada)
After the registration of the articles of organization with the commercial registry and the enrollment with the federal tax authorities and the Central Bank of Brazil (in case of non-resident quotaholders), the company must also register with Caixa Econômica Federal, an official bank, and the National Social Security Institute (INSS). Subsequently, the company may need to register with municipal and/or state authorities, and other licenses may be required depending on its activities.

**Corporation (Sociedade Anônima)**

After the registration of the incorporation document with the commercial registry and the enrollment with the federal tax authorities and the Central Bank of Brazil (in case of non-resident shareholders), the corporation must also register with Caixa Econômica Federal, an official bank, and the National Social Security Institute (INSS). Subsequently, the corporation may need to register with municipal and/or state authorities, and other licenses may be required depending on its activities.

**PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY**

**Limited liability company (Sociedade Limitada)**

Shelf companies can be purchased from third-party service providers.

**Corporation (Sociedade Anônima)**

Shelf companies can be purchased from third-party service providers.

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**KEY CONTACTS**

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CANADA

FORM OF ENTITY

Corporate subsidiary (corporation form rather than flow-through form)

Separate and distinct legal entity. May incorporate federally (under the Canada Business Corporations Act) or provincially/territorially — for example, under the Business Corporations Act (Ontario). It is managed by a board of directors, which is responsible for making major business decisions and overseeing the general affairs of the corporation. Directors are elected by the shareholders of the corporation. Officers, who run the day-to-day operations of the corporation, are appointed by the directors.

Note: Additional forms of entity structures also exist and could be useful in some instances but are not covered in this guide either because they are less commonly used types of entity structures or not as likely to be relevant to the reader.

ENTITY SET UP

Corporate subsidiary

Corporation form (limited liability corporation)

- Incorporate under either federal or provincial/territorial law
- Most foreign businesses choose this form rather than branch office
- Certain industries are subject to specific legislation and must incorporate under these laws (e.g., banking or insurance companies)
- For corporations under federal law, 25 percent of directors must be residents of Canada. If a corporation has less than 4 directors, at least 1 director must be a resident Canadian. Certain corporations in prescribed activities require a majority of resident Canadian directors
• A number of provinces/territories have similar residency requirements for directors; some have no residency requirements

• Cannot consolidate income and loss with operations in other corporate entities for Canadian tax purposes

**Flow-through form**

• Unlimited liability companies (ULCs) may be created by incorporating in the provinces of Nova Scotia, British Columbia or Alberta

• For Canadian income tax purposes, ULCs are treated as regular corporations, subject to Canadian tax on their worldwide income; however, for US tax purposes, ULCs may be treated either as partnerships or "check-the-box" flow-through entities, possibly offering cross-border opportunities

**Branch (permanent establishment)**

• A corporation must register in each province or territory where it plans to conduct business or own real property located in that jurisdiction. A foreign (ie, non-Canadian) corporation may also register in the province or territory if the foreign corporation intends to conduct business in that province or territory

• Must have a Canadian place of business or address where corporate records are kept

• Canadian branch operations of foreign corporations are subject to Canadian federal and provincial/territorial tax on income and gains sourced in Canada (primarily income from a business carried on in Canada). The branch is required to calculate income or loss from the business carried on in Canada and may deduct expenses only in respect of that business carried on in Canada

• A 25 percent branch tax levied on after-tax Canadian earnings from business carried on in Canada less amounts that are re-invested in Canadian business (which is intended to mirror the 25 percent withholding tax that would be payable on taxable dividends from a Canadian subsidiary corporation). Financial and tax accounting and reporting obligations may be more complex as the branch is not a legal entity. The rate of branch tax may be reduced under certain tax treaties between Canada and the country of residence of the foreign corporation

• The parent company remains liable for debts and obligations of the branch

• It is common to create a wholly owned subsidiary in home jurisdiction to consolidate losses from the Canadian branch operations but avoid direct liability

**Note 1:** The mechanics and operation of corporations are governed by the federal or provincial/territorial laws of incorporation.

**Note 2:** The shareholders of a federal corporation or the shareholders of most provincial/territorial corporations may enter into a unanimous shareholder agreement which provides for, among other matters, the regulation of the rights and liabilities of the shareholders, the regulation of the election of directors and
the management of the business of the corporation including the right to restrict in whole or in part the powers of the directors.

**MINIMUM CAPITAL REQUIREMENT**

Corporate subsidiary (Corporation form rather than flow-through form)

No minimum capital requirement – however, there are thin-capitalization rules that could deny deductions for interest payments to specified non-residents.

**LEGAL LIABILITY**

Corporate subsidiary (Corporation form rather than flow-through form)

Shareholders of a corporation are generally not liable for the debts or obligations of the corporation.

**TAX PRESENCE**

Corporate subsidiary (Corporation form rather than flow-through form)

Canadian resident corporations are subject to federal and provincial/territorial corporate tax on worldwide income. Corporations are not subject to "branch profits tax" but are required to pay withholding tax on dividends and certain other amounts paid or distributed to non-Canadian resident shareholders, the rate of which varies depending upon the existence of a tax treaty between Canada and the shareholder’s country of residence. This "dual layer of tax" (ie, first at the corporate level and then again upon distribution at the shareholder level) is sometimes referred to as double taxation. Share capital, however, can generally be repatriated free of any Canadian withholding tax (without first distributing E&P).

**INCORPORATION PROCESS**

Corporate subsidiary (Corporation form rather than flow-through form)

Companies that are incorporated federally must file Articles of Incorporation with Innovation, Science and Economic Development Canada (Corporations Canada). Companies that are incorporated under a Canadian province or territory must file Articles of Incorporation with the equivalent provincial or territorial government authority.

**BUSINESS RECOGNITION**

Corporate subsidiary (Corporation form rather than flow-through form)

Well regarded and widely used.

**SHAREHOLDER MEETING REQUIREMENTS**
Corporate subsidiary (Corporation form rather than flow-through form)

Required to hold annual meeting of shareholders to vote on certain items, such as election of directors, unless a unanimous shareholder agreement is in effect that specifies how directors are to be appointed. A resolution signed by all shareholders is valid in lieu of a meeting.

**BOARD OF DIRECTOR MEETING REQUIREMENTS**

Corporate subsidiary (Corporation form rather than flow-through form)

Annual meeting of the directors is required, unless dispensed with by the provisions of a unanimous shareholder agreement. A resolution signed by all directors is valid in lieu of a meeting.

**ANNUAL COMPANY TAX RETURNS**

Corporate subsidiary (Corporation form rather than flow-through form)

Must annually file tax returns with federal and (potentially) provincial/territorial tax authorities.

**BUSINESS REGISTRATION FILING REQUIREMENTS**

Corporate subsidiary (Corporation form rather than flow-through form)

Most provinces and territories (and federal corporations) require initial registration, as well as annual filings with Corporations Canada (if a federal corporation) and in the province or territory where the corporation is incorporated or registered. A change of directors of a corporation also requires the filing of a notice of a change of directors, usually within 15 days of when the change takes place.

**BUSINESS EXPANSION**

Corporate subsidiary (Corporation form rather than flow-through form)

No need to change as business expands.

**EXIT STRATEGY**

Corporate subsidiary (Corporation form rather than flow-through form)

File dissolution documents with the appropriate federal, provincial or territorial government authority, as the case may be, and final tax returns with federal and provincial/territorial tax authorities.

**ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Corporate subsidiary (Corporation form rather than flow-through form)
Annual director and shareholder meeting, or resolution signed by all directors or shareholders, as the case may be, subject to any unanimous shareholder agreement which dispenses with that. If a private (ie, non-public) corporation has a unanimous shareholder agreement, often the unanimous shareholder agreement restricts the transferability of shares by a shareholder.

**DIRECTOR / OFFICER REQUIREMENTS**

**Corporate subsidiary (Corporation form rather than flow-through form)**

Directors are required; officers are almost always appointed, but not generally legally required. Under some corporate statutes, at least 25 percent of directors must be resident Canadians.

For more information on directors’ duties, see our [Global Guide to Directors’ Duties](http://www.dlapiperintelligence.com/goingglobal/).

**LOCAL CORPORATE SECRETARY REQUIREMENT**

**Corporate subsidiary (Corporation form rather than flow-through form)**

Not generally required.

**LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT**

**Corporate subsidiary (Corporation form rather than flow-through form)**

Most provinces and territories require a corporation registered in their jurisdiction to have an agent for service or power of attorney where the entity does not otherwise have a place of business in the province or territory. An agent for service or power of attorney is generally an individual who is 18 years or older and resides in the province or territory of registration.

**LOCAL OFFICE LEASE REQUIREMENT**

**Corporate subsidiary (Corporation form rather than flow-through form)**

None required for incorporation.

**OTHER PHYSICAL PRESENCE REQUIREMENTS**

**Corporate subsidiary (Corporation form rather than flow-through form)**

Some provinces and territories require a corporation registered in their jurisdiction to maintain a registered office address in that jurisdiction.
SUFFICIENCY OF VIRTUAL OFFICE

Corporate subsidiary (Corporation form rather than flow-through form)

Sufficient for incorporation.

PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Corporate subsidiary (Corporation form rather than flow-through form)

Allowed for incorporation.

PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Corporate subsidiary (Corporation form rather than flow-through form)

Allowed for incorporation, though not common.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

Corporate subsidiary (Corporation form rather than flow-through form)

Only for directors under some corporate statutes.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Corporate subsidiary (Corporation form rather than flow-through form)

Not applicable.

SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF

Corporate subsidiary (Corporation form rather than flow-through form)

Directors are elected by the shareholders (or may be appointed under a unanimous shareholder agreement) and are the highest authority in the management of the corporation and govern the organization by establishing broad policies and objectives. In contrast, officers are appointed by the directors to oversee day-to-day operations of the corporation. Shareholders may adopt a unanimous shareholders agreement to restrict powers of directors.
PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

Corporate subsidiary (Corporation form rather than flow-through form)

Identity of directors is publicly disclosed; certain jurisdictions require disclosure of officers; identity of shareholders of private, non-listed companies is not publicly disclosed in most jurisdictions.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

Corporate subsidiary (Corporation form rather than flow-through form)

There must be a minimum of 1 shareholder. There is no maximum number. For directors, generally the minimum number is 1 for non-public companies, while there is no maximum number. There may be a required minimum number of directors (ie, more than one) for public companies federally and in many provinces and territories.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

Corporate subsidiary (Corporation form rather than flow-through form)

1 shareholder is sufficient.

REMOVAL OF DIRECTORS OR OFFICERS

Corporate subsidiary (Corporation form rather than flow-through form)

Removal of directors is generally allowed by a vote of shareholders; removal of officers is generally allowed by a vote of directors.

REQUIRED AND OPTIONAL OFFICERS

Corporate subsidiary (Corporation form rather than flow-through form)

Typically, a President and Secretary is appointed, which may be the same individual; any other officer is allowed but not required.

BOARD MEETING REQUIREMENTS

Corporate subsidiary (Corporation form rather than flow-through form)

Typically at least 1 annual director meeting is required, which may be completed by written resolutions signed by all directors.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS
Corporate subsidiary (Corporation form rather than flow-through form)

For a shareholder meeting, the quorum set out in the corporate bylaws, articles of incorporation or unanimous shareholder agreement must be present during the shareholder meeting. For directors, typically a majority of directors must be present (including 25 percent resident Canadian directors in some jurisdictions) during a board meeting; alternatively, all of the directors may execute written resolutions.

**MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?**

Corporate subsidiary (Corporation form rather than flow-through form)

Not necessary in order to incorporate. When necessary, a bank account can be opened anywhere.

**AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?**

Corporate subsidiary (Corporation form rather than flow-through form)

*Auditor*

An audit is not generally required for private, non-listed companies provided shareholder approval is obtained.

*Books*

Generally corporate books, such as the minute book, must be kept in Canada, typically with the company or with the company’s attorneys. A corporation may keep all or any of its records at a place other than the registered office of the corporation if the records are available for inspection during regular office hours at the registered office by means of a computer terminal or other electronic technology.

**REQUIREMENT REGARDING PAR VALUE OF STOCK**

Corporate subsidiary (Corporation form rather than flow-through form)

For federal companies and most provincial and territorial companies, shares are issued without nominal or par value.

**INCREASING OF CAPITALIZATION IF NEEDED**

Corporate subsidiary (Corporation form rather than flow-through form)

An increase in authorized capital may be effectuated by amending the articles of incorporation, which requires authorization, generally, from 2/3 of the shareholders at a meeting and all the shareholders if by resolution in writing.
SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)

Corporate subsidiary (Corporation form rather than flow-through form)

Funds can be repatriated abroad from Canada via dividends, return of capital or redemption.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

Corporate subsidiary (Corporation form rather than flow-through form)

Shares can generally be transferred between shareholders via a written agreement, with directors’ consent typically needed for private companies. If there is a unanimous shareholder agreement in place for a private company, typically it places restrictions on the transferability of shares of that private company and may include other provisions such as “piggyback” rights, rights of first refusal and other similar steps that must be taken before a transfer of shares can take place.

OBTAINING A NAME AND NAMING REQUIREMENTS

Corporate subsidiary (Corporation form rather than flow-through form)

Proposed name can be reserved. Certain name requirements apply. It is possible to incorporate with a generic “numbered company” name.

SUMMARY OF “KNOW YOUR CLIENT” REQUIREMENTS

Corporate subsidiary (Corporation form rather than flow-through form)

Typically required by law societies in various Canadian provinces and territories.

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

Corporate subsidiary (Corporation form rather than flow-through form)

Typically, a corporation’s shareholders must approve, by special resolution, any amendments to the articles of incorporation. Some changes to the articles give rise to a mandatory vote of shareholders or even a separate class vote. Some changes to the articles also give rise to an appraisal right.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

Corporate subsidiary (Corporation form rather than flow-through form)

Typically, the only license required would be an extra-provincial or extra-territorial license (registration) in each province or territory in which the corporation carries on business. Licenses might be required in certain specific
regulated industries or by municipalities where the corporation carries on business.

**PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY**

Corporate subsidiary (Corporation form rather than flow-through form)

It is possible, but not typical, to purchase a shelf company.

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CHILE

FORM OF ENTITY

The most common types of business organizations operating in Chile are (i) sociedades de responsabilidad limitada (SRL), or limited liability companies/partnerships; (ii) sociedades anónimas (SA), or stock corporations or corporations; (iii) sociedades por acciones (SPA), or simplified corporations; and (iv) branches of foreign entities.

Limited Liability Company (Sociedad de Responsabilidad Limitada or SRL)

This type of company is mainly regulated by Law No. 3.918 but also by rules applicable to general partnerships and by certain rules contained in the Commerce and Civil Codes. The liability of the members of an SRL is limited to the amount of their contributions or to the higher amount established in the bylaws. Equity rights can only be transferred with the unanimous approval of the partners. There is great flexibility as to the rules that may be included in the bylaws.

The SRL is managed as established in the bylaws. If the bylaws do not state who manages the company, management corresponds to partners, by themselves or by representatives. If a manager is not appointed, all partners may administrate the company. Bylaws may establish different management options, such as appointing certain partner or partners, third parties or even a board of directors.

Corporation (Sociedad Anónima or S.A.)

This type of company is mainly regulated by Law No. 18,046 (the Corporations Act) as well as by the Corporations Regulations (Reglamento de Sociedades Anónimas).

A corporation may be open (public), closed (private) or special. Open corporations are those that register, voluntarily or by legal obligation, their shares in the Securities Registry and are under control of the Financial Market Commission (Comisión para el Mercado Financiero or CMF). Special corporations are expressly established by law (eg, banks and insurance companies). Closed corporations are those that do not qualify as open or special.

Its share capital is divided into shares, which may be transferred without limitation, except for certain exceptions such as those contained in shareholders’ agreements. In private corporations, bylaws may establish certain restrictions, but in public corporations, this is not allowed. The liability of shareholders is limited to the amount of their capital contributions.
Managed by a board of directors appointed by the shareholders. The board is responsible for administration and representation of the company and is entitled to delegate part of its powers to the CEO and other officers. A director's term of appointment, which is set forth in the bylaws, cannot exceed 3 years. Directors may also be re-elected indefinitely.

Simplified Corporation (Sociedades por Acciones or SpA)

Simplified corporations are regulated by special rules contained in the Commerce Code. They are also ruled by their bylaws and by the private corporations’ rules in a suppletory manner. Unlike corporations, SpAs may be incorporated and operate with only 1 shareholder. The capital is divided into shares.

Legal regulation for simplified corporations is more flexible than that of corporations as it allows special agreements regarding, for example, management, profit distributions, share ownership, multiple votes and restrictions to voting rights.

Management is flexible. Bylaws may establish different management options, such as appointing certain shareholder or shareholders, third parties or a board of directors.

It is customary for simplified corporations to be managed by an administrator – usually the shareholder – who may act personally and/or through 1 or more agents and/or managers.

Branch of a Foreign Legal Entity (Agencia)

A branch acts as an alternative form of entity as it corresponds to the presence of a foreign company (ie, parent) in Chile that does not seek to incorporate a new company, but instead only establishes a branch of the existing company. It is not a separate legal entity, except for in the case of certain tax purposes. The parent company is ruled by its local laws. The Commerce Code and the Corporations Act have certain special rules about the establishment and amendments of the branch for foreign companies and for-profit entities and corporations, respectively.

It is managed by an agent appointed by the parent. The parent grants the agent extensive power to act on its behalf in Chile. This power shall expressly mention that the agent acts in Chile under direct responsibility of the parent.

ENTITY SET UP

Limited Liability Company (Sociedad de Responsabilidad Limitada or SRL)

- Minimum of 2 partners and maximum of 50 partners.

- The liability of the members of an SRL is limited to the amount of their contributions or to the higher amount established in the bylaws.

- Rules for distribution of profits shall be included in the bylaws. Partners have the freedom to decide about this matter in the bylaws.

- Typical charter documents include:
Articles of incorporation

Bylaws and its amendments

Powers of attorney and

Accounting and tax records.

- Bylaws may establish different management options, such as appointing a certain partner or partners, third parties or even a board of directors.

- Equity rights may only be transferred with the unanimous approval of the partners.

- No publication of financial statements is needed.

**Corporation (Sociedad Anónima or S.A.)**

- Minimum of 2 shareholders.

- May be public or private. May also be special corporations.

- The liability of shareholders is limited to the amount of their contributions to capital.

- Profits distribution decision corresponds to the general ordinary shareholders’ meeting. Public corporations shall annually pay, as dividend, at least 30 percent of net profits of each fiscal year.

- Typical charter documents include:
  
  - Articles of incorporation
  
  - Bylaws and its amendments
  
  - Stock certificates
  
  - A shareholders’ registry
  
  - A book of minutes of shareholders’ meetings
  
  - A book of minutes of board of directors’ meetings
  
  - A book of executives and attorneys and
  
  - Accounting and tax records.

- Managed by a board of directors appointed by the shareholders. The board is responsible for administration and representation of the company and is entitled to delegate part of its power to the CEO and other officers.
• No limitations to shares transfer. Restrictions may be included in the company’s bylaws (not allowed in public corporations) and/or in shareholders’ agreements.

• In private corporations, the shareholders’ meeting shall appoint account inspectors or external auditors. In public corporations, the shareholders’ meeting shall appoint an external auditing firm, which shall be registered with the CMF.

**Simplified Corporation (Sociedades por Acciones or SpA)**

• Minimum of 1 or more shareholders.

• The liability of shareholders is limited to the amount of their contributions to capital.

• Bylaws shall establish profit distribution agreements and what corporate body shall approve distributions. In case of silence, shareholders shall approve distributions at annual shareholders’ meetings.

• Typical charter documents include:
  
  ○ Articles of incorporation

  ○ Bylaws and its amendments

  ○ A stock certificate – however, the company’s bylaws may establish that the shares may exist without the need of issuance of a document that physically represents the shares

  ○ A shareholders’ registry

  ○ A book of minutes of shareholders’ meetings

  ○ If the management of the company is vested in a board of directors, meeting minutes must be kept – and

  ○ Accounting and tax records.

• Management is flexible. Bylaws may establish different management options, such as appointing a certain shareholder or shareholders, third parties or a board of directors.

• No limitation to shares transfer. Restrictions may be included in the company’s bylaws and/or in shareholders’ agreements. Bylaws may establish minimum or maximum percentages of capital to be controlled, directly or indirectly, by a 1 or more shareholders.

• Publication of financial statements, if requested by the bylaws.

**Branch of a Foreign Legal Entity (Agencia)**

• No minimum or maximum requirement for shareholders or partners of the parent. The parent is ruled by applicable foreign laws.
• The parent company is liable for the actions of the branch in Chile.

• No limitations on remittance of profits from the branch to the parent. Subject to compliance of tax obligations and applicable exchange rules.

• Typical charter documents include:
  ○ Articles of incorporation of the parent
  ○ Bylaws of the foreign entity
  ○ A certificate of good standing of the parent
  ○ General power of attorney granted by the foreign company to the agent who will represent it in Chile
  ○ A statement made by the agent and
  ○ Accounting and tax records.

• Managed by an agent appointed by the parent, granting them extensive powers to acts on its behalf in Chile.

• Every year, the agent shall publish the annual balance of the branch in a local newspaper within 4 months following the closing of the financial period.

MINIMUM CAPITAL REQUIREMENT

Limited Liability Company (Sociedad de Responsabilidad Limitada or SRL)

There is no obligation for a minimum capital.

Corporation (Sociedad Anónima or S.A.)

There is no obligation for a minimum capital, except in the case of certain special corporations.

Simplified Corporation (Sociedades por Acciones or SpA)

There is no obligation for a minimum capital.

Branch of a Foreign Legal Entity (Agencia)

There is no obligation for a minimum capital.

LEGAL LIABILITY

Limited Liability Company (Sociedad de Responsabilidad Limitada or SRL)
The liability of the partners of an SRL is limited to the amount of their contributions or to the higher amount established in the bylaws.

**Corporation (Sociedad Anónima or S.A.)**

The liability of shareholders is limited to the amount of their contributions to capital.

**Simplified Corporation (Sociedades por Acciones or SpA)**

The liability of shareholders is limited to the amount of their contributions to capital.

**Branch of a Foreign Legal Entity (Agencia)**

The parent company is liable for the actions of the branch in Chile.

In a statement made by the agent, it must be declared, for example, that goods of the company are affected by Chilean law and that the company shall keep easy-to-sell goods in Chile to comply with its obligations.

**TAX PRESENCE**

The Chilean tax regime levies taxes at 2 levels. First, the company pays a corporate tax on its income. Then, stockholders pay a personal tax on dividends. The structure of the general tax regime is the following:

**Distributed or partially integrated tax regime:** Corporate tax is paid by the company at a 27-percent rate. The stockholder pays personal tax only on effective distribution by the company. Only 65 percent of the corporate tax is creditable against personal tax. If a double taxation treaty with Chile is applicable, the stockholder is entitled to a full credit.

**Régimen Propyme:** This is as an alternative tax regime for small and medium companies with annual income below UF 75,000 (USD2.91 million approx). In this regime, the corporate tax rate is 25 percent and owners pay personal taxes on effective distributions. However, due to effects of the coronavirus disease 2019 (COVID-19) pandemic, the tax rate has been temporarily reduced to 10 percent for the years 2020, 2021 and 2022.

**INCORPORATION PROCESS**

**Limited Liability Company (Sociedad de Responsabilidad Limitada or SRL)**

SRLs shall be incorporated by public deed, which contains the bylaws. An abstract of the incorporation public deed must be registered in the Registry of Commerce of the company’s domicile and published in the Official Gazette within 60 days from the date of the public deed.

**Corporation (Sociedad Anónima or S.A.)**

Corporations shall be incorporated by public deed, which contains the bylaws. An abstract of the incorporation public deed must be registered with the Registry of Commerce of the company’s domicile and published in the Official Gazette within 60 days from the date of the public deed.

**Simplified Corporation (Sociedades por Acciones or SpA)**
SpAs may be incorporated by public deed or private instrument duly authorized by a public notary in Chile. Its bylaws are contained in the incorporation public deed or private instrument. An abstract of the incorporation public deed or private instrument must be registered in the Registry of Commerce of the company’s domicile and published in the Official Gazette within 1 month from the date of the incorporation.

Branch of a Foreign Legal Entity (Agencia)

Branches of foreign legal companies are established in Chile by an agent or representative of the parent. For this purpose, the agent shall notarize in its official language and translate into Spanish, if drafted in another language, the following documents:

(i) Documents that prove that the foreign company is legally constituted according to the law of the country of origin and a certificate of good standing of the company

(ii) An authentic copy of the current bylaws of the foreign company and

(iii) General power of attorney granted by the foreign corporation to the agent who will represent it.

Additionally, the agent shall make a statement with the mentions required by the Commerce Code or the Corporations Act, as applicable. The statement shall be made by public deed executed on the same date and before the same notary where the abovementioned documents were registered.

An abstract of the notarized documents and the public deed must be registered in the Commercial Registry correspondent to the branch’s domicile and published in the Official Gazette within 60 days from the date of notarization.

BUSINESS RECOGNITION

Limited Liability Company (Sociedad de Responsabilidad Limitada or SRL)

Well regarded and used regularly by small and medium-sized family enterprises and businesses.

Corporation (Sociedad Anónima or S.A.)

Well regarded and widely used for big businesses and companies seeking financing options in the equity market.

Simplified Corporation (Sociedades por Acciones or SpA)

Well regarded and used regularly by small and medium-sized enterprises and businesses, especially venture capital.

Branch of a Foreign Legal Entity (Agencia)

Not frequently used by foreign companies as it is not a separate legal entity and depends on the parent.

SHAREHOLDER MEETING REQUIREMENTS

Limited Liability Company (Sociedad de Responsabilidad Limitada or SRL)
Annual meetings of members or managers are not required. Operating agreement provisions will determine any meeting requirement.

**Corporation (Sociedad Anónima or S.A.)**

There must be at least 1 ordinary shareholder meeting per year for shareholders to approve or reject the balance sheet and financial statements of the corporation each fiscal year, among other matters. Some meetings may require the assistance of a Notary Public (e.g., amendments to the bylaws). In public and special corporations (and private corporations, if authorized in the bylaws), the meeting may be held via technological means.

**Simplified Corporation (Sociedades por Acciones or SpA)**

As established in the bylaws; in case of silence, rules for private corporations apply.

**Branch of a Foreign Legal Entity (Agencia)**

Not applicable to Chilean branches. The parent company shall comply with applicable foreign regulation.

### BOARD OF DIRECTOR MEETING REQUIREMENTS

**Limited Liability Company (Sociedad de Responsabilidad Limitada or SRL)**

Board of directors’ meetings - if the company is administered by a board - may be freely established in the bylaws.

**Corporation (Sociedad Anónima or S.A.)**

In public corporations, regular directors’ meetings shall be held at least once a month. Private corporations shall indicate the frequency of directors’ in the bylaws. If they are not delineated in the bylaws, directors’ meetings shall be held at least once per month. The board meeting may be held via technological means, and minutes may be signed by electronic signature.

**Simplified Corporation (Sociedades por Acciones or SpA)**

Board of director meetings may be freely established in corporate bylaws; in case of silence, rules for private corporations apply. The board meeting may be held via technological means. Minutes may be signed by electronic signature if approved by the board.

**Branch of a Foreign Legal Entity (Agencia)**

Not applicable to Chilean branches. The parent company must comply with applicable foreign regulation.

### ANNUAL COMPANY TAX RETURNS

**Limited Liability Company (Sociedad de Responsabilidad Limitada or SRL)**

Files tax returns annually and monthly. Its partners file annually.

**Corporation (Sociedad Anónima or S.A.)**
Files tax returns annually and monthly. Its shareholders file annually.

**Simplified Corporation (Sociedades por Acciones or SpA)**

Files tax returns annually and monthly. Its shareholders file annually.

**Branch of a Foreign Legal Entity (Agencia)**

Files tax returns annually and monthly. Its parent company file annually.

### BUSINESS REGISTRATION FILING REQUIREMENTS

**Limited Liability Company (Sociedad de Responsabilidad Limitada or SRL)**

Requires initial registration with the Registry of Commerce in order to incorporate the company and when its bylaws are amended.

**Corporation (Sociedad Anónima or S.A.)**

Requires initial registration with the Registry of Commerce in order to incorporate the company and when its bylaws are amended. Additionally, the public corporation and its shares must be registered in the Securities Registry of the CMF.

**Simplified Corporation (Sociedades por Acciones or SpA)**

Requires initial registration with the Registry of Commerce to incorporate the company and when its bylaws are amended.

**Branch of a Foreign Legal Entity (Agencia)**

Requires initial registration with the Registry of Commerce when the branch is established, when the agent’s statements are modified and when a new agent is appointed.

### BUSINESS EXPANSION

**Limited Liability Company (Sociedad de Responsabilidad Limitada or SRL)**

Limited to 50 partners. An SRL may not operate in the banking industry.

**Corporation (Sociedad Anónima or S.A.)**

No need to change as business expands. Private corporations become public corporations when there are at least 500 shareholders or at least 10 percent of its capital is held by more than 100 shareholders.

**Simplified Corporation (Sociedades por Acciones or SpA)**

A company that, for a period longer than 90 consecutive days, has 500 shareholders or more, or at least 10
percent of capital is held by more than 100 shareholders, shall transform by sole means of law into a public corporation.

Branch of a Foreign Legal Entity (Agencia)

No need to change as business expands.

EXIT STRATEGY

Dissolution documents, a final balance sheet and a final tax return are filed with the tax authority. An abstract of the dissolution document shall be registered at the Registry of Commerce and published in the Official Gazette.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

A municipal tax is paid in the borough where the entity is domiciled and where the entity has opened branches.

DIRECTOR / OFFICER REQUIREMENTS

A company must have a representative before the tax authorities who is a Chilean resident. This is not applicable to directors and other officers except in the case of certain industries.

For more information on directors’ duties, see our Global Guide to Directors’ Duties.

LOCAL CORPORATE SECRETARY REQUIREMENT

Not applicable for this jurisdiction.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

A company must have a representative before the tax authorities who is a Chilean resident. This is not applicable to directors and other officers except in the case of certain industries.

LOCAL OFFICE LEASE REQUIREMENT

An entity must have a local address within the Chilean territory for tax purposes.

OTHER PHYSICAL PRESENCE REQUIREMENTS

Not applicable for this jurisdiction.
SUFFICIENCY OF VIRTUAL OFFICE

A virtual office is not accepted as the legal address for the purpose of registering with the tax authorities, except if, due to the nature of the company’s services, said office is in fact the place where the company carries out its main activity. However, a virtual office may be used as a valid address for receiving notifications from the tax authority.

PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Not applicable for this jurisdiction.

PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Not applicable for this jurisdiction.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

Partners or shareholders may be local or foreign. However, they must be registered as such with the tax authority. A company must have a representative before the tax authorities who is a Chilean resident. This is not applicable to directors and other officers, except in the case of certain industries.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

In private corporations, the position of CEO is incompatible with the company’s president, auditor or accountant positions. It is additionally incompatible with the director position in public corporations.

SUMMARY OF DIRECTOR'S, OFFICER'S AND SHAREHOLDER'S AUTHORITY AND LIMITATIONS THEREOF

Corporation (Sociedad Anónima or S.A.)

Board of directors: The board of directors represents a company judicially and extrajudicially and is vested with all the powers of administration and disposition that the law or statute does not establish as privative of the shareholders’ meeting, without it being necessary to grant it any special power, even for those acts or contracts for which laws require this circumstance. The foregoing does not preclude the representation of the CEO. Consequently, there is not a list of matters submitted to the board of directors; instead, the law defines those matters that can only be agreed by the shareholders given their relevance.
In Chile, directors do not hold the power to represent the company individually. However, the board of directors as a body may delegate some of its powers to the main executives, managers, assistant managers or lawyers of the company; to a director or to a committee of directors; and, for specially determined objects, to other people.

Officers: In corporations, the board of directors must appoint a CEO. Law grants judicial representation of the corporation to the CEO, who also has the power granted by the board. The board may grant additional power of attorney to certain officers.

Shareholders: Each shareholder will have 1 vote for each share it owns. The shareholders meet in ordinary or extraordinary meetings. Law expressly defines which matters shall be discussed in each type of meeting. Ordinary meetings shall be held once a year to decide on the director’s election, the annual balance, the distribution of profits and appointment of external auditors, among other issues. Extraordinary meetings may be held at any time, when required by the company, to decide on any matter that the law or the bylaws provide to the knowledge of the shareholders’ meetings and provided that such matters are indicated in the corresponding citation. Extraordinary shareholders’ meeting matters are the following: the dissolution of the company; the transformation, merger or division of the company and any amendments to its bylaws; the issuance of bonds or debentures convertible into shares; disposal of 50 percent or more of the company’s assets; the granting of guarantees to secure obligations of third parties, except if these are subsidiaries, in which case board approval will be sufficient; early dissolution of the company; and bylaw amendments, among others.

**Simplified Corporation (Sociedades por Acciones or SpA)**

Determined by the bylaws. In case of silence, rules of private corporations will apply.

**PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS**

Applicable within public corporations.

**MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS**

At least 3 directors for private corporations and simplified corporations by shares.

The board of public corporations must be composed of at least 5 directors. Public corporations that are required to have a special board committee and must also appoint at least 1 independent director must have a board of 7 directors.

**MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

**Limited Liability Company (Sociedad de Responsabilidad Limitada or SRL)**

Minimum of 2 partners and maximum of 50 partners. They may be individuals or legal entities and either Chilean or foreign.

**Corporation (Sociedad Anónima or S.A.)**
In private corporations, minimum of 2 shareholders and no maximum requirement. They may be individuals or legal entities and either Chilean or foreign. However, if there are 500 shareholders or more, or at least 10 percent of capital is held by more than 100 shareholders, it becomes a public corporation.

In public corporations, minimum of 2 shareholders and no maximum.

**Simplified Corporation (Sociedades por Acciones or SpA)**

A minimum of 1 shareholder and no maximum requirement. They may be individuals or legal entities and either Chilean or foreign.

However, if, for a period longer than 90 consecutive days, the corporation has 500 shareholders or more or at least 10 percent of capital is held by more than 100 shareholders, it will transform by sole means of law into a public corporation.

Bylaws may establish minimum or maximum percentages of capital to be controlled, directly or indirectly, by 1 or more shareholders.

**Branch of a Foreign Legal Entity (Agencia)**

No minimum or maximum requirement for shareholders or partners of the parent company. The parent company is ruled by applicable foreign law.

**REMOVAL OF DIRECTORS OR OFFICERS**

Directors may be freely removed by the shareholders of a corporation or a simplified corporation. Removal shall affect all directors; individual or collective revocation of 1 or more of its members is not allowed. Officers are freely appointed and removed by the board of directors. If officers are determined in bylaws of a limited liability company, the partners must unanimously agree on the removal.

**REQUIRED AND OPTIONAL OFFICERS**

The board of corporations shall appoint 1 or more managers. One of them will be the CEO. The board is free to appoint any additional officers.

**BOARD MEETING REQUIREMENTS**

**Limited Liability Company (Sociedad de Responsabilidad Limitada or SRL)**

Board of directors’ meetings – if the company is administered by a board – may be freely established in the bylaws and, in that case, the board meeting may be held via technological means.

**Corporation (Sociedad Anónima or S.A.)**

At least 1 per year for private corporations and 1 per month for public corporations. The board meeting may be held via technological means, and minutes may be signed by electronic signature.
Simplified Corporation (Sociedades por Acciones or SpA)

These meetings may be freely established in corporate bylaws; in case of silence, rules for private corporations apply. The board meeting may be held via technological means.

Branch of a Foreign Legal Entity (Agencia)

Not applicable for a Chilean branch. The parent company shall comply with applicable foreign regulation.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

In corporations, unless otherwise stated in the bylaws, (i) the assistance quorum for shareholders’ meetings is the majority of the issued shares with the right to vote in the first call and the majority of the attending shares in the second call, and the quorum to approve most of the matters is the majority of the attending shares, except regarding certain specific matters when the quorum to approve them is 2/3 of the issued shares with right to vote; and, (ii) for board meetings, the attendance quorum is the majority of the board members and the approval quorum is the majority of the attending board members. There are some other special quorums.

MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?

Not prior to incorporation. It is not mandatory to open an account in a local bank.

AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?

Local financials are audited in open and closed corporations. In the case of public corporations, the auditor must be registered with the CMF. For all entities, company books must be kept locally.

REQUIREMENT REGARDING PAR VALUE OF STOCK

Not applicable for this jurisdiction.

INCREASING OF CAPITALIZATION IF NEEDED

Limited Liability Company (Sociedad de Responsabilidad Limitada or SRL)

Capital is represented by equity rights and is established in the bylaws. The amount of the company’s capital may be increased or decreased by means of an amendment to the company’s articles of bylaws (complying with formal requirements that include a public deed, registration and publication and notice to the tax authority).

Corporation (Sociedad Anónima or S.A.)
Capital is divided into shares and is established in the bylaws. It shall be subscribed to and paid within a period of no longer than 3 years. If not, capital will be decreased ipso jure to the amount already subscribed to and paid. Capital may only be increased or decreased by agreement of the shareholders’ meeting. That agreement shall be reflected in an amendment of bylaws (complying with formal requirements that include the public deed, registration and publication and notice to the tax authority).

In public corporations, capital increases must be authorized by the CMF and the new shares must be registered in the Securities Registry of the CMF.

**Simplified Corporation (Sociedades por Acciones or SpA)**

Capital is divided into shares. Capital and the term to pay it is established in the bylaws. In case of silence, the term will be 5 years. If not, capital will be decreased ipso jure to the amount already subscribed to and paid.

Bylaws may establish minimum or maximum percentages of capital to be controlled, directly or indirectly, by a 1 or more shareholders.

Capital increases or decreases shall be agreed by shareholders in a special shareholder meeting, and such agreement shall be reflected in an amendment of bylaws (complying with formal requirements that include a public deed, registration and publication and notice to the tax authority). However, in a SpA, bylaws may be amended by all shareholders without the need for a meeting, if all shareholders subscribe to the bylaw amendment, public deed or a private document registered with a notary (complying with formal requirements that include registration and publication and notice to the tax authority).

In an SpA, bylaws may authorize the manager to increase capital of the SpA with the purpose of financing the management of the company or for specific purposes. In this case, a shareholders’ meeting is not required.

Decreases in capital amount must be agreed by shareholders with the quorum set out in bylaws. In case of silence, the quorum required will be unanimity.

**Branch of a Foreign Legal Entity (Agencia)**

The statement made by the agent shall contain the effective capital of the branch and the date and form in which such capital will be entered into the branch.

In order to increase or decrease the branch’s capital, the agent shall, by public deed, a statement modifying the one that established the branch. An abstract of such public deed shall be registered in the Commercial Registry correspondent to the branch’s domicile and published in the Official Gazette within 60 days. Additionally, compliance of exchange rules is required.

**SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)**

Subject to compliance of tax obligations and applicable exchange rules, such as Chapter XII of the Compendium of Foreign Exchange Rules of the Central Bank of Chile, DL 600 or other applicable rules. There is no regulatory restriction to repatriation of funds (ie, dividends or redemption).
RESTRICTIONS ON TRANSFERABILITY OF SHARES

Except in connection with certain industries and/or as required by antitrust law, there are no regulatory restrictions to transferability of shares. Restrictions may also be included in the company’s bylaws (except in public corporations) and/or in shareholders’ agreements.

In an SRL, the sale or assignment of equity rights and incorporation of a new partner requires unanimous approval from other partners.

OBTAINING A NAME AND NAMING REQUIREMENTS

As a general rule, the name of a company shall be established in the bylaws. The name may be freely agreed by shareholders or partners, but the use of a name may be restricted by companies that already use the same name.

Limited Liability Company (Sociedad de Responsabilidad Limitada or SRL)

The company’s name may contain the name of 1 or more of its partners or a reference to its purpose. The name must be followed by the word “limitada”. Without this word, partners will be jointly liable for the company’s obligations.

Corporation (Sociedad Anónima or S.A.)

The name must include the words “Sociedad Anónima” or the acronym “S.A.”.

Simplified Corporation (Sociedades por Acciones or SpA)

The name must end with "SpA".

Branch of a Foreign Legal Entity (Agencia)

The statement made by the agent must include the name under which the company will operate in Chile.

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

Required by banks, AGFs and insurance companies.

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

Except regarding certain regulated industries and special corporations, no regulatory approval is required for amending charter documents.

Additionally, in special corporations, bylaw amendments must be authorized by the CMF, and, in public corporations, bylaw amendments shall be notified to the CMF.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION
Only required for certain industries (ie, banking, insurance, telecom and utilities).

**PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY**

Not applicable for this jurisdiction.

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CHINA

FORM OF ENTITY

Independent legal entity. In terms of companies set up by or with foreign investors, they need to follow the general company law (and partnership law as applicable) pursuant to the new Foreign Investment Law which took effect from January 1, 2020. Therefore, depending on the foreign shareholding ratio in a limited liability company (LLC) or a company limited by shares as discussed below, it would still work to make reference to a wholly foreign owned enterprise (WFOE) or a Sino-foreign joint venture enterprise in an economic sense. However, a WFOE or JV, including an equity joint venture (EJV) or contractual joint venture (CJV), would no longer exist as a legal form. All foreign invested enterprises (FIEs) in China will take the legal form of either a company (LLC or company listed by shares) or a partnership.

Limited liability company (LLC)

- Managed by board of directors or a single executive director (usually adopted by LLCs with a limited number of shareholders and relatively small size of operation), responsible for making major business decisions and overseeing general operations of an LLC.

- The highest authority of an LLC is the shareholders’ meeting.

- Director or the executive director is appointed/elected by the shareholder(s) of an LLC.

- Senior management officers run the day-to-day operations of an LLC, as led by a general manager who usually is appointed by the board of directors or executive director.

Company limited by shares

- Independent legal entity.

- Board of directors has overall management responsibility, making major business decisions and overseeing general operations of a company.

- The highest authority of a company listed by shares is the shareholders’ assembly.

- Director is appointed/elected by shareholders of a company.
• Senior management officers run the day-to-day operations of a company limited by shares, as led by a general manager who usually is appointed by the board of directors.

**Partnership enterprise**

• NOT a separate legal person entity.

• Partnership agreement sets forth how the business is to be managed; one or several general partners can be designated to manage the business.

**ENTITY SET UP**

**Limited liability company (LLC)**

• Up to 50 shareholders.

• Generally no personal liability of shareholders.

• Taxed at 2 levels (commonly referred to as double taxation). First, an LLC pays an enterprise income tax on its corporate income; then, the LLC distributes its after-tax profits as dividends to shareholders who then pay income tax on those dividends.

• Typical charter documents include:
  - Articles of association, to be registered with the Administration for Market Regulation (AMR)
  - Business license
  - For foreign-invested LLCs, additional documents such as joint venture contract or shareholders’ agreement, which are not required for registration with the Administration of Market Regulation (AMR) under the current company law, plus record on certain foreign investment information, such as the information on each investor and its ultimate actual controller, that has been reported to the Ministry of Commerce (MOFCOM).

• Shareholders typically subscribe and contribute to the registered capital of an LLC according to the articles of association.

• An annual report should be filed with the AMR through the AMR’s online platform. For foreign-invested companies, a joint annual report should, in addition, be filed with various authorities through the same AMR’s online platform for the annual report.

**Company limited by shares**

• There must be 2 to 200 promoters, of whom more than half must have domiciles in China.

• Generally no personal liability of shareholders.
• Taxed on its earnings at a corporate level, and shareholders are taxed on any distributed dividends.

• Typical charter documents include:
  ○ Promoters’ agreement
  ○ Articles of association
  ○ Business license
  ○ For foreign-invested companies limited by shares, additional documents such as joint venture contract or shareholders’ agreement, which are not required for registration with the AMR under the current company law, plus record on certain foreign investment information, such as the information on each investor and its ultimate actual controller, that has been reported to the MOFCOM.

• Shareholders typically purchase stock in company, but generally only 1 class of stock is allowed. China allows listed or non-listed public companies (with more than 200 shareholders) to issue preferred stock on a trial basis.

• An annual report must be filed with the AMR and MOFCOM.

**Partnership enterprise**

• At least 2 partners; up to 50 partners for limited partnership unless otherwise provided by law.

• General partners have unlimited joint and several liability for the debts of the partnership; limited partners have liability for the debts of the partnership to the extent of the capital contributions they have subscribed for.

• Not taxed on earnings at partnership level, and profits and losses are passed through to the partners who are subject to taxes.

• Typical charter documents include:
  ○ Partnership agreement
  ○ Business license.

• Partners typically contribute money, property, intellectual property, land use right or other property right to the partnership. General partners may contribute labor services to the partnership. Partners receive an interest in profits and losses.

• An annual report must be filed with the AMR

Note: Because the LLC is the most common investment vehicle used by foreign investors, we only discuss the LLC in detail in the following sections and can provide information on other forms of entities upon request.
MINIMUM CAPITAL REQUIREMENT

No minimum capital required unless otherwise provided under the relevant laws, regulations or decisions of the State Council.

LEGAL LIABILITY

Shareholders of an LLC are generally not liable for the debts of a company aside from their capital contribution to the company.

TAX PRESENCE

An LLC is taxed at 2 levels (commonly referred to as double taxation). First, the LLC pays an enterprise income tax on its corporate income; then, the LLC distributes its after-tax profits as dividends to shareholders who then pay individual/enterprise income tax on those dividends.

INCORPORATION PROCESS

The incorporation of a foreign-invested LLC typically consists of the following steps:

1. File online application to register the name as well as for initial review by the AMR and information reporting to the MOFCOM through the AMR’s online system
2. File paper application for registration of the establishment of an LLC with the AMR and
3. File post-registration applications with various authorities such as tax, foreign exchange and customs.

BUSINESS RECOGNITION

The LLC is the most popular legal form for foreign investors to conduct business in China.

SHAREHOLDER MEETING REQUIREMENTS

Not required to hold annual meeting of shareholders for foreign-invested LLCs.

BOARD OF DIRECTOR MEETING REQUIREMENTS

Annual meeting of directors is not required for the LLCs, though it is quite common.

ANNUAL COMPANY TAX RETURNS

Must quarterly and annually file enterprise income tax returns with tax authorities. Other taxes such as value-added tax (VAT) require filings on monthly basis in general.
BUSINESS REGISTRATION FILING REQUIREMENTS

Registration with the AMR and information reporting to the MOFCOM are required for establishment of foreign-invested LLCs as well as subsequent changes of company particulars. In practice, filings to the MOFCOM are carried out through the same AMR online platform and become invisible in most cases.

BUSINESS EXPANSION

No need to change registration as business expands unless the expansion requires increase of registered capital of an LLC or expansion of its business scope.

EXIT STRATEGY

Foreign investors may liquidate/early terminate or transfer the equity in the LLC. In case of liquidation, the investor will need to go through a liquidation process including applying for deregistration or registration with various government authorities as applicable and to complete a tax clearance before the LLC can be liquidated by cancelling its business license with the AMR.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

Annual reports are required to be filed with the AMR and the MOFCOM.

DIRECTOR / OFFICER REQUIREMENTS

Directors (or an executive director), general manager and supervisor(s) are required.

For more information on directors’ duties, see our Global Guide to Directors’ Duties.

LOCAL CORPORATE SECRETARY REQUIREMENT

Not required.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Legal representative is required, which must be either a chairman of the board of directors (or the executive director, as applicable) or a general manager pursuant to the articles of association of an LLC.

An LLC may also need to record 1 or 2 contact persons for purposes of liaison with the tax authorities and the AMR when an LLC is established. Such contact person(s) should be individuals who usually reside within China and...
speak Chinese.

**LOCAL OFFICE LEASE REQUIREMENT**

Required for incorporation and ongoing business operation, if an LLC does not itself own office premises.

**OTHER PHYSICAL PRESENCE REQUIREMENTS**

None.

**SUFFICIENCY OF VIRTUAL OFFICE**

Requirements and practice vary among different locations. In some cities, certain office premises approved by competent local authorities are allowed on a trial basis for "collective registration" of companies.

**PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

Generally not permitted unless in certain pilot trial areas. For example, certain approved domestic law firms in the Shanghai free trade zone are permitted to provide registered address subject to restrictions.

**PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

Generally not allowed for incorporation.

**NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS**

None.

**RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS**

Appointment of nominee shareholders is generally not allowed, though a VIE (Variable Interest Enterprise) structure with nominee shareholders can be commonly seen in practice. However, certain recent changes of the policy may create questions about whether the VIE structure is still sustainable.

**SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF**
Directors (or the executive director, as applicable) are appointed by shareholders and are responsible for the management of a company and govern the organization by establishing broad policies and objectives. In contrast, general manager is appointed by directors (or the executive director, as applicable) to oversee day-to-day operations of a company.

**PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS**

Names of shareholders as well as directors and supervisor(s) are generally available for public search through the National Enterprise Credit Information Publicity System. Name of a general manager may also be available for search if a company has registered such information with the AMR.

**MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS**

There must be a minimum of 1 shareholder and a maximum of 50 shareholders for an LLC. For directors of a board of an LLC, the minimum number is 3 and the maximum number is 13. Or, if a company has an executive director instead of the board of directors, only 1 executive director is allowed.

**MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

An LLC may be established by a single shareholder.

**REMOVAL OF DIRECTORS OR OFFICERS**

Directors (or the executive director as applicable) may be removed by shareholders. General manager may be removed by the board of directors (or the executive director).

**REQUIRED AND OPTIONAL OFFICERS**

Typically a general manager is required; any other optional officer, such as the deputy general manager, is allowed.

**BOARD MEETING REQUIREMENTS**

Typically 1 annual board meeting is required, and resolutions may also be adopted via written consent if necessary.

**QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

For foreign-invested LLCs, shareholders’ meeting is only applicable when there are two or more shareholders. Usually a majority of shareholders must be present during the shareholder meeting or sign a written consent. However, certain matters such as amendment to the articles of association must be approved by shareholders representing more than two-thirds of the voting rights. In practice, AMR may require certain matters be approved
by all shareholders if a shareholders’ resolution is required by AMR for change of registration of the company. For directors, typically more than two-thirds of directors must be present during a board meeting.

**MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?**

Not necessary in order to incorporate; however, a bank account must be opened after incorporation. A company may set up bank accounts within China, or outside of China in rare cases (which is subject to approval by the foreign exchange authority).

**AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?**

An annual audit is required. The auditor must be located in local jurisdiction. Generally, corporate books, such as the minute book, should be kept with the company.

**REQUIREMENT REGARDING PAR VALUE OF STOCK**

Not applicable for the jurisdiction.

**INCREASING OF CAPITALIZATION IF NEEDED**

Effectuated by amending the articles of association and joint venture contract (if applicable), which requires registration with the AMR. Among other application documents, the shareholder resolutions are required for application with the AMR.

**SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)**

Funds can be repatriated abroad via dividends, reduction of registered capital or liquidation of a company.

**RESTRICTIONS ON TRANSFERABILITY OF SHARES**

For foreign-invested LLCs, any transfer of shares is subject to the registration with the AMR and information reporting to the MOFCOM. Proposed transfer of shares by a shareholder to a third party should be subject to the consent of more than half of other shareholders and such other shareholders have the right of first refusal.

**OBTAINING A NAME AND NAMING REQUIREMENTS**

Proposed name must be reserved before incorporation or change of name.
SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

In connection with the information reporting to the MOFCOM, information about an ultimate actual controller of the company as well as that of all the investors must be disclosed to MOFCOM. The disclosed information should generally allow the MOFCOM to trace the investment all the way up to either natural person, publicly listed company, foreign government (including government fund) or international organization owning or controlling 50 percent or more of the interest of a foreign investor. Practice of the local counterpart of the MOFCOM varies, but it may be possible to list only the largest shareholder, and to group multiple smaller shareholders together without specifying their names. Banks may have separate and different "know your client" or anti-money laundering requirements.

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

For foreign-invested LLCs, amending charter document is subject to the registration with the AMR and information reporting to the MOFCOM (if applicable). Shareholder resolutions will be required for the applications.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

Typically, the only license required would be a business license. Depending on the underlying business and operation, certain special license may be required from the competent industrial ministry.

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

Not common.

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COLOMBIA

FORM OF ENTITY

Under Colombian law, there are 5 types of commercial entities that can be incorporated:

General partnership (Sociedad Colectiva)

Partners have subsidiary personal liability, and the partnership board is the highest corporate body. A minimum of 2 partners is required at all times. General Partnerships are closed companies where partners must manage the company themselves or unanimously authorize a third person to do so, as well as unanimously authorize total or partial assignment of participation in the company, or the possibility for partners to carry out similar lines of business on their own.

Limited partnership (Sociedad en Comandita Simple y por Acciones)

A hybrid type of company, where partners can either be managing partners or limited partners. Each type of partner has different levels of liability, functions, voting rights and participation in the company. There are also 2 types of limited partnerships under Colombian law. The simple limited partnership, where partner’s contributions are established as participation quota; and the share limited partnership, where partner’s contributions are established as shares.

Limited liability company (Sociedad de Responsabilidad Limitada)

The limited liability company is a hybrid type of company where partners can limit their responsibility to the amount of their contributions as a general rule, but there are certain exceptions, such as responsibility regarding taxation, labor regulation or if such extended responsibility is included in the company’s bylaws. Limited liability companies must have a minimum of 2 partners and a maximum of 25.

Corporation (Sociedad Anónima)

Shareholders have no personal liability. A corporation must have the Shareholders General Assembly as the highest corporate body, a board of directors, a legal representative designated by the board of directors and a statutory auditor. A minimum of 5 shareholders is required, and it is generally used for large enterprises or financial institutions that are subject to control and surveillance of the Colombian Superintendence of Finance.
Simplified stock company (*Sociedad por Acciones Simplificada*)

Most recent and flexible type of the commercial entity created under Colombian legislation. Shareholders have no personal liability. A simplified stock company must have a Shareholders General Assembly as the highest corporate body and a legal representative. It can have a board of directors if shareholders require it. A minimum of one shareholder is required and there is no maximum requirement. Colombian law has opened the possibility that, beginning on June 4, 2020 and up to June 3, 2022 simplified stock companies that issue debt securities, which are offered to accredited investors (*segundo mercado*), can register them in the National Registry of Securities and Issuers (*Registro Nacional de Valores y Emisores*) and trade them in the Colombian stock exchange.

**ENTITY SET UP**

General partnership (*Sociedad Colectiva*)

- Minimum of 2 partners, and there is no maximum
- Partners have subsidiary personal liability; creditors must first pursue the General Partnership’s patrimony
- At a corporate level, general partnerships are taxed based on their earnings; at a natural person’s level, partners are taxed based on distributed dividends
- Private companies, meaning partners must manage the company themselves or unanimously authorize a third person to do so, as well as unanimously authorize total or partial assignment of participation in the company, or the possibility for partners to carry out similar lines of business on their own
- Incorporation must be through public deed registered by the Registry of Commerce
- Partnership board has overall management responsibility
- Partners have a veto right and can oppose any proposal, and such opposition suspends the proposed activity or project until majority vote is obtained
- Partnership board must meet by the end of every business activity and approve the company’s financial statements at least once a year
- Colombian law requires any foreign investment to be declared through the Colombian Central Bank
- Colombian law does not require general partnerships to have a statutory auditor, unless the company exceeds a certain amount of assets

Limited partnership (*Sociedad en Comandita Simple y por Acciones*)

- 2 types of partners: managing partners (1 or more) and a limited partner (1 or more). In case of a share limited partnership, there must be at least 5 share limited partners
- Managing partners have personal liability, and limited partners have limited liability
At a corporate level, limited partnerships are taxed based on their earnings; at a personal level, partners are taxed based on distributed dividends.

Limited partnerships are hybrid companies, meaning that, to transfer participation of a managing partner, partners of the company must agree unanimously and amend company's bylaws. On the other hand, to transfer participation of a limited partner, rest of limited partners must agree unanimously and amend company's bylaws.

Incorporation must be through public deed registered by the Registry of Commerce.

Partnership board is the highest corporate body; managing partners have the responsibility of managing and legally representing the company.

Company's capital is composed by the limited partner's contribution. However, managing partners may also contribute to the company's capital.

Managing partners each have a vote in the partnership board. Limited partners have a number of votes that proportionally corresponds to their ownership in the company.

Partnership board must meet and approve the company's financial statements at least once a year.

Colombian law requires any foreign investment to be declared through the Colombian Central Bank.

Colombian law does not require limited partnerships to have a statutory auditor, unless the company exceeds certain amount of assets.

Limited liability company (Sociedad de responsabilidad limitada)

Must be at least 2 partners and no more than 25 partners.

Partners have no personal liability.

At a corporate level, limited liability companies are taxed based on their earnings; at a personal level, partners are taxed based on distributed dividends.

In a limited liability company, transfer of participation must be carried out through a bylaw reform, following procedures regarding pre-emptive rights.

Incorporation must be through public deed registered by the Registry of Commerce.

Partnership board is the highest corporate body.

Company's capital must be totally paid by the time of incorporation, and any modification of the capital must be established through a registered amendment to the bylaws of the company.

Partners' votes proportionally correspond to their participation in the company.
• Partnership Board must meet and approve the company’s financial statements at least once a year

• Colombian law requires any foreign investment to be declared through the Colombian Central Bank

• Colombian law does not require a Limited liability company to have a statutory auditor, unless the company exceeds certain amount of assets

Corporation (Sociedad Anónima)

• Must have a minimum of 5 shareholders with no maximum requirements

• Shareholders have no personal liability

• At a corporate level, corporations are taxed based on their earnings; at a personal level, shareholders are taxed based on distributed dividends

• Shareholders have pre-emptive rights to subscribe and pay shares if the Shareholders General Assembly agrees to increase its capital

• The incorporation must be through public deed registered by the Registry of Commerce

• Shareholders General Assembly is the highest corporate body, and the board of directors is the managing body. Corporations must also have a legal representative and a statutory auditor

• Company’s capital is divided into stock

• Shareholders typically incorporate a corporation or may purchase shares from existing shareholders

• Shareholders of a corporation may execute a shareholders’ agreement or determine certain provisions in the company’s bylaws like certain rights and obligations regarding negotiation of shares, vote rights, majorities for decision-making, drag-along and tag-along rights, put and call options, deadlock solution procedures, issuance of non-voting shares, etc.

• Shareholders General Assembly must meet and approve the company’s financial statements at least once a year

• Colombian law requires any foreign investment to be declared through the Colombian Central Bank

• Colombian law does require a corporation to have a statutory auditor

Simplified stock company (Sociedad por Acciones Simplificada)

• Must have a minimum of 1 shareholder with no maximum requirements

• Shareholders have no personal liability

• At a corporate level, simplified stock companies are taxed based on their earnings; at a personal level, shareholders are taxed based on distributed dividends
• Shareholders have pre-emptive rights to subscribe and pay shares if the Shareholders General Assembly approves to increase its capital

• The incorporation must be through public deed registered by the Registry of Commerce

• Shareholders General Assembly is the highest corporate body. A simplified stock company must have a legal representative and can have board of directors if shareholders prefer to

• Company’s capital is divided in stock

• Shareholders typically incorporate simplified stock company or may purchase shares from existing shareholders

• Shareholders of a corporation may execute a shareholders’ agreement or determine certain provisions in the company’s bylaws, such as certain rights and obligations regarding negotiation of shares, vote right, majorities for decisions, drag-along and tag-along rights, put and call options, deadlock solution procedures, issuance of non-voting shares, etc.

• Shareholders General Assembly must meet and approve the company’s financial statements at least once a year

• Colombian law requires any foreign investment to be declared through the Colombian Central Bank

• Colombian law does not require a simplified stock company to have a statutory auditor, unless the company exceeds certain amount of assets

**MINIMUM CAPITAL REQUIREMENT**

**General partnership (Sociedad Colectiva)**

No minimum capital requirement. When incorporating a general partnership, partners must indicate amount of their contributions to the company.

**Limited partnership (Sociedad en Comandita Simple y por Acciones)**

No minimum capital requirement. The company’s capital is composed of contributions made by limited partners. Managing partners may also contribute to the company’s capital.

**Limited liability company (Sociedad de Responsabilidad Limitada)**

No minimum capital requirement. When incorporating a limited liability company, partners must indicate amount of their contributions to the company.

**Corporation (Sociedad Anónima)**

Generally, there is no minimum capital requirement. Colombian Superintendence of Finance establishes minimum capital requirements if a corporation plans to carry out financial activities. A corporation has authorized capital,
subscribed capital and paid capital.

Simplified stock company (*Sociedad por Acciones Simplificada*)

No minimum capital requirement. A simplified stock company has authorized capital, subscribed capital and paid capital.

**LEGAL LIABILITY**

General partnership (*Sociedad Colectiva*)

Partners of a general partnership have subsidiary personal liability for the debts of the company, aside from their contribution to the partnership.

Limited partnership (*Sociedad en Comandita Simple y por Acciones*)

Managing partners have personal liability and limited partners have limited liability.

Limited liability company (*Sociedad de Responsabilidad Limitada*)

Partners have limited liability. Taxation and labor obligations exceptions exist under the laws.

Corporation (*Sociedad Anónima*)

Shareholders have no personal liability.

Simplified stock company (*Sociedad por Acciones Simplificada*)

No minimum capital requirement. A simplified stock company has authorized capital, subscribed capital and paid capital.

**TAX PRESENCE**

At a corporate level, all entities are taxed based on their earnings. At a personal level, partners and shareholders are taxed based on distributed dividends.

**INCORPORATION PROCESS**

For all entity types:

- Search for homonyms
- Drafting and approval of bylaws and articles of incorporation
- Formalization of documents with a Colombian Notary Public and
- Registration of the public deed with Registry of Commerce. As an exception, an entity can be incorporated
through private documents when they satisfy the characteristics of a micro-enterprise under Colombian law

Simplified stock company (Sociedad por Acciones Simplificada)

- Homonymy search
- Drafting and approval of bylaws and articles of incorporation and
- Registration of the private document before the Registry of Commerce

BUSINESS RECOGNITION

General partnership (Sociedad Colectiva)

Rarely used.

Limited partnership (Sociedad en Comandita Simple y por Acciones)

Rarely used.

Limited liability company (Sociedad de Responsabilidad Limitada)

Not frequently used.

Corporation (Sociedad Anónima)

Widely used.

Simplified stock company (Sociedad por Acciones Simplificada)

Widely used.

SHAREHOLDER MEETING REQUIREMENTS

General partnership (Sociedad Colectiva)

Required to hold annual partnership board meetings.

Limited partnership (Sociedad en Comandita Simple y por Acciones)

Required to hold annual partnership board meetings.

Limited liability company (Sociedad de Responsabilidad Limitada)

Required to hold annual partnership board meetings.

Corporation (Sociedad Anónima)
Required to hold annual shareholders general assembly meetings.

**Simplified stock company (Sociedad por Acciones Simplificada)**

Required to hold annual shareholders general assembly meetings.

**COVID regulations applicable to all companies**

Colombian laws issued with occasion of the COVID pandemic have allowed all companies to hold the annual shareholders general assembly/partnership board meetings up to one month after the Sanitary Emergency declared in Colombia has terminated. In this sense, as the Sanitary Emergency has not yet terminated, it is possible that in the year 2020 the companies didn’t hold the annual shareholders general assembly/partnership board meeting. It is important to note that this is a temporary measure and will only be applicable as long as the Sanitary Emergency persists.

**BOARD OF DIRECTOR MEETING REQUIREMENTS**

**General partnership (Sociedad Colectiva)**

There is no board of directors in a general partnership.

**Limited partnership (Sociedad en Comandita Simple y por Acciones)**

There is no board of directors in a limited partnership.

**Limited liability company (Sociedad de Responsabilidad Limitada)**

There is no obligation to have a board of directors, but it can be created.

**Corporation (Sociedad Anónima)**

There is a board of directors in a corporation that must have a minimum of 3 members. The board of directors must also follow notification requirements and meet at least once a year.

**Simplified stock company (Sociedad por Acciones Simplificada)**

There can be a board of directors that must meet at least once a year.

**ANNUAL COMPANY TAX RETURNS**

All entity types must annually file tax returns with Colombian tax authorities.

**BUSINESS REGISTRATION FILING REQUIREMENTS**

All entity types are bound to register before the Registry of Commerce and tax authorities. As an exception a simplified stock company is incorporated by a private document that is registered with the Registry of Commerce.
BUSINESS EXPANSION

General partnership (Sociedad Colectiva)

There is no legal requirement to change as business expands. If the general partnership exceeds a certain amount of assets and fulfills the characteristics described in Law 43 of 1990, then the company must designate a statutory auditor.

Limited partnership (Sociedad en Comandita Simple y por Acciones)

There is no legal requirement to change as business expands. If the limited partnership exceeds a certain amount of assets and fulfills the characteristics described in Law 43 of 1990, then the company must designate a statutory auditor.

Limited liability company (Sociedad de Responsabilidad Limitada)

There is no legal requirement to change as business expands. If the limited liability company exceeds a certain amount of assets and fulfills the characteristics described in Law 43 of 1990, then the company must designate a statutory auditor.

Corporation (Sociedad Anónima)

There is no legal requirement to change as business expands.

Simplified stock company (Sociedad por Acciones Simplificada)

There is no legal requirement to change as business expands.

EXIT STRATEGY

General partnership (Sociedad Colectiva)

Aside from the general causes of dissolution applicable for every company in Colombia, the dissolution causes specific to a general partnership are:

- One of the partners dies and there is no legal heir
- Legal incapacity of one of the partners, unless their agent is authorized to represent partner’s interests in the company
- Bankruptcy of a partner and no assignment of their participation in the company
- Forceful assignment of participation of a partner to a third person if the rest of the partners do not accept such situation
- Resignation of one of the partners, if the rest of the partners do not acquire such partner’s participation

Limited partnership (Sociedad en Comandita Simple y por Acciones)
Aside from the general causes of dissolution applicable for every company in Colombia, the dissolution causes specific to a limited partnership are:

- Managing partner dies and has no legal heir
- Legal incapacity of the managing partner, unless his or her agent is authorized to represent partner’s interests in the company
- Bankruptcy of the managing partner and no assignment of their participation in the company occurs, forceful assignment of participation of the managing partner to a third person if the rest of the partners do not accept such situation, and the resignation of the managing partner, if the rest of the partners do not acquire such partner’s participation. Also, when either one of the 2 types of partners disappear or, in the case of a share limited partnership, when the patrimony is less than half of the subscribed capital.

Limited liability company (Sociedad de Responsabilidad Limitada)

Aside from the general causes of dissolution applicable for every company in Colombia, the dissolution cause specific to a limited liability company is when the patrimony is less than half of the subscribed capital.

Corporation (Sociedad Anónima)

Aside from the general causes of dissolution applicable for every company in Colombia, the dissolution causes specific to a Corporation are, when the patrimony is less than half of the subscribed capital or when 95 percent of the company’s shares belong to the same shareholder.

Simplified stock company (Sociedad por Acciones Simplificada)

Only the general causes of dissolution applicable for every company in Colombia are applicable to the simplified stock company, these are: expiration of the term of the company, the impossibility to carry out the company’s objective, and because of the decision of the shareholders or national authority.

**ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

General partnership (Sociedad Colectiva)

The partnership board must approve the annual financial statements and annually renew the Commerce Registration. In 2020 the approval of financial statements was not a requirement as per the temporary measures implemented by the government with reason to COVID pandemic. The meeting to approve annual financial statements can be held up to 1 month after the Sanitary Emergency is terminated.

Limited partnership (Sociedad en Comandita Simple y por Acciones)

The partnership board must approve the annual financial statements and annually renew the Commerce Registration. In 2020 the approval of financial statements was not a requirement as per the temporary measures implemented by the government with reason to COVID pandemic. The meeting to approve annual financial statements can be held up to 1 month after the Sanitary Emergency is terminated.
Limited liability company (Sociedad de Responsabilidad Limitada)

The partnership board must approve the annual financial statements and annually renew the Commerce Registration. In 2020 the approval of financial statements was not a requirement as per the temporary measures implemented by the government with reason to COVID pandemic. The meeting to approve annual financial statements can be held up to 1 month after the Sanitary Emergency is terminated.

Corporation (Sociedad Anónima)

The shareholders general assembly must approve the annual financial statements. In 2020 the approval of financial statements was not a requirement as per the temporary measures implemented by the government with reason to COVID pandemic. The meeting to approve annual financial statements can be held up to 1 month after the Sanitary Emergency is terminated.

Simplified stock company (Sociedad por Acciones Simplificada)

The shareholders general assembly must approve the annual financial statements. In 2020 the approval of financial statements was not a requirement as per the temporary measures implemented by the government with reason to COVID pandemic. The meeting to approve annual financial statements can be held up to 1 month after the Sanitary Emergency is terminated.

DIRECTOR / OFFICER REQUIREMENTS

General partnership (Sociedad Colectiva)

All partners must participate and manage a general partnership, unless a third person is designated unanimously by the partnership board.

Limited partnership (Sociedad en Comandita Simple y por Acciones)

All managing partners must participate and manage a limited partnership.

Limited liability company (Sociedad de Responsabilidad Limitada)

All partners must participate and manage a limited liability company; however, partners can designate a manager.

Corporation (Sociedad Anónima)

The board of directors can designate officers and legal representatives.

Simplified stock company (Sociedad por Acciones Simplificada)

The shareholders general assembly and, if there is a board of directors, the board of directors can designate officers and legal representatives.

For more information on directors’ duties, see our Global Guide to Directors’ Duties.
LOCAL CORPORATE SECRETARY REQUIREMENT

There is no requirement to designate a secretary.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

The company must have a legal representative.

LOCAL OFFICE LEASE REQUIREMENT

Not required.

OTHER PHYSICAL PRESENCE REQUIREMENTS

All entity types must have a domicile and notification address, a limited liability company must only have a domicile.

SUFFICIENCY OF VIRTUAL OFFICE

The company must have at least a domicile and notification address.

PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Permitted.

PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Limited liability company (LLC)

Not allowed for incorporation.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

There are no specific nationality requirements; however, in the incorporation documents, intended partners of a future entity must state their nationality and domicile.
RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

General partnership (Sociedad Colectiva)

A general partnership is a closed company. To assign or transfer a partner’s participation or designate a third party to manage the company, partners must unanimously approve.

Limited partnership (Sociedad en Comandita Simple y por Acciones)

To assign or transfer the participation of a managing partner, partners of the company must agree unanimously and make amendments to the company's bylaws. To transfer participation of a limited partner, the rest of limited partners must unanimously agree and amend the company's bylaws.

Limited liability company (Sociedad de Responsabilidad Limitada)

The assignment or transfer of a partner’s participation must be carried out through a bylaws amendment, following procedures regarding pre-emptive rights.

Corporation (Sociedad Anónima)

None.

Simplified stock company (Sociedad por Acciones Simplificada)

None.

SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF

General partnership (Sociedad Colectiva)

The partnership board is composed by all the partners of the company. It is the highest corporate body and can designate officers, legal representatives, statutory auditors and any other position. Some decisions must be unanimously agreed by the partners, such as authorizing total or partial assignment of participation in the company, but generally, majority is simple. Partners also hold a veto right with which they can oppose any proposal, and such opposition suspends the proposed activity or project until majority vote is obtained.

Limited partnership (Sociedad en Comandita Simple y por Acciones)

The partnership board is composed by all the partners of the company. It is the highest corporate body and can designate officers, legal representatives, statutory auditors and any other position. Decisions are adopted by the majority of managing partners, and the vote of a plural number of limited partners or share limited partners, depending on the case, that compose at least half of the company’s capital. Decisions regarding management can only be taken by the managing partners.

Limited liability company (Sociedad de Responsabilidad Limitada)
The partnership board is composed by all the partners of the company. It is the highest corporate body and can designate officers, legal representatives, statutory auditors and any other position. Most decisions must be taken by the majority of the partners. Bylaw reforms must have the positive vote of 70 percent of the partners.

Corporation (Sociedad Anónima)

The shareholders general assembly is the highest corporate body and can designate officers, determine economic policies of the company and distribute profits. The board of directors is the highest management corporate body, a legal representative designated by the board of directors that permanently represents the company and a statutory auditor.

Simplified Stock company (Sociedad por Acciones Simplificada)

The shareholders general assembly is the highest corporate body, and the company must have a legal representative. Shareholders can designate a board of directors if they wish to and a statutory auditor. The shareholders general assembly is in charge of approving the company’s financial statements, designating officers, managing the company and general activities.

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

Such information is public since each entity is incorporated through public deed that must be registered with the Registry of Commerce.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

General partnership (Sociedad Colectiva)

There must be a minimum of 2 partners, and no maximum number. Partners are directors of the company, unless they unanimously designate a third person.

Limited partnership (Sociedad en Comandita Simple y por Acciones)

There must be a minimum of 1 managing partner and 1 limited partner. In case of a share limited partnership, there must be at least 5 share limited partners.

Limited liability company (Sociedad de Responsabilidad Limitada)

A minimum of 2 partners and a maximum of 25.

Corporation (Sociedad Anónima)

There must be a minimum of 5 shareholders with no maximum number.

Simplified stock company (Sociedad por Acciones Simplificada)

There must be a minimum of 1 shareholder with no maximum number.
MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

General partnership (Sociedad Colectiva) and limited liability company (Sociedad de Responsabilidad Limitada)

2 partners.

Limited partnership (Sociedad en Comandita Simple y por Acciones)

There must be a minimum of 1 managing partner and 1 limited partner, and, in case of a share limited partnership, a minimum of 5 share limited partners.

Corporation (Sociedad Anónima)

5 shareholders.

Simplified stock company (Sociedad por Acciones Simplificada)

1 shareholder.

REMOVAL OF DIRECTORS OR OFFICERS

Removal of directors must hold the same formalities as their designation.

REQUIRED AND OPTIONAL OFFICERS

Legal representative is required.

BOARD MEETING REQUIREMENTS

General partnership (Sociedad Colectiva)

Meetings of the partnership board must occur at least once a year, and ordinary and extraordinary meetings must comply with notification formalities. Every decision and meeting must be duly recorded in minutes and books of the company. Generally, meetings must be held in the company’s domicile, unless the bylaws state other possibilities.

Limited partnership (Sociedad en Comandita Simple y por Acciones)

Meetings of the partnership board must occur at least once a year, and ordinary and extraordinary meetings must comply with notification formalities. Every decision and meeting must be duly recorded in the minutes and books of the company. Generally, meetings must be held in the company’s domicile, unless the bylaws state other possibilities.

Limited liability company (Sociedad de Responsabilidad Limitada)

Meeting of the partnership board must occur at least once a year, and ordinary and extraordinary meetings must
comply with notification formalities. Every decision and meeting must be duly recorded in the minutes and books of the company. Generally, meetings must be held in the company's domicile, unless the bylaws state other possibilities.

**Corporation (Sociedad Anónima)**

Meeting of the shareholders general assembly and the board of directors must occur at least once a year, and ordinary and extraordinary meetings must comply with notification formalities. Every decision and meeting must be duly recorded in the minutes and books of the company. Generally, meetings must be held in the company's domicile, unless the bylaws state other possibilities.

**Simplified Stock Company (Sociedad por Acciones Simplificada)**

Meetings of the shareholders general assembly and the board of directors must occur at least once a year, and ordinary and extraordinary meetings must comply with notification formalities. Every decision and meeting must be duly recorded in the minutes and books of the company. Generally, meetings must be held in the company's domicile, unless the bylaws state other possibilities.

**QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

**General partnership (Sociedad Colectiva)**

Whether the partnership board encounters in an ordinary or extraordinary meeting, the majority of partners must be present or duly represented in order to have quorum. Colombian law allows partners to be present through simultaneous communication, but such event must be recorded in the correspondent minutes. Meetings can be held in person, virtually or mixed (in person and virtually simultaneously). The quorum count will depend on the meeting's nature and will consider the virtually connected when it is a virtual or combined meeting.

**Limited partnership (Sociedad en Comandita Simple y por Acciones)**

Whether the partnership board encounters in an ordinary or extraordinary meeting, all the managing partners and the limited partners or share limited partners that represent at least half of the company's capital must be present or duly represented in order to have quorum. Colombian law allows partners to be present through simultaneous communication, but such event must be recorded in the correspondent minutes. Meetings can be held in person, virtually or mixed (in person and virtually simultaneously). The quorum count will depend on the meeting's nature and will consider the virtually connected when it is a virtual or combined meeting.

**Limited liability company (Sociedad de Responsabilidad Limitada)**

Whether the partnership board encounters in an ordinary or extraordinary meeting, the majority of partners must be present or duly represented in order to have quorum. Colombian law allows partners to be present through simultaneous communication, but such event must be recorded in the correspondent minutes. Meetings can be held in person, virtually or mixed (in person and virtually simultaneously). The quorum count will depend on the meeting's nature and will consider the virtually connected when it is a virtual or combined meeting.

**Corporation (Sociedad Anónima)**

Whether the shareholders general assembly and the board of directors encounters in an ordinary or
extraordinary meeting, the majority of shareholders or members of the board of directors must be present or duly represented in order to have quorum. Colombian law allows partners to be present through simultaneous communication, but such event must be recorded in the correspondent minutes. Meetings can be held in person, virtually or mixed (in person and virtually simultaneously). The quorum count will depend on the meeting’s nature and will consider the virtually connected when it is a virtual or combined meeting.

**Simplified stock company (Sociedad por Acciones Simplificada)**

Whether the shareholders general assembly and the board of directors, if it is the case, encounters in an ordinary or extraordinary meeting, the majority of shareholders or members of the board of directors must be present or duly represented in order to have quorum. Colombian law allows partners to be present through simultaneous communication, but such event must be recorded in the correspondent minutes. Meetings can be held in person, virtually or mixed (in person and virtually simultaneously). The quorum count will depend on the meeting’s nature and will consider the virtually connected when it is a virtual or combined meeting.

**MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?**

Not necessary for incorporation. When necessary, a bank account must be opened in Colombia.

**AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?**

**General partnership (Sociedad Colectiva)**

Statutory auditors are required if the company exceeds certain amount of assets determined by law and must be local. The corporate and accounting books should be kept in the company’s domicile.

**Limited partnership (Sociedad en Comandita Simple y por Acciones)**

Statutory auditors are required if the company exceeds certain amount of assets determined by law and must be local. The corporate and accounting books should be kept in the company’s domicile.

**Limited liability company (Sociedad de Responsabilidad Limitada)**

Statutory auditors are required if the company exceeds certain amount of assets determined by law and must be local. The corporate and accounting books should be kept in the company’s domicile.

**Corporation (Sociedad Anónima)**

Statutory auditor is required by law and must be local. The corporate and accounting books should be kept in the company’s domicile.

**Simplified stock company (Sociedad por Acciones Simplificada)**

Statutory auditor is not required by law and must be local. The corporate and accounting books should be kept in
the company’s domicile.

**REQUIREMENT REGARDING PAR VALUE OF STOCK**

There are no requirements.

**INCREASING OF CAPITALIZATION IF NEEDED**

General partnership (*Sociedad Colectiva*)

An increase of the company’s capital must be executed through a bylaw reform and registered before the Registry of Commerce.

Limited partnership (*Sociedad en Comandita Simple y por Acciones*)

An increase of the company’s capital must be registered before the Registry of Commerce.

Limited liability company (*Sociedad de Responsabilidad Limitada*)

An increase of the company’s capital must be registered before the Registry of Commerce.

Corporation (*Sociedad Anónima*)

An increase of the company’s capital must be approved by the shareholders general assembly, and an increase in the authorize capital must be completed through a bylaw reform registered before the Registry of Commerce.

Simplified stock company (*Sociedad por Acciones Simplificada*)

An increase of the company’s capital must be approved by the shareholders general assembly, and an increase in the authorize capital must be completed through a bylaw reform registered before the Registry of Commerce.

**SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)**

Funds can be repatriated abroad but must always be declared before the Colombian Central Bank and are subject to exchange regulation.

**RESTRICTIONS ON TRANSFERABILITY OF SHARES**

General partnership (*Sociedad Colectiva*)

Participation can generally not be transferred between partners or third parties without the consent of every partner of the company. When such authorization is obtained, participation can be transferred.

Limited partnership (*Sociedad en Comandita Simple y por Acciones*)
To transfer the participation of a managing partners, the partners of the company must unanimously agree and amend the company's bylaws. On the other hand, to transfer the participation of a limited partner, the rest of limited partners must unanimously agree and amend the company's bylaws. In the case of shares of a share limited partner, these can be assigned or transferred without a bylaws amendment.

Limited liability company (Sociedad de Responsabilidad Limitada)

The assignment or transfer of a partner’s participation must be carried out through a bylaws amendment, following procedures regarding pre-emptive rights.

Corporation (Sociedad Anónima)

Shares are subject to pre-emptive rights in a corporation.

Simplified Stock company (Sociedad por Acciones Simplificada)

Shares are subject to pre-emptive rights in a simplified stock company.

**OBTAINING A NAME AND NAMING REQUIREMENTS**

Proposed name must be approved by the Registry of Commerce.

**SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS**

Depending on the company’s object and line of business, it may or may not be obligated to have a Know-Your-Client policy.

**APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

General partnership (Sociedad Colectiva)

Through an ordinary or extraordinary partnership board meeting with majority vote.

Limited partnership (Sociedad en Comandita Simple y por Acciones)

Through an ordinary or extraordinary partnership board meeting with the vote of all managing partners and the vote of a plural number of limited partners or share limited partners that represent at least half of the company’s capital.

Limited liability company (Sociedad de Responsabilidad Limitada)

Through an ordinary or extraordinary partnership board meeting with a positive vote of at least 70 percent of the partners.

Corporation (Sociedad Anónima)

Through an ordinary or extraordinary shareholders general assembly meeting with majority vote.
Simplified stock company *(Sociedad por Acciones Simplificada)*

Through an ordinary or extraordinary shareholders general assembly meeting with majority vote.

**LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

Only for certain corporate purposes.

**PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY**

Shelf companies can be purchased in Colombia but are not widely used. Colombian law has strict regulation regarding taxation and anticorruption policies.

**KEY CONTACTS**

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FORM OF ENTITY

Unlimited partnership (veejná obchodní spolenost, v.o.s.)

A company in which at least 2 partners run their business under a common business name and are liable for all the partnership’s debts to the full extent of their assets. Company does not need to have any registered capital. Monetary contributions of the shareholders to the company are voluntary. Each partner has a right to manage a partnership within the guidelines agreed by partners. One or more partners may, however, be entrusted with management responsibilities. All decisions are made jointly by all partners, unless articles of association stipulate that a majority vote is sufficient. Transfer of ownership interest is currently forbidden.

Limited partnership (komanditní společnost, k.s.)

A company with 1 or more partners that are liable for the debts of the company to the full extent of their assets (unlimited partners), and 1 or more partners that are liable for the debts of the company up to the amount of their unpaid capital contributions (limited partners). A limited partner must contribute to the registered capital of a company in the amount provided for in the partnership contract. Unlike unlimited partners, limited partners are able to transfer their ownership interests. The limited partner must provide a monetary contribution.

Limited liability company (společnost s rùcením omezeným, s.r.o./spol. s r.o.)

Separate and distinct legal entity. Managed by one or more managing directors, who are responsible for making major business decisions and overseeing general affairs of a corporation as well as the day-to-day operations of a stock corporation. One of the most common types of company in the Czech Republic. Registered capital consists of contributions by shareholders who are, jointly and severally liable for the debts of a company up to the amount of the sum of their unpaid contribution to the registered capital. The company is liable for its debts to the full extent of its assets. A supervisory board may also be established; however, it is not mandatory.

Joint stock company (akciová společnost, a.s.)

Separate and distinct legal entity. Registered capital consists of shares with a certain nominal value. It is liable for its debts to the full extent of its assets. The governance system may be two-tier with a board of directors.
(predstavenstvo) and supervisory board (dozorci rada), or single-tier with an administrative board (správní rada). The company may issue registered or bearer shares. Bearer shares can be, however, issued only as dematerialized shares registered by the securities depository.

**ENTITY SET UP**

**Limited liability company**

- Unlimited number of shareholders allowed (limited only by the number of shares since 1 share must at least correspond to CZK1 unless articles stipulate otherwise).
- Taxed on its earnings at a corporate level, and shareholders are taxed on any distributed dividends.
- Minimum stated capital: none prescribed; however, one share must at least correspond to CZK1.
- One-tier management (or two-tier board system, if supervisory board is set up), depending on the size of the company. Management is responsible for the day-to-day management; the supervisory board, if established, supervises management and grants its consent (in some cases mandatory) to certain business and transactions

- Typical charter documents include:
  - Articles of incorporation
  - Organizational resolutions by managing directors, if applicable, the supervisory board and AGM/EGM and
  - List of shareholders.
- Share of each shareholder is registered with the Czech commercial register; share certificates may be issued.
- Depending on the size (established by the balance sheet total, turnover and number of employees), annual financial statements must be audited by an auditor and filed with the Czech commercial register.

**Joint stock company**

- In theory, unlimited number of shareholders.
- Taxed on its earnings at a corporate level, and shareholders are taxed on any distributed dividends.
- Minimum stated capital: CZK2 million or EUR80,000.
- Governance system may be two-tier with a board of directors (predstavenstvo) and supervisory board (dozorci rada), or single-tier with an administrative board (správní rada); the first arrangement is more common.
Typical charter documents include:

- Articles of incorporation and
- Organizational resolutions by the management board, supervisory board and AGM/EGM.

Shares must be either registered shares or, if bearer shares, then issued only as dematerialized shares registered by securities depository.

Depending on the size (established by the balance sheet total, turnover and number of employees), annual financial statements must be audited by an auditor and filed with Czech commercial register.

**MINIMUM CAPITAL REQUIREMENT**

**Limited liability company**

There is a minimum of CZK1.

**Joint stock company**

There is a minimum of CZK2 million or EUR80,000.

**LEGAL LIABILITY**

**Limited liability company**

Shareholders of a limited liability company are generally not liable for the debts of a company if the sum of their contributions to the registered capital have been fully paid up.

**Joint stock company**

Shareholders of a stock corporation are generally not liable for the debts of a corporation aside from their financial contribution to the corporation.

**TAX PRESENCE**

A stock corporation or limited liability company is taxed at 2 levels: First, the company pays a corporate income tax on its corporate income; then, a company distributes profits to shareholders, who then pay income tax on those dividends (to be withheld by the company upon payment).

Companies are obliged to add value-added tax (VAT) to the prices of their goods or services and to invoice their customers accordingly.

**INCORPORATION PROCESS**

**Limited liability company**
Filing an application with a local court (registration court) for registration, together with the articles of association in the form of a notarial deed, which contains the appointment of the first managing directors, and a confirmation by a local bank that the stated capital has been paid. If the stated capital does not exceed CZK 20,000, the confirmation by bank is not required.

**Joint stock company**

Filing an application with a local court (companies registry) for registration, together with articles of association in the form of a notarial deed, which contains the appointment of the first members of the management board and the supervisory board, and a confirmation by a local bank that the stated capital has been paid.

**BUSINESS RECOGNITION**

Well regarded and widely used. Joint stock company and limited liability company are the most commonly used forms of a corporate entity in Czech Republic.

**SHAREHOLDER MEETING REQUIREMENTS**

Shareholders are required to hold at least 1 annual meeting to vote on certain items, such as approval of financial statements, payment of dividends or coverage of losses and election of auditors. Meetings required for usual decisions on appointment of members of the board of directors, supervisory board (as well as revocation of any appointment) and changes to the articles of association. Physical meetings are held or *per rollam* decision-making is chosen.

**BOARD OF DIRECTOR MEETING REQUIREMENTS**

Requirements depend on the respective articles of association. Any time a management decision is required, however, it can be (and usually is) quite informal.

**ANNUAL COMPANY TAX RETURNS**

Must annually file tax returns with tax authorities.

**BUSINESS REGISTRATION FILING REQUIREMENTS**

Initial registration as well as annual filings are required. Changes in recorded data of commercial register require registration.

**BUSINESS EXPANSION**

No need to change as business expands, unless any such expansion is not covered by articles of association. It is also possible to open up branches of a Czech entity in order to expand in Czech Republic. An autonomous branch
office engages in business activities independently; a dependent branch office can make out invoices only in the name of the head office company. As a consequence, while an autonomous branch office is required to register, the dependent branch establishment does not have to be entered in the commercial register. It is only necessary for the business activity that is being practiced to be notified at the responsible trade office.

EXIT STRATEGY

Sale of shares, a resolution on dissolution which is passed by the shareholders, exit by a shareholder upon disapproval with a certain adopted decision of a general meeting, agreement with other shareholders. A dissolution resolution by shareholders starts the liquidation proceedings. The liquidation process takes at least 6 months. At the end of the liquidation process, there is the ending and deletion of the company in the commercial register.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

Annual accounts must be filed with the Czech commercial register in the Collection of Deeds (sbírka listin).

The auditing of the annual financial statements is mandatory for large and medium-sized companies.

DIRECTOR / OFFICER REQUIREMENTS

Limited liability company

At least one managing director is required and at least one member of the supervisory board, if formed. A legal entity can become a managing director. In such a case, a specific (natural) person who is acting on behalf of this legal entity must be listed in the commercial register. A managing director cannot be a member of the supervisory board.

Joint stock company

At least three members of management board and at least three members of supervisory board required, unless articles of association prescribe otherwise. A legal entity can become a member of management board. Again, a specific (natural) person who is acting on behalf of this legal entity, must be listed in the commercial register. A member of supervisory board cannot be simultaneously a member of a management board. Provided the joint stock company is employing over 500 employees, one-third of the seats in the supervisory board is elected by company’s employees.

In the single-tier governance system, at least three members of the administrative board are required, unless articles of association prescribe otherwise.

LOCAL CORPORATE SECRETARY REQUIREMENT

Not applicable for this jurisdiction.
LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Not applicable for this jurisdiction.

LOCAL OFFICE LEASE REQUIREMENT

Since an address must be filed with the commercial register within the incorporation and throughout the term of the company, title to the address (at least consent of owner of the premises or a lease agreement) must be obtained.

OTHER PHYSICAL PRESENCE REQUIREMENTS

Depending on business activities conducted in Czech Republic. Local office is usually required from a trade licensing perspective.

SUFFICIENCY OF VIRTUAL OFFICE

Yes, generally possible. However, a company still needs a registered office address. An address must be filed with the commercial register.

PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Allowed and widely used, at least on temporary basis.

PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

No local directors required. Provision of director services by a third-party service provider is common.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

In most cases, no, except for certain areas of business where, for regulatory purposes, a majority of shares cannot be held by foreigners.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

None with respect to the shareholders.
Please note that any member of a management board or a supervisory board is fully liable, whether acting as nominee or not. Directors must meet certain requirements under the Czech Business Corporations Act.

**SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF**

**Limited liability company**

Managing directors are elected by shareholders’ meeting and are the highest authority in management of a corporation. Managing directors may be dismissed at any time, without stating any reasons (irrespective of any employment agreement). Managing directors can request an order on business management from shareholders; however, they must always act with due care.

Managing directors represent a company towards third parties and run the company. Their authorization has unlimited external legal effect and, thus, even binds the company if internal restrictions of their representational powers are violated.

**Joint stock company**

Members of management board are elected by shareholders and are the highest authority in the management of a corporation. Members of management board may be dismissed at any time, without stating any reasons. Members of management board can request an order from shareholders on business management; however, they must always act with due care.

**PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS**

Identity of the ultimate beneficial owner of a company (as defined in the Czech AML Act) shall be registered with the commercial register. The term “ultimate beneficial owner” refers to a natural person that is able to exercise, either directly or indirectly, a controlling influence in a company, meeting the qualification requirements under the Czech AML Act (e.g., a person with more than 25 percent of the capital contribution or voting rights in a company). If the ultimate beneficial owner cannot be determined (typically in a case of publicly listed joint stock companies), there is a presumption that the ultimate beneficial owner is a member of a statutory body of a company. Details of the ultimate beneficial owner are not disclosed; however, they can be in certain cases ascertained from the commercial register due to the disclosure requirements referred to in the below paragraphs.

**Limited liability company**

Identity of managing directors (and members of supervisory board, if any) is publicly disclosed; identity of shareholders is also disclosed in the commercial register.

**Joint stock company**

Identity of members of management board and supervisory board is publicly disclosed; identity of shareholders is not publicly disclosed (unless there is only 1 single shareholder; in that case, identity of that single shareholder is to be disclosed in the commercial register).
MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

Limited liability company

There must be a minimum of 1 shareholder, no maximum number and at least 1 managing director.

Joint stock company

There must be a minimum of 1 shareholder and no maximum number. For members of the management board, the minimum number is one, while there is no maximum number.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

One shareholder is sufficient.

REMOVAL OF DIRECTORS OR OFFICERS

Limited liability company

Removal of members of the supervisory board, as well as managing directors, requires a vote by the shareholders’ meeting. It is possible to recall a managing director, as well as a member of the supervisory board, at any time. Managing director, as well as a member of the supervisory board, can resign from the position. Recall or resignation must be recorded in the commercial register.

Joint stock company

Removal of members of management, as well as the supervisory board, requires a vote by shareholders’ meeting. It is possible to recall board members at any time. Board members can resign from their position. Recall or resignation must be recorded in the commercial register.

REQUIRED AND OPTIONAL OFFICERS

Limited liability company

Required are managing directors and, as the case may be, a supervisory board; in addition, a holder of special power of representation (so-called prokurista) may be appointed (by way of proxy granting by the company with approval of shareholders).

Joint stock company

Required:

- Management board and a supervisory board or

- An administrative board.
In addition, a holder of special power of representation (so-called prokurista) may be appointed (by way of proxy granting by the company with approval of shareholders).

**BOARD MEETING REQUIREMENTS**

**Limited liability company**

Requirements depend on respective articles of association. Any time a management decision is required, however, it can be (and usually is) quite informal. If a company has more than 1 director, a resolution requires an approval of majority.

**Joint stock company**

Requirements depend on respective articles of association. Any time a management decision is required, however, it can be (and usually is) quite informal.

**QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

**Limited liability company**

Not applicable for a single shareholder. For a shareholder meeting, presence of shareholders with at least 50 percent of all votes (each shareholder has 1 vote for each CZK1 of its contribution, unless otherwise stated in articles of association) is required. Resolutions are passed with the simple majority of the votes cast by the present shareholders, except for important decisions, eg, change of articles (75-percent majority of the votes cast by all shareholders). Requirements can be regulated in articles of association.

**Joint stock company**

Not applicable for a single shareholder. For a shareholder meeting, presence of shareholders with shares of nominal value or number that exceeds 30 percent of the registered capital is required, unless otherwise is stated in the articles of association. Resolutions are passed with the simple majority of the votes cast by the present shareholders, except for important decisions where higher quorums are required. For management and supervisory board meetings, typically a majority of respective body must be present during such meeting; alternatively, all directors must execute written resolutions. Requirements can be regulated in the articles of association.

**MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?**

Yes, a Czech bank account is required for incorporation and payment of monetary contributions of shareholders. Monetary contributions must be paid to that bank account, and the bank must provide a confirmation that stated capital is available. Without such confirmation, the commercial register will not register a new company. The only exception applies to a limited liability company with stated capital not exceeding CZK20,000.

**AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED**
IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?

Limited liability company

Yes; only “small” companies with limited liability are exempt from the mandatory audit.

Joint stock company

Yes; only “small” joint stock companies are exempt from the mandatory audit.

REQUIREMENT REGARDING PAR VALUE OF STOCK

Limited liability company

The statutory minimum par value per share is CZK1.

Joint stock company

The statutory minimum par value of stock is not prescribed.

INCREASING OF CAPITALIZATION IF NEEDED

Limited liability company

More usual are debt-to-equity swaps, ie, capitalization of receivables with set-off against contribution to equity, without effect of increasing share ownership of a shareholder in the company. Alternatively by increase of registered capital subject to approval of shareholders’ meeting.

Joint stock company

Increase of registered capital subject to approval of shareholders’ meeting.

SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)

Funds can be repatriated from Czech Republic abroad via dividends.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

Limited liability company

Shares are generally transferable. However, articles of association can restrict the transfer (ie, by implementing approval requirements).

Joint stock company
Shares can generally be transferred between shareholders via written agreement and endorsement of registered shares. Articles of association may limit (but not exclude) transferability; approval requirements may be implemented.

OBTAINING A NAME AND NAMING REQUIREMENTS

Limited liability company

Name has to be distinct and must show the legal form. Name must not be misleading or create a misunderstanding. Name must include a reference to the legal form of a limited liability company in Czech, therefore either "spolecnost s rucenim omezenym," or any abbreviated form like "s.r.o." or "spol. s r.o."

Joint stock company

Name must not be misleading or create a misunderstanding. Name must include a reference to legal form of a joint stock company in Czech, therefore either "akciová společnost" or an abbreviated form "a.s."

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

Czech “know your client” requirements are based on European provisions. Most applicable law is the Anti-Money Laundering Act.

Thereunder, transactions are subject to different identification measurements and reporting duties, with penalties resulting from non-compliance. These vary from simple proof of identification (for individuals) – respectively a physical/electronic record of the company – to simple or enhanced due diligences depending on the risk. For instance, politically exposed persons (PEPs) are always subject to enhanced due diligences.

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

Limited liability company

The shareholders resolve on amendments. The resolution must have a majority of 2/3 of the votes of all shareholders. The resolution needs to be in the form of notarial deed.

Joint stock company

Shareholders resolve on amendments. The resolution must have a majority of 2/3 of present shareholders' votes. The resolution needs to be in the form of notarial deed.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

It depends on the kind of business to be run. Before starting their business operations, business operators must obtain necessary trade licenses from trade licensing office (zivnostensky urad). Basic is a free trade license with
certain subcategories, obtained upon notification to the office. In some sectors, qualified trade or other business licenses are necessary (e.g., pharmacies, property developers, estate agents, brokers, security firms, pubs and hotels and banks).

**PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY**

Shelf companies can be purchased from third-party service providers. Purchase of a company requires a share purchase.

**KEY CONTACTS**

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DENMARK

FORM OF ENTITY

Limited liability company (Kapitalselskab)

There are 3 types of limited companies: public limited companies, private limited companies and limited partnership companies. They are all separate and distinct legal entities. A limited liability company is owned by the shareholders, and the shareholders’ meeting is the ultimate authority of the company. However, the shareholders mainly control the company by instructing and supervising the board of directors and/or the general manager. In general, only the company is liable to creditors for corporate debts, and once the share contribution has been paid, the shareholders have no obligation to contribute further to the capital of the company.

ENTITY SET UP

Limited company (Kapitalselskab)

• There are 3 types of limited companies: public limited companies (Aktieselskaber or A/S), private limited companies (Anpartsselskaber or ApS) and limited partnership companies (Partnerselskaber or P/S)

• Minimum 1 shareholder and no maximum.

• Generally no personal liability of the shareholders.

• Limited companies are taxed on their earnings at a corporate level, and shareholders are taxed on distributed profits and salary from the company.

• Limited companies are subject to a Danish corporate income tax rate which currently amounts to 22 percent.

• Typical corporate documents include:
  ○ memorandum of association
  ○ articles of association
- rules of procedure for the board of directors
- minutes of the general meetings
- shareholders’ agreement and
- register of shareholders.

- The board of directors holds the overall and strategic management responsibility; the executive board has day-to-day management responsibility of the company.

- Separate classes of shares with different rights (voting, dividends, etc.) are commonly used.

- Annual reports must be filed annually with the Danish Business Authority.

**General partnership (Interessentskab, I/S)**

- Minimum 2 partners are required, which can be either natural persons or legal entities such as limited companies.

- No startup capital requirement.

- Founded by an agreement between the partners; registration with the Danish Business Authority is possible and mandatory if all partners are legal entities.

- A general partnership is tax transparent. Each partner is taxed individually for its part of the profits of the general partnership (income tax).

- The partners are personally liable for the debt of the general partnership.

- An authorized or approved auditor and filing of annual reports are required where the general partnership meets certain criteria regarding partners, number of employees, balance sheet total and net turnover.

**Limited partnership (Kommanditselskab, K/S)**

- Minimum two partners are required, which can be either natural persons or legal entities, such as limited companies.

- At least one partner of the limited partnership must take status as the general partner (Komplementar) and at least one as the limited partner (Kommanditist).

- The general partner has unlimited, personal liability (jointly and severally) for the agreements and debt of the limited partnership. The limited partner is only liable for the subscribed capital, which is similar to the liability of limited companies. The liability includes debt that already exists at the time of becoming a partner.

- There is no startup capital requirement for the general partner, but a capital requirement for each limited
partner is minimum DKK1.

- A limited partnership is tax transparent like a general partnership. Partners are taxed individually for their part of the profits of the limited partnership (income tax and social security contributions).

- A limited partnership is incorporated by filing with the Danish Business Authority.

- An authorized or approved auditor and filing of annual reports are required where the limited partnership meets certain criteria regarding partners, number of employees, balance sheet total and net turnover.

Branch office (Filial)

- A company based within the EU or EEA or based in the US, Switzerland, South Korea or Georgia that engage in business activities in Denmark may register a branch office with separate management in Denmark. Companies based in other countries may register a branch in Denmark as well; however, a declaration from the business authorities in the country in which the company is incorporated is required.

- A branch is not a separate legal entity but is part of the foreign-based company.

- It has no independent capital and the assets and liabilities are a part of the total assets of the foreign-based company.

- 1 or more branch managers must be appointed to run the business activities in Denmark.

- The branch is subject to a Danish corporate tax rate which currently amounts to 22 percent.

- The branch is incorporated by filing with the Danish Business Authority.

- The business name must contain the name of the foreign-based company and the word "filial" added hereto.

- A branch must file annual reports of the foreign company with the Danish Business Authority.

**MINIMUM CAPITAL REQUIREMENT**

**Limited liability company (Kapitalselskab)**

Limited liability companies must have the following minimum share capitals respectively:

- Private limited company (anpartsselskab): DKK40,000.

- Public limited company (aktieselskab): DKK400,000.

- Limited partnership company (partnerselskab): DKK400,000.

The share capital may be paid in the form of cash, assets (non-cash contribution) or a combination of the 2. It is possible to pay only 25 percent of the nominal share capital upon formation if the contribution is paid in cash.
only; however, at least DKK40,000 must be paid prior to registration.

The share capital may be increased or decreased late by following the procedures stipulated in the Danish Companies Act, which generally requires a decision by qualified majority of the shareholders.

However, the share capital may not be decreased below the company’s legal minimum share capital.

LEGAL LIABILITY

Limited liability company (Kapitalselskab)

The owners of the company (the shareholders) are not personally liable for the acts and/or omissions of the limited liability company.

The liability of the shareholders is generally limited to their capital investment in the company (ie, the amount the shareholder has paid for its shares).

The only express authority for holding a shareholder liable is a provision in the Danish Companies Act whereby a shareholder is liable for damages suffered by the company, other shareholders or third parties if the shareholder intentionally or negligently has caused damage to the company and/or the shareholders.

TAX PRESENCE

Limited liability company (Kapitalselskab)

The profits of a limited company are taxed at 2 levels (commonly referred to as double taxation). Firstly, the limited company pays a corporate tax on its corporate income. Limited companies are subject to a Danish corporate income tax rate, which currently amounts to 22 percent.

Secondly, the shareholders pay tax on the distributed profits from the limited company.

INCORPORATION PROCESS

Limited liability company (Kapitalselskab)

A Danish limited company may be incorporated by 1 or more founders.

Both natural and legal persons can act as founders of the company. The founder does not have to be a Danish citizen or an entity established in Denmark.

The founder needs to prepare at least 2 documents before applying for registration with the Danish Business Authority: The memorandum of association (stiftelsesdokument) and the articles of association (vedtægter).

Where the share capital of the limited company is to be paid in assets other than cash (apportindskud), a valuation report is also to be enclosed.

Once the memorandum of association has been signed, the application for registration of the company with the
Danish Business Authority must be submitted within two weeks.

When the company has been registered in the Danish Business Authority’s IT system, it will receive a registration number (CVR no.) and the registration is granted with effect from the date of signature of the memorandum of association.

As soon as possible after the formation of the company, the management must set up a (non-public) register of all shareholders who have subscribed for shares in the company (ejerbog).

If the company has a board of directors, the duties of the board of directors must be laid down in the rules of procedure (forretningsorden).

The new Danish limited company must generally appoint an auditor upon formation, but under certain conditions the company can deselect auditing.

If a company has several shareholders, it will often be relevant to enter into a shareholders’ agreement in close connection to the formation of the company (ejeraftale).

A shareholders’ agreement may, for example, contain provisions on voting rights, restrictions on the transfer of shares, the right to appoint members of the board, etc. While a shareholders’ agreement does not bind the company – and therefore has no effect on the validity of the decisions made by the general meeting – the agreement is still valid among the shareholders, and a violation of the shareholders’ agreement will often result in the party in breach incurring liability.

BUSINESS RECOGNITION

Limited liability company (Kapitalselskab)

Public and private limited companies are both well regarded and widely used.

The limited partnership company are in the newer alley of corporate forms, thus not as commonly known. However, the company form provide certain benefits regarding share capital requirements and tax considerations.

For instance, many partner-based companies, such as liberal professions, law firms and auditing firms, have reorganized to a limited partnership company in recent years.

SHAREHOLDER MEETING REQUIREMENTS

Limited liability company (Kapitalselskab)

The shareholders’ right to pass resolutions is exercised at the general meetings of the limited liability company.

Each shareholder must vote in respect of its shares, unless otherwise provided in the articles of association. Separate classes of shares with different rights (eg, in respect to voting rights) are commonly used.

Unless otherwise provided in the Danish Companies Act or in the articles of association of the company, all resolutions at general meetings are passed by a simple majority of votes. Resolutions to amend the articles of association must be passed by at least 2/3 of the votes cast as well as at least 2/3 of the share capital represented
at the general meeting.

The company is required to hold annual general meetings where the shareholders vote on certain items, such as adoption of annual report, appropriation of or loss recorded in the approved annual report, etc.

Resolutions passed by the shareholders at general meetings may, in general, be passed without complying with the provisions of the Danish Companies Act on form and notice and can therefore be held electronically if agreed upon. Shareholders are further entitled to attend general meetings by proxy.

All shareholders are entitled to attend and speak at general meetings, and any shareholder is entitled to have a specific issue included on the agenda for an annual general meeting.

The annual general meeting must be held in time for the approved annual report to be received by the Danish Business Authority before the expiry of the time-limit set out in the Financial Statements Act, which currently is no later than 5 months after the end of the financial year of the company.

Extraordinary general meetings may be held at the request of the central management body, the supervisory board or the auditor elected by the general meeting. In private limited companies, any shareholder may request an extraordinary general meeting, and in public limited companies the requesting shareholder must hold 5 percent of the share capital in order to request the extraordinary general meeting.

The central management body is obliged to call and organize the general meeting by a notice of no more than four weeks before the general meeting and, unless the articles of association provide for a longer period of notice, no less than two weeks before the general meeting.

General meetings must be conducted in Danish, unless otherwise decided at the general meeting. The general meeting may resolve by a simple majority of votes to conduct the meeting in a language other than Danish, offering all attendees simultaneous interpretation to and from Danish.

**BOARD OF DIRECTOR MEETING REQUIREMENTS**

**Limited liability company (Kapitalselskab)**

The board of directors of a public limited company shall consist of minimum 3 members, and such board members are elected by the shareholders at the shareholders meeting. No requirements are set for the number of board members in private limited companies.

The board of directors is quorate when more than half of its members are represented, unless a higher proportion is required by the articles of association.

There are no requirements regarding the frequency of the board of directors’ meetings.

The board of directors is entrusted with the ultimate responsibility of the company as they have both the supervisory function of the executive board and the overall strategic responsibility of the company. The board must therefore make sure to be convened as frequently as this responsibility necessitates.

The board of directors of a public limited company elects its own chairman, unless otherwise provided in the articles of association.
The chairman of the board of directors will procure that the board convenes when necessary and, in addition, ensure that all members receive due notice of the meeting.

Any member of the board of directors may request that a board meeting is held.

Meetings of the board of directors are held in person unless the board decides that members may participate by electronic means and such participation is compatible with the members carrying out their duties.

The language of the board meetings must be Danish, but the majority of the board may resolve to conduct the meeting in a language other than Danish, offering all attendees simultaneous interpretation to and from Danish.

**ANNUAL COMPANY TAX RETURNS**

Limited liability company (*Kapitalselskab*)

The company must annually file tax returns with the Danish Tax Authority, SKAT, to declare its income, as all limited companies are subject to a corporate tax of 22 percent of their taxable income and gains.

The filing deadline is 6 months after the end of the income year, however no later than August 1 the following year.

**BUSINESS REGISTRATION FILING REQUIREMENTS**

Limited liability company (*Kapitalselskab*)

Some information and resolutions in the limited company must be registered with the Danish Business Authority.

The company’s central management body – often its board of directors – is responsible for ensuring that the necessary information is registered with the Danish Business Authority within 2 weeks after the date of the relevant resolution.

For instance, the initial registration at the formation of the company must be registered within 2 weeks from signing of the memorandum of association.

Further, all amendments to the articles of association, and all members of the executive board, the board of directors and the supervisory board of a limited liability company as well as the company’s auditor, if any, must always be registered.

The limited company must also ensure to annually file its annual accounts with the Danish Business Authority.

**BUSINESS EXPANSION**

Limited liability company (*Kapitalselskab*)

There is no requirement to change the form of the company as the business expands.

However, there may be several advantages in terms of flexibility, recognition, tax purposes etc. in changing the
form as the business grows, and this should therefore always be considered. However, this will always depend on the company in question.

EXIT STRATEGY

Limited liability company (Kapitalselskab)

If the shareholders wish to dissolve a solvent company, this is by default done by a resolution which must be adopted by the general meeting. After this, a liquidator must be appointed. The final dissolution must be registered by the Danish Business Authority.

The company can also be dissolved by declaration rather than liquidation, which is a more expedient process. However, this is only when the limited liability company has paid all its creditors, and it entails that the shareholder(s) will be held liable for all debts, whether due or not and whether disputed or not, that existed at the date of the declaration.

Further, a company can be dissolved by a merger where 1 company integrates another or where both companies combine to make one new company. By contrast, the general meeting of a limited company can also decide to split up the company and thereby transfer assets and debts collectively to other existing or new companies.

Finally, the shareholders can decide to convert a public limited company into a private limited company or a limited partnership company – and the other way around. The managing body must ensure that all regulations of the new form of entity is complied with after such conversion.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

Limited liability company (Kapitalselskab)

The shareholders of the limited company must hold annual shareholders' meetings.

The audited and approved annual report of all limited companies must annually be filed with the Danish Business Authority without undue delay after approval.

The Danish Business Authority must receive the annual report no later than 5 months after the end of the financial year of the company. It is possible to have a financial year other than the calendar year (i.e., July 1 to June 30).

DIRECTOR / OFFICER REQUIREMENTS

Limited liability company (Kapitalselskab)

The term "management" covers both members of the board of directors, the supervisory board and the executive board.

All limited companies need to have 1 or more general managers – together the executive board (Direktion). However, the choice of managing structure can vary depending on the form of the company chosen.

A public limited company and a limited partnership company may choose between 2 management systems, which
are both structured as a 2-tier system:

- A system with a board of directors responsible for the overall and strategic management of the company and an executive director or an executive board consisting of several managing directors responsible for the day-to-day management. The executive board is appointed and dismissed by the board of directors.

- An executive director or an executive board, which is responsible for the overall and strategic management as well as the day-to-day management. The executive(s) must be appointed and dismissed by a supervisory board.

The private limited company can also choose to have a 2-tier management system, but is not required to, as opposed to the public limited company and the limited partnership company. They may therefore choose either of the 2 options above or:

- A system with only an executive director or an executive board. In this case, the executive board assumes the responsibilities that would otherwise have been those of the board of directors.

In a public limited company and a limited partnership company, the board of directors or the supervisory board must consist of at least 3 members while the same does not apply to the private limited company.

None of the limited companies are subject to requirements with regards to nationality or addresses for any member of the management.

There are no rules that prohibits the members of the executive board from being members of the board of directors too. However, in a public limited company, the majority of the board of directors cannot be members of the executive board and the chairman cannot be member of the executive board.

For more information on directors’ duties, see our Global Guide to Directors’ Duties.

LOCAL CORPORATE SECRETARY REQUIREMENT

Limited liability company (Kapitalselskab)

There is no requirement for a local corporate secretary in Denmark.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Limited liability company (Kapitalselskab)

None beyond the required management and, where applicable, members of the board of directors or supervisory board.
LOCAL OFFICE LEASE REQUIREMENT

Limited liability company (Kapitalselskab)

Limited companies must have a registered office in Denmark, but it does not have to be either owned or leased by the company.

OTHER PHYSICAL PRESENCE REQUIREMENTS

Limited liability company (Kapitalselskab)

Not applicable for this jurisdiction.

SUFFICIENCY OF VIRTUAL OFFICE

Limited liability company (Kapitalselskab)

An address is needed, but here are no requirements as to the presence of directors or employees on that address.

PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Limited liability company (Kapitalselskab)

It is accepted that the limited company has its registered address at a law firm or third-party service provider, and as such the address can be a c/o-address at the office of another entity in Denmark.

PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Limited liability company (Kapitalselskab)

There are no requirements as to the presence of directors or employees on their address or in Denmark in general.

By default, all general meetings must be held at the registered office of the limited liability company, unless the articles of association specify that general meetings must or may be held elsewhere – for instance within a specified municipality.

It is not required that general meetings or board meetings are held as physical meetings, as the general meeting and the meeting of the board of directors may pass a resolution on electronic communication.

However, the residential status of the entity might be compromised if none of the meetings are held in Denmark, which can be problematic from a tax perspective. Thus, it may be required that some of the management services are performed effectively from Denmark.
There are no further formal requirements in Denmark for the company’s physical presence.

**NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS**

Limited liability company (Kapitalselskab)

None of the limited companies are subject to requirements with regards to nationality or addresses of the shareholders, directors, officers or any member of the management.

**RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS**

Limited liability company (Kapitalselskab)

Limited liability companies must keep a register of shareholders. The register of shareholders is the company’s own register of all shareholders. As for registered shares (which is far the most common), information about the shareholder has to be entered into the register of shareholders.

Previously, bearer shares could be issued, and they were only registered by serial numbers in the register of shareholders. Bearer shares can no longer be issued, and existing bearer shares shall be registered with the Danish Business Authority (not public).

Furthermore, shareholders must notify the company if the share capital or voting rights attached to the shares represent at least 5 percent of the total share capital or voting right. This information must be registered in the Public Register of Shareholders with the Danish Business Authority. The Public Register of Shareholders is accessible to both public authorities and the general public.

**SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF**

Limited liability company (Kapitalselskab)

The executive board carries out the day-to-day management.

If the company has a board of directors, the board of directors is responsible for the overall management of the company and appoints and supervises the directors. If the company has a supervisory board, this board supervises the directors of the company.

A public limited company needs to have either a board of directors or a supervisory board. It is by far most common for a public limited company to have a board of directors.

**PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS**
Limited liability company (Kapitalselskab)

The identity of registered executives and shareholders holding at least 5 percent of the share capital is publicly disclosed in the Public Register of Shareholders.

The company must also publicly disclose information on the beneficial ownership, if any. A beneficial owner is the physical person(s), who directly or indirectly, holds or controls more than 25 percent of the share capital or the votes, or who practices control by other means. The company is obliged to verify on an annual basis whether the information on beneficial owners is updated and correct. This could be handled at the annual general meeting.

**MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS**

Limited liability company (Kapitalselskab)

Only 1 shareholder is mandatory and there is no maximum of shareholders.

The executive board may consist of minimum 1 person and there is no maximum.

A public limited company needs to have either a board of directors or a supervisory board. In both cases, the board must consist of at least 3 members.

**MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

Limited liability company (Kapitalselskab)

Only 1 shareholder is required.

**REMOVAL OF DIRECTORS OR OFFICERS**

Limited liability company (Kapitalselskab)

The shareholders have the authority to remove the board of directors or the supervisory board at a shareholders' meeting, and a member of the board of directors may resign at any time.

The executive board is both appointed and dismissed by the board of directors. If the company has no board of directors, the executive board is dismissed by the general meeting.

The limited company's articles of association may include provisions on appointment and removal of the board members that deviates from the above.

**REQUIRED AND OPTIONAL OFFICERS**

Limited liability company (Kapitalselskab)

In a public limited company, the board of directors or the supervisory board need to appoint its chairman unless otherwise provided in the company's articles of association.
BOARD MEETING REQUIREMENTS

Limited liability company (Kapitalselskab)

No requirements regarding the frequency. Meetings must be convened in Danish unless at least 1/2 of the board agree to hold the meeting in another language. Meetings may be completed in writing or using electronic communication unless 1 member of the board requires a verbal debate.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

Limited liability company (Kapitalselskab)

The board of directors or the supervisory board is quorate when more than 1/2 of its members are represented, unless a higher quorum is decided in the articles of association. However, resolutions cannot be passed without all members having been allowed to participate in the transaction of business, if possible.

When the provisions of the Danish Companies Act and the company's articles of association in regard of notice have been complied with, the actual turnout will be able to vote on the general meeting. However, the articles of association may contain a provision regulating if a certain number of votes of the shareholders' general meeting is required in order to pass a resolution.

MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?

Limited liability company (Kapitalselskab)

Banks will usually not open an account before the company is incorporated.

All companies in Denmark are required to have a NemKonto/Easy Account. A company’s Nemkonto is a designated bank account that receives payments from the public sector.

The NemKonto can either be a bank account in Denmark or a designated foreign bank account.

The expected timeline for opening a bank account in Denmark is around 2-3 weeks, often due to AML requirements and disclosing of KYC documentation.

AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?

Limited liability company (Kapitalselskab)

A limited company encompassed by either reporting classes B, C or D pursuant to Danish Financial Statements Act must have its annual report audited by 1 or more independent auditors. A company within reporting class B can deselect to have the annual report audited if it fulfills at least 2 of the following conditions:
• The average number of full-time employees during each of the 2 most recent financial years has exceeded 12.

• The company's reported balance sheet total for each of the 2 most recent financial years has exceeded DKK4,000,000.

• The company's reported net turnover for each of the 2 most recent financial years has exceeded DKK8,000,000.

Only auditors registered at the Danish Business Authority may carry out the auditing, however, auditors from another EU or EEA country may be registered in Denmark.

Accounting documents must be kept in a manner ensuring that they can be easily made available for local authorities.

**REQUIREMENT REGARDING PAR VALUE OF STOCK**

Limited liability company (Kapitalselskab)

Stocks cannot be subscribed at a price below par.

**INCREASING OF CAPITALIZATION IF NEEDED**

Limited liability company (Kapitalselskab)

The share capital may be increased or decreased by following the procedures stipulated in the Danish Companies Act, which generally requires a decision by qualified majority of the shareholders.

Adopted by the shareholders’ meeting, the articles of associations must be changed accordingly (in general a majority of 2/3 of the votes as well as of the represented capital at the shareholders’ meeting is required to change the article of associations).

The share capital may not be decreased below the company's legal minimum share capital.

**SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)**

Limited liability company (Kapitalselskab)

Funds may be repatriated from Denmark when paid out to shareholders as dividend.

Dividends may be paid to the shareholders without them having to pay withholding tax under certain conditions (eg, if the recipient is the rightful owner of at least 10 percent or more of the shares in the company).

**RESTRICTIONS ON TRANSFERABILITY OF SHARES**
Limited liability company (Kapitalselskab)

In general, no restriction by law, but transferability may be restricted by specific legislation.

Further, it is fairly common that the shareholders' agreement and/or the company’s articles of association contain provisions regulating the transferability of shares.

While a shareholders' agreement does not bind the company – and therefore has no effect on the validity of the decisions made by the general meeting – the agreement is still valid among the shareholders, and a violation of the shareholders’ agreement will often result in the party in breach incurring liability.

OBTAINING A NAME AND NAMING REQUIREMENTS

Limited liability company (Kapitalselskab)

The name is required information in the memorandum of association and the articles of association.

The name must contain the name of the company form (A/S or ApS) and must be clearly distinguishable from the names of other enterprises registered by the Danish Business Authority.

The name must not include any family name, business name, distinctive name of real estate, trademark, distinctive mark or the like not belonging to the company.

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

Limited liability company (Kapitalselskab)

There are no general "KYC" requirements applicable to all companies in Denmark.

However, several specific businesses such as banking, law firms, accountants and real estate agencies are subject to the Danish Money Laundering Act, which contains certain "know your client" requirements. Business is required to provide sufficient and correct information upon request from the relevant authorities.

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

Such requirements depend on the type of business the company is conducting.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

Limited liability company (Kapitalselskab)

In general, there are no licenses required to conduct business in Denmark.

However, some professions and activities require that you apply for a permit, license, obtain an admission or an authorization (eg, banking business, food businesses, gambling providers, lawyers and auditors).
PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

Limited liability company (Kapitalselskab)

Shelf companies are not commonly used anymore as the incorporation process has been simplified and can now be carried out electronically in most cases on a day-to-day basis.

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**EGYPT**

**FORM OF ENTITY**

Joint Stock Company (JSC)

- A separate legal entity that may be a private company or a public company.

- It may offer its shares to public subscription, issue bonds and convertible securities and offer them to the public.

- The name of a JSC must derive from its purpose and may include the name(s) of any of its shareholders.

- Generally, there are no restrictions on foreign ownership, and the JSC may be wholly owned by foreigners, except for companies operating in Sinai (see below) and companies engaging in activities that are restricted by law for foreigners to participate in, such as:
  - Commercial agency, which requires the company to be wholly owned by Egyptians or persons who have acquired and held Egyptian nationality for at least 10 years
  - Importation activities for trading purposes, which requires that 51 percent of the shareholders must be Egyptians and
  - Acquiring land and/or real estate in Sinaix, which requires that the company be wholly owned by Egyptians.

- A company operating in Sinai must be established in the form of a JSC; 55 percent of its shareholders must be Egyptians and it is subject to certain approval requirements. However, the foreign ownership restriction (ie, the requirement that 55 percent of the shareholders be Egyptians) may be waived for companies which conduct implementation of integrated development projects in Sinai, provided that the company has obtained a presidential decree, the required cabinet approval and any required approval of the competent local authorities.

- Managed through a minimum of 3 board members appointed by the general assembly. The board of directors (BoD) is responsible for the company’s management and performing the required activities to achieve its purpose. It may delegate powers to 1 or more of its members in order to:
- Perform certain act(s) and oversee certain aspects of the company
- Exercise some of the BoD's powers and competencies and
- Undertake the actual management of the company.

- All foreign BoD members must pass a security clearance, but the company can generally be incorporated and conduct business even before such security clearance has been obtained provided that it has submitted a completed application that is pending approval. However, and by way of exception, board members of certain foreign nationalities (routinely subject to change) require the security clearance to be issued prior to starting the entity's business.

- Foreign employees cannot exceed 10 percent of all employees of the JSC.

**Limited Liability Company (LLC)**

- A separate legal entity that is a private company and its quotas cannot be listed or traded on any stock exchange
- An LLC may not issue bonds or other financial debentures that are offered to the public
- Quotaholders appoint 1 or more managers to manage the LLC. The manager(s) may act individually or jointly in accordance with the terms of the LLC's articles of incorporation (AoI). Juridical persons may not be appointed as a manager of an LLC

**One-Person Company (OPC)**

- Newly introduced to the Egyptian market (Law No. 4 of 2018 amending the Companies Law).
- Formed by a sole founder, who can be either a natural or a juridical person.
- An OPC's equity cannot be listed or traded on any stock exchange.
- An OPC cannot issue bonds or other financial debentures that are offered to the public.
- Similarly to a JSC and LLC, there are generally no restrictions on foreign ownership except for activities that foreigners are prohibited from participating in (eg, commercial agency, importation activities for trading purposes and acquiring land and/or real estate in Sinai).
- Managed through the founder (ie, sole proprietor) of the company or 1 or more appointed manager(s).
- Companies Law states that the rules governing the LLC are applicable to an OPC, unless otherwise provided.

JSC, LLC and OPC collectively to be called "corporate entities" or "corporations" in some provisions in
Corporate entities are subject to the Companies Law. The Companies Law regulates, inter alia, the operations of the company’s corporate bodies such as the board of directors/managers, the general assembly and the matters related to the management and control of the company.

Further, depending on the type of the undertaken activities, Corporate entities may be established under the Investment Law No. 72 of 2017 and its Executive Regulations No. 2310 of 2017 (the Investment Law). In such case, the Companies Law would apply to the extent that the Investment Law is silent to a certain matter.

There are other entity types in Egypt but the ones listed above are the most commonly used.

**Branch of a Foreign Corporation (Branch)**

- Not a separate legal entity.
- Foreign corporations can conduct business in Egypt via a local branch.
- A foreign-based company (ie, parent company) can establish a branch in Egypt by registering with the General Authority for Investment and Free Zones (GAFI) as a foreign company carrying on business in Egypt.
- A branch must be formed for the purpose of implementing specific public or private sector agreements in Egypt.
- 1 or more branch managers, whether Egyptian or foreign, must be appointed to run the business activities in Egypt.
- Business name must contain the name of a foreign-based company

**Representative Office (RO)**

- Not a separate legal entity.
- Can only be used for studying the feasibility of production or carry out market surveys.
- Cannot engage in any commercial activities or execute agreements with third parties on behalf of a foreign
ENTITY SET UP

JSC

- Minimum of 3 shareholders is required with no maximum limit; can be a natural or juridical person (given that it has in its purposes the establishment of such company).

Foreign shareholders in JSC are permitted. Foreign shareholders must pass security clearance.
- Taxed on its annual net profits and on its distributed dividends.

- Typical charter documents include:
  - Articles of Association (AoA)
  - Bylaws
  - Organizational board resolutions
  - General assembly resolutions
  - MCDR (as defined below) registration certificate
  - and Commercial register.

In an effort to achieve dematerialization by moving to replace materialized share certificates (ie, physical shares) with centralized electronic book keeping, the amendments recently introduced to the Companies Law require all existing JSCs to register and deposit their shares with Misr ("Misr" means "Egypt" in the Arabic language) for Central Clearing, Depository and Registry (the MCDR).

- BoD has overall day-to-day management responsibility.

LLC

- Minimum of 2 quotaholders and a maximum of 50 quotaholders
- Taxed on its annual net profits and on its distributed dividends

- Typical charter documents include:
  - Articles of incorporation (AoI)
  - General assembly resolutions and

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1 Companies Law no.159 of 1981 and its Executive Regulations No. 96 of 1982 as amended (the "Companies Law").
• The company's AoI sets forth how the business is to be managed. It must be managed by 1 or more managers appointed from its quotaholders or from third parties.

OPC

• Wholly owned by 1 person; can be a natural or juridical person.
• Taxed on its annual net profits and on its distributed dividends.
• Typical charter documents include:
  ◦ AoI
  ◦ Founder's resolutions and
  ◦ Commercial register.
• Founder has overall management responsibility in person or through appointed manager(s).

Branch

• No partners are required.
• GAFI approval is required to establish a branch, and it must be registered with the Commercial Registration Department (CRD).
• Typical charter documents include:
  ◦ Commercial register and
  ◦ A foreign-based company's resolution of establishing a branch in Egypt.
• A branch must comply with applicable companies, taxation, labor, social insurance law and foreign exchange control regulations.

RO

• No partners are required.
• A parent company submits an application to establish RO to GAFI, and it must be registered with the CRD.
• Such application must specify the foreign parent company's name, nationality, purpose, capital, head office location abroad, Egyptian branch (if any) and the type of the RO required to be established in Egypt, its purpose and permanent/temporary address.
• All the aforementioned are to be attached with:
○ The parent company’s bylaws, AoA and a translation of their summary
○ The resolution of the parent company approving the establishment of the RO in Egypt
○ The name of the RO’s manager or temporary agent and
○ The proper fees.

• Typically, a charter document includes:
  ○ Commercial register and
  ○ A parent company’s resolution of establishing an RO in Egypt.

• RO must comply with applicable taxation, labor and social insurance law, and foreign exchange control regulations.

MINIMUM CAPITAL REQUIREMENT

JSC

Minimum capital required is EGP250,000. However, the minimum capital of a JSC may vary depending on the company’s activity and the decrees issued regulating such activity. In respect of the JSCs whose shares are offered to public subscription, the required minimum capital is EGP500,000.

LLC

No minimum capital requirement. It is determined by the quotaholders in the company’s AoI.

OPC

Minimum capital required is EGP50,000.

Branch

Not applicable. The foreign-based company shall only deposit an amount equivalent to EGP5,000.

RO

Not applicable. The parent company shall only deposit an amount equivalent to EGP5,000.

LEGAL LIABILITY

JSC

Liability of JSC’s shareholders remains limited to the value of their shares in a company, and they are generally not liable for the debts of a JSC.
LLC

Quotaholders are generally not liable for the debts of an LLC aside from their individual contributions.

OPC

Founder is generally not liable for the debts of an OPC aside from their contribution to an OPC, unless:

- Founder liquidates or suspends company’s activity in bad faith prior to the end of its term or purpose
- Founder enters into agreements under company’s name prior to incorporation, where such agreements were not essential for incorporation or
- Personal and company funds of the founder were comingled.

Branch

A foreign-based company is generally liable for the debts and other financial dues on a branch.

RO

The parent company is generally liable for the debts of the RO noting that the RO must not engage in any type of taxable commercial activities to avoid immediate termination of its registration.

TAX PRESENCE

Corporations

- Corporate entity is subject to income tax at the rate of 22.5 percent of its annual net profits.
- Employees' salaries are subject to income tax.
- The company makes a withholding tax at the rate of 10 percent upon distribution of dividends. As an exception, shareholders or quotaholders who own 25 percent of the company's shares or quotas for at least 2 years are subject to a withholding tax at a rate of 5 percent.
- Corporate entities must make social insurance contributions from both employers and employees.
- Corporate entities, which sell goods or provide services that are subject to value-added tax (VAT) according to the VAT Law no. 67 of 2016, and whose annual turnover exceeds the amount of EGP500,000, must be registered with the Egyptian Tax Authorities (ETA) for VAT purposes. By way of exception to the abovementioned threshold, corporate entities may apply to be registered for VAT purposes even if their turnover does not exceed said threshold provided that:
  - Their annual turnover during the 12 months prior to filing the registration application must not be less than EGP150,000 or its paid-up capital must not be less than EGP50,000
CORPORATE

They have registered physical office space through which they perform their registered activity and

- They have a valid tax card.

- VAT at the rate of 14 percent, generally, is applied to all taxable local and imported goods and services, except:
  - Those specifically exempted by the VAT Law
  - Machinery and equipment used in the production of such goods and services which shall be levied at 5 percent and
  - All other products listed in the annex to the VAT Law which specifies the percentage of tax levied on them.

Branch

- A branch is subject to income tax at the rate of 22.5 percent of its annual net profits. Branch employees’ salaries are subject to an income tax.

- The branch makes a withholding tax at the rate of 10 percent upon distribution of dividends and social insurance contributions from both the employers and employees.

- Branches, which sell goods or provide services subject to VAT and whose annual turnover exceeds the amount of EGP500,000, must be registered with the ETA for VAT purposes.

- VAT at the rate of 14 percent, generally, is applied to all taxable local and imported goods and services, except:
  - Those specifically exempted by the VAT Law
  - Machinery and equipment used in the production of such goods and services which shall be levied at 5 percent and
  - All other products listed in the annex to the VAT Law, which specifies the percentage of tax levied on them.

RO

An RO’s employees are subject to income tax and social insurance contributions from both employers and employees.

INCORPORATION PROCESS

Corporate entities, branches and ROs require an approval from the GAFI or the Financial Regulatory Authority (FRA), in case of capital market activities, to establish them after submitting required documents. Moreover, they must be registered with the CRD.
Work and residence permits for foreign employees, managers or officers must be obtained prior to starting any work in Egypt.

**BUSINESS RECOGNITION**

**JSC**
Well regarded and widely used.

**LLC**
Well regarded and widely used.

**OPC**
New entity form based on an attractive single founder structure.

**Branch**
Regularly used where there is a foreign company which requires a specific contract to be carried out in Egypt.

**RO**
Regularly used where the goal is to carry out market exploration and analysis as opposed to carrying out commercial activities.

**SHAREHOLDER MEETING REQUIREMENTS**

**JSC**

- The shareholders supervise the management of the company through the general assembly. The general assembly shall be held upon the invitation of the company’s chairman and shall be divided into an ordinary general assembly (OGM) and extraordinary general assembly (EGM), each of which shall have its competences.

- Each shareholder shall have the right to attend the general assembly whether in person or by proxy by virtue of a written power of attorney or authorization. The shareholder who is not a member of the company’s BoD shall not be entitled to appoint a board member to attend the general assembly on their behalf.

- The meeting of the general assembly shall be held at least once every financial year within the 3 months succeeding the end of the financial year of the company. The attendance and voting quorums of the OGM and EGM are determined in the AoA of the company in accordance with the Companies Law.

- The OGM is held to:
  - Approve the appointment and removal of the board member(s)
  - Supervise and release the board
member(s) from liability Approve the financial statements

- Approve the BoD’s report regarding the company’s activity Approve the distribution of dividends and
- Decide on the matters proposed by any of the board members, GAFI or shareholders holding 5 percent of the capital of the JSC.

- The EGM is held to:
  - Decide on any amendment of the AoA of the company, taking into consideration the restrictions provided under the Companies Law
  - Consider the dissolution or continuation of the company in case its losses amounted to half the value of the shareholders’ rights according to the recent financial statements and
  - Issue preferential shares and increase the capital.

LLC

- Similar to a JSC, the quotaholders of an LLC supervise the management of the company through the general assembly (ie, the OGM and EGM, each of which shall have its competences). The general assembly shall be held upon the invitation of quotaholders representing at least 1/4 of the company’s capital.

- Each quotaholder shall have the right to attend the general assembly whether in person or by proxy by virtue of a written power of attorney or authorization. Quotaholders shall be entitled to appoint a third party (who is not a manager) to attend the general assembly on their behalf unless otherwise is provided under the AoI of the company.

- The meeting of the general assembly shall be held at least once every year during the 3 months succeeding the end of the financial year of the company. The attendance and voting quorums of the OGM and EGM are determined in the AoI of the company in accordance with the Companies Law.

- The OGM shall be held to:
  - Approve the appointment and removal of the manager(s) Supervise and release the manager(s) from liability Approve the financial statements
  - Approve the managers’ report on the company’s activity Approve the distribution of dividends and
  - Decide on the matters proposed by any of the manager(s), GAFI or quotaholders holding 5 percent of the capital of the LLC.

- The EGM shall be held to:
  - Decide on any amendment of the AoI of the company, taking into consideration the restrictions provided under the Companies Law
Consider the dissolution or continuation of the company in case its losses amounted to half the value of the quotaholders’ quotas according to the recent financial statements and

- Increase the capital.

**OPC**

Not applicable, as the founder supervises the management of the company and has all powers of the general assembly. The founder of the company has the authority to decide on all company matters and, in particular, the following:

- Amendment of the AoI of the company
- Liquidation or dissolution of the company
- Increase or decrease the capital of the company, taking into consideration the minimum required capital for the OPC as provided under the Executive Regulations
- Merging of the company and its transformation into another form of company and
- Appointment of 1 or more managers of the company and decide their competencies and authorities.

All actions of the founder shall not be effective before a third party prior to its annotation in the commercial register.

**Branch**

Not applicable for this jurisdiction.

**RO**

Not applicable for this jurisdiction.

**BOARD OF DIRECTOR MEETING REQUIREMENTS**

**JSC**

At least 3 BoD members must attend the meeting. The BoD shall meet at the invitation of its chairman or the majority of its members in case of a vacancy of the position of the chairman.

A third of the board members may submit a written request to the chairman to hold a meeting. If the chairman fails to invite the board within 10 days from the date of submitting the request, they shall invite the board to a meeting themselves and notify GAFI with such meeting. The meeting may be held outside the company’s headquarter or by means of teleconference, video conference or circulation, including electronic signature, in accordance with the regulations specified by the Companies Law.

**LLC**
A BoD meeting is not applicable under the Egyptian Laws for LLCs, but the quotaholders appoint manager(s) to manage a company. If the number of quotaholders is more than 10, control must be entrusted to a Board of Control (BoC) consisting of at least 3 quotaholders as determined in the AoI. Such BoC may require manager(s) to present reports, audit the books and documents of a company, take an inventory of treasury and financial stocks and request to show that the company validly exists and is in good standing. Moreover, the BoC controls financial statements of the company and annual report, develops a distribution of profits strategy and sends its report to quotaholders not less than 15 days before the next general assembly’s meeting.

OPC

Not applicable for this jurisdiction. However, the founder appoints manager(s) to manage the company, determines their authorities and ratifies their signatures. Such manager(s) shall represent the company before courts and third parties and shall be responsible before the founder.

Branch

Not applicable for this jurisdiction.

RO

Not applicable for this jurisdiction.

ANNUAL COMPANY TAX RETURNS

Corporations

Annually file enterprise tax returns with tax authorities in addition to the required schedules and data within 60 days subsequent to the filing due date. By way of exception to the aforementioned, the Income Tax Law no. 91 of 2005 provides for certain circumstances whereby the company shall be exempted from the obligation of submitting the tax returns. In regards to VAT, Corporate Entities are generally required to file tax returns on monthly basis.

Branch

Annually file enterprise tax returns with tax authorities in addition to the required schedules and data within 60 days subsequent to the filing due date. By way of exception to the aforementioned, the Income Tax Law provides for certain circumstances whereby the branch shall be exempted from the obligation of submitting the tax returns. In regards to VAT, branches are generally required to file tax returns on monthly basis.

RO

Filing enterprise tax returns with tax authorities is not applicable for ROs under Egyptian laws as they cannot be engaged in commercial activities.

BUSINESS REGISTRATION FILING REQUIREMENTS

Corporations
Corporate entities require initial registration. They shall be registered in the commercial registry office by virtue of the establishment certificate issued by GAFI.

According to the Companies Law, GAFI is required to issue an establishment certificate upon being notified by the Corporate Entities provided that the required documents are attached to the establishment notification.

There are additional obligations to file yearly audited financial statements as well as amendments to bylaws, AoI(s) and AoA(s) each time they are made.

**Branch**

A branch’s establishment requires an initial approval from GAFI and must be registered in the CRD. Moreover, it must annually (within 3 months from the lapse of its financial year) submit to GAFI:

- A copy of its financial statements and an audit report
- Names and nationalities of its manager(s)
- Number, nationalities, titles and total payroll of its employees and determine the payroll of the Egyptian employees and
- Its profits and the distributed proportion to its employees.

**RO**

An RO’s establishment requires an initial approval from GAFI and must be registered in the CRD. Its registration certificate shall be issued for a period not exceeding 1 year and shall be subject to an annual renewal provided that the RO must be obliged to annually (at the beginning of each financial year) submit to GAFI (as may be requested):

- Employee names, titles, nationalities and total payroll and determine the ratio of the Egyptian employees’ payroll
- Additional information concerning the RO’s activities during the financial year and any amendments in relation thereto
- Evidence that the parent company has been notified with the aforementioned
- Decisions of the parent company in relation to the activities undertaken by the RO during the financial year and
- A timeline schedule for the pending and finalized studies required to be done by the RO.

**BUSINESS EXPANSION**

**JSC**

- Minimum 3 shareholders with no maximum limit.
• No need to change as business expands.

• If number of shareholders drops to be fewer than the minimum required number of persons, the entity may convert to an OPC corporation or increase the number of shareholders to no fewer than 3 natural or juridical persons.

LLC

• Minimum of 2 and maximum of 50 quotaholders.

• If number of quotaholders exceeds 50 persons, must convert to a JSC corporation or decrease the number of quotaholders to 50 persons.

• If number of quotaholders drops to be fewer than the minimum required number of persons, must convert to an OPC corporation or increase the number of quotaholders to 2 persons.

OPC

Used exclusively for a sole proprietor entity. The whole structure of this type of company is based on 1 founder. Therefore, if more than 1 natural or juridical person becomes a founder in an OPC, the entity must convert to an LLC or JSC as applicable.

Branch

No need to change as business expands, to the extent that the purpose remains within the scope of activities mentioned in the commercial register.

RO

Not applicable for this jurisdiction, as ROs are prohibited from engaging in commercial activity.

EXIT STRATEGY

Corporations

Shareholders’, quotaholders’ or founder’s meeting approval (ie, the general assembly resolution) or court decision on dissolution and winding up of an entity. Liquidator(s) will be assigned to run the liquidation process.

Branch

Parent company must submit a declaration to GAFI together with other required documents, stating its decision to close a local branch.

RO

Parent company must submit a declaration to GAFI together with other required documents, stating its decision to close the RO.
A new comprehensive bankruptcy code has been adopted and implemented that codifies and organizes the liquidation process of an entity incorporated in the Arab Republic of Egypt.

**ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

**JSC**

Annual shareholders' meeting (ie, the general assembly meeting) to approve appointment of independent financial auditor, financial statements and limit liability of and hold the board harmless when it acts within the scope of its authority. The meeting should be held at least once every year during the 3 months succeeding the end of the financial year of the company.

**LLC**

Annual quotaholders' meeting (ie, the general assembly meeting) to approve appointment of independent financial auditor, financial statements and limit liability of and hold the manager(s) harmless when they act within the scope of their authority. The meeting should be held at least once every year during the 3 months succeeding the end of the financial year of the company.

**OPC**

A founder has all powers of a general assembly; therefore, they annually submit audited financials, appoint an independent auditor and name managers.

**Branch**

A branch must annually submit a copy of its financial statements and an audit report; names and nationalities of its manager(s); and number, nationalities, titles and total payroll of its employees and determine the payroll of the Egyptian employees, its profits and the proportion of the profit that was distributed to its employees to GAFI.

**RO**

An RO must annually submit to GAFI (as may be may requested), at the beginning of each financial year:

- Its employees' names, titles, nationalities, total payroll and determine the ratio of the Egyptian employees' payroll
- Any additional information regarding RO’s activities during the financial year and any amendments in relation thereto
- Evidence that the parent company has been notified with the aforementioned
- Decisions of the parent company in relation to the activities undertaken by the RO during the financial year
- A timeline schedule for the pending and finalized studies required to be done by the RO.
DIRECTOR / OFFICER REQUIREMENTS

JSC

- Minimum of 3 board members appointed by the general assembly for 3 years. As an exception, the term of the first appointed BoD can be 5 years from the date of incorporation.

- Management is typically named by the BoD,

- The BoD usually appoints, among its members, a chairman and vice-chairman to the company. The chairman represents the company before courts.

- The powers and responsibilities of the company’s chairman, executive chairman, board members and employees are usually provided under the company’s AoA and its internal bylaws.

LLC

- At least 1 manager is required who is appointed for the first time by the quotaholders by virtue of a decision issued by the general assembly.

- The manager(s) shall have the responsibility to represent the company, unless otherwise provided under the company’s AoI.

- The removal of the manager(s) shall be by virtue an EGM resolution. Such resolution is issued by the majority of 3/4 of the quotas represented at the meeting.

OPC

A founder can be a manager or can appoint manager(s).

Branch

One or more managers must be appointed to run the business activities in Egypt.

RO

At least 1 manager. A manager does not need to be an Egyptian national.

For more information on directors’ duties, see our Global Guide to Directors’ Duties.

LOCAL CORPORATE SECRETARY REQUIREMENT

Not applicable for this jurisdiction.
LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

The Egyptian laws provide for local representative requirements in regards to certain activities including, inter alia, the following:

- Importation activities for trading purposes: Manager(s) of the company conducting the importation activity and 51 percent of its shareholders must be Egyptians

- Commercial agency activities: Manager(s) and board members of the JSC participating in such activity are required to be Egyptians or have held Egyptian nationality for at least 10 years. Additionally, it should be wholly owned by Egyptians or persons who have held Egyptian nationality for at least 10 years

- Acquiring lands and/or real estates’ in Sinai: The company is required to be wholly owned by Egyptians and

- Operating in Sinai: The company must be established in the form of JSC and 55 percent of its shareholders must be Egyptians.

Further, with regard to the Egyptian employees’ ratio in Egyptian companies, the Companies Law provides that the number of the Egyptian employees should not be less than 90 percent of the manpower in corporate entities.

LOCAL OFFICE LEASE REQUIREMENT

An owned or leased registered physical office space is required for all types of entities.

OTHER PHYSICAL PRESENCE REQUIREMENTS

Corporations

Corporate entities and their branches must have a registered office in Egypt.

Branch

Must have a registered office in Egypt.

RO

Must have a registered office in Egypt.

SUFFICIENCY OF VIRTUAL OFFICE

A physical presence is necessary for all types of entities.

PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER
Not applicable for this jurisdiction.

PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Not available in this jurisdiction.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

Shareholders/quotaholders/founders

- There are no restrictions on foreign ownership. A company may be wholly owned by foreigners except in the event that the company participates in any activity that is restricted for foreigners by law – for example:
  - A commercial agency which is required to be wholly owned by Egyptians or persons who have held Egyptian nationality for at least 10 years
  - Importation activities for trading purposes whereby 51 percent of the shareholders must be Egyptians and
  - Acquiring of lands and/or real estate in Sinai whereby the company is required to be wholly owned by Egyptians.

- Security clearance must be obtained for foreign shareholders, quotaholders and founders.

- For foreign companies operating in Sinai and/or acquiring lands/real estate, certain security clearances may be required.

Directors and officers

JSC

- All board members may be non-Egyptians including the chairman and the managing director.

- Security clearance must be obtained for foreign board members.

- Work and residence permits for foreign employees including the board members must be obtained if they will reside and work in Egypt.

- An entity may conduct business while its security clearances are pending. However, and by way of exception, some foreign nationalities (routinely subject to change) require the security clearance to be issued prior to starting the entity’s business. The time required to obtain the security clearance is subject to the discretion of the competent authority after the submission of all requested documents.

- There are some restrictions regarding the appointment of directors of some activities under the Egyptian
laws which require the managers to be Egyptians such as importation for trade purposes and commercial agency.

**LLC**

- A company must be managed by manager(s) appointed by quotaholders whether Egyptians or foreigners.
- Security clearance for a foreign manager(s) must be obtained.
- An entity may conduct business while its security clearances are pending. However, and by way of exception, some foreign nationalities (routinely subject to change) require the security clearance to be issued first prior to starting the entity’s business. The time required to obtain the security clearance is subject to the discretion of the competent authority after the submission of all requested documents.
- Work and residence permits for foreign manager(s) must be obtained.
- There are some restrictions regarding the appointment of directors and some activities under the Egyptian laws require the managers to be Egyptians (eg, importation for trade purposes and commercial agency).

**OPC**

- A company must be managed by manager(s) appointed by a founder. The manager does not need to be an Egyptian national.
- Security clearance for foreign manager(s) must be obtained.
- An entity may conduct business while its security clearances are pending. However, and by way of exception, some foreign nationalities (routinely subject to change) require the security clearance to be issued first prior to starting the entity’s business. The time required to obtain the security clearance is subject to the discretion of the competent authority after the submission of all requested documents.
- Work and residence permits for foreign manager(s) and employees must be obtained.
- There are some restrictions regarding the appointment of directors and some activities under the Egyptian laws require the managers to be Egyptians (eg, importation for trade purposes and commercial agency).

**Branch**

- A branch must be managed by a manager(s); the manager does not need to be an Egyptian national.
- Security clearance must be obtained for foreign manager(s).
- Work and residence permits must be obtained for foreign manager(s).

**RO**
• An RO must be managed by a manager(s); the manager does not need to be an Egyptian national.
• Security clearance must be obtained for foreign manager(s).
• Work and residence permits must be obtained for foreign manager(s).

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Corporations

None with respect to shareholders, quotaholders and founders except that all foreigners must obtain security clearance.

There are some restrictions regarding appointment of directors, such as no minors, insolvent persons or persons with criminal records.

Branch

A security clearance must be obtained for foreign-based companies.

There are some restrictions regarding appointments of managers, such as no minors, insolvent persons or persons with criminal records.

RO

Security clearance must be obtained for parent company.

There are some restrictions regarding appointment of managers, such as no minors, insolvent persons or persons with criminal records.

SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF

Corporations

JSC’s chairman, vice-chairman, managing director and, in case of LLCs and OPCs, their respective manager(s) shall represent and manage the company.

JSC

The Companies Law and AoA may reserve certain powers to the general assembly meeting, such as approving the financial statements, appointment and resignation of board members and amending AoA. All other powers, unless otherwise required by law, will be attributed to the BoD.

LLC
The Companies Law and AoI may reserve certain powers to the general assembly meeting, such as approving the financial statements, appointment and removal of managers, and amending of AoI.

Unless otherwise required by applicable law, all other powers will be attributed to managers.

**OPC**

Founder of an OPC reserves all powers of a general assembly meeting and may appoint and remove manager(s).

**Branch**

Manager(s) represent a branch and run it under supervision and guidance of foreign-based company and in accordance with applicable Egyptian Law.

**RO**

Manager(s) represent the RO and operate it under supervision and guidance of a parent company and in accordance with applicable Egyptian law.

### PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

**JSC**

Identities of the board members and officers of the company are disclosed in a company's commercial register. Where a company is a publicly listed company on the Egyptian Stock Exchange, identities of shareholders are publicly disclosed. Identities of shareholders of private, non-listed companies are not publicly disclosed.

**LLC**

Identities of quotaholders and manager(s) are disclosed in a company’s commercial register.

**OPC**

Identities of a founder and a manager(s) are disclosed in a company’s commercial register.

**Branch**

Identities of a foreign-based company and its manager(s) are disclosed in a company’s commercial register.

**RO**

Identities of a parent company and its manager(s) are disclosed in a company’s commercial register.

### MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

**JSC**
Minimum of 3 shareholders and no maximum is required.

Minimum of 3 board members.

**LLC**

- Minimum of 2 quotaholders and a maximum of 50.
- If number of quotaholders is more than 10, control must be entrusted to a BoC, consisting of at least 3 quotaholders.
- Minimum 1 manager.

**OPC**

- Wholly owned by 1 person; can be a natural or juridical person.
- Founder has overall management responsibility and may appoint manager(s).

**Branch**

- Shareholders are not applicable.
- At least 1 manager.

**RO**

- Shareholders are not applicable.
- One manager.

**MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

Please refer to Section (Minimum and Maximum Number of Directors and Shareholders) above.

**REMOVAL OF DIRECTORS OR OFFICERS**

**Corporate entities**

Generally, shareholders, quotaholders or founders may remove directors or managers at any time by virtue of a decision issued by the general assembly, or they can resign. Managers and directors who are appointed in accordance with a labor contract governed by Labor law cannot be removed unless in accordance with the Labor Law.

With regard to LLCs, the removal of the manager(s) shall be by virtue an EGM resolution. Such resolution shall be issued by the majority of 3/4 of the quotas represented at the meeting.
Branch

A foreign-based company can remove manager(s) at any time and subject to applicable provisions of labor law (if appointed in accordance with a labor contract that is governed by labor law).

RO

A parent company can remove manager(s) at any time and subject to applicable provisions of labor law (if appointed in accordance with a labor contract that is governed by labor law).

REQUIRED AND OPTIONAL OFFICERS

JSC

Minimum of 3 board members. The general assembly meeting must be attended by at least 3 board members. A company’s AoA may provide the number of BoD meetings to be held per year.

LLC

At least 1 manager is required who is appointed for the first time by the quotaholders. If the number of quotaholders is more than 10, then control must be entrusted to a BoC, consisting of a minimum of 3 quotaholders as determined in the AoI. No minimum number of meetings per year.

OPC

Not applicable for this jurisdiction. However, the founder appoints manager(s) to manage the company, determines their authorities and ratifies their signatures. Such manager(s) will represent the company before courts and third parties and be responsible to the founder.

Branch

Not applicable for this jurisdiction.

RO

Not applicable for this jurisdiction.

BOARD MEETING REQUIREMENTS

Please refer to "Board of Director Meeting Requirements."

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

In conjunction with the "Shareholders Meeting Requirements" and "Annual Corporate Maintenance Requirements" sections, the required quorum for shareholder, quotaholders or founders and BoD meeting is as follows:

JSC
Shareholders:

- Ordinary general assembly meeting (OGM):
  
  - Shareholders representing at least 1/4 of the company's capital must attend the OGM. The AoA of the company may stipulate a higher mandatory attendance not exceeding 50 percent of shareholders (ie, the company's capital). If this minimum is not met at a first meeting, the OGM will be called to a second meeting within 30 days after the first meeting.

  - The invitation of the first meeting may determine the date of the second meeting (if the required minimum attendance of the shareholders is not met) unless otherwise is provided under the AoA of the company.

  - A second meeting will be deemed valid regardless the number of shares represented in the meeting.

  - Resolutions of the OGM shall be issued by an absolute majority of the shares represented at the meeting (50 percent plus 1 share of the attending shareholders).

  - The OGM must be attended by a minimum of 3 board members.

Extra-ordinary general assembly meeting (EGM):

- The provisions regulating the OGM under the Companies Law apply to the EGM and take into consideration the following:

  - The company's BoD may invite the EGM to be held upon the request of the shareholders representing at least 10 percent of the company's capital provided that such shareholders must deposit their shares at the company's headquarter or in any approved bank. The shares should not be withdrawn except after dismissal of the EGM. If the board does not convoke the EGM within 1 month from the date of submitting the request, the applicants may recourse to GAFI which will address the invitation itself.

  - Shareholders representing at least half of the company's capital must attend the EGM. If this minimum quorum is not present in a first meeting, then shareholders are invited to a second meeting to be held within 30 days from the date of a first meeting.

  - A second meeting will be considered valid if attended by a number of shareholders representing at least 1/4 of the company's capital

  - Resolutions of the EGM are issued by a majority of 2/3 of the shares represented in the meeting.

  - If the resolution relates to the increase of the authorized capital, the diminution of the capital, the dissolution of the company before its term, changing its purpose or its merging or splitting, the voting majority shall be 3/4 of the shares represented in the meeting.

  - The EGM must be attended by a minimum of 3 board members.
LLC

Quotaholders:

- Ordinary general assembly meeting (OGM):
  - Quotaholders representing at least half of capital must attend an OGM (unless the AoI of the company stipulates a higher proportion). If this minimum is not met at a first meeting, then an OGM will be called to a second meeting within 30 days after the first meeting.
  - A second meeting will be deemed valid regardless of the represented number of shares.
  - Resolutions of the OGM shall be issued by an absolute majority of the quotas represented at the meeting (50 percent plus 1 quota of the attending quotaholders).
  - The OGM must be attended by at least 1 manager and the auditor.

- Extra-ordinary general assembly meeting (EGM):
  - Shareholders representing at least half of capital must attend the EGM. If this minimum quorum is not present in a first meeting, then shareholders are invited to a second meeting to be held within 30 days from the date of a first meeting.
  - A second meeting will be considered valid if attended by a number of shareholders representing at least 1/4 of capital. Every shareholder or quotaholder in JSC or LLC is entitled to attend the general assembly, personally or by a written proxy (ie, written power of attorney or authorization).

Every Shareholder in JSC or LLC is entitled to attend the general assembly of shareholders, personally or by written proxy.

OPC

Not applicable for this jurisdiction.

Branch

Not applicable for this jurisdiction.

RO

Not applicable for this jurisdiction.

MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?

Corporations

Yes.
AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?

Corporations

Applicable to this jurisdiction. The provisions relating to the auditor of the JSCs shall also apply to LLCs and OPCs. In this regard, the company must appoint 1 or more certified auditors by its general assembly.

The auditor has, at all times, the right to examine all the books, registers and documents of the company and to demand information and explanations which is deemed to be essential for the fulfillment of the auditor’s duties.

Branch

The provisions relating to the auditor of the JSCs shall apply to a branch.

RO

Not applicable for this jurisdiction.

REQUIREMENT REGARDING PAR VALUE OF STOCK

JSC

Minimum par value per share is EGP1 and maximum EGP1,000.

LLC

Quotas must be equal in value.

OPC

Single founder with all equity issued to be of equal value.

Branch

Not applicable for this jurisdiction.

RO
Not applicable for this jurisdiction.

**INCREASING OF CAPITALIZATION IF NEEDED**

**Corporations**

Capital may be increased any time after incorporation. It requires an EGM’s resolution and must be reflected in the AoI or AoA of the company and its commercial register. In case of a JSC, if the capital increase is within the authorized capital, such increase will not require an EGM’s resolution and could be made by virtue of a BoD resolution.

**Branch**

Not applicable for this jurisdiction.

**RO**

Not applicable for this jurisdiction.

**SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)**

No restrictions on the repatriation of funds of all entities outside of Egypt. Banking regulations will apply including Anti-Money Laundering requirements and providing legitimate reason for any transfer as may be required.

However, it is worth noting that the exportation of EGP is prohibited if it exceeds an amount of EGP 5,000. Accordingly, funds exceeding the aforementioned EGP amount must be converted into any foreign free hard currency prior to repatriation.

**RESTRICTIONS ON TRANSFERABILITY OF SHARES**

**JSC**

 Shares may generally be transferred between shareholders or third parties, provided that the transfer of the in-kind shares is not made by founding shareholders within the first 2 financial years of the company and before the publication of the relevant financial statements and other related documents. By way of exception, subscribed shares may be assigned or transferred between the shareholders or to a board member if such subscribed shares are to be presented as a guarantee for their company’s management, or from 1 of the board member’s heirs to other shareholders except when there is restriction on the transferability in the AoA (eg, the pre-emption right). For the transfer of shares to be complete in accordance with Egyptian law, the Egyptian Stock Exchange (EGX) and MCDR must be notified.

**LLC**

 Quotas may generally be transferred between quotaholders or third parties without the other quotaholders...
having the right of redemption of such transferred quotas unless provided otherwise under the company’s AoI. The company’s AoI may provide that such transfer should be made by virtue of a written agreement which should be notarized at the notary public office.

Unless otherwise agreed in the AoI, there is a preemptive right for existing quotaholders to buy quotas offered for sale.

The quotaholder wishing to sell or transfer quotas is obliged to first notify the manager(s) of the company of the desire and the terms of the quota transfer or sale agreement, and then notify the other quotaholders who can then either exercise their right to substitute the buyer or waive such right.

OPC

A founder can transfer or sell equity to any person (ie, natural or juridical person) via a written agreement. If a founder transfers or sells the equity to more than 1 person, then a company must be registered as an LLC or JSC as applicable within 90 days from the date of transfer or sale. In any case, the transfer of equity will not be valid unless registered in the company’s commercial register.

Branch

Not applicable for this jurisdiction.

RO

Not applicable for this jurisdiction.

OBTAINING A NAME AND NAMING REQUIREMENTS

In general, a corporation may have any name that is not currently used by another company or that infringes on an existing registered trademark or trade name or cause confusion or misunderstanding to the company’s purpose or nature. An entity may submit its chosen name to GAFI for pre-approval.

JSC

A company's name can be derived from its purpose (ie, refer to its activity) or from the names of its shareholders. A Joint Stock Company must have the words "Joint Stock Company" or "JSC" as part of its name.

LLC

A company's name can be derived from its purpose or from a name of its quotaholders or any one of them. A limited liability company must have the words "Limited Liability Company" or "LLC" as part of its name.

OPC

A company's name may be derived from its purpose or from a name of its founder.

Branch

A branch must have the same name as a foreign-based company. The phrase "a branch of (name of foreign-based
company)" must be added to a branch’s name.

**RO**

An RO must have the same name as a foreign-based company. The phrase "an RO of (name of foreign-based company)" must be added to an RO’s name.

**SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS**

Not applicable for this jurisdiction.

**APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

Approval from GAFI and the FRA is required as applicable.

**LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

**Corporations**

Egyptian law may provide for certain types of activities which require licenses, such as importation of goods for trade purposes, tourism and operating in Sinai.

**LLC**

LLC companies cannot engage in:

- Banking activities
- Deposit taking Insurance business
- Investment funds of third parties Savings and
- Any other activity restricted by virtue of the provisions of law.

**OPC**

OPC companies cannot engage in:

- Banking
- Deposit taking Insurance business
- Investment funds of third parties Savings
- Incorporation of an OPC
• Public subscription (whether upon its incorporation or increasing its capital)

• Division of the company’s capital into exchangeable shares and

• Borrow by issuing tradable securities.

Branch

A branch must be formed for the purpose of conducting specific public or private sector agreements in Egypt. Only certain types of activities require license, such as construction and building.

RO

An RO may not conduct commercial activities or execute agreements with third parties on behalf of a foreign company and can only conduct studying activities such as studying the feasibility of production or carrying out market surveys.

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

Not applicable for this jurisdiction.

KEY CONTACTS

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FORM OF ENTITY

Limited Liability Company (Osakeyhtiö, Oy)

Separate and distinct legal entity. Managed by a board of directors, which is responsible for making major business decisions and overseeing general affairs of the company. Directors are elected by the shareholders of the Oy. The managing director (optional), who runs the day-to-day operations of the Oy, is appointed by the board of directors. Other officers are appointed by the board of directors or by the managing director.

Note: There are other legal forms in Finland but the limited liability company is the most commonly used.

ENTITY SET UP

Osakeyhtiö (Oy)

- Unlimited number of shareholders
- Generally no personal liability of the shareholders
- Taxed on its earnings at a corporate level (currently 20 percent), and shareholders are taxed on any distributed dividends
- Typical charter documents include:
  - Articles of association
  - Agreement of incorporation
  - Organizational board resolutions
  - Stock certificates
Stock ledger

- Incorporated by registration with the Finnish Trade Register (*Kaupparekisteri*)
- Board of directors has overall management responsibility; managing director has day-to-day responsibility
- Shareholders typically purchase stock in the company; separate classes of shares with different rights (e.g., voting, dividends) are commonly used
- Annual report is filed annually with the Finnish Trade Register (*Kaupparekisteri*)

**MINIMUM CAPITAL REQUIREMENT**

Osakeyhtiö (Oy)

- Private Limited Liability Company (Oy): EUR0
- Public Limited Liability Company (*Julkinen osakeyhtiö, Oy*): EUR80,000

**LEGAL LIABILITY**

Osakeyhtiö (Oy)

Shareholders of a company are generally not liable for the debts of a company aside from their financial contribution to the company.

**TAX PRESENCE**

Osakeyhtiö (Oy)

The profits of an Oy are taxed at 2 levels (commonly referred to as double taxation). First, the Oy pays a corporate tax on its corporate income; then shareholders pay tax on the distributed profits from the Oy. The Oy is subject to a Finnish corporate income tax rate, which currently amounts to 20 percent.

**INCORPORATION PROCESS**

Osakeyhtiö (Oy)

Signing of agreement of incorporation, payment of (possible) share capital and registration of agreement of incorporation with the Trade Register.

**BUSINESS RECOGNITION**

Osakeyhtiö (Oy)
Well regarded and widely used. Most commonly used is the private company, and mainly only listed companies are public companies.

**SHAREHOLDER MEETING REQUIREMENTS**

Osakeyhtiö (Oy)

Required to hold annual meeting of shareholders to vote on certain items, such as adoption of annual accounts and resolution on discharge from liability for members of the board of directors and the managing director.

**BOARD OF DIRECTOR MEETING REQUIREMENTS**

Osakeyhtiö (Oy)

No statutory minimum number requirement. In practice, at least 1 meeting needs to be held yearly.

**ANNUAL COMPANY TAX RETURNS**

Osakeyhtiö (Oy)

Must annually file tax returns with the Finnish tax authorities.

**BUSINESS REGISTRATION FILING REQUIREMENTS**

Osakeyhtiö (Oy)

Initial registration, annual filings of annual accounts and filing of changes of registered issues.

**BUSINESS EXPANSION**

Osakeyhtiö (Oy)

No need to change as business expands. If securities issued by the company are listed at a regulated market, then company must change its category from private to public.

**EXIT STRATEGY**

Osakeyhtiö (Oy)

File dissolution documents with the Trade Register.

**ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Osakeyhtiö (Oy)
Annual shareholders’ meeting, which can be completed per caput (i.e., by written consent by all shareholders), shall be held within 6 months after the end of each financial year. Annual reports are required to be filed with the registration authority.

**DIRECTOR / OFFICER REQUIREMENTS**

Osakeyhtiö (Oy)

A legal person may not serve as a director. A director must be over 18 years of age. They must not be declared bankrupt, be prohibited to carry on business or have a guardian.

For more information on directors’ duties, see our [Global Guide to Directors’ Duties](http://www.dlapiperintelligence.com/goingglobal/).

**LOCAL CORPORATE SECRETARY REQUIREMENT**

Osakeyhtiö (Oy)

Not applicable for this jurisdiction.

**LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT**

Osakeyhtiö (Oy)

In the event an Oy has no authorized representative (i.e., board member, managing director or special company signatory) who is resident in European Economic Area (EU, Norway, Iceland and Liechtenstein), the board of directors shall authorize a person who is resident in Finland to act as person authorized to receive service of process on behalf of the company.

**LOCAL OFFICE LEASE REQUIREMENT**

Osakeyhtiö (Oy)

Not required.

**OTHER PHYSICAL PRESENCE REQUIREMENTS**

Osakeyhtiö (Oy)

Not required.

**SUFFICIENCY OF VIRTUAL OFFICE**
Osakeyhtiö (Oy)

An address is needed, but there are no requirements as to the presence of directors or employees at that address.

**PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

Osakeyhtiö (Oy)

Allowed for incorporation.

**PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

Osakeyhtiö (Oy)

Allowed, but internal rules/insurance limitations may restrict law firm professionals from taking the role of a director. Even though a secretary is not required, law firms typically provide that kind of service.

**NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS**

Osakeyhtiö (Oy)

Shareholders: None.

Directors (unless granted an exemption by the Trade Register): At least 1 ordinary member of the board shall be resident within the European Economic Area.

Managing director and possible deputy managing director (unless granted an exemption by the Trade Register): Required to be resident within the European Economic Area.

**RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS**

Osakeyhtiö (Oy)

Nominee directors are not allowed.

Information about the shareholder must be entered into the register of shareholders kept by the company. If shares are issued through the book-entry system, it is not prescribed that the registered account holder is the beneficial owner of the shares.

According to anti-money laundering legislation, companies which are not publicly listed are obligated to keep
records of natural persons who are directly or indirectly beneficial owners of over 25 percent of shares or votes of the company or who have de facto control in the company.

Companies which are not publicly listed are also obligated to register to the Trade Register natural persons who are directly or indirectly beneficial owners of over 25 percent of shares or votes of the company or who have de facto control in the company. Registration information is available to those who have under anti-money laundering rules right to receive that information.

**SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF**

Osakeyhtiö (Oy)

Directors of the board are elected by the shareholders and are the highest authority in the management of the Oy; they govern the organization by establishing broad policies and objectives. A managing director is appointed by directors to manage the day-to-day operations of the Oy. Board of directors issues instructions regarding allocation of work between the board of directors and the managing director. The managing director is always authorized to represent the company and sign documents on its behalf in matters related to the day-to-day management of the company.

**PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS**

Osakeyhtiö (Oy)

Identity of directors and managing director is publicly disclosed; identity of shareholders of private, non-listed companies is not publicly registered. The Oy is, however, required to disclose the share ledger (which contains identity of shareholders) to anyone upon request.

**MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS**

Osakeyhtiö (Oy)

There must be a minimum of one shareholder, and there is no limitation on the number of shareholders.

Minimum director requirements: one director and one deputy director.

Where the board consists of one or two directors, at least one deputy director must be appointed. If the articles of association does not provide otherwise, the maximum number of members of the board is five. There is no maximum number of directors, which can be taken to the articles of association.

**MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

Osakeyhtiö (Oy)

1 shareholder is sufficient.
REMOVAL OF DIRECTORS OR OFFICERS

Osakeyhtiö (Oy)

The shareholders’ meeting resolves upon removal of directors. Removal of managing director requires a board resolution. Directors and managing director may furthermore resign by notifying the board.

REQUIRED AND OPTIONAL OFFICERS

Osakeyhtiö (Oy)

Where the board consists of 2 or more directors, a chairman shall be appointed.

Managing director is optional.

The board of directors may appoint 1 or more specially authorized signatories with authority to represent and sign on behalf of the company (no decision-making powers).

BOARD MEETING REQUIREMENTS

Osakeyhtiö (Oy)

No statutory minimum number requirement. In practice, at least 1 meeting must be held yearly. A meeting can be held by telephone or completed via consents by all directors.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

Osakeyhtiö (Oy)

For a shareholders’ meeting, no specific quorum requirements apply. For directors, at least more than half of directors must participate in a board meeting.

MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?

Osakeyhtiö (Oy)

Where the share capital shall be paid in cash, opening a bank account with a bank is required. The bank must be properly regulated, but it does not have to be Finnish.

AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?
Osakeyhtiö (Oy)

An Oy shall have at least 1 auditor where the company fulfills more than 1 of the following conditions during the 2 most recent financial years:

- The average number of employees exceeded 3
- The company’s reported balance sheet total exceeded EUR100,000
- The company’s reported net turnover has exceeded EUR200,000

The appointed auditor shall be an authorized public accountant (HT or KHT) and must be resident within the EEA. Furthermore, a registered accounting firm may serve as auditor.

Accounting documents must be kept in a manner ensuring that they can be easily made available for local authorities and the auditor of the company.

REQUIREMENT REGARDING PAR VALUE OF STOCK

Osakeyhtiö (Oy)

Par value may be used but it is not mandatory.

INCREASING OF CAPITALIZATION IF NEEDED

Osakeyhtiö (Oy)

The issue of new shares in relation to prior shareholdings may be decided by a simple majority of the shareholders’ meeting. If the issue is not in relation to prior shareholdings, a qualified majority will be needed. The shareholders’ meeting may authorize the board of directors to decide about the issue of new shares. The issue of new shares needs to be registered in the Trade Register. If the articles of association must be amended, a decision by the shareholders’ meeting with a qualified majority is needed.

SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)

Osakeyhtiö (Oy)

Funds can be repatriated abroad from Finland via dividends or redemption.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

Osakeyhtiö (Oy)

The general rule under Finnish law is that shares may be freely transferred and acquired. Transferability may be
restricted by provisions in the articles of association regarding only the pre-emption clause and consent clause. Transferability may be restricted by provisions in a shareholders' agreement.

**OBTAINING A NAME AND NAMING REQUIREMENTS**

Osakeyhtiö (Oy)

Company name is indicated in the articles of association. The Trade Register decides whether the name can be registered. The name must differ from other business names and trademarks in the company's line of business. The company name must include the word "Osakeyhtiö" or abbreviation "Oy," or Swedish word "Aktiebolag" or abbreviation "Ab." Public companies are required to include words "Julkinen osakeyhtiö" or "Oyj," or Swedish word "Publikt aktiebolag" or "Abp."

**SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS**

Osakeyhtiö (Oy)

In case the client plans to make transactions, investments, open a bank account or similar, certain KYC requirements apply.

**APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

Osakeyhtiö (Oy)

Typically, a majority of 2/3 of the votes cast as well as represented at the shareholders' meeting must formally approve any amendment of the articles of association. Some amendments, such as changes in the legal relationship between shares or restrictions on the right to transfer shares in the company, require approval by all of the shareholders affected.

**LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

Osakeyhtiö (Oy)

Typically none. Specific licenses may be required for certain types of business.

**PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY**

Osakeyhtiö (Oy)

Shelf companies can be purchased from service providers.
KEY CONTACTS

Ari Savela
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Asianajotoimisto DLA Piper
Finland Oy
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FORM OF ENTITY

Société par actions simplifiée (SAS)

The SAS is an increasingly used type of company, mainly because of its great flexibility and low capital requirements. The SAS is a more flexible corporate form than the SARL which is a more binding vehicle. The SAS is essentially a simplified form of the SA. It has a number of advantages due to its flexibility such as:

- The law does not impose a particular management structure for the SAS; the president is the only compulsory corporate body
- There is greater freedom for organizing the management and operating structures of an SAS and
- The SAS does not have access to the capital markets and its shares cannot be listed on a stock exchange.

Société à responsabilité limitée (SARL)

Easy to set up and operate. Relevant for small businesses. One or more directors, who must not be corporate entities, but do not need to be shareholders. The SARL is a widely utilized form of corporation in France, mainly due to the number of advantages it offers to small businesses, such as low capital requirements and simple rules and regulations. It is more restrictive and less flexible than the SAS. Sweat equity permitted: a shareholder offers the company his time, work and professional knowledge (does not contribute to forming the capital but has right to shares in the company, share of profits and participation in collective decisions).

The SARL does not have access to the capital markets and its shares cannot be listed on a stock exchange.

Société anonyme (SA)

The SA is an historical legal form mainly used by large corporations in France, as it enables public offering of shares. Tailored for large companies needing external capital by resorting to the market, it is a very complex form of company, not commonly appropriate for a first incorporation in France.

Branch of a foreign company
Under French law, an entity operating in France shall register with the French Registry of Commerce and Companies (RCS) only if it is conducting a “commercial activity”. A foreign company is only required to register with the local Registry of Commerce and Companies when its operations in France constitute a permanent establishment, where an autonomous activity (as opposed to "preparatory and auxiliary" activities) is being conducted and managed by an agent of the foreign company or a person who may bind the foreign company vis-à-vis third parties.

Under French law, the branch is a direct form of implantation in France of a foreign company. A branch is not a separate legal entity and is therefore deemed to be the same legal entity as the foreign company, which remains solely responsible for the operation of its branch in France.

The main difference between a French branch and a French subsidiary is that:

- A branch is a mere emanation of the parent company in France, with no legal existence or distinct assets or liabilities and
- A subsidiary is an independent entity with its own legal existence, bylaws and capital contributions.
- As a consequence, the parent company:
  - Has unlimited liability for any debts and liabilities incurred by the branch in France and
  - Has limited liability for the debts and liabilities incurred by its subsidiary (provided that the subsidiary is not incorporated under the form of a partnership, ie, SNC or civil company) in case it becomes insolvent (ie, limited to its initial capital contribution and the amount of any shareholder’s loan which cannot be reimbursed within the context of a liquidation due to insufficiency of assets).

**ENTITY SET UP**

_Société par actions simplifiée (SAS)_

- Unlimited number of shareholders.
- Generally no personal liability of the shareholders.
- Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends.
- Typical charter documents include bylaws, organizational shareholders’ meeting resolutions, share transfer register and shareholders’ accounts.
- The president is the only required corporate body by law who gets the broadest powers to act in the name and on behalf of the company and to represent the company towards third parties.
- Shareholders typically purchase stock in the SAS, either common or preferred.
- SAS does not have access to the capital markets and its shares cannot be listed on a stock exchange.
Société à responsabilité limitée (SARL)

- Up to 100 shareholders; only one class of stock allowed.
- Generally no personal liability of the shareholders.
- Typical charter documents include bylaws and organizational shareholders’ meeting resolutions.
- Manager(s) get(s) the broadest powers to act in the name and on behalf the company and to represent the company towards third parties.
- Shareholders typically purchase stock in the SARL, but only one class of stock is allowed.

Société anonyme (SA)

- SA enables public offering of shares.
- Unlimited number of members allowed and at least 2.
- Generally no personal liability of the members.
- Typical charter documents include bylaws, organizational shareholders’ meeting resolutions, share transfer register and shareholders’ accounts. Shareholders typically purchase stock in the SA, either common or preferred.

MINIMUM CAPITAL REQUIREMENT

Société par actions simplifiée (SAS)

The minimum is EUR1.

Société à responsabilité limitée (SARL)

There is a minimum of EUR1.

Société anonyme (SA)

EUR37,000.

LEGAL LIABILITY

Société par actions simplifiée (SAS)

Shareholders of a SAS are generally not liable for the debts of a corporation aside from their financial contribution to the SAS.

Société à responsabilité limitée (SARL)
Shareholders of a SARL are generally not liable for the debts of a corporation aside from their financial contribution to the SARL.

**Société anonyme (SA)**

Shareholders of a SA are generally not liable for the debts of a corporation aside from their financial contribution to the SA.

**TAX PRESENCE**

**Société par actions simplifiée (SAS)**

Are subject to French taxes, including corporate income tax (33 1/3 percent), withholding tax on profits and business tax as well as VAT.

**Société à responsabilité limitée (SARL)**

Are subject to French taxes, including corporate income tax (33 1/3 percent), withholding tax on profits and business tax as well as VAT.

**Société anonyme (SA)**

Are subject to French taxes, including corporate income tax (33 1/3 percent), withholding tax on profits and business tax as well as VAT.

**INCORPORATION PROCESS**

**Société par actions simplifiée (SAS)**

Must apply for registration with the Registry of Commerce and Companies (RCS) with filing of the bylaws. Process can take from 48 hours to 4 weeks (in the event the company's registered office is located in the east of France) following the filing of the required documents with the Registry of Commerce and Companies and depending on the reactivity of the Registry of Commerce and Companies where the document shall be filed. List of documents:

- A copy of the bylaws and list of subscribers
- A copy of the signed lease/sublease/domiciliation agreement
- A copy of the certificate of deposit of funds issued by the bank/notary
- A copy of the acceptance letter of the principal and substitute statutory auditors (if any)
- A copy of the valid passport of the president and of the statement of non-conviction
- In the event the president to be appointed is a legal entity, an original of less than 3 months of the up-to-date company extract issued by the competent Company Register and a copy of the valid passport of the legal representative of the legal entity to be appointed as president
• A copy of the valid passport of the general manager(s) and of the statement of non-conviction, if any

• A copy of the valid passport of the members of the board and of their statement of non-conviction, if any, and

• A copy of the beneficial owner declaration executed by the legal representative of the company. It is reminded that, pursuant to the provisions of Articles L. 561-2-2, L. 561-46 à L. 561-50, R. 561-1 à R. 561-3 and R. 561-55 à R. 561-63 of the French Monetary and Financial Code, any French company (having its registered office in a French department) must file a declaration with the clerk’s office of the Commercial Court regarding its ultimate beneficial owner (otherwise the legal representative will be liable with a fine of EUR7,500 and imprisonment). In the event the beneficial owner changes, a new declaration must be filed within 30 days of this change.

For the beneficial owner to be disclosed, he or she must be an individual (not a legal entity) who:

• owns, directly or indirectly more than 25 percent of the share capital, or

• owns, directly or indirectly, more than 25 percent of the voting rights, or

• has a power of control over the management of the declaring entity or over the general meetings of its shareholders

In the event it is not possible to determine the identity of the beneficial owner (i.e., at the level of the top company, no individual fulfills one of the above criteria), the legal representative(s) of the declaring entity will have to be declared as beneficial owner; in the event the legal representative of the declaring entity is a legal entity, it will be necessary to declare the identity of the individual acting as legal representative of this legal entity.

*Société à responsabilité limitée (SARL)*

Must apply for registration with the Registry of Commerce and Companies (RCS) with filing of the bylaws. Process can take from 48 hours to 4 weeks (in the event the company’s registered office is located in the east of France) following the filing of the required documents with the Registry of Commerce and Companies and depending on the reactivity of the Registry of Commerce and Companies where the document shall be filed. List of documents:

• A copy of the bylaws

• A copy of the signed lease/sublease/domiciliation agreement

• A copy of the certificate of deposit of funds issued by the bank/notary

• A copy of the acceptance letter of the principal and substitute statutory auditors (if any)

• A copy of the valid passport of the gérant and of the statement of non-conviction and

• A copy of the beneficial owner declaration executed by the legal representative of the company: it is reminded that pursuant to the provisions of Articles L. 561-2-2, L. 561-46 à L. 561-50, R. 561-1 à R. 561-3 and R. 561-55 à R. 561-63 of the French Monetary and Financial Code, any French company (having its
registered office in a French department) must file a declaration with the clerk’s office of the Commercial Court regarding its ultimate beneficial owner (otherwise the legal representative will be liable with a fine of EUR7,500 and imprisonment). In the event the beneficial owner changes, a new declaration must be filed within 30 days of this change.

For the beneficial owner to be disclosed, he or she must be an individual (not a legal entity) who:

- owns, directly or indirectly more than 25 percent of the share capital, or
- owns, directly or indirectly, more than 25 percent of the voting rights, or
- has a power of control over the management of the declaring entity or over the general meetings of its shareholders

In the event it is not possible to determine the identity of the beneficial owner (ie, at the level of the top company, no individual fulfills one of the above criteria), the legal representative(s) of the declaring entity will have to be declared as beneficial owner; in the event the legal representative of the declaring entity is a legal entity, it will be necessary to declare the identity of the individual acting as legal representative of this legal entity.

**Société anonyme (SA)**

Must apply for registration with the Registry of Commerce and Companies (RCS) with filing of the bylaws. Process can take from 48 hours to 4 weeks (in the event the company's registered office is located in the east of France) following the filing of the required documents with the Registry of Commerce and Companies and depending on the reactivity of the Registry of Commerce and Companies where the document shall be filed. List of documents:

- A copy of the bylaws and list of subscribers
- A copy of the minutes appointing the chairman of the board and the general manager
- A copy of the signed lease/sublease/domiciliation agreement
- A copy of the certificate of deposit of funds issued by the bank/notary
- A copy of the acceptance letter of the principal and substitute statutory auditors (if any)
- A copy of the valid passport of the directors, chairman of the board and general manager and of their statement of non-conviction and
- A copy of the beneficial owner declaration executed by the legal representative of the company: it is reminded that pursuant to the provisions of Articles L. 561-2-2, L. 561-6 à L. 561-50, R. 561-1 à R. 561-3 and R. 561-55 à R. 561-63 of the French Monetary and Financial Code, any French company (having its registered office in a French department) must file a declaration with the clerk’s office of the Commercial Court regarding its ultimate beneficial owner (otherwise the legal representative will be liable with a fine of EUR7,500 and imprisonment). In the event the beneficial owner changes, a new declaration must be filed within 30 days of this change.

For the beneficial owner to be disclosed, he or she must be an individual (not a legal entity) who:
owns, directly or indirectly more than 25 percent of the share capital, or

owns, directly or indirectly, more than 25 percent of the voting rights, or

has a power of control over the management of the declaring entity or over the general meetings of its shareholders

In the event it is not possible to determine the identity of the beneficial owner (i.e., at the level of the top company, no individual fulfills one of the above criteria), the legal representative(s) of the declaring entity will have to be declared as beneficial owner; in the event the legal representative of the declaring entity is a legal entity, it will be necessary to declare the identity of the individual acting as legal representative of this legal entity.

Branch of a foreign company

The required documents to incorporate a branch in France are:

1. Name of the legal representative in France of the branch, together with a copy of his/her valid passport
2. Name of the legal representative in the US, together with a copy of his/her valid passport and his/her personal address (please note that this person can be the same as in (1) above. Consequently, the French branch would have only one legal representative, acting in France and in the US)
3. A copy of the articles of association and of the bylaws of the US company, to be certified conform to the original by the legal representative in France of the branch, together with a copy of a French translation, to be certified to conform to the original by the legal representative in France of the branch
4. Original of the certificate of incorporation of the US company issued by the relevant US authorities, dated less than 3 months (to be certified as being original by the legal representative in France of the branch), together with a French translation, certified to conform to the original by the legal representative in France of the branch
5. A short description of the business of the branch, the starting date of business and the number of employees, if any, at the time of the registration
6. A copy of the executed commercial lease or domiciliation contract for the premises where the French branch will be located (in French). We can provide for the whereabouts of a domiciliation company we are used to work with, if necessary, and
7. A copy of the beneficial owner declaration executed by the French representative of the French branch.

BUSINESS RECOGNITION

*Société par actions simplifiée (SAS)*

Highly regarded and widely used.

*Société à responsabilité limitée (SARL)*

Highly regarded and widely used.

*Société anonyme (SA)*

Highly regarded for large companies but considered as a very complex form. Not appropriate for a first
corporation in France.

SHAREHOLDER MEETING REQUIREMENTS

_Société par actions simplifiée_ (SAS)

According to the bylaws. Obligation to hold an annual meeting each year to approve the annual accounts.

_Société à responsabilité limitée_ (SARL)

Obligation to hold an annual meeting each year to approve the annual accounts.

Management structure

SA can be incorporated in accordance with 2 different management structures:

- Either with a board of directors (*Conseil d’Administration*) or
- With an executive board (*Directoire*) and a supervisory board (*Conseil de Surveillance*).

_Société anonyme_ (SA)

Obligation to hold an annual meeting each year to approve the annual accounts.

BOARD OF DIRECTOR MEETING REQUIREMENTS

_Société par actions simplifiée_ (SAS)

The law does not impose a particular management structure for the SAS except the appointment of a president. There is no obligation to have a board of directors but it can be organized by the bylaws.

_Société à responsabilité limitée_ (SARL)

There is no board of directors in SARL.

_Société anonyme_ (SA)

Meetings shall occur at least when required by law and the bylaws for the statement of the annual accounts, interim accounts (when applicable).

ANNUAL COMPANY TAX RETURNS

_Société par actions simplifiée_ (SAS)

Must annually file tax returns with French tax authority.

_Société à responsabilité limitée_ (SARL)
Must annually file tax returns with French tax authority.

*Société anonyme (SA)*

Must annually file tax returns with French tax authority.

**BUSINESS REGISTRATION FILING REQUIREMENTS**

*Société par actions simplifiée (SAS)*

Require initial registration, as well as annual filings. There are additional, on-going filing requirements including, in particular, an obligation to file its bylaws whenever they are amended and its yearly financial statements.

*Société à responsabilité limitée (SARL)*

Require initial registration, as well as annual filings. There are additional, on-going filing requirements including, in particular, an obligation to file its bylaws whenever they are amended and its yearly financial statements.

*Société anonyme (SA)*

Require initial registration, as well as annual filings. There are additional, on-going filing requirements including, in particular, an obligation to file its bylaws whenever they are amended and its yearly financial statements.

**BUSINESS EXPANSION**

*Société par actions simplifiée (SAS)*

No need to change as business expands.

*Société à responsabilité limitée (SARL)*

No need to change as business expands.

*Société anonyme (SA)*

No need to change as business expands.

**EXIT STRATEGY**

*Société par actions simplifiée (SAS)*

File dissolution and liquidation documents with the Registry of Commerce and Companies (RCS).

*Société à responsabilité limitée (SARL)*

File dissolution and liquidation documents with the Registry of Commerce and Companies (RCS).
Société anonyme (SA)

File dissolution and liquidation documents with the Registry of Commerce and Companies (RCS).

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

Société par actions simplifiée (SAS)

Annual shareholders’ meeting to approve once a year the financial statements within 6 months from the closing of the last financial year.

Société à responsabilité limitée (SARL)

Annual shareholders’ meeting to approve once a year the financial statements within 6 months from the closing of the last financial year.

Société anonyme (SA)

Annual shareholders’ meeting to approve once a year the financial statements within 6 months from the closing of the last financial year.

DIRECTOR / OFFICER REQUIREMENTS

Société par actions simplifiée (SAS)

Shareholders enjoy total freedom to set in the bylaws the composition of the management structure of the SAS. The only obligation is to have the SAS represented by a president.

Société à responsabilité limitée (SARL)

One or more manager(s) (Gérant(s)) appointed by the shareholders is/are required. The number of managers is freely determined by the bylaws.

The SARL shall be managed by one or more individuals.

Société anonyme (SA)

One of the following management structures is required:

- Either a board of directors with 3 to 18 members (Conseil d’Administration) or

- Or an executive board (Directoire) (with a maximum of 5 members) with a supervisory board (Conseil de Surveillance) with 3 to 18 members.

LOCAL CORPORATE SECRETARY REQUIREMENT

Société par actions simplifiée (SAS)
Not applicable.

_Société à responsabilité limitée (SARL)_

Not applicable.

_Société anonyme (SA)_

Not applicable.

**LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT**

_Société par actions simplifiée (SAS)_

None beyond the required president.

_Société à responsabilité limitée (SARL)_

None beyond the required managing director(s).

_Société anonyme (SA)_

None beyond the required board of directors in the event of an SA with a board of directors (Conseil d’administration) or the required executive board (Directoire) with a supervisory board (Conseil de Surveillance) in the event of an SA with an executive board (Directoire) with a supervisory board (Conseil de Surveillance).

**LOCAL OFFICE LEASE REQUIREMENT**

_Société par actions simplifiée (SAS)_

Must justify the regular occupation of the registered office for incorporation.

_Société à responsabilité limitée (SARL)_

Must justify the regular occupation of the registered office for incorporation.

_Société anonyme (SA)_

Must justify the regular occupation of the registered office for incorporation.

**OTHER PHYSICAL PRESENCE REQUIREMENTS**

_Société par actions simplifiée (SAS)_

Not applicable. Management decisions to be taken in France.

_Société à responsabilité limitée (SARL)_
Not applicable. Management decisions to be taken in France.

_Société anonyme (SA)_

Not applicable. Management decisions to be taken in France.

**SUFFICIENCY OF VIRTUAL OFFICE**

_Société par actions simplifiée (SAS)_

SAS must be at least domicile in a domiciliation company (domiciliation agreement to be signed prior the process of incorporation).

_Société à responsabilité limitée (SARL)_

SARL must be at least domicile in a domiciliation company (domiciliation agreement to be signed prior the process of incorporation).

_Société anonyme (SA)_

SA must be at least domicile in a domiciliation company (domiciliation agreement to be signed prior the process of incorporation).

**PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

_Société par actions simplifiée (SAS)_

Law firms cannot provide for a registered address. The accountant may provide for a local registered address.

_Société à responsabilité limitée (SARL)_

Law firms cannot provide for a registered address. The accountant may provide for a local registered address.

_Société anonyme (SA)_

Law firms cannot provide for a registered address. The accountant may provide for a local registered address.

**PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

_Société par actions simplifiée (SAS)_

Not applicable.

_Société à responsabilité limitée (SARL)_
NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

Société par actions simplifiée (SAS)
None.

Société à responsabilité limitée (SARL)
None.

Société anonyme (SA)
None.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Société par actions simplifiée (SAS)
Not applicable.

Société à responsabilité limitée (SARL)
Nominee shareholders do not apply. The manager cannot be a corporate entity.

Société anonyme (SA)
Nominee shareholders do not apply. The chairman of the board/CEO or the members of the executive board cannot be a corporate entity.

SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF

Société par actions simplifiée (SAS)
The president is the highest authority in the management of the SAS and governs the organization by establishing broad policies, objectives and oversee day-to-day operations of the SAS.

Société à responsabilité limitée (SARL)
The manager is appointed by the vote of shareholders. He has the broadest powers to act in the SARL’s interests, subject to powers that may be expressly attributed to the shareholders.

*Société anonyme (SA)*

Board of directors: the managing director (ie, CEO or *Directeur Général*) has broadest powers to act in the SA’s interests, with full authority to manage the SA and represent it vis-à-vis third parties.

Executive board and supervisory board: The executive board is vested with full authority to manage the SA. In principle, the chairman of the executive board represents the company vis-à-vis third parties. The supervisory board’s sole function is to control the company’s executive bodies.

**PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS**

*Société par actions simplifiée (SAS)*

Identity of the president is publicly disclosed. Identity of shareholders is not publicly disclosed.

*Société à responsabilité limitée (SARL)*

Identity of the managing director and of the shareholders is publicly disclosed.

*Société anonyme (SA)*

Identity of:

- Members of the board of directors and managing director or
- Members of the executive board and members of the supervisory board are disclosed

Identity of shareholders is not publicly disclosed.

**MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS**

*Société par actions simplifiée (SAS)*

A SAS may have one or more shareholders (either individuals or corporate entities). The number of shareholders is not limited. There must be only one president.

*Société à responsabilité limitée (SARL)*

Between one and 100 shareholders, either individuals or corporate entities. The number of managers is freely determined by the bylaws.

*Société anonyme (SA)*

Board of directors: from 3 to 18 members.
Executive board: from 2 to 5 (and up to 7 members in listed companies). Note that, if stated capital is under EUR150,000, the executive board may be composed of only one person referred to as sole managing director (Directeur Général Unique).

Supervisory board: from 3 to 18 members.

**MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

*Société par actions simplifiée (SAS)*

One shareholder is sufficient.

*Société à responsabilité limitée (SARL)*

One shareholder is sufficient.

*Société anonyme (SA)*

The number of members may not be less than 2.

The number of members may not be less than 7 if the company is a listed company.

**REMOVAL OF DIRECTORS OR OFFICERS**

*Société par actions simplifiée (SAS)*

Removal of the president allowed by a vote of the shareholders. Removal shall not intervene within vexatious circumstances and the president shall be able to defend his position with the shareholders prior to his removal.

*Société à responsabilité limitée (SARL)*

Removal of the manager allowed by a vote of the shareholders. Removal shall nevertheless be motivated and shall not intervene within vexatious circumstances, and the manager shall be able to defend his position with the shareholders prior to his removal. If dismissal is decided upon without just cause, it may give rise to damages.

*Société anonyme (SA)*

Removal of the CEO, the members of the executive board, the members of the board of directors, the chairman of the board of directors, the members of the supervisory board and the chairman of the executive board shall not intervene within vexatious circumstances, and they shall be able to defend their position with the shareholders prior to their removal (note that the removal of the CEO or the members of the executive board shall be also motivated).

**REQUIRED AND OPTIONAL OFFICERS**

*Société par actions simplifiée (SAS)*
Only one president is required by law. Possibility to appoint (if it is provided in the bylaws) managing directors, deputy managing directors or a collegial governing body.

Société à responsabilité limitée (SARL)

Typically one or more manager(s) is/are required; any other optional officer is not allowed.

Société anonyme (SA)

Board of directors: one individual to be the chairman of the board and CEO or 2 individuals to be chairman and CEO respectively is/are required. The board may appoint, upon CEO’s proposal, one or more persons to act as deputy managing directors (Directeurs Généraux Délégués).

Executive board: an executive board comprises generally 2 to 5 members who shall be individuals.

A managing director (Directeur Général) may be appointed by the supervisory board with full authority to represent the company vis-à-vis third parties, if the bylaws so provide. If stated capital is under EUR150,000, the executive board may be composed of only one person referred to as sole managing director (Directeur Général Unique).

BOARD MEETING REQUIREMENTS

Société par actions simplifiée (SAS)

According to the bylaws.

Société à responsabilité limitée (SARL)

None.

Société anonyme (SA)

According to the bylaws and the French Commercial code, the board of directors must meet at least once a year to close the annual accounts and convene the shareholders’ meeting called to approve the annual accounts; the executive board must meet at least once a year to close the annual accounts and convene the shareholders’ meeting called to approve the annual accounts, and the supervisory board must meet at least 4 time per year.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

Société par actions simplifiée (SAS)

According to the bylaws.

Société à responsabilité limitée (SARL)

For an ordinary general meeting, no quorum is required.

For an extraordinary general meeting (mainly for any decisions which imply a change of the bylaws):
• If the company is incorporated before August 4, 2005: no quorum is required

• If the company is incorporated after August 4, 2005: the general meeting's proceedings shall be considered valid only if the members present or represented have at least 1/4 of shares when first convened and 1/5 of those shares if the meeting is reconvened

Société anonyme (SA)

An ordinary general meeting may validly deliberate when first convened only if the shareholders present or represented hold at least 1/5 of the voting shares. Companies whose shares are not admitted to trading on a regulated market may provide for a higher quorum in their articles of association. If it is reconvened, no quorum is required. It makes its decisions on a majority of the votes held by the shareholders present or represented.

An extraordinary general meeting (mainly for any decisions which imply amendments of the bylaws) may validly deliberate when first convened only if the shareholders present or represented hold at least 1/4 of the voting shares and, if reconvened, 1/5 of the voting shares. Failing this, the second meeting may be postponed to a date not later than 2 months after the date originally scheduled. Companies whose shares are not admitted to trading on a regulated market may provide for higher quorums in their constitution.

The extraordinary general meeting shall make its decisions on a majority of 2/3 of the votes held by the shareholders present or represented.

Quorum and majority for board of directors:

Quorum: the board of directors may validly deliberate only if at least half of its members are present.

Majority: unless the bylaws require a larger majority, the decisions are taken on a majority vote of the members present or represented.

**MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?**

Société par actions simplifiée (SAS)

Initial capital contribution must be deposited prior to incorporation on a local bank account, or at the "Caisse des Dépôts et consignations," or a notary bank's account.

Société à responsabilité limitée (SARL)

Initial capital contribution must be deposited prior to incorporation on a local bank account, or at the "Caisse des Dépôts et consignations," or a notary bank's account.

Société anonyme (SA)

Initial capital contribution must be deposited prior to incorporation on a local bank accounts or at the "Caisse des Dépôts et consignations," or a notary bank's account.
AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?

Société par actions simplifiée (SAS)

The SAS must have statutory auditors when it meets two of the three following thresholds (no need to have an alternate statutory auditor when the principal statutory auditor is a legal entity):

- A balance sheet amounting at least to EUR4 million
- A turnover of at least EUR8 million (taxes excluded) and
- 50 employees
- The company’s books are kept locally.

Société à responsabilité limitée (SARL)

Statutory auditor is necessary if SARL exceeds two of the following three thresholds (no need to have an alternate statutory auditor when the principal statutory auditor is a legal entity):

- Pre-tax turnover over EUR8 million
- Total balance sheet over EUR4 million or
- 50 employees
- The company’s books are kept locally.

Société anonyme (SA)

SA is required to have a statutory auditor when it meets 2 of the 3 following thresholds (no need to have an alternate statutory auditor when the principal statutory auditor is a legal entity):

- A balance sheet amounting at least to EUR4 million
- A turnover of at least EUR8 million (taxes excluded) and
- 50 employees
- The company’s books are kept locally.

REQUIREMENT REGARDING PAR VALUE OF STOCK

Société par actions simplifiée (SAS)

There is no statutory minimum par value of stock.
There is no statutory minimum par value of stock.

**Société anonyme (SA)**

There is no statutory minimum par value of stock.

**INCREASING OF CAPITALIZATION IF NEEDED**

**Société par actions simplifiée (SAS)**

Effectuated by amending the bylaws which requires a majority of the shareholders according to the provisions of the bylaws. In the event of a capital increase, the shareholders have a preferential subscription right.

**Société à responsabilité limitée (SARL)**

Effectuated by amending the bylaws, which requires a majority of the shareholders, the shareholders have a preferential subscription right if provided for in the bylaws or by a decision of the general meeting.

**Société anonyme (SA)**

Effectuated by amending the bylaws, which requires a majority of the shareholders. In the event of a capital increase, the shareholders have a preferential subscription right.

**SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)**

**Société par actions simplifiée (SAS)**

Funds can be repatriated abroad via dividends, distribution of reserves or capital reduction by redemption of shares.

**Société à responsabilité limitée (SARL)**

Funds can be repatriated abroad via dividends, distribution of reserves or capital reduction by redemption of shares.

**Société anonyme (SA)**

Funds can be repatriated abroad via dividends, distribution of reserves or capital reduction by redemption of shares.

**RESTRICTIONS ON TRANSFERABILITY OF SHARES**

**Société par actions simplifiée (SAS)**
Shares are freely transferable, unless otherwise provided in the bylaws.

**Société à responsabilité limitée (SARL)**

The transfer of shares to a third party is subject to the prior approval of the majority of the shareholders representing at least half of the shares comprising the share capital, unless a stronger majority provided for the bylaws. The transfer of shares must be notified to the SARL to be enforceable against the SARL and third parties.

**Société anonyme (SA)**

Shares are freely transferable, unless otherwise provided in the bylaws.

### OBTAINING A NAME AND NAMING REQUIREMENTS

**Société par actions simplifiée (SAS)**

Must check that the name of the SAS has not already been registered with the French Trademark and Patent Office (*Institut national de la propriété industrielle*).

**Société à responsabilité limitée (SARL)**

Must check that the name of the SARL has not already been registered with the French Trademark and Patent Office (*Institut national de la propriété industrielle*).

**Société anonyme (SA)**

Must check that the name of the SA has not already been registered with the French Trademark and Patent Office (*Institut national de la propriété industrielle*).

### SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

**Société par actions simplifiée (SAS)**

Not required from a corporate law standpoint. However, at the time of the opening of a bank account in the name of the company, the bank will ask for KYC documents.

**Société à responsabilité limitée (SARL)**

Not required from a corporate law standpoint. However, at the time of the opening of a bank account in the name of the company, the bank will ask for KYC documents.

**Société anonyme (SA)**

Not required from a corporate law standpoint. However, at the time of the opening of a bank account in the name of the company, the bank will ask for KYC documents.

### APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

Société par actions simplifiée (SAS)

The bylaws freely determine the quorum and majority criteria, it being specified that the amendments of some specific provisions of the bylaws such as the temporary non-transferability of shares (inaliénabilité des actions) must be adopted by an unanimous decision.

Société à responsabilité limitée (SARL)

For an extraordinary general meeting (mainly for any decisions which imply a change of the bylaws):

- If the company is incorporated before August 4, 2005, the amendments to the bylaws shall be decided by the shareholders representing at least 3/4 of shares
- If the company is incorporated after August 4, 2005, the amendments to the bylaws shall be decided by the shareholders representing at least 2/3 of shares.

Société anonyme (SA)

For an extraordinary general meeting (mainly for any decisions which imply a change of the bylaws), the amendments to the bylaws shall be decided by the shareholders representing at least 2/3 of the shares.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

Société par actions simplifiée (SAS)

The exercise of certain businesses is subject to administrative authorization or prior approval (eg, chartered accountant, removal firm, goods traffic).

Société à responsabilité limitée (SARL)

The exercise of certain businesses is subject to administrative authorization or prior approval (eg, chartered accountant, removal firm, goods traffic).

Société anonyme (SA)

The exercise of certain businesses is subject to administrative authorization or prior approval (eg, chartered accountant, removal firm, goods traffic).

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

Société par actions simplifiée (SAS)

Not applicable.

Société à responsabilité limitée (SARL)

Not applicable.
Société anonyme (SA)

Not applicable.

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View bio
FORM OF ENTITY

GmbH – limited liability company

The GmbH is a company for all kinds of business with a corporate organization and its own legal personality. The shareholders mainly control the company by instructing the managing directors. It has a share capital, which matches the sum total of the share contributions to be made by the shareholders. Only the company is liable to creditors for corporate debts. The legal frame allows individual formation to a certain extent.

Note: Additional forms of entity structures also exist and could be useful in some instances but are not covered in this guide either because they are less commonly used types of entity structures or not as likely to be relevant to the reader.

ENTITY SET UP

Partnerships

GbR (Gesellschaft bürgerlichen Rechts), oHG (Offene Handelsgesellschaft), KG (Kommanditgesellschaft), GmbH & Co. KG

- Require no minimum share capital and
- At least 1 partner is personally unlimited liable.

Corporations

GmbH (Gesellschaft mit beschränkter Haftung) – Limited Liability Company:

- 1 or more shareholders
- EUR25,000 minimum share capital
• Liability limited to share capital

• Most popular legal form in Germany and

• Individual formation possible due to very few mandatory provisions.

UG (Unternehmergesellschaft haftungsbeschränkt) – Limited Liability Entrepreneurial Company:

• 1 or more shareholders

• EUR1 minimum share capital

• Liability limited to share capital and

• Strict requirements to accumulate yearly earnings.

AG (Aktiengesellschaft) – Stock Corporation:

• 1 or more shareholders

• EUR50,000 minimum share capital

• Liability limited to stock capital

• Generally addresses a larger number shareholders and

• Stocks fungible and can be traded at the stock markets.

KGaA (Kommanditgesellschaft auf Aktien) – Partnership limited by Shares:

• 2 partners or more: at least 1 as general partner and 1 as limited partner

• EUR50,000 minimum share capital

• General partner is personally liable without limitation (but a limited liability partner can be the general company) and

• Limited partner’s liability is limited to his share.

MINIMUM CAPITAL REQUIREMENT

GmbH – limited liability company

There is a minimum of EUR25,000.

LEGAL LIABILITY
GmbH – limited liability company

Shareholders are not liable to creditors if the share contribution has been paid in.

**TAX PRESENCE**

GmbH – limited liability company

A GmbH is usually taxed on 2 levels:

- Firstly, it is subject to corporate income tax (*Körperschaftsteuer*).
- On the second level, a GmbH is subject to trade tax (*Gewerbesteuer*), which is imposed by local municipalities (i.e., the town or city where the company is based).

Companies are obliged to add value-added tax (*Mehrwertsteuer*) to the prices of their goods or services and to invoice their customers accordingly.

**INCORPORATION PROCESS**

GmbH – limited liability company

Notarial certification for the articles of association to be filed with the local commercial register (*Handelsregister*).

As of August 1, 2022, the law on the use of digital tools and processes in company law (*Gesetz zur Umsetzung der Digitalisierungsrichtlinie*) will come into effect. This law *inter alia* provides for the possibility of an online incorporation of a GmbH.

**BUSINESS RECOGNITION**

GmbH – limited liability company

Most popular legal form in Germany. However, some people might feel more secure contracting with bigger companies, especially stock companies (AG) or smaller companies where the partners are subject to personal liability.

**SHAREHOLDER MEETING REQUIREMENTS**

GmbH – limited liability company

Generally, a written invitation by the managing directors (including the necessary information) is used. Requirements are set out in the German Limited Liability Company Act (GmbHG) and/or in the articles of association.

At least 1 shareholder meeting each year to agree on accounts.
BOARD OF DIRECTOR MEETING REQUIREMENTS

GmbH – limited liability company

Requirements depend on the respective articles of association.

ANNUAL COMPANY TAX RETURNS

GmbH – limited liability company

Must file tax returns annually for corporate income, trade and value added tax with the competent tax authorities.

BUSINESS REGISTRATION FILING REQUIREMENTS

GmbH – limited liability company

Both initial registration, as well as annual filings can be necessary. Germany recently implemented the transparency register by an amendment of its Money Laundering Act with effect as of 27 June 2017. Companies such as GmbH, AG, KG and KGaA have to submit to the transparency register specific information about their beneficial owner if a natural person directly or indirectly (with a multi-level participation structure) holds more than 25% of the capital or voting shares or exercises control in a comparable manner.

With another amendment of the Money Laundering Act with effect as of 1 August 2021, such a filing with the transparency register is required in any case where the 25% threshold is triggered, regardless of whether or not the same information can already be retrieved from the German commercial register or any other public register.

BUSINESS EXPANSION

GmbH – limited liability company

No need to change as business expands. It is also possible to open up branches of a German entity in order to expand in Germany. There are 2 groups:

- Independent branch (selbständige Zweigniederlassung) and
- Dependent office/site (unselbständige Zweigniederlassung).

The main distinctive feature is the dependency on the head office company. Whereas the independent branch engages in business activities independently (i.e., a spatial and organizational separation, independent participation in the course of business, own management with the required proxies, separate accounting and separate business assets), the dependent office/site can make out invoices only in the name of the head office company. As a consequence, while the independent branch is required to register, the dependent office/site establishment does not have to be entered in the commercial register. It is only necessary for the business activity that is being practiced to be notified at the competent local trade office (Gewerbe-/Ordnungsamt). Both groups are not separate legal entities.
EXIT STRATEGY

GmbH – limited liability company

The dissolution resolution by the shareholders starts the liquidation proceedings. The liquidation process takes at least 1 year. At the end of the liquidation process there is the ending and deletion of the company in the commercial register.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

GmbH – limited liability company

Annual accounts have to be filed with the German Federal Gazette (Bundesanzeiger).

The auditing of the annual financial statements is mandatory for large and medium-sized GmbHs in accordance with German Commercial Law.

DIRECTOR / OFFICER REQUIREMENTS

GmbH – limited liability company

Managing directors are required (at least 1).

A supervisory board is optional, unless the Company is subject to co-determination (500 employees and above), then, the supervisory board is mandatory.

For more information on directors’ duties, see our Global Guide to Directors’ Duties.

LOCAL CORPORATE SECRETARY REQUIREMENT

GmbH – limited liability company

None.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

GmbH – limited liability company

None.

LOCAL OFFICE LEASE REQUIREMENT
GmbH – limited liability company

Filing for incorporation requires an office in Germany. A lease is not required, however, a full postal address suitable for formal service of documents must be given. The actual location of the administrative headquarter can differ and therefore be in a foreign country as well.

OTHER PHYSICAL PRESENCE REQUIREMENTS

GmbH – limited liability company

None.

SUFFICIENCY OF VIRTUAL OFFICE

GmbH – limited liability company

Yes, generally possible. However, you still need a registered office address.

PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

GmbH – limited liability company

Yes, but should be only an interim solution as this bears the risk of not having enough "substance" from a tax perspective. However, in the recent past some commercial register judges have refused to register an address of a law firm. Therefore, it might not be possible to register in the future with an address of a law firm or third-party provider.

PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

GmbH – limited liability company

No local directors required as long as it is ensured that the director(s) is/are able to operate and manage the business of the GmbH primarily from Germany.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

GmbH – limited liability company

None as long as they can easily enter Germany (or obtain easily a Visa).

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR
DIRECTORS

GmbH – limited liability company

None with respect to the shareholders.

Directors must meet certain requirements under the German Limited Liability Company Act (GmbHG).

SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF

GmbH – limited liability company

The shareholders’ meeting is the highest corporate body. It can issue binding instructions to the directors to carry out certain actions, decide on rules of procedure and/or the basic direction of the business. To the extent legally permissible the articles of association can define the authority and the limitations (i.e. there needs to be a core competency for the managing directors). A number of actions are mandatory managing directors’ responsibilities (such as filing for insolvency).

The managing directors represent the company vis-à-vis third parties and run the company. Their power of attorney has unlimited external legal effect, and, thus, even binds the company if internal restrictions of their representational powers have been violated.

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

GmbH – limited liability company

The commercial register contains a list of the shareholders.

The managing director is listed in the commercial register as well.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

GmbH – limited liability company

1 shareholder.

1 director, who can be the only shareholder (managing shareholder).

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

GmbH – limited liability company

1 shareholder.
REMOVAL OF DIRECTORS OR OFFICERS

GmbH – limited liability company

The shareholders resolve on the appointment of the managing directors.

The removal of a managing director is possible at any time and without notice by the executive organ stated in the statutes. Removal must be filed for entry in the commercial register.

Please note that German law distinguishes between the position as managing director and the contractual relationship based on the service agreement. The termination of the service agreement is subject to the agreed notice period.

REQUIRED AND OPTIONAL OFFICERS

GmbH – limited liability company

None.

BOARD MEETING REQUIREMENTS

GmbH – limited liability company

There is no statutory requirement to have board meetings.

Requirements depend on the respective articles of association.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

GmbH – limited liability company

There are no statutory quorum requirements for shareholder and board meetings.

Requirements can be regulated in articles of association.

MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?

GmbH – limited liability company

The share capital must be paid to an account of the company to be established. It is possible to use a foreign bank account.

AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT
LOCALLY?

GmbH – limited liability company

The GmbH is obliged to prepare financial statements. It is obliged to draw up a balance sheet (annual balance sheet) and a profit and loss account at the end of every fiscal year. In addition, the annual financial statements are to be extended by notes with explanations. They must be drawn up in the German language. Auditing of the annual financial statements is mandatory for large and medium-sized limited liability companies.

There is no statutory rule where the books have to be kept.

REQUIREMENT REGARDING PAR VALUE OF STOCK

GmbH – limited liability company

The registered nominal amount must be at least EUR1 per share and – in case of a higher amount per share – must be a full Euro amount.

INCREASING OF CAPITALIZATION IF NEEDED

GmbH – limited liability company

Effected by amending the articles of association, which requires a notarized shareholders’ resolution.

SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)

GmbH – limited liability company

Funds can be repatriated abroad from Germany via profit withdrawal in accordance with the relevant tax provisions.

No exchange control exists.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

GmbH – limited liability company

Shares are generally transferable. However, the articles of association can restrict the transfer (i.e. by implementing approval requirements).

OBTAINING A NAME AND NAMING REQUIREMENTS

GmbH – limited liability company
The name must be distinct and must show the legal form (GmbH).

**SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS**

**GmbH – limited liability company**

The German "Know Your Client" requirements are based on the European provisions.

Most common applicable law is the Anti-Money Laundering Act (Geldwäschegesetz), pursuant to which transactions are subject to different identification and reporting requirements, with penalties resulting from non-compliance. These vary from simple proof of identification (for individuals) or a physical/electronic record of the company, to simple or enhanced due diligence, depending on the risk. For example, Politically Exposed Persons (PEPs) are always subject to an enhanced due diligence process.

The reporting is made to the Criminal Investigation Department of the relevant state and to the central Criminal Investigation Department of Germany (Central Division for Suspicious Activity Reports (Financial Intelligence Unit FIU)).

**APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

**GmbH – limited liability company**

The shareholders resolve on amendments. The resolution must have a majority of 3/4 of the votes cast. The articles of association can provide additional approval requirements. The resolution needs to be notarized.

Amended articles of association need to be filed with the commercial register.

**LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

**GmbH – limited liability company**

Before starting their business operations, all business operators must inform the trade office (Gewerbe/Ordnungsamt) of the town or local district in which the business operation is located. In some additional sectors, business licenses are necessary (i.e., pharmacies, property developers, real estate agents, brokers, security firms, pubs and hotels and banks).

**PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY**

**GmbH – limited liability company**

The purchase of a shelf company if feasible and requires a share purchase agreement. After the purchase of the company and its application for registration with the commercial register, you may take up business.
KEY CONTACTS

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GREECE

FORM OF ENTITY

Societe anonyme (S.A.)

A societe anonyme is a legal entity where liability can be imposed solely on its assets and not personally on its shareholders.

A societe anonyme is a company managed by its general meeting of shareholders and its board of directors. The board of directors is competent to decide on every act concerning the management of the company, the administration of its assets and the pursuit of the company’s business activities in general.

Directors are elected by the shareholders of the company.

Officers, who run the day-to-day operations of the company, are appointed by directors.

Limited liability company (L.T.D.)

Separate and distinct legal entity. Shareholder (partner) liability is limited solely to the assets of the company. The governing body of the company is the partners meeting (assembly) which is responsible for making major business decisions and overseeing general affairs of the company. The director (administrator) of the company is elected by the company’s partners and is the legal representative and responsible for managing the day-to-day operations and business of the company.

Private company (P.C.)

Separate and distinct legal entity. Shareholder (partner) liability is limited solely to the assets of the company. The governing body of the company is the partners meeting (assembly) which is responsible for making major business decisions and overseeing general affairs of the company. The director (administrator) of the company is elected by the company’s partners. Director is the legal representative of the company and is responsible for managing the day-to-day operations of the company.

ENTITY SET UP

Societe anonyme (S.A.)
• Unlimited number of shareholders but can be also formed as a single member company, namely as a company with 1 shareholder, either a natural or a legal person.

• Generally, no personal liability of the shareholders

• Typical documents:
  ○ The Act of establishment of a societe anonyme and
  ○ The Articles of Association of a societe anonyme, which are subject to publicity.

• Shareholders are not personally liable, but the company is liable with its own assets

• Taxed on its earnings at a corporate level, and partners are taxed on any distributed dividends (withholding tax)

• The societe anonyme can be formed before a notary public with a notarial deed or with a private document where the articles of association are included

• Board of directors has overall main management responsibilities; officers have day-to-day responsibilities.

Limited liability company (L.T.D.)

• Can be formed as a single member company, namely as company with 1 partner who is either a natural or a legal person.

• A natural or legal person cannot participate as a sole partner in more than one single member limited liability companies.

• There is no restriction to the number of partners, who can be either individuals or legal entities

• Partners are not personally liable, but company is liable with its own assets

• Taxed on its earnings at a corporate level, and partners are taxed on any distributed dividends (withholding tax)

• The LTD can be formed before a notary public with a notarial deed or with a private document where the articles of association are included

• Articles of association set forth how the business has to be managed

• Partners typically contribute in cash or in kind (eg, real estate property), only capital contributions are made.

Private company (P.C.)

• Can be formed as a single member company, namely as a company with 1 partner who is either a natural or
a legal person.

- There are no restrictions on the number of partners, who can be either individuals or legal entities
- Partners are not personally liable, but the company is liable with its own assets
- Taxed on its earnings at a corporate level and partners are taxed on any distributed dividends (withholding tax)
- Formed by a private document with few exceptions, where the articles of association are included
- Articles of association set forth how the business is to be managed
- Partners typically contribute in cash or services to the PC (capital and non-capital contributions)
- Any person can become a partner only by accepting the obligation to cover any company debt to any third party at any time in the future up to a specific amount, which has to be stated in the articles of association, either during incorporation or during any other future amendments thereof (guarantee contributions)

**MINIMUM CAPITAL REQUIREMENT**

**Societe anonyme (S.A.)**

The minimum share capital required for the establishment of a societe anonyme is currently EUR25,000, fully paid upon the establishment of the company.

**Limited liability company (L.T.D.)**

No minimum capital requirement.

**Private company (P.C.)**

No minimum capital requirement.

**LEGAL LIABILITY**

**Societe anonyme (S.A.)**

**Shareholders**

Shareholders of a societe anonyme are generally not liable for the debts of the company.

Company is solely liable for its debts with its assets.

Shareholders would be directly liable for the debts of the societe anonyme in case they misuse the company for the purpose of evading their personal liability (lifting of the corporate veil).
Members of the BoD

The Directors are liable towards the company for any fault committed by them during the management of the company’s affairs.

The BoD actions and resolutions should be directed to the best interests of the company and its stakeholders.

Every Director shall be particularly liable for any omissions or untrue statements in the balance sheets concealing the true position of the company.

The Directors of a societe anonyme may be jointly and severally liable with the company for any tort committed.

The Directors and the executive officers of a societe anonyme may be jointly and severally liable with the company for any overdue tax payment levied upon the legal person of the company.

Furthermore, the Directors are directly liable in accordance with the provisions of the Greek Bankruptcy Code.

Limited liability company (L.T.D.)

Partners are only liable for their corporate obligations through the company’s assets. Partners in principle have no personal liability whatsoever regarding the company’s affairs, obligations, responsibilities and liability towards third parties or towards the authorities.

However, the administrator(s) of a limited liability company may be jointly and severally liable with the company for any overdue tax payment levied upon the legal person of the company.

Private company (P.C.)

Partners are only liable for their corporate obligations through the company’s assets. Partners in principle have no personal liability whatsoever regarding the company’s affairs, obligations, responsibilities and liability towards third parties or towards the authorities.

However, the administrator(s) of a private company may be jointly and severally liable with the company for any overdue tax payment levied upon the legal person of the company.

**TAX PRESENCE**

Societe anonyme (S.A.)

The SA pays a corporate tax on its corporate income and then distributes dividends to shareholders who are taxed as well.

Limited liability company (L.T.D.)

Company pays a corporate tax on its corporate income and then distributes profits to partners. A tax of a specific rate is withheld for profits that are distributed by the company.

Private company (P.C.)
Company pays a corporate tax on its corporate income and then distributes profits to partners. A tax of a specific rate is withheld for profits that are distributed by the company.

**INCORPORATION PROCESS**

**Societe anonyme (S.A.)**

Pursuant to Greek Law, the incorporation of a societe anonyme is completed through a simplified procedure, which is called the "1-stop service."

The societe anonyme can be formed before a notary public with a notarial deed or with a private document where the articles of association are included (which is under control of the General Commercial Registry Services – under this regime, all documents required for the incorporation are submitted in writing or electronic form). Publicity is required for processing of the establishment of a societe anonyme in Greece.

Obligation for publicity concern among others the act of incorporation and the articles of association, if it consists of a different act, as well as any amendments thereof which do not need to have been performed by means of notarial deed.

**Limited liability company (L.T.D.)**

Established and amended by a notarial deed of notary public or a private document, which is under control of the General Commercial Registry Services. The LTD is incorporated through the "1 stop shop" authorities, as defined by law.

**Private company (P.C.)**

Incorporated through the "1 stop shop" authorities, as defined by law. The PC is established and amended by a simple private document, which is under control of the General Commercial Registry Services.

**BUSINESS RECOGNITION**

**Societe anonyme (S.A.)**

Well regarded and extensively used especially for companies that wish to have a significant share capital, different shareholders and more sophisticated decision-making.

**Limited liability company (L.T.D.)**

Well regarded and used regularly in various industries. Used frequently by foreign entities with a small scale of activity in Greece.

**Private company (P.C.)**

Relatively new type of capital company, addressed to small and medium enterprises, with lots of similarities to LTD. During recent years, this type of entity has been more frequently used by foreign entities who wish to incorporate a subsidiary in Greece due to its flexibility, simple incorporation (thorough a private agreement) and its partners’ contributions system.
SHAREHOLDER MEETING REQUIREMENTS

Societe anonyme (S.A.)

Required for approval of company’s financial statements and balance sheet.

At least 1 meeting is held for each fiscal year and no later than the 10th calendar day of the 9th month after the end of the fiscal year.

General meeting of the shareholders is solely competent to decide on:

- Amendments of the articles of association
- Election or removal of members of the BoD and auditors
- Approval of the total management of the BoD and discharge of the auditors from their liability for the specific fiscal year
- Approval of the company’s balance sheet
- Distribution of annual profits
- Approval of payment or advance payment of fees to the members of the BoD
- For companies listed in regulated markets, approval of remuneration policy and remuneration report for the members of the BoD and the general manager or its deputy, if any
- Company’s merger, division (demerger), conversion, revival, extension of duration or dissolution
- Appointment of liquidators

Limited liability company (L.T.D.)

There is a law requirement to hold an annual meeting of partners for the purpose of voting on approval of the balance sheet, no later than the 10th calendar day of the 9th month after the end of the fiscal year.

Private company (P.C.)

There is a law requirement to hold annual meeting of partners for the purpose of voting on approval of the balance sheet, no later than the 10th calendar day of the 9th month after the end of the fiscal year.

BOARD OF DIRECTOR MEETING REQUIREMENTS

Societe anonyme (S.A.)

Board of directors convenes whenever the law, the articles of association or the needs of the company so require.
Limited liability company (L.T.D.)

There is no requirement for annual meeting of directors. Provisions of articles of association may determine any meeting requirements.

Private company (P.C.)

There is no requirement for annual meeting of directors. Provisions of articles of association may determine any meeting requirements.

**ANNUAL COMPANY TAX RETURNS**

Societe anonyme (S.A.)

Must file tax returns annually to the tax authorities. For the fiscal year 2021, the corporate income tax was 22 percent. There is a tax withholding to dividends at five percent.

Limited liability company (L.T.D.)

Must annually file tax returns to the tax authorities. For the fiscal year 2021, the corporate income tax was 22 percent. There is a tax withholding to dividends at five percent.

Private company (P.C.)

Must annually file tax returns to the tax authorities. For the fiscal year 2021, the corporate income tax was 22 percent. There is a tax withholding to dividends at five percent.

**BUSINESS REGISTRATION FILING REQUIREMENTS**

Initial registration as well as annual fillings are required with General Commercial Registry.

**BUSINESS EXPANSION**

Societe anonyme (S.A.)

Not applicable for this jurisdiction.

Limited liability company (L.T.D.)

There is no need for changes as the business expands. It can be converted to societe anonyme if decided by the partners’ meeting.

Private company (P.C.)

There is no need for changes as the business expands. It can be converted to societe anonyme if decided by the partners’ meeting.
EXIT STRATEGY

Societe anonyme (S.A.)

A societe anonyme can be dissolved either by decision of the shareholders or by court decision or due to the expiration of its duration or due to its entering into insolvency proceedings. The dissolution of the company is registered to the General Commercial Registry. Liquidation of the company follows.

Limited liability company (L.T.D.)

A limited liability company can be dissolved due to provisions of law or the articles of association or by decision of the general partner’s meeting or by court decision or due to its entering into insolvency proceedings. The dissolution of the company is registered to the General Commercial Registry. Liquidation of the company follows.

Private company (P.C.)

A private company can be dissolved either by decision of the general partner’s meeting or due to its entering into insolvency proceedings or due to provisions of law or the articles of association. The dissolution of the company is registered to the General Commercial Registry. Liquidation of the company follows.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

Societe anonyme (S.A.)

Submission of financial statements together with balance sheet, management report and auditor’s report, if required by law, to be registered to the Companies’ Registry. Additionally, several other decisions of shareholders as well as BoD decisions must be registered to the General Commercial Registry.

Limited liability company (L.T.D.)

Annual financial statements of the company are registered to the General Commercial Registry and some other decisions of the partners meeting.

Private company (P.C.)

Annual financial statements of the company are registered to the General Commercial Registry and some other decisions of the partners meeting.

DIRECTOR / OFFICER REQUIREMENTS

Societe anonyme (S.A.)

The board of directors is appointed by the shareholders of the company.

The initial board of directors is specified in the articles of association.

Generally, the BoD consists of 3 up to 15 members by law. There is an exception for an SA with small annual turnover (category very small- and/or small-sized entity) where only 1 director may be appointed. In this case, the limited liability company is the main form of legal structure.
case, the sole director may solely be a natural person.

The shareholders may -either via a general meeting resolution or through a special provision to the Company’s Articles of Association- elect to have corporate matters managed by a staggered board.

The board appoints its legal representative.

**Limited liability company (L.T.D.)**

Director of the company is appointed either by the articles of association or by the decision of partners meeting. There can be 1 or more directors, who can be partners or third parties. In case there is no specific provision in the articles, all partners of the company act as directors by law.

**Private Company (P.C.)**

Director of the company is appointed either by the articles of association or by the decision of partners meeting. There can be 1 or more directors, who can be partners or third parties. In case there is no specific provision in the articles, all partners of the company act as directors by law.

For more information on directors’ duties, see our [Global Guide to Directors’ Duties](#).

**LOCAL CORPORATE SECRETARY REQUIREMENT**

Not applicable for this jurisdiction.

**LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT**

Not applicable for this jurisdiction.

**LOCAL OFFICE LEASE REQUIREMENT**

A lease agreement, sub-lease agreement or a concession of use of space in force is provided by the company to the General Commercial Registry to prove its registered address. Depending on the company’s activity, a commercial lease agreement may be essential for the legitimate operation of the company.

**OTHER PHYSICAL PRESENCE REQUIREMENTS**

Not applicable for this jurisdiction.

**SUFFICIENCY OF VIRTUAL OFFICE**

Not applicable for this jurisdiction.
PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

A local registered address can be temporarily provided by a law firm or a third-party until a permanent registered address is found.

PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Not applicable for this jurisdiction.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

Directors, shareholders and officers should have an official work/residence permit if they are non-EU citizens.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Not applicable for this jurisdiction.

SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF

Directors represent a company and act in its name in all activities that are covered by the company’s scope and provided within AoA.

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

Identity of directors of all company types and identity of shareholders of LTDs and PCs is registered in the General Commercial Registry.

The identity of shareholders may be subject to registration with the national Ultimate Beneficial Owner Registry.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

Not applicable for this jurisdiction.
MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

Not applicable for this jurisdiction.

REMOVAL OF DIRECTORS OR OFFICERS

Societe anonyme (S.A.)

Appointed directors may be removed at any time by those having the right to appoint them (general meeting of the shareholders) and be replaced by others. Revocation and appointment of new directors are to be registered to the General Commercial Registry.

Board of directors is competent to decide on a removal of an officer.

Limited liability company (L.T.D.)

Directors can be removed by decision of the general partners' meeting or by court decision. Revocation of directors is registered in the General Commercial Registry.

Private company (P.C.)

Directors can be removed by decision of the general partners' meeting or by court decision. Revocation of directors is registered to the General Commercial Registry.

REQUIRED AND OPTIONAL OFFICERS

Not applicable for this jurisdiction.

BOARD MEETING REQUIREMENTS

Societe Anonyme (S.A.)

The BoD convenes at the registered address of the company, but may also convene inside or outside Greece if provided in the articles of association or all members are present or represented. Another way of holding a meeting is by teleconference. The BoD is convened each time it must take a decision within its scope of authority.

Limited Liability Company (L.T.D.)

Provisions of articles of association determine any meeting requirements if there is more than 1 director.

Private Company (P.C.)

Provisions of articles of association determine any meeting requirements if there is more than 1 director.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS
Société anonyme (S.A.)

Decisions of the general meeting are taken by absolute majority of shares casted, unless increased quorum is provided by the company’s articles of association and/or by the law.

Board meeting decisions are taken by absolute majority of the board members.

Limited liability company (L.T.D.)

Decisions during the meetings are taken by majority plus half of the total number of partners, representing more than half of the total company capital save otherwise, provided explicitly for in the law.

Private company (P.C.)

Decisions during the meetings are taken by absolute majority of the total number of partners unless increased quorum is provided by the company’s articles of association and/or by the law.

MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?

A bank account must be opened upon completion of transaction for the payment of share capital. The bank account may be held either in a local bank or in a bank institution of the European Economic Area.

AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?

An auditor must be located in Greece, and the company’s books must be kept locally. This applies for all types of companies.

REQUIREMENT REGARDING PAR VALUE OF STOCK

Société anonyme (S.A.)

Nominal value of each share may not be fixed at an amount lower than EUR 0.04 and higher than EUR100. The issue of shares below par is prohibited.

The issue of shares below par is prohibited.

Limited liability company (L.T.D.)

Not less than EUR1.

Private company (P.C.)

Not less than EUR1.
INCREASING OF CAPITALIZATION IF NEEDED

Societe anonyme (S.A.)

Increase of the share capital may be made either by decision of the general meeting of shareholders, with the ordinary or extraordinary quorum and majority or by a decision of the board of directors, according to the provisions of Greek law and the articles of association of the company. Increase of the company capital may only take place through amendment of the articles of association and following a resolution of the general meeting. Accordingly, the share capital increase is effectuated as soon as the essential registrations to the General Commercial Registry are made.

Limited liability company (L.T.D.)

Increase of the company capital takes place through amendment of the articles of association and following a resolution of the general meeting taken with the extraordinary quorum and increased majority and pursuant to Greek law. Accordingly, the share capital increase is effectuated as soon as the essential registrations to the General Commercial Registry are made.

Private company (P.C.)

Increase of the company capital takes place through amendment of the articles of association and following a resolution of the general meeting taken with the extraordinary quorum and majority and pursuant to Greek law. Accordingly, the share capital increase is effectuated as soon as the essential registrations to the General Commercial Registry are made.

SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)

Not applicable for this jurisdiction.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

Societe anonyme (S.A.)

Shares may be freely transferred unless the articles of association provide for the issuance of restricted stocks and/or stock options granted to certain shareholders.

Limited liability company (L.T.D.)

Corporate parts may be freely transferred unless otherwise stipulated in the articles of association or in the law.

Private company (P.C.)

Corporate parts may be freely transferred unless otherwise stipulated in the articles of association or in the law.
OBTAINING A NAME AND NAMING REQUIREMENTS

Societe anonyme (S.A.)

Societe anonyme can be named after the type of business it is engaged in.

A company's name may also include the name and surname of founders or shareholders.

The company name must in any case include words "Societe Anonyme." If the company is single member, the name must include the words Single Member Societe Anonyme.

In the case company's object covers many fields, the company's name may be formed from the most important among them.

For a company's international transactions, company name may be presented in a foreign language, accurate translation or the Latin alphabet.

Verification regarding the nonexistence of previous registration of the corporate name at stake on the General Commercial Registry is mandatory before obtaining a name.

Limited liability company (L.T.D.)

Name of LTD could be either objective, which means it is formed according to the object and the purpose of the enterprise; or subjective, meaning it is formed by the name of 1 or more of partners; or a combination of the above. In addition, written mention of "Limited Liability Company" is obligatory, mainly to inform transacting parties. If the company is single member, the name must include the words Single Member Limited Liability Company.

Verification regarding the nonexistence of previous registration of the corporate name at stake on the General Commercial Registry is mandatory before obtaining a name.

Private company (P.C.)

Name could be either objective, which means it is formed according to the object and the purpose of the enterprise; or subjective, meaning it is formed by the name of 1 or more of partners; or a combination of the above. In addition, written mention of "Private Company" is obligatory, mainly to inform the transacting parties. If the company is single member, the name must include the words Single Member Private Company.

Verification regarding the nonexistence of previous registration of the corporate name at stake on the General Commercial Registry is mandatory before obtaining a name.

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

"KNOW YOUR CLIENT" requirements are not mandatory for any legal person to cooperate with a law firm.

"KNOW YOUR CLIENT" requirements constitute a mandatory process relating to banking transactions (i.e. opening of a banking account).
Greek legislation stipulates the mandatory registration in the Central Register of UBO of companies based in Greece or conducting business activity taxed in Greece.

**APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

**Societe anonyme (S.A.)**

Amendment of company’s articles of association may be made according to the provisions of local legislation and its articles of association. Depending on the issue at stake, a resolution of the general meeting must be taken with absolute majority or with an increased majority of 2/3 of the votes casted in the general meeting.

Accordingly, the resolution of the general meeting and the deed of amendment of the articles of association are to be registered to the General Commercial Registry.

**Limited liability company (L.T.D.)**

Amendment of a company’s articles of association may be made following a general meeting resolution, which is taken by a majority corresponding to the presence of more than 1/2 of the partners of the company representing at least 65 percent of total corporate parts (shares) of the company.

Accordingly, the resolution of the general meeting and the deed of amendment of the articles of association are to be registered to the General Commercial Registry.

**Private company (P.C.)**

Amendment of the company’s articles of association may be made following a general meeting resolution, which is taken by an increased majority of 2/3 of the total corporate parts. Concerning certain items provided for in the law, amendment of the company’s articles of association may be made following a resolution of the administrator of the company.

Accordingly, the resolution of the general meeting and the deed of amendment of the articles of association are to be registered to the General Commercial Registry.

**LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

Not applicable for this jurisdiction.

**PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY**

Not applicable for this jurisdiction.
KEY CONTACTS

Aris Papaspyridis
Partner
Argyropoulou – Papaspyridis (AP Law Firm)
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View bio
FORM OF ENTITY

Limited private companies

Separate and distinct legal entity. Managed by a board of directors, which is responsible for making major business decisions and overseeing the general affairs of the corporation. Directors are elected by the shareholders or the board of the corporation. Officer could be appointed by directors to run the day-to-day operations of the corporation.

Note: Additional forms of entity structures also exist and could be useful in some instances but are not covered in this guide either because they are less commonly used types of entity structures or they are not as likely to be relevant to the reader.

ENTITY SET UP

Limited private companies

- Up to 50 shareholders
- Right to transfer shares restricted
- Invitation to public to subscribe for any shares or debentures prohibited
- Generally no personal liability of the shareholders
- Taxed on its profits at a corporate level. No tax on capital gains or dividends
- Typical corporate documents include:
  - Articles of association
Certificate of incorporation

Business registration certificate

Board resolutions

Shareholders’ resolutions

Share certificates

Common seal (optional) and

Registers.

Board of directors has overall management responsibility.

Annual return, notification of changes (such as share capital and directors) and creation of certain charges must be filed with the Companies Registry.

Limited public companies

No restrictions on number of shareholders, right to transfer and invitation to public to subscribe for shares or debentures.

Interim and annual report also to be filed with Hong Kong Stock Exchange if the public company is listed in Hong Kong Stock Exchange.

Companies limited by guarantee (without a share capital)

Same as limited private companies, except liability of shareholders limited by the company’s articles to the amount that the shareholders undertake to contribute to the assets of the company in the event of it being wound up.

MINIMUM CAPITAL REQUIREMENT

Limited private companies

No minimum capital requirement.

LEGAL LIABILITY

Limited private companies

Shareholders of a corporation are generally not liable for the debts of a corporation aside from their financial contribution to the corporation.

TAX PRESENCE
Limited private companies

A limited private company is taxed on its business profits at a corporate level. There are no tax on capital gains or dividends.

**INCORPORATION PROCESS**

Limited private companies

File Incorporation Form, Notice to Business Registration Office and Articles of Association with the Companies Registry.

**BUSINESS RECOGNITION**

Limited private companies

Well regarded and widely used.

**SHAREHOLDER MEETING REQUIREMENTS**

Limited private companies

Save for an annual general meeting, regular meetings are not mandatory.

**BOARD OF DIRECTOR MEETING REQUIREMENTS**

Limited private companies

Regular meetings are not mandatory unless required by a shareholders’ agreement and/or articles of association. However, it is recommended to convene board meetings to approve corporate changes and significant transactions.

**ANNUAL COMPANY TAX RETURNS**

Limited private companies

Must annually file tax returns with the Inland Revenue Department.

**BUSINESS REGISTRATION FILING REQUIREMENTS**

Limited private companies

Business registration with the Inland Revenue Department valid for 1 or 3 years is required.
BUSINESS EXPANSION

Limited private companies

There is usually no need to change the articles of association as the business expands, unless the business scope is clearly stated in the articles. There may be a need to change the business scope in the business registration certificate.

EXIT STRATEGY

Limited private companies

Exit usually takes place by:

- Voluntary winding up of the company
- Sale of shares or
- Sale of assets.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

Limited private companies

- Annual general meeting: Generally required to hold an annual general meeting of shareholders 9 months after the end of its accounting reference period. Audited financial statements must be tabled at the annual general meeting. The annual general meeting can be replaced by written resolutions by all shareholders. This requirement may be waived for certain companies.

- Annual Return: Generally required to be filed with the Companies Registry within 42 days after the date to which the return is made up to with updated company's information, including the shareholders' and the directors' information.

- Audited financial statements: Required to be prepared up to the end of the financial year of the company in accordance with the Hong Kong GAAP.

- Renewal of Business Registration Certificate

DIRECTOR / OFFICER REQUIREMENTS

Limited private companies

At least 1 director; at least 1 director must be a natural person.

For more information on directors' duties, see our Global Guide to Directors’ Duties.
LOCAL CORPORATE SECRETARY REQUIREMENT

Limited private companies

Company secretary must be either a Hong Kong corporate or an individual who is a Hong Kong resident.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Limited private companies

None beyond the required natural director and company secretary.

LOCAL OFFICE LEASE REQUIREMENT

Limited private companies

None required.

OTHER PHYSICAL PRESENCE REQUIREMENTS

Limited private companies

Each Hong Kong company must have a registered office in Hong Kong.

SUFFICIENCY OF VIRTUAL OFFICE

Limited private companies

Sufficient.

PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Limited private companies

Allowed.

PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Limited private companies
Allowed. Starting from March 1, 2018, company service providers are required to apply for a Trust or Company Service Provider License from the Registrar of Companies.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

Limited private companies

None, except for the company secretary (see Local corporate secretary requirement).

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Limited private companies

None, except 1 natural director is required.

SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF

Limited private companies

Directors are appointed by the shareholders or the board (if permitted by the articles of association), and the board of directors is the highest authority in the management of the corporation and governs the organization by establishing broad policies and objectives. In contrast, officers may be appointed by the directors to oversee day-to-day operations of the corporation.

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

Limited private companies

Identity of directors and shareholders is publicly disclosed in filings with the Companies Registry.

Starting from March 1, 2018, companies incorporated in Hong Kong (except for listed and exempted companies) are required to create and maintain a significant controllers register. The register will not be publicly available but should be open for inspection by law enforcement officers upon demand.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

Limited private companies

A minimum of 1 shareholder and a maximum of 50 shareholders (otherwise the company will become a public company). A minimum of 1 natural director and no maximum number of directors.
MINIMUM NUMBER OF SHAREHOLDERS REQUIRED
Limited private companies

1 shareholder is sufficient.

REMOVAL OF DIRECTORS OR OFFICERS
Limited private companies

Removal of directors is generally allowed in general meeting (written resolution is not allowed) by an ordinary resolution of shareholders, but note special procedures apply (e.g., the director must be given the right to be heard before a decision).

REQUIRED AND OPTIONAL OFFICERS
Limited private companies

None, except director and company secretary.

BOARD MEETING REQUIREMENTS
Limited private companies

Notice to all directors, but directors can agree to short notice.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS
Limited private companies

If a company has only 1 member, that member present is a quorum of a general meeting of the company. Otherwise, 2 members is a quorum of a general meeting of the company subject to a higher threshold in the articles of association.

Quorum of board meetings depends on the articles of association of the company.

MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?
Limited private companies

Not necessary. A company can have a bank account anywhere.

AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED
IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?

Limited private companies

Audit of financial statements by registered Hong Kong auditors is required, but such audited financial statements are not publicly available. A company’s accounting records must be kept at its registered office or any other place that the directors think fit. If a company’s accounting records are kept at a place outside Hong Kong, the accounts and returns with respect to the business dealt with in those records must be sent to, and kept at, a place in Hong Kong.

Audited accounts must be approved by the board and tabled at annual general meeting.

REQUIREMENT REGARDING PAR VALUE OF STOCK

Limited private companies

No par value.

INCREASING OF CAPITALIZATION IF NEEDED

Limited private companies

The company may:

- Increase its share capital without allotting and issuing new shares, if the funds or other assets for the increase are provided by the members of the company
- Capitalize its profits, with or without allotting and issuing new shares, and
- Allot and issue bonus shares with or without increasing its share capital.

SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)

Limited private companies

Funds can be repatriated abroad via dividends, redemption (if the relevant shares are issued as redeemable shares), or share buyback. Different rules and procedures apply in each case.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

Limited private companies

Shares can generally be transferred, but company may refuse to register the transfer. Note also that the transfer documents must be duly stamped or adjudicated before the transfer can be registered by the company.
OBTAINING A NAME AND NAMING REQUIREMENTS

Limited private companies

No name reservation system. Name must generally end with "Limited." There are specific words that relate to the government and certain industries, which are prohibited.

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

Limited private companies

Professional service providers complete customer due diligence according to guidelines issued by the Companies Registry on compliance of anti-money laundering and counter-terrorist financing requirements for Trust or Company Service Providers.

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

Limited private companies

Generally the Articles of Association can be amended by special resolution of shareholders.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

Limited private companies

Generally no license is required, except business registration with the Inland Revenue Department. Certain businesses require special licenses (e.g., telecommunications).

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

Limited private companies

Shelf companies can be purchased from third-party service providers, but are less common nowadays.
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FORM OF ENTITY

Private company limited by shares (Zrt.)

Private company limited by shares (zártkőren mkőd részvénytársaság or Zrt.) is a separate and distinct legal entity.

A Zrt. is established with a predetermined amount of share capital. Such share capital is represented by shares with a face (par or nominal) value. The shares may be issued either as printed shares or dematerialized (i.e. e-shares registered on a securities/investment account).

The owners of a Zrt. are the shareholders. Liability of the shareholders is limited to their respective share capital contributions.

Managed by a board of directors, which is responsible for making major business decisions and overseeing the general affairs of the Zrt. Shareholders may also decide to appoint a single director instead of a board to perform the duties of the board of directors (references to “board of directors” throughout this guide should be interpreted accordingly).

Directors are elected by shareholders of a Zrt. Company managers (who must be employees of the company) may also be appointed by shareholders to assist the directors in day-to-day operations.

Limited liability company (Kft.)

Limited liability company (korlátolt felelsség társaság or Kft.) is a separate and distinct legal entity.

A Kft. is established with a predetermined amount of initial capital provided by its quotaholders. Equity contribution of such quotaholders is not – and must not be – embodied in any negotiable instrument (e.g. share certificate). Liability of the quotaholders is limited to their capital contributions.

Managed by managing directors appointed by quotaholders. Shareholders may also decide to set up a board of directors instead of appointing one or more individual managing directors (references to “managing directors” throughout this guide should be interpreted accordingly). Company managers (who must be employees of the company) may also be appointed by quotaholders to assist managing directors in the day-to-day operations of the corporation.
Note: Further corporate forms are also available: general partnership (közkereseti társaság or Kkt.), limited partnership (betéti társaság or Bt.) and public company limited by shares (nyilvánosan működ részvénytársaság or Nyrt.). However, these corporate forms are not very common in the Hungarian market.

ENTITY SET UP

Private company limited by shares (Zrt.)

- Unlimited number of shareholders.
- Generally, no personal liability of shareholders.
- Taxed on its worldwide income at a corporate level. Dividends paid to (resident and non-resident) corporate shareholders are exempt from taxation in Hungary. Only dividends paid to (resident and non-resident) individual shareholders are subject to withholding tax.
- Typical charter documents include the articles of association, stock certificates and stock ledger.
- Board of directors has overall management responsibility.
- At least 1 shareholders’ meeting must be held each year (to resolve on the acceptance of the annual financial statements and the payment of dividend).
- Upon the foundation of the Zrt. as well as on any subsequent capital increases fresh capital can be injected in the form of cash or in-kind contributions.
- The type of shares that a Zrt. can issue can be structured flexibly, including ordinary shares, preferred and deferred shares as well as employee shares (with limited transferability).
- Annual financial statements to be filed electronically by uploading them to a website operated by the Ministry of Justice (e-beszamolo.im.gov.hu) and these can be accessed by the general public.

Limited liability company (Kft.)

- Unlimited number of quotaholders allowed.
- Generally, no personal liability of quotaholders.
- Typical charter documents include the articles of association (in the case of sole quotaholder Kft. this is called “deed of foundation”) and list of quotaholders.
- At least 1 quotaholders’ meeting must be held each year (to resolve on the acceptance of the annual financial statements and the payment of dividend).
• Quotaholders contribute cash or in-kind contributions to Kft.

• If the articles of association so provides, the quotaholders may be required to provide a Kft. with supplementary capital contributions in order to cover losses. These payments do not increase the quotaholders’ quota in the company. The Kft must repay these contributions to the quotaholders as soon as its financial position allows it.

• Taxed on its worldwide income at a corporate level. Dividends paid to (resident and non-resident) corporate shareholders are exempt from taxation in Hungary. Only dividends paid to (resident and non-resident) individual shareholders are subject to withholding tax.

**MINIMUM CAPITAL REQUIREMENT**

Private company limited by shares (Zrt.)

At least HUF 5 million (USD 16,000).

Limited liability company (Kft.)

At least HUF 3 million (USD 10,000).

**LEGAL LIABILITY**

Private company limited by shares (Zrt.)

Shareholders of a Zrt. are generally not liable for its debts, liability of shareholders is limited to their respective share capital contributions. However, in extreme cases, such as in the case of insolvency, shareholders may be held liable if it is proven that they have “abused limited liability”.

Limited liability company (Kft.)

Quotaholders are generally not liable for the debts of a Kft., liability of quotaholders is limited to their capital contributions. However, in extreme cases, such as in the case of insolvency, shareholders may be held liable if it is proven that they have “abused limited liability”.

**TAX PRESENCE**

Private company limited by shares (Zrt.)

A Zrt., as a Hungarian resident company, is taxed on its worldwide income subject to conditions of double tax treaty provisions. A company is resident if it has been incorporated in Hungary or has its place of effective management in Hungary.

Limited liability company (Kft.)

A Kft., as a Hungarian resident company, is taxed on its worldwide income subject to conditions of double tax treaty provisions. A company is a resident if it has been incorporated in Hungary or has its place of effective
management in Hungary.

INCORPORATION PROCESS

A corporate entity is established by:

- Founding shareholders or quotaholder(s) executing, among other documents, the articles of association of a company; to be effective, the articles of association must be countersigned by a lawyer or must be incorporated into a notarial deed

- Filing an application for registration with the Court of Registration within 30 days from the date of execution of the articles of association and

- Registration of a corporate entity with the court of registration. The registration procedure is generally completed within 1 to 15 working days after the application is filed.

Representation by a Hungarian attorney at law is mandatory in the course of registration.

Registration has a constitutive effect (i.e., a corporate entity is deemed to exist from the date of registration). However, with the registration the acts of the would-be company taken after the countersigning of the articles of the association shall be deemed the act of the registered company with retroactive effect.

Note: The mandatory set of documentation differs between the corporate form. In addition, directors or managing directors and other officers (e.g., statutory auditor or supervisory board members) must execute certain documents (e.g., declaration of acceptance).

BUSINESS RECOGNITION

Private company limited by shares (Zrt.)

Well regarded and widely used.

Limited liability company (Kft.)

Most widely used corporate form in Hungary, more than ninety per cent of all companies operating in Hungary are Kfts.

SHAREHOLDER MEETING REQUIREMENTS

Private company limited by shares (Zrt.)

A Zrt. is required to hold an annual meeting of shareholders to vote on the acceptance of annual financial statements and payment of dividends. The shareholders’ meeting is convened by a board of directors.
Limited liability company (Kft.)

A Kft. is required to hold an annual meeting of quotaholders to vote on the acceptance of annual financial statements and payment of dividends. The quotaholders’ meeting is convened by managing directors.

**BOARD OF DIRECTOR MEETING REQUIREMENTS**

Private company limited by shares (Zrt.)

Annual meeting of a board of directors is required. If the Zrt. has a supervisory board, the board of directors must present a report on the financial position of the company quarterly to the supervisory board (this presupposes quarterly board meetings).

Limited liability company (Kft.)

Since managing directors do not act as a board but as individual officers (i.e., directors) of a Kft., an annual meeting of the managing directors is not required. However, managing directors may still hold meetings informally at their convenience.

**ANNUAL COMPANY TAX RETURNS**

Private company limited by shares (Zrt.)

Corporate income tax is self-assessed. Annual corporate income tax returns must be filed until the last day of the 5th month following the end of the tax year.

Limited liability company (Kft.)

Corporate income tax is self-assessed. Annual corporate income tax return must be filed until the last day of the 5th month following the end of the tax year.

**BUSINESS REGISTRATION FILING REQUIREMENTS**

Private company limited by shares (Zrt.)

- Court of Registration – initial registration;
- Central Statistical Office – statistical number issued in the course of initial (court) registration (no separate filing is needed);
- Chamber of commerce – after initial (court) registration;
- Tax Authority – tax number is issued in the course of initial (court) registration (no separate filing is needed);
- Central clearing house – requesting ISIN code for the shares, after initial (court) registration.
Limited liability company (Kft.)

- Court of Registry – initial registration;
- Central Statistical Office – statistical number issued in the course of initial (court) registration (no separate filing is needed);
- Chamber of commerce – after initial (court) registration;
- Tax Authority – tax number is issued in the course of initial (court) registration (no separate filing is needed).

BUSINESS EXPANSION

No need to change as business expands.

EXIT STRATEGY

The primary exit route is the sale of the equity stake held in the Zrt. (i.e. the shares) or Kft. (i.e. the quota). In the case of Kfts the other quotaholders, the Kft. itself and -if applicable- any third person designated by the quotaholders meeting will have a right of first refusal upon the transfer of quotas to third parties. The equity stakes can also be contributed to other companies’ share capital as in kind contribution (allowing for share-for-share exits).

If no exit transaction is feasible or preferred, corporate entities may conduct a voluntary dissolution procedure (végelszámlás) to liquidate their assets and to settle their debts. Dissolution documentation must be filed with the Court of Registration after completion of the procedure. The tax authority usually conducts an audit of final tax returns. The assets of the company remaining after the settlement of debts can be distributed to the shareholder(s)/quotaholder(s).

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

Companies must prepare, submit and publish annual financial statements until the last day of the 5th month following the end of the tax year (due to COVID-19, such deadline was extended until 30 September 2020 with respect to the 2019 financial statements). If the company fails to submit and publish its financial statements upon the request of the tax authority, default penalty is assessed up to HUF 200,000 and the tax authority requests the company to rectify such non-compliance within 30 days. If the company fails the submit and publish its financial statement within the additional 30-day deadline, the tax authority withdraws the tax number of the company and initiates the deletion procedure of the company at the Court of Registration.

DIRECTOR / OFFICER REQUIREMENTS

Basically, any natural person can be appointed as director provided that such person is of legal age and their legal capacity is not restricted.
A person may not serve as a director if they:

- Were sentenced by a final court decision to imprisonment, until the person is deemed relieved from the detrimental consequences related to the committed criminal act
- Are barred by a final court decision from accepting a director (or other executive officer) position or
- Are barred by a final court decision from exercising a regulated profession, which is in the scope of major business activities pursued by the Zrt.

In case of a Kft., legal entities (e.g. a Kft.) may also be appointed as managing director (i.e., corporate director). In this case, a natural person is appointed to represent a corporate director.

For more information on directors’ duties, see our Global Guide to Directors’ Duties.

**LOCAL CORPORATE SECRETARY REQUIREMENT**

Not applicable for this jurisdiction.

**LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT**

It is possible and lawful to establish a wholly foreign-owned and -managed company. Representation by a Hungarian attorney at law is mandatory in the course of the initial corporate registration and subsequent amendment registration procedures before the Court of Registration.

Due to professional qualification requirements, companies are recommended to engage local accountants or accountancy firms to perform day-to-day business, accounting and taxation tasks for the company.

**LOCAL OFFICE LEASE REQUIREMENT**

Corporate entity’s registered seat must be in Hungary. For the purpose of the foregoing “registered seat” means the place indicated in the company’s articles of association as such where the company must be able to take delivery of its correspondence and where it must be able to provide access to its books and statements specific under applicable law. The place of “central administration” (i.e. place of effective management) of a corporate entity may be located outside of Hungary. From a taxation perspective, this may result in dual tax residency and potential double taxation for Hungarian purposes which can be mitigated based on the provisions of a relevant double tax treaty.

**OTHER PHYSICAL PRESENCE REQUIREMENTS**

Hungarian tax law does not stipulate specific minimum substance requirements for companies, but general
anti-avoidance rules are in effect concerning business transactions.

Accordingly, artificial structures that aim, exclusively or mainly, at tax avoidance may be disregarded, and the real substance of such transactions may be considered for taxation purposes especially based on the following anti-avoidance principles:

- A contract, transaction or any other arrangement is assessed by the tax authorities for taxation purposes based on its actual substance (the legal substance of the transaction prevails over its legal form)
- Taxation rights must be exercised properly. Transactions and contracts that aim at tax avoidance are regarded as abuse of rights. In this case, tax liabilities must be assessed as if the parties had not abused rights
- If, in respect to legal relationships affected by international treaties or income generated from such relationships, the available facts or the different interpretation of international treaty rules by the respective countries involve that the income realized from the legal relationship is not taxable in any country, then Hungary does not provide tax exemption in respect to that income.

SUFFICIENCY OF VIRTUAL OFFICE

A corporate entity's registered seat must be in Hungary.

A corporate entity must be available at the address of its registered seat and must mark it with a sign indicating the corporate entity's name. As a minimum, the registered seat functions as the corporate entity's:

- Mailing address and
- Place where business and official documents specified under applicable law are filed, safeguarded and archived and where they can be accessed.

If the place of the effective/ de facto management of the company is different from the registered seat, such additional place must also be indicated in the articles of association.

PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Provision of a local registered address is strictly regulated in Hungary. Law firms are no longer authorized to provide this service, however, third-party service providers may provide the registered address on the basis of a written contract.

If the local registered address is provided by a third-party service provider and an administrative penalty was imposed on the corporate entity due to the hindrance of tax administration proceedings, then the corporate entity will qualify as a "risky taxpayer" resulting in, amongst other consequences, less favorable rules for VAT refunds and potentially higher default penalties in the case of tax audits conducted by the Hungarian tax authority.

As a general rule, only real estate that is in the sole ownership of the service provider or such service provider is
entitled to use it under a right (e.g., usufruct) which is registered in the land registry can be provided as a registered seat to corporate entities.

An exception to the general rule is if the owner of the real estate gives its prior written consent to the provision of such service and one of the following conditions is met:

- the parties (i.e., the service provider and the corporate entity) are affiliated entities;
- the service provider is registered as a delivery agent (of a foreign shareholder or quotaholder or executive officer of a corporate entity) into the companies register kept by the Court of Registration; or
- there is a bookkeeping mandate relationship between the parties (i.e., the service provider and the corporate entity).

PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

There are third-party service providers that offer corporate secretarial services, including:

- Directorship services to non-trading entities, including management services by rendering 1 or more individuals who act as director
- Holding shareholder meetings
- Preparing documentation annual filing
- Ensuring that statutory books are in order and
- Assistance during dissolution.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

As a general rule, not applicable for this jurisdiction. It is possible and lawful to establish a wholly foreign-owned and -managed company. If certain regulated areas (e.g., banks) the presence of Hungarian tax residents on the board of director may be mandatory.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

The position of “nominee managing directors” is not regulated specifically under Hungarian law, however, it is possible to create such a position via third party service providers.

Appointing a nominee quotaholder is possible in the form of a fiduciary asset management (bizalmi vagyonkezelés) relationship, which is similar to a trust.
In such relationship, the trustee undertakes to manage the assets, rights and receivables entrusted to it by the principal in its own name and on the principal’s behalf for an agreed fee.

**SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF**

General meeting of shareholders or quotaholders of a corporate entity is the primary decision-making body of a corporate entity, deciding on major strategic issues (eg, amendment of articles of association, increasing or decreasing registered capital, approving financial statements, dividend payment, transformation and dissolution of a corporate entity) and personal matters (eg, appointing and recalling directors or managing directors) of a corporate entity.

Directors or managing directors are appointed by the shareholders or quotaholders of a corporate entity, and they run the day-to-day operations. Directors or managing directors are entitled to represent or act on behalf of a corporate entity vis-à-vis third parties.

Limitation on the right of representation of directors or managing directors is possible by applying a co-signature, where only the joint acts of 2 directors or managing directors will bind a corporate entity.

The representation right of a director or managing director may further be limited in the articles of association (eg, certain acts require approval of the shareholders’ or quotaholders’ meeting). However, such limitations are not effective vis-à-vis third parties (i.e., acts of a director or managing director will bind the corporate entity regardless of limitations, but a director or managing director may be liable vis-à-vis the corporate entity for a breach of limitations).

**PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS**

**Private company limited by shares (Zrt.)**

Identity of directors is publicly disclosed. The following personal data will appear in the companies’ register kept by the Court of Registration: name, mother’s maiden name, address, date of birth and tax number. Regarding the tax number, for foreign individuals it is possible to apply for a Hungarian tax number, in this case the companies’ register includes only the Hungarian tax number.

Identity of shareholders is only disclosed publicly if the shareholder has more than 50-percent ownership in a corporate entity (including if the company is a sole shareholder company). The following personal data will appear in the companies’ register kept by the Court of Registration: name, mother’s maiden name, address, date of birth and tax number; or, for corporates: company name, registered seat, registration number and registering authority.

**Limited liability company (Kft.)**

Identity of managing directors and quotaholders is publicly disclosed. The following personal data will appear in the companies’ register kept by the Court of Registration: name, mother’s maiden name, address, date of birth and tax number; or, for corporates: company name, registered seat, registration number and registering authority.
MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

Private company limited by shares (Zrt.)

Zrt. is set up by at least 1 shareholder. There is no upper limit on the number of shareholders.

The minimum number of directors on the board of directors is 3. There is no upper limit on the number of quotaholders of the board of directors. Shareholder(s) may also decide to appoint a single director instead of setting up a board of directors.

Limited liability company (Kft.)

Kft. is set up by at least 1 quotaholder. There is no upper limit on the number of quotaholders.

The minimum number of managing directors is 1. There is no upper limit on the number of managing directors. Shareholders may also decide to set up a board of directors instead of appointing one or more individual managing directors.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

Private company limited by shares (Zrt.)

Zrt. is set up by at least 1 shareholder.

Limited liability company (Kft.)

Kft. is set up by at least 1 quotaholder.

REMOVAL OF DIRECTORS OR OFFICERS

Directors may be removed by a resolution of a shareholders’ or quotaholders’ meeting at any time, without having to give reasons.

Directors may also resign from their position at any time (subject to their service/employment agreement). If operation of a company so requires, the termination will become effective only on the 60th day after the resignation is submitted (eg if there is no other director).

REQUIRED AND OPTIONAL OFFICERS

Private company limited by shares (Zrt.)

At least 3 directors are required for the board of directors.

In addition, company managers may be appointed by shareholders to assist directors in the day-to-day operations of a corporate entity in accordance with the instructions of the directors.
Directors may also authorize employees of a corporate entity to represent the company on a permanent basis, such authorization must -however- be limited in scope.

The auditor and supervisory board may additionally be appointed by shareholders. Appointment is mandatory in certain instances.

**Limited liability company (Kft.)**

At least 1 managing director is required.

In addition, company managers may be appointed by quotaholders to assist managing directors in the day-to-day operations of a corporate entity in accordance with the instructions of the managing director(s).

The managing director may also authorize employees of a company to represent the company on a permanent basis, such authorization must -however- be limited in scope.

The auditor and supervisory board may also be appointed by shareholders. Appointment is mandatory in certain instances.

### BOARD MEETING REQUIREMENTS

**Private company limited by shares (Zrt.)**

An annual meeting of the board of directors is required. If the Zrt. has a supervisory board, the board of directors must present a report on the financial position of the company quarterly to the supervisory board this presupposes quarterly board meetings).

**Limited liability company (Kft.)**

Because managing directors do not act as a board, but as individual officers (i.e., directors) of the Kft., an annual meeting of managing directors is not required. However, managing directors may hold meetings informally at their convenience.

### QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

As a general rule a quorum exists on shareholders’ or quotaholders’ meeting if more than 1/2 of the votes that can be cast are represented at such meeting. The quorum must be checked at each and every voting (not just once for the meeting).

If there is a quorum, shareholders or quotaholders adopt resolutions by a majority of votes cast. Some matters (e.g., amendment of articles of association, increase or decrease of registered capital, transformation or dissolution) require a qualified majority (i.e., 3/4 of votes) or even unanimity (if the amendment to the articles of association would be detrimental for the rights of certain shareholders or quotaholders). Under applicable law there is substantial flexibility allowed to shareholders and quotaholders to diverge from the default quorum and majority requirements (e.g., simple majority requirement may be raised to qualified majority and vice versa).

For board meetings, the quorum and majority requirements are primarily set by the board itself via the rules of
procedure of the board.

**MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?**

Capital contributions of shareholders/quotaholders must be transferred to a bank account. A corporate entity must have at least 1 local bank account.

A company must open at least 1 Hungarian bank account for its operations. Foreign bank accounts of the company must be reported to the Hungarian tax authority. Information on the bank account, account number and date of opening and closure of the bank account must be reported to the Hungarian tax authority within 15 days from the date of an event.

**AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?**

If the company has an auditor, or if appointment of an auditor is mandatory, the auditor must comply with all qualification requirements determined by Hungarian laws.

In general, in Hungary it is mandatory to appoint an auditor for a company operating on the basis of double-entry bookkeeping. Exemption is available if both of the following requirements are met:

- Annual net sales revenues did not exceed HUF 300 million (USD 1 million) on average for the 2 prior financial years and
- The average number of people employed did not exceed 50 people on average for the 2 prior financial years.

For newly established companies, because no data is available for prior financial years, the expected data of a given financial year is to be considered.

**REQUIREMENT REGARDING PAR VALUE OF STOCK**

**Private company limited by shares (Zrt.)**

A par value (i.e., face value) and an issue price can differ for the same share. However, the share’s issue price cannot be less than its par value.

Under applicable law it is also possible to issue no par value shares,

**Limited liability company (Kft.)**

The capital contribution of each quotaholder must be at least HUF 100,000 (USD 330).
INCREASING OF CAPITALIZATION IF NEEDED

Registered capital can be increased by a resolution of a shareholders’ or quotaholders’ meeting. In the case of Zrt., the general meeting often authorizes the board of directors to increase the registered capital (issue new shares).

The effective date of the capital increase may be set out in the pertaining resolution, but it cannot be earlier than the date of the resolution.

In order to cover the losses of the Kft., the quotaholders’ meeting may order that the quotaholders provide supplementary contributions (pótbefizetés). The supplementary contributions must be repaid to the quotaholders if financial position of the Kft allows for such repayment.

SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (i.e. DIVIDENDS OR REDEMPTION)

Payment of dividends requires a resolution of a shareholders’/quotaholders’ meeting and is subject to the Zrt.’s Kft.’s financial statements showing sufficient funds to pay dividends.

Decrease of the registered capital (effected with a view to make distribution to the shareholders’/quotaholders’) requires a resolution of a shareholders’/quotaholders’ meeting. Decrease of the registered capital is a complex, 4-6 months procedure. Amongst others, the intention to decrease the registered capital must be published in the Companies Gazette and creditors of a Zrt. or Kft. may demand collateral (security). Payments to shareholders regarding capital decrease may only be made after the Court of Registration registers the capital decrease.

There is no withholding tax on accumulated profits distributed in the course of a capital decrease (i.e., redemption) or with respect to dividends distributed to resident or nonresident corporate entities.

Accumulated profits distributed in the course of a capital decrease (i.e., redemption) or dividends distributed to resident individuals are subject to personal income tax and social tax. Withholding tax due on dividends paid or accumulated profits distributed in the course of a capital decrease (i.e., redemption) to nonresident individuals must be withheld by the paying company. No social tax payment obligation arises in respect of payments made to an individual qualifying as secured person in another EU member state.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

Private company limited by shares (Zrt.)

Articles of association may stipulate that transfer of shares is subject to a right of first refusal (in favor of one or more shareholders) or approval of the shareholders’ meeting (e.g. to prevent transfer to a competitor).

Limited liability company (Kft.)

Business quota may be transferred freely amongst quotaholders. However, the articles of association may stipulate a right of first refusal in favor of the other quotaholders.

Business quota can only be transferred to a third party if in the business quota is fully paid up. Other quotaholders
of Kft., the Kft. itself or a person designated by the quotaholders’ meeting – in this order – has a right of first refusal.

The right of first refusal may be exercised pro rata by the quotaholders.

The articles of association may also stipulate that approval of the quotaholders’ meeting is required for the transfer of a business quota to a third party (e.g. to prevent transfer to a competitor).

**Foreign investment control regulations**

The minister of home affairs must be notified of certain transactions and he has the right to block them if the transaction is deemed against the national security interests of Hungary. A transaction is subject to such notification if, among other things, (i) the investor is incorporated in, or resident of, a country that is not part of the EU, the EEA or Switzerland, (ii) a key industry sector (e.g. national defense, financial services or energy) is involved or (iii) the transaction pertains to, among others, the acquisition of more than 25 percent of the shares in a Hungarian entity.

Under recent COVID-19 legislation, the minister responsible for the domestic economy must be notified of certain transactions and he has the right to block them if he deems them to be against the national interests of Hungary. The scope of this legislation is much wider than the previous (and still existing, parallel notification regime concerning only “foreign investors” (i.e. investors whose beneficial owner is a resident of a country that is not part of the EU, EEA or Switzerland.) Accordingly, the newly introduced notification regime is applicable if, among other things, (i) the investor is incorporated in, or resident of, a country that is not part of the EU, the EEA or Switzerland (ii) the target company conducts its business in a key industry sector (e.g. pharma, leisure or energy), (iii) the transaction pertains to, among others, the acquisition of at least 10 percent of the shares in a Hungarian company if the aggregate value of the transaction reaches HUF 350 million (USD 1.1 million). The investment screening regime also applies to investors incorporated in the EU, EEA or Switzerland if they acquire a controlling shareholding in the Hungarian target company operating in the relevant sector provided aggregate value of the transaction reaches HUF 350 million (USD 1.1 million).

**OBTAINING A NAME AND NAMING REQUIREMENTS**

A corporate entity’s name cannot be confusingly similar to the name of any other corporate entity already registered in Hungary. A name can only contain reference to “state” or “national” if the Hungarian State holds a majority interest in the corporate entity. If a third party has a legal interest in a name, (element of it), such name (element) can only be used with the consent of the beneficiary.

The name selected by the shareholders or quotaholders is registered in the course of the initial company registration procedure by the court of registration. Shareholders or quotaholders may also conduct a so called advance name reservation procedure (if the name of the company is critical) before the foundation of the company. If the court of registration confirms that the desired name is registerable, it will be reserved for 60 days in favor of the applicant (so that the foundation documents can be signed and filed).

**SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS**

Service providers (eg, inter alia, law firms, credit institutions, financial service providers, auditor companies, funds
and tax advisers) must verify the identity of their clients for anti-money laundering purposes before entering into an engagement. Service providers must record the identification data of a client (in the case of natural persons: name and surname, name at birth, nationality, date and place of birth, mother’s birth name, home address, number and type of identification document; in the case of legal entities and unincorporated organizations: name, abbreviated name, registered office, main activities, name and position of authorized representatives, identification data of the agent for service of process, registration number and tax number).

For the purposes of identification and verification procedures, service providers must require the presentation of various documents (in the case of natural persons: an official document suitable for identification purposes and official address card for Hungarian citizens, and passport or personal identification document for foreign nationals; in case of legal entities and unincorporated organizations: personal identification documents of a natural person acting on behalf of a legal entity or unincorporated organization, documentary evidence of registration or that an application for registration has been submitted, and a constitutional document if an application for registration has not yet been submitted).

If the client is a natural person, it is required to provide a written statement as to whether the person is acting in the name or on behalf of a beneficial owner. The statement must indicate the following data of the ultimate beneficial owner:

- Name at birth
- Nationality
- Date and place of birth and
- Home address.

The service provider must additionally request a statement declaring whether the beneficial owner is a politically exposed person.

If a client is a legal entity or unincorporated organization, it is required to provide a written statement identifying its ultimate beneficial owner; the statement must indicate the following data of the ultimate beneficial owner:

- Name and surname
- Name at birth
- Nationality
- Date and place of birth
- Home address and
- The nature and extent of ownership interest.

The service provider must additionally request a statement declaring whether the beneficial owner is a politically exposed person.
APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

A shareholders’ or quotaholders’ meeting may approve, with a qualified majority of 3/4 of the votes, amendment to the articles of association of the Zrt. or Kft. The amended articles of association must be submitted to the Court of Registry to ensure that the public always has access to the up-to-date articles of association.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

There is no general business license requirement, but some business activities (typically financial services, but also certain forms of industrial, energy and public utility activities, among others) may only be conducted with a regulatory license.

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

Some service providers offer shelf companies for sale but the use of a shelf company is not common in practice given that a clean, new company can be set up very quickly.

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INDIA

FORM OF ENTITY

Private limited company

Separate and distinct legal entity. Managed by a board of directors, which is responsible for making major business decisions and overseeing the general affairs of the company, subject to the Articles of Association of the company, and within the provisions of the Companies Act, 2013. Directors are elected by the shareholders of the company.

ENTITY SET UP

Private limited company

- Preferred choice of corporate entity by foreign investors because it is simpler to administer.

- India is an exchange-controlled economy, and there are certain restrictions or conditions in case of foreign investment in identified sectors. Under the Foreign Direct Investment (FDI) policy of India, 100-percent FDI is permissible in various sectors (including manufacturing, services sectors, single brand product retail trading). FDI is prohibited in a few sectors (such as gambling and lottery business). In certain sectors, there are limits on the permissible FDI under the automatic route (such as 74% FDI is permitted in brownfield pharmaceutical). In sectors like print media and multi brand retail trading, the prior approval of the government is required for FDI.

- The Indian foreign exchange control regime was amended in April 2020 to restrict FDI from certain countries. The prior approval of the government will be required in case of investment from an entity of a country which shares land borders with India (such as, among others, China and Hong Kong), or where the beneficial owner of an investment into India is situated in or is a citizen of any such country. Similarly, in case of transfer of ownership of any existing or future FDI in an entity in India, directly or indirectly, resulting in the beneficial ownership falling within the purview of para above, such subsequent change in beneficial ownership will also require approval of the government.

- All issuances and transfers of shares involving foreign investors have to comply with the prescribed ‘pricing guidelines’ issued by the Reserve Bank of India (RBI) from time to time. The shares of unlisted companies can be acquired by a foreign investor at a price which is not less than the fair value of the shares of the
Indian company determined by a chartered accountant or a SEBI registered merchant banker or a practicing cost accountant, in accordance with internationally accepted accounting principle and on an arms’ length basis.

- For tax purposes, companies are broadly classified as follows under the (Indian) Income Tax Act 1961:
  - domestic company: an Indian company formed under the Companies Act, 2013 or Companies Act, 1956
  - foreign company: a company which is not a domestic company

Indian companies are taxed in India on their worldwide income, irrespective of its source and origin. Foreign companies are taxed only on income which accrues from operations carried out in India. In certain cases foreign companies may be taxed on income which is deemed to have arisen in India and includes royalty, fees for technical services, interest, gains from sale of capital assets situated in India (including gains from sale of shares in an Indian company) and dividends from Indian companies.

**Limited liability partnership**

- The Limited Liability Partnership (LLP) Act, which was notified in 2009, allowed LLPs to be incorporated in India.
- LLP is a hybrid form of business with the features of both a legal entity as well as traditional partnership.
- Government approval dispensed with for foreign investments in the LLP where FDI is allowed under the automatic route; in sectors or activities where 100-percent FDI is allowed and no-FDI linked performance condition has been stipulated.
- Minimum of 2 partners (ie, owners) are required. There is no limit to the maximum number of partners. A legal entity or an individual can be a partner of an LLP.
- Every LLP must have at least 2 designated partners who are individuals, and at least 1 of them must be a resident in India. In case of an LLP where all partners are legal entities or 1 or more partners are individuals and legal entities, at least 2 individuals who are partners of such LLP or nominees of such legal entities must act as designated partners.
- Designated partners are responsible for all acts of an LLP, and designated partners must be accountable for regulatory and legal compliances. No minimum capitalization requirements.
- Similar process of incorporation to a private limited company.
- Designated partners must secure a Designated Partners Identification Number (DPIN) and digital signature prior to incorporation. If designated partners already have a DIN, the DIN may be used.
- Recently, LLPs have also been permitted to convert into a company under the automatic route.
- Typical charter documents include the LLP agreement. Partners typically contribute to the LLP as defined in
the LLP agreement and agree on a profit-sharing ratio.

- An LLP is required to get audit done only if:
  
  - Contributions of an LLP exceed INR 2.5 million or
  
  - Annual turnover of an LLP exceeds INR 4 million

- An LLP’s income is subject to tax at 34.94 percent (assuming highest applicable surcharge and cess). No further tax on repatriation of the profits of an LLP to an overseas parent entity, and, hence, the effective tax rate in the case of an LLP is 34.94 percent.

- The FDI policy allows foreign direct investment under an automatic route in an LLP in specified sectors and has removed the specific prohibition on LLPs availing external commercial borrowings (ECBs). An LLP which has existing foreign investment is permitted to make downstream investments in another company or LLP in sectors in which 100-percent FDI is allowed under the automatic route and there are no FDI-linked performance conditions.

- May not be suitable for all types of business. Suited best for professionals and small to medium businesses.

Branch office

- A foreign company needs prior approval from the RBI to establish a branch and is not permitted to expand its activities or undertake any new trading, commercial or industrial activity other than that expressly approved by the RBI.

- Must register itself with the Registrar Of Companies and file audited accounts.

- Only specified activities permitted; cannot undertake any manufacturing activity in India.

Liaison office

- Suitable for foreign companies that wish to set up a representative office as a first step to explore and understand the business and investment climate in India.

- Serves as a communication channel between the parent company overseas and its present or prospective customers in India.

- Must obtain prior approval from RBI before establishing a liaison office.

- Must register itself with the Registrar of Companies and file audited accounts.

- Limited activity: may establish business contacts and may gather market intelligence to promote the products or services of the overseas parent company but cannot undertake any business activity in India or earn any income in India.
Private limited company

No minimum capital requirement stipulated under the law. Typically, companies are incorporated with a nominal capital of INR 100,000.

LEGAL LIABILITY

Private limited company

Private limited companies provide limited liability to its shareholders, and the shareholders have no personal liability beyond the amount they originally paid for their shares.

TAX PRESENCE

Private limited company

A private limited company is taxed at 2 levels. First, the company pays a corporate tax on its corporate income; then, the company pays dividend distribution tax on profits distributed to shareholders (declared prior to April 1, 2020). With effect from April 1, 2020, a dividend paid by an Indian company is taxable in the hands of the recipient shareholder.

Sale or redemption of shares in the company is taxed as capital gains. Any indirect transfer of India shares may trigger indirect transfer tax provisions.

INCORPORATION PROCESS

Private limited company

Reserve name; submit memorandum of association and articles of association with the appropriate Registrar of Companies (ROC) in the state where the incorporation is sought. Current online incorporation forms provide for the reservation of name, allotment of DIN, the allotment of tax IDs (PAN and TAN) along with the incorporation. E-form AGILE provides additional facility to apply for Goods and Services Tax registration (GST), Employees State Insurance registration (ESI) and Employees Provident Fund Registration (EPF) at the time of the incorporation of the company itself.

BUSINESS RECOGNITION

Private limited company

Highly regarded.

SHAREHOLDER MEETING REQUIREMENTS

Private limited company
1st annual general meeting (AGM) to be held within 9 months from the date of closing of the first financial year of the company subject to other conditions. Subsequent (AGM) within 6 months from close of year. A gap between 2 AGMs cannot be more than 15 months.

BOARD OF DIRECTOR MEETING REQUIREMENTS

Private limited company

At least 4 times in a year. Maximum gap between 2 meetings should not be more than 120 days. Every director is required to attend at least 1 meeting in a year.

ANNUAL COMPANY TAX RETURNS

Private limited company

All taxpayers are required to follow a uniform financial year from April 1 to March 31 for the purposes of filing tax returns. The law requires that the taxpayer companies must file their prescribed periodical tax returns on or before a due date specified in the respective legislations.

BUSINESS REGISTRATION FILING REQUIREMENTS

Private limited company

A company can commence any business or exercise any borrowing power after (i) it has filed a business commencement declaration within 180 days from incorporation certifying that the initial share capital has been remitted by the shareholders and (ii) the company has adhered to registered office verification rules.

Every company is required to file annual return in e-Form MGT-7 with the relevant RoC within 60 days from the date on which the AGM is held. Similarly, a copy of the financial statements, including a consolidated financial statement, if any, along with all the documents which are required to be attached to such financial statements under the Companies Act, 2013 duly adopted at the AGM of the company, are required to be filed with the RoC within 30 days of the date of the AGM.

Financial year

Every company’s financial year is the period ending on March 31 every year. Only exception available is for subsidiaries of foreign companies to enable them to align with financial year of the parent company. However, such a change is required to be approved by the National Company Law Tribunal (NCLT).

BUSINESS EXPANSION

Private limited company

No need to change as business expands. Can be easily converted into a public company at any time if required.
EXIT STRATEGY

Private limited company

Cease operations; file closure documents with ROC.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

Private limited company

Annual shareholder meetings; quarterly board meetings.

DIRECTOR / OFFICER REQUIREMENTS

Private limited company

At least 2 directors; new company law regulations mandate the appointment of a resident director. Consequently recommend 3 directors: 1 from India and 2 from parent company’s location.

For more information on directors’ duties, see our Global Guide to Directors’ Duties.

LOCAL CORPORATE SECRETARY REQUIREMENT

Private limited company

Must appoint a company secretary where the paid-up capital of the company exceeds INR100 million. Until such threshold, the company may appoint a third-party service provider to manage corporate compliance.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Private limited company

None except for the forthcoming local director requirement.

LOCAL OFFICE LEASE REQUIREMENT

Private limited company

Local physical office or correspondence address capable of accepting letters/post is mandatory at the time of incorporation. The local physical office acts as the registered office of the entity in the incorporation documents. In case the company is an incorporated basis correspondence address, the company is required to intimate the relevant RoC of its registered office within 30 days of its incorporation.
OTHER PHYSICAL PRESENCE REQUIREMENTS
Private limited company

None under the Companies Act, 2013.

SUFFICIENCY OF VIRTUAL OFFICE
Private limited company

No. See “Provision of local registered address by law firm or third-party service provider.”

PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER
Private limited company

Allowed for incorporation; preferable to use it temporarily.

PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER
Private limited company

Allowed for incorporation. However, considering the liability that could fall on the local directors, provision of local director by law firm or third-party service providers is based on references and on a case-to-case basis.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS
Private limited company

None except for the local director requirement and the restriction on investment from countries which share land border with India.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS
Private limited company

None. However, reporting requirements apply.

SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY
AND LIMITATIONS THEREOF

Private limited company

Directors are elected by the shareholders and are the responsible for the overall management of the company. They govern the organization by establishing broad policies and objectives. Directors are personally liable for breach of fiduciary duty, ultra vires acts, negligence, mala fide acts and breach of statutory duties.

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

Private limited company

Identity of directors and officers is publicly disclosed; identity of shareholders of private, non-listed companies is not publicly disclosed. However, this may be obtained on payment of certain nominal fees on the online portal of the Ministry of Corporate Affairs.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

Private limited company

There must be a minimum of 2 shareholders and a maximum of 200. For directors, the minimum is 2 and the maximum is 15.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

Private limited company

Two shareholders.

REMOVAL OF DIRECTORS OR OFFICERS

Private limited company

Removal of directors is allowed by majority of the shareholders. Size of the board of directors cannot fall below 2.

REQUIRED AND OPTIONAL OFFICERS

Private limited company

None.

BOARD MEETING REQUIREMENTS

Private limited company
At least 4 times in a year. Maximum gap between 2 meetings should not be more than 120 days. Every director is required to attend at least 1 meeting in a year.

**QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

*Private limited company*

For a shareholder meeting, 2 members must be present during the shareholder meeting. Corporate shareholders may appoint authorized signatories to attend the meetings on their behalf. For directors, 1/3 of its total strength or 2 directors, whichever is higher must be present during a board meeting; alternatively, at least a majority of the directors must execute written resolutions. Written resolutions (referred to as circular resolutions) cannot be used for all purposes.

Meetings can also be held via videoconference which is recorded and stored. Meetings via video conference cannot be used for certain purposes.

**MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?**

*Private limited company*

As per the prescribed process, all companies are required to mandatorily file an application for opening a bank account along with the incorporation form. This application is part of the incorporation form which is submitted with the RoC. Presently, the companies have the option to open the bank account with Punjab National Bank, State Bank of India, ICICI Bank, Kotak Mahindra Bank, Bank of Baroda, UBI, IndusInd Bank or HDFC Bank.

Post incorporation, the NewCo may open additional accounts with its preferred banks.

**AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?**

*Private limited company*

An annual audit is mandatory. The auditor may be located in any state in India. The company’s books of accounts should be kept locally with either the company or a third-party service provider. The Act now stipulates mandatory rotation of auditors. Instead of the annual appointment, individual auditors can hold office for a maximum period of 5 years, whereas audit firms may retain the post for up to 10 years. The first auditor of the company should be appointed by the board within 30 days from incorporation or within 90 days from incorporation by the shareholders on failure to appoint within 30 days.

Corporate books, such as the minute book and other statutory registers, should be kept with the company. The common seal, if available, should also be kept with the company. The requirement for a common seal has now been made optional, and the director’s signature is acceptable in lieu of the common seal of the company.
REQUIREMENT REGARDING PAR VALUE OF STOCK

Private limited company

No minimum par value for private limited companies. Normally, used par value is INR 10 per share.

INCREASING OF CAPITALIZATION IF NEEDED

Private limited company

Effectuated by amending the charter document, which requires authorization from both the board of directors and a majority of the shareholders. Further filing requirements with the ROC apply along with the payment of filing fees calculated based on the amount of authorized capital being increased.

SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)

Private limited company

Funds can be repatriated abroad from India via dividends or redemption – commonly referred to as buyback of equity.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

Private limited company

In general, shares of a private limited company are not freely transferable. Shares can be transferred via private sales, with the approval of the board and subject to conditions of the charter documents. A public offer to sell shares or invite fresh capital subscriptions cannot be made (ie, shares cannot be offered to the public). Shares can generally be transferred between existing shareholders.

OBTAINING A NAME AND NAMING REQUIREMENTS

Private limited company

The name should reflect the main objects/business of the Indian company. In case the Indian company uses the same name as used abroad, a letter from the foreign company must also be given. In all states, a corporate ending such as “private limited.” must be used. Further, it is recommended that generic names be avoided and the proposed name include a descriptor. Name can be reserved for a maximum period of 60 days (initially, it will be reserved for a period of 20 days, which can be further extended to another 40 days upon payment of requisite fees) from the date of approval. If not incorporated within this time, the name lapses and becomes available to other applicants. Upon expiry of 60 days, a fresh application is required.

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS
Private limited company

Know-your-client requirements are mandatory for incorporation as well as for the opening of a bank account. Significant beneficial owner filing requirements apply to all shareholders who hold more than 10 percent or more in the company.

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

Private limited company

Both the board of directors and a majority of shareholders must formally approve any amendment to the charter documents.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

Private limited company

In addition to incorporation, an entity must obtain registration under:
(a) The Shops and Establishment Act: shops and commercial establishments (including companies) are required to register under the provisions of state-specific shops and establishments laws. Such laws regulate the working and employment conditions of the employees.
(b) Importer Exporter Code (IEC): The IEC is required to be obtained by persons (including companies) importing or exporting goods and services from India. In addition to the foregoing, companies may require registrations which are specific to a location (ie, the place from where the business is being conducted and basis the proposed business activities).

As part of the incorporation application, the following licenses and registrations are also issued:
(a) Permanent Account Number (PAN)
(b) Tax Deduction Account Number (TAN)
(c) registrations with the Employees Provident Fund Organization (EPFO) and the Employees State Insurance Corporation (ESIC) and
(d) Goods and Service Tax Registration (GST)

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

Private limited company

Not widely used.
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INDONESIA

FORM OF ENTITY

Limited liability company

A separate and distinct legal entity, managed by the board of directors responsible for making major business decisions and overseeing the general affairs of the company, under the supervision of a board of commissioners. The members of the board of directors and the board of commissioners are appointed and dismissed by the general meeting of shareholders.

ENTITY SET UP

Limited liability company

A separate legal entity.

The typical charter documents and main features include the following:

- The deed of establishment containing the articles of association and its approval from the Ministry of Law and Human Rights (MOLHR)
- The shareholders’ resolutions containing any amendments to the articles of association and their receipts of notice or approvals from the MOLHR
- The limited liability of the shareholders
- The board of directors has overall management responsibility and
- The board of commissioners has overall supervisory responsibility.

The general meeting of shareholders must be convened annually (within 6 months of the end of the financial year) and an extraordinary general meeting of shareholders may be convened at any time as required to make necessary decisions.
MINIMUM CAPITAL REQUIREMENT

Limited liability company

Generally, the authorized capital is determined based on the agreement of the company’s founders (without any minimum requirement). Certain lines of business (such as banking, insurance etc.) will be subject to relevant regulations that may require a minimum amount of capital. At least 25 percent of the capital must be issued and paid up as required under the Indonesian Company Law. The shareholders of a foreign investment company (a company with any number of foreign shareholders - a PMA company) must invest more than IDR10 billion for each line of business, excluding the value of any land and or building. The investment value is to be realized at a later stage (not at the time of establishment). For the establishment of a PMA company, a minimum of issued and paid-up share capital or equity is IDR10 billion.

LEGAL LIABILITY

Limited liability company

Subject to limited exceptions as stipulated under the Indonesian Company Law, the shareholders are not liable for the debts of the company beyond their financial contributions to the company. However, the Indonesian Company Law also recognizes the legal principle of lifting the company’s liability, which causes the shareholders to be personally liable for the company’s liability (piercing the corporate veil principle) – for example, when there is bad faith among the shareholders and ignorance of the formal incorporation procedure. The shareholder may also be held liable when proven to have taken part in a tortious act by the company.

TAX PRESENCE

Limited liability company

Corporate income tax is reduced from 22 percent to 20 percent as of the 2022 tax year. VAT of 10 percent is imposed on the delivery of goods and services and will be raised to 11 percent starting April 1, 2022.

INCORPORATION PROCESS

Foreign investment limited liability company in general

- Establish the company by signing the deed of establishment (which includes the articles of association). Then, after being registered with and approved by the MOLHR by the issuance of MOLHR Decree, the company will obtain legal entity status. The MOLHR’s online/registration system will additionally issue a taxpayer identification number (Nomor Pokok Wajib Pajak or NPWP) to the newly established company.

- Apply for a Business Identification Number (NIB) through the Online Single Submission (OSS) system maintained by the OSS Agency, currently adopting a risk-based approach (RBA). The MIB also applies as a Company Registration Certificate (TDP), Importer’s Identification Number (API), customs access and initial mandatory manpower reporting. If foreign manpower is going to be employed, an applications of a license to use foreign manpower may additional be submitted through the OSS. Acquiring an NIB means that the company has participated in health and manpower social security programs.
• Depending on the risk level of the business, the company is deemed ready to operate (if the risk level is low), to obtain standard certification of the OSS (if the risk level is medium) or to obtain a license (if the risk level is high).

• Fulfill various post-establishment company obligations such as reporting obligation, creating a master list (if applicable) and other obligations.

**BUSINESS RECOGNITION**

Limited liability company

Well regarded and widely used.

**SHAREHOLDER MEETING REQUIREMENTS**

Limited liability company

Required to hold an annual general meeting of shareholders within 6 months of the end of each financial year. An extraordinary general meeting of shareholders can be held at any time as required by the company.

**BOARD OF DIRECTOR MEETING REQUIREMENTS**

Limited liability company

No specific requirements unless imposed under the company’s articles of association.

**ANNUAL COMPANY TAX RETURNS**

Limited liability company

Must submit an annual tax return to the Indonesian tax authorities. MOLHR recently implemented a confirmation on the taxpayer’s status (Konfirmasi Status Wajib Pajak or KSWP) process for services provided through the MOLHR’s online/registration system. The MOLHR may withhold issuing the approval or receipt of notification if the result of the KSWP shows invalid information (i.e., the company is not compliant in submitting annual tax returns) and will resume the services when the company has rectified the issue.

**BUSINESS REGISTRATION FILING REQUIREMENTS**

Limited liability company

Every company must be registered in the Company Register maintained by the OSS-RBA system so that the company can obtain an NIB. Additionally, ongoing filing requirements apply to, among other things, certain amendments made to the articles of association, changes to the board of directors and the board of commissioners, and annual financial statements. Following the implementation of the OSS-RBA system, reportings on the amendments or changes are now covered under the process to obtain an NIB (please see “Incorporation
Process”). A PMA company is additionally required to submit a periodic investment report (Laporan Kegiatan Penanaman Modal or LKPM) to BKPM through its online system.

**BUSINESS EXPANSION**

Limited liability company

A PMA company business expansion may need the OSS-RBA Agency, BKPM or other government institution’s approval or a reporting obligation. If the expansion constitutes one or more new lines of business, a PMA company shall be required to invest at least IDR10 billion for each line of business (please also see “Minimum Capital Requirement”).

**EXIT STRATEGY**

Limited liability company

An Indonesian company may be dissolved by being wound up (voluntary dissolution and liquidation) or under a court order.

**ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Limited liability company

The board of directors must draw up the annual report to be approved by the annual general meeting of shareholders. The board of commissioners must also draw up the annual supervisory report to be presented in the annual general meeting of shareholders.

**DIRECTOR / OFFICER REQUIREMENTS**

Limited liability company

Generally, every company must have at least 1 director and 1 commissioner. In certain lines of business, the board of directors and the board of commissioners are each required to have at least 2 members, as well as an independent commissioner.

No director or commissioner may, within the 5 years before their appointment, have been:

- Declared bankrupt

- A member of a board of directors or a board of commissioners found by a court to have caused a company to be declared bankrupt or

- Sentenced for a criminal offense which caused the state to suffer a financial loss or related to the financial sector.
For more information on directors’ duties, see our Global Guide to Directors’ Duties.

Local Corporate Secretary Requirement

Limited liability company

Generally, not legally required, unless it is a publicly listed company.

Local Legal or Admin Representative Requirement

Limited liability company

Not legally required.

Local Office Lease Requirement

Limited liability company

A company incorporated in Indonesia must have a registered office in Indonesia. A lease agreement is 1 of the supporting documents to be submitted to the OSS-RBA agency, BKPM or other government institution when establishing the company and obtaining the NIB from the OSS-RBA.

Other Physical Presence Requirements

Limited liability company

Not applicable for this jurisdiction.

Sufficiency of Virtual Office

Limited liability company

A company must have a physical office located in Indonesia, particularly for a PMA company. However, in general there is no explicit prohibition against using a virtual office.

Provision of Local Registered Address by Law Firm or Third-Party Service Provider

Limited liability company

May apply in certain circumstances and subject to certain requirements.
PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Limited liability company

There is no specific prohibition against a local director or corporate secretary being provided by a third-party service provider. Please note however, that a corporate secretary is not legally required, unless it is a publicly listed company.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

Limited liability company

In certain business fields which are closed to foreign investment, all shareholders must be Indonesian (legal entities or individuals). Shareholders are not subject to any residency requirement.

In general, no Indonesian nationality or residency requirement applies to either directors or commissioners, except that the director or other officer that handles or is responsible for employment matters must be Indonesian. For certain lines of business, a specific requirement on the nationality or residency of a director or a commissioner may apply.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Limited liability company

Although under a strict interpretation of the law, nominee shareholder and director arrangements are not allowed, they are still common in practice.

SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF

Limited liability company

Members of the board of directors and the board of commissioners are appointed and dismissed by the general meeting of shareholders. The board of directors is responsible for making business decisions, overseeing the general affairs and running the day-to-day operations of the company and is supervised by the board of commissioners. Limitations on the authority of the board of directors in general are provided for under the Indonesian Company Law and may be further stipulated in the articles of association of the company.

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

Limited liability company
The identities of the shareholders and members of the board of directors and board of commissioners are publicly available in the relevant company register, accessible upon request in the MOLHR database.

**MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS**

**Limited liability company**

A company must have at least 2 shareholders (with exceptions regulated in the Indonesian Company Law (such as a state-owned company, a small-medium enterprise)), 1 director and 1 commissioner, except for certain business activities which, for example, require at least 2 directors and 2 commissioners and to appoint an independent commissioner. There is no maximum number unless stipulated under the articles of association.

**MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

**Limited liability company**

A limited liability company must have at least 2 shareholders (particularly for PMA companies), except in certain special circumstances when it can have only 1, but only for a limited period of time and for those regulated in the Indonesian Company Law.

Omnibus law introduces individual companies as an exception of the above general concept, the shareholder of which is only 1 individual. However, it must meet the criteria of micro- and small-scale enterprises as regulated in the relevant laws and regulations, which will not apply for any PMA companies. If it no longer meets such criteria, it must convert its status to a limited liability company through notarial deed and be registered with the MOLHR.

**REMOVAL OF DIRECTORS OR OFFICERS**

**Limited liability company**

Members of the board of directors or the board of commissioners may be removed under a resolution of the general meeting of shareholders, the procedure for which is commonly provided in the company’s articles of association and in line with the provisions under the Indonesian Company Law.

**REQUIRED AND OPTIONAL OFFICERS**

**Limited liability company**

A company is legally required to have a board of directors and a board of commissioners.

**BOARD MEETING REQUIREMENTS**

**Limited liability company**

There are none under the Indonesian Company Law. However, the company’s articles of association may stipulate requirements for meetings of the board of directors and the board of commissioners, such as the quorum,
procedure and voting requirements.

**QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

**Limited liability company**

The quorum for a shareholders’ meeting depends on the agenda for the meeting. The quorum may be at least or more than 1/2, 2/3, or 3/4 of all of the issued shares with valid voting rights depending on the nature of the resolutions to be passed and as stipulated under the company’s articles of association. If the quorum for the first meeting is not met, a second meeting may be held with a different quorum, depending on the agenda for the meeting.

The Indonesian Company Law does not set the quorum for meetings of the board of directors or the board of commissioners. These may be stipulated in the company’s articles of association.

**MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?**

**Limited liability company**

In practice, banks in Indonesia can only open an account after the company has been incorporated as they require certain documents from the company including, but not limited to, its deed of establishment and the NPWP. Indonesian law does not specifically require the bank to be local but, in practice, the share capital is paid into a bank which has opened its office in Indonesia. This payment evidence must be submitted to the MOLHR.

**AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?**

**Limited liability company**

According to the Indonesian Company Law, a company’s financial reports must be audited if:

- The company’s business activities are related to the collection and/or management of public funds
- The company issues promissory notes to the public
- The company is a publicly listed company (*Perseroan Terbuka*)
- The company is a state-owned company (*Persero*)
- The value of the company’s assets and/or total business turnover is at least IDR50 billion or
- It is required under the prevailing laws and regulations.

The Ministry of Trade, as the government institution who manages the submission of the audited financial
statements, and other related ministries, may issue a regulation which provides a more extensive coverage for parties who are required to submit the audited financial statements. The auditor or public accountant must be local and have a license issued by the Ministry of Finance as a public accountant, and in some cases, must be registered with the relevant government institutions. The company’s books are usually kept in the company’s premises.

**REQUIREMENT REGARDING PAR VALUE OF STOCK**

**Limited liability company**

Under the Indonesian Company Law, all shares must be issued with a par value or nominal value denominated in Rupiah, except for publicly owned companies that may issue shares without any par value.

**INCREASING OF CAPITALIZATION IF NEEDED**

**Limited liability company**

The capital of an Indonesian limited liability company consists of its authorized, issued and paid-up capital. An increase in capital must be approved under the general meeting of shareholders resolutions. The articles of association must be amended and approval must be obtained from the MOLHR for the increase of the authorized capital. Receipt of notification from the MOLHR must be obtained for the increase of the issued capital and paid-up capital.

**SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)**

**Limited liability company**

Funds can be repatriated from Indonesia through dividends, capital reductions and share buybacks, subject to certain requirements and procedures under Indonesian law, such as the minimum reserve requirement (for dividends) or a maximum 10 percent of all the company’s issued shares (for a share buyback).

**RESTRICTIONS ON TRANSFERABILITY OF SHARES**

**Limited liability company**

Shares are generally transferable, subject to certain requirements and procedures under the Indonesian Company Law, the Articles of Association of the company, the investment negative list and contractual arrangements with a third party, if any. A share transfer requires a notarized deed and publication in a newspaper if it causes a change of control in the company; it must be approved by the general meeting of shareholders under a resolution (that must be converted into a notarized deed), it may need to be approved by certain government institutions, and it must be recorded in the company’s shareholders register and reported to the MOLHR.

The company’s articles of association usually stipulate other requirements for transferring rights over shares, such as to first offer them to a certain classification of shareholders or the other shareholders, to obtain prior approval.
from a company organ and or to obtain prior approval from the relevant authorities as required under the prevailing laws and regulations.

**OBTAINING A NAME AND NAMING REQUIREMENTS**

**Limited liability company**

The proposed name of a company must be approved by the MOLHR. By law, the name of a company must satisfy several requirements, such as it must be in Roman script, not already be used or be identical to that of another company, not be contrary to public order and or morality and not be identical to that of a government entity or international organization, unless approved otherwise. Current practice suggests that the proposed company name must consist of 3 words.

**SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS**

**Limited liability company**

Banks and financial service institutions in Indonesia are required to apply certain know your client principles. Indonesian companies, as well as notaries, are required to identify, verify and report the ultimate beneficial owner to the government. If necessary, a government institution may audit a company to identify and verify its beneficial owner.

**APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

**Limited liability company**

Amendments to the company’s articles of association or data must either be approved by or notified to the MOLHR, depending on the item being amended. In addition, PMA companies may need to apply for approval from certain government institutions (if required under specific regulations) to change certain company information such as their name, line of business or capital contributions. Please also see the KSWP process discussed in “Annual Company Tax Returns.”

**LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

**Limited liability company**

Limited liability companies require approval from the MOLHR for their deed of establishment, which contains their articles of association. Companies (including PMA companies) are also required to obtain a business license and/or standard certificate from the OSS-RBA Agency, BKPM or other government institutions if the proposed business activities are classified as high risk or medium risk, accordingly. For low-risk business activities, the NIB will also serve as the business license to carry out its business activity. General company licenses and documents such as NPWP is also required. Certain other permits, licenses and/or approvals from relevant national or local government authorities may also be required depending on the company’s location and line(s) of business. In late
2021, the integrated risk-based approach online single submission system (the OSS-RBA System) was updated by the government to support the issuance of licenses and permits. In some cases, consultation may be required to ensure the issuance of the required licenses or permits is approved.

**PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY**

Limited liability company

There is no specific regulation on purchasing or utilizing a shelf company.

**KEY CONTACTS**

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FORM OF ENTITY

The information in this guide provides a summary of 2 corporate structures that are commonly used in Ireland. Other alternatives, such as a designated activity company (DAC), a private unlimited company (ULC), a company limited by guarantee (CLG) or a public limited company (PLC), could be useful in some instances but are less common.

Private company limited by shares (LTD)

Separate and distinct legal entity. Managed by a board of directors which has collective authority and is responsible for managing the affairs of the company. Subject to the constitution, the shareholders have the power to appoint and remove directors. A LTD cannot offer shares to the public, and the right to transfer shares is generally restricted by the company’s constitution. Shareholders have limited liability protection.

External company

A company with limited liability incorporated under the laws of another jurisdiction and which establishes operations in Ireland is obliged to register as an external company (ie, a branch) in certain circumstances. The requirement to register a branch generally arises where the Irish operations of the foreign company has:

- A physical place of business
- The appearance of permanency
- A person to manage the place of business and
- Authority to independently negotiate and contract directly with third parties on an independent basis

From an Irish perspective, the branch is not a separate legal entity to the "home" or "parent" company.

ENTITY SET UP

- Private company limited by shares (LTD)
• External company (ie, an Irish branch)

MINIMUM CAPITAL REQUIREMENT

Private company limited by shares (LTD)

No minimum capital requirement.

External company

Determined by the laws of the jurisdiction of incorporation.

LEGAL LIABILITY

Private company limited by shares (LTD)

The liability of shareholders is limited to the amount, if any, unpaid on the shares issued by the company.

External company

Determined by the laws of the jurisdiction of incorporation.

TAX PRESENCE

Private company limited by shares (LTD)

If an Irish tax resident, a LTD is subject to Irish corporation tax on its worldwide income at 12.5 percent on its trading income and 25 percent for non-trading (ie, passive) income.

If non-resident for Irish tax purposes, a LTD is not subject to Irish corporation tax unless it carries on a trade in Ireland through a branch or agency or if it receives income from Irish sources (eg, income from the rental of Irish properties).

External company

An Irish branch is subject to Irish corporation tax on:

• Trading income arising directly or indirectly through or from the branch

• Any income from property or rights used by, or held by or for, the branch and

• Chargeable gains accruing on the disposal of Irish land and any assets situated in Ireland which are used for the purposes of a trade carried on by the Irish branch or are held for the purposes of the branch.
INCORPORATION PROCESS

Private company limited by shares (LTD)

For purposes of incorporation, the following documentation must be submitted to the Companies Registration Office (CRO):

- Fee of EUR50 using the online incorporation scheme
- The company's constitution
- A Form A1 which contains details of the company's
  - Name
  - Registered office
  - Principal activity
  - Directors and secretary and
  - Subscribers and their shares.

External company

For purposes of registration, the following must be submitted to the Companies Registration Office (CRO) within 30 days of the date of establishment of the branch in Ireland:

- Fee of EUR60
- CRO Form F12 or F13 (depending on whether the branch is a branch of an EEA or a non-EEA country company)
- Certified copy of the foreign company’s constitutional documentation and certificate/articles of incorporation and
- A copy of the latest publicly filed accounting documents of the foreign company (translated into English, if required)

If the documents are not written in the Irish or English language, a certified translation will be required.

BUSINESS RECOGNITION

Private company limited by shares (LTD)

Very well recognized. A LTD is the most common form of corporate entity used in Ireland.
SHAREHOLDER MEETING REQUIREMENTS

Private company limited by shares (LTD)

Generally required to hold an annual general meeting (AGM) once in each calendar year. A LTD may dispense with the requirement to hold a physical AGM. This involves the shareholders of the LTD (on an annual basis) signing a unanimous written resolution acknowledging receipt of financial statements, resolving all matters as would be required to be resolved at the AGM and confirming that there is to be no change to the auditor.

External company

Determined by the laws of the jurisdiction of incorporation.

BOARD OF DIRECTOR MEETING REQUIREMENTS

Private company limited by shares (LTD)

Subject to the constitution, the directors may meet as they think fit, and no minimum number of board meetings is required annually although regular board meetings are recommended for corporate governance purposes.

External company

Determined by the laws of the jurisdiction of incorporation.

ANNUAL COMPANY TAX RETURNS

Private company limited by shares (LTD)

Corporation tax returns are generally due by the 21st day of the 9th month following the end of the relevant company's accounting period.

Companies are also obliged to pay preliminary tax in either 1 or 2 installments within their current accounting period.

External company

Corporation tax returns are generally due by the 21st day of the 9th month following the end of the relevant company's accounting period.
Branches are also obliged to pay preliminary tax in either 1 or 2 installments within their current accounting period.

**BUSINESS REGISTRATION FILING REQUIREMENTS**

Private company limited by shares (LTD)

No general requirement, but it should be considered whether any regulatory permits or licenses are required to conduct certain activities in specific industries.

External company

No general requirement, but it should be considered whether any regulatory permits or licenses are required are required to conduct certain activities in specific industries.

**BUSINESS EXPANSION**

Private company limited by shares (LTD)

No general requirements.

External company

No general requirements.

**EXIT STRATEGY**

Private company limited by shares (LTD)

Dissolution may be achieved by way of voluntary liquidation or strike-off procedure. It is also possible to merge a LTD with:

- One or more other Irish companies under Irish domestic legislation (provided that none of the companies is a public limited company and at least one of the companies is a private company limited by shares) or

- Another limited company registered under the laws of a state of the European Economic Area under Ireland’s cross-border merger regulations.

External company

Notice of closure of the branch (Form F14) must be filed with the CRO within 30 days of the branch ceasing to exist, for example, on the liquidation of the company in the jurisdiction of incorporation.
ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

Private company limited by shares (LTD)

Convene the AGM (or pass a written shareholder resolution in lieu). File an annual return and audited financial statements with the CRO.

Certain events also give rise to CRO filing requirements (e.g., changes to the constitutional documents, share capital, registered office or officers of the company).

External company

A branch is required to file a copy of the foreign company’s accounting documents (translated into English, if required) with the CRO no later than 30 days after the last date for publication of accounting documents in the jurisdiction of incorporation.

Certain events give rise to CRO filing requirements (e.g., changes to constitutional documents, address of the branch or offices of the company).

DIRECTOR / OFFICER REQUIREMENTS

Private company limited by shares (LTD)

Must have at least 1 director. A body corporate cannot act as a director.

External company

Determined by the laws of the jurisdiction of incorporation.

For more information on directors’ duties, see our Global Guide to Directors’ Duties.

LOCAL CORPORATE SECRETARY REQUIREMENT

Private company limited by shares (LTD)

A company secretary must be appointed. Unless a LTD has only 1 director, it is possible for a director of the company to also act as company secretary. A body corporate may act as company secretary.

External company

Determined by the laws of the jurisdiction of incorporation.
LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Private company limited by shares (LTD)

None.

External company

A branch is required to indicate the following on registration:

- The person or persons authorized to represent the branch
- A person resident in Ireland authorized to accept service of proceedings and notices
- A person resident in Ireland authorized to ensure compliance with the Companies Act 2014

LOCAL OFFICE LEASE REQUIREMENT

Private company limited by shares (LTD)

Every company is required to have in Ireland:

- a registered office address, being the official address where all formal legal documents are sent or
- a business or trading office address.

Both the registered office address and business/trading office address can be the same address and may be provided by a third-party services provider.

External company

Must have a principal place of business in Ireland which:

- Has the appearance of permanency
- Has a management system
- Is materially equipped to negotiate business with third parties.

The principal place of business also acts as the registered address, being the official address where all formal legal documents are sent, and may be provided by a third-party services provider.

OTHER PHYSICAL PRESENCE REQUIREMENTS

Private company limited by shares (LTD)
No other legal requirements, but may be required by the Irish Revenue Authority in respect of certain types of tax (eg, required for registration for value-added tax).

**External company**

No other legal requirements, but may be required by the Irish Revenue Authority in respect of certain types of tax (eg, required for registration for value-added tax).

**SUFFICIENCY OF VIRTUAL OFFICE**

**Private company limited by shares (LTD)**

Insufficient – a physical address must be specified on incorporation documentation.

**External company**

Insufficient – a physical address must be specified on registration documentation.

**PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

**Private company limited by shares (LTD)**

Permitted.

**External company**

Permitted.

**PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

**Private company limited by shares (LTD)**

Permitted.

**External company**

Permitted.
NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

Private company limited by shares (LTD)

At least 1 director of the company must be resident in the European Economic Area. Alternatively, the company must:

- Put in place a bond to pay any fines or penalties which may be imposed on the company under the Companies Act 2014 or the Taxes Consolidation Act 1997 or

- Obtain a certificate from the CRO confirming that the company has a real and continuous link with 1 or more economic activities in Ireland.

External company

Not applicable for this jurisdiction.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Private company limited by shares (LTD)

None. Nominee directors generally subject to the same duties as other directors.

External company

Determined by the laws of the jurisdiction of incorporation.

SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF

Private company limited by shares (LTD)

Authority for management of the company’s affairs is typically delegated collectively to the board of directors in the constitution with certain fundamental decisions relating to the company being reserved for the shareholders (eg, changes to the company’s constitution).

External company

Determined by the laws of the jurisdiction of incorporation.
PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

Private company limited by shares (LTD)

Identities of the following persons must be disclosed and are publicly available from filings made at the CRO:

- Directors
- Secretary
- Shareholders
- Any "beneficial owners," being any natural person who ultimately owns or controls, directly or indirectly, 25 percent or more of the company

External company

Details of the branch's representatives (see "Local Legal or Admin Representative Requirement") are publicly disclosed at the CRO.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

Private company limited by shares (LTD)

Directors – minimum 1 and no maximum; however, a company’s constitution may set an upper limit.

Shareholders – minimum 1 and maximum 149.

External company

Determined by the laws of the jurisdiction of incorporation.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

Private company limited by shares (LTD)

At least 1 shareholder is required.

External company

Determined by the laws of the jurisdiction of incorporation.

REMOVAL OF DIRECTORS OR OFFICERS
Private company limited by shares (LTD)

Shareholders can remove or replace directors by availing of a statutory procedure set out in the Companies Act 2014. The constitution of a company can also often provide authority to the board of directors to remove and appoint directors.

External company

Determined by the laws of the jurisdiction of incorporation.

**REQUIRED AND OPTIONAL OFFICERS**

Private company limited by shares (LTD)

Directors and secretary are the only officers required under statute. The constitution may allow for the appointment of a managing director or other executive officer(s).

External company

Determined by the laws of the jurisdiction of incorporation (see "Local Legal or Admin Representative Requirement").

**BOARD MEETING REQUIREMENTS**

Private company limited by shares (LTD)

Subject to the constitution, the directors may meet as they think fit, and no minimum number of board meetings is required annually from a legal perspective (although regular board meetings are recommended for corporate governance purposes). The company’s constitution will often provide for quorum and voting requirements.

External company

Determined by the laws of the jurisdiction of incorporation.

**QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

Private company limited by shares (LTD)

Shareholder meetings – subject to the company’s constitution, the minimum quorum requirement is 2 shareholders present in person or by proxy (or, in the case of a single-member company, the quorum is 1 shareholder). Shareholders may also approve resolutions by way of written resolutions.

Meetings of the board of directors – subject to the company’s constitution, the minimum quorum requirement is 2 directors (or, in the case of a company with a sole director, the quorum is 1 director). Subject to the company’s constitution, written resolutions of the directors may also be used but require the unanimous consent of all
directors.

External company

Determined by the laws of the jurisdiction of incorporation.

**MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?**

Private company limited by shares (LTD)

A bank account does not need to be opened prior to incorporation.

There is no legal requirement for a company to have an Irish bank account.

External company

A bank account does not need to be opened prior to registration.

There is no legal requirement for a branch to have an Irish bank account.

**AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?**

Private company limited by shares (LTD)

Subject to limited exceptions, audited financial statements must be prepared annually and publicly filed at the CRO.

Subject to certain approval and registration requirements, the auditor may be located outside of Ireland.

There is no statutory obligation that the company’s accounting records must be kept in Ireland, but significant additional requirements are imposed where the accounting records are kept outside of Ireland. Certain statutory registers (including the register of members, register of directors and secretaries, shareholder and director’s meeting minute books and the register of disclosable interests) must be kept in Ireland.

External company

No requirement to audit the local financial statements of the branch.

A branch is required to file a copy of the foreign company’s accounting documents (translated into English, if required) with the CRO no later than 30 days after the last date for publication of the accounting documents in the jurisdiction of incorporation.
No requirement for the branch’s books to be kept locally.

**REQUIREMENT REGARDING PAR VALUE OF STOCK**

Private company limited by shares (LTD)

All allotted shares must have a fixed nominal value. Shares must not be allotted at less than nominal value but may be issued at a premium. There is no statutory minimum nominal value.

External company

Determined by the laws of the jurisdiction of incorporation.

**INCREASING OF CAPITALIZATION IF NEEDED**

Private company limited by shares (LTD)

Generally permitted. A company may increase its share capital by issuing and allotting further shares provided that the company’s constitution authorizes such action.

External company

Determined by the laws of the jurisdiction of incorporation.

**SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)**

Private company limited by shares (LTD)

Funds may be repatriated via dividends, a redemption or buyback of shares or a reduction of share capital. Capital maintenance rules must be complied with.

External company

Determined by the laws of the jurisdiction of incorporation.

**RESTRICTIONS ON TRANSFERABILITY OF SHARES**

Private company limited by shares (LTD)
Shares are generally freely transferrable subject to restrictions, such as pre-emption rights, that may be contained in a company's constitution.

External company

Determined by the laws of the jurisdiction of incorporation.

**OBTAINING A NAME AND NAMING REQUIREMENTS**

Private company limited by shares (LTD)

The CRO approves the names of all companies and will reject a name that is currently registered or if the proposed name is offensive, misleading or otherwise objectionable. Every LTD must include the word "limited" or "teoranta" as the last word of the registered name (although this may be shortened to "ltd." or "teo." in subsequent usage). Prior to incorporation, it is possible on payment of a fee to reserve a company name for a period of 28 days.

External company

A branch may use the name of the company or adopt a separate name – typically, the company name with the appendix "Irish Branch."

The CRO approves the names of all branches and will reject a name that is currently registered or if the proposed name is offensive, misleading or otherwise objectionable.

**SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS**

Private company limited by shares (LTD)

Typical KYC information required by, for example, banks and professional services firms is as follows:

- Proof of incorporation/registration
- Up-to-date list of directors
- Identification of the ultimate beneficial owners
- Personal identification of at least 1 director (ie, copies of a recent utility bill and passport or driver's license) and
- Disclosure of any politically exposed persons

KYC information does not need to be submitted for the incorporation of the company itself.
Typical KYC information required by, for example, banks and professional service firms is as follows:

- Proof of incorporation / registration
- Up-to-date list of directors (if any)
- Identification of the ultimate beneficial owners
- Personal identification of at least 1 director (ie, copies of a recent utility bill and passport or driver’s license) and
- Disclosure of any politically exposed persons

KYC information does not need to be submitted for registration of the branch.

**APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

Private company limited by shares (LTD)

A special resolution of the shareholders (ie, approval of shareholders holding at least 75 percent of the voting rights in the company) must be passed in order to alter the constitution of the company.

External company

Determined by the laws of the jurisdiction of incorporation.

**LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

Private company limited by shares (LTD)

No general business license is required, but an authorization or permit may be required to conduct certain activities in specific industries.

External company

No general business license is required, but an authorization or permit may be required to conduct certain activities in specific industries.

**PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY**

Private company limited by shares (LTD)

Shelf companies may be purchased from third party providers.
External company

Not applicable for this jurisdiction.

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ISRAEL

Last modified 14 June 2021

FORM OF ENTITY

Company

Separate and distinct legal entity. Must be registered with the Israeli Registrar of Companies. Managed by a board of directors, which is responsible for making major business decisions and overseeing the general affairs of the company. Directors are appointed by the shareholders of the company. The general manager, if appointed (appointment is not required), is appointed by the board of directors and runs the day-to-day operations of the corporation. Other officers may be appointed.

Branch / representative office

A foreign corporation conducting business in Israel must register as a Foreign Company with the Israeli Registrar of Companies. The Foreign Corporation is regarded as the same legal entity as the Original Entity.

ENTITY SET UP

Company

- Unlimited number of shareholders. However, having over 50 shareholders will subject the company to different reporting requirements.

- Generally no personal liability of the shareholders.

- Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends.

- Typical charter documents include: Certificate of Incorporation; and Articles of Association.

- Board of directors has overall management responsibility; general manager has day-to-day responsibility within the framework set by the board of directors and is subject to the board’s supervision.

- Shareholders typically purchase shares in the corporation, either common or preferred.
The Company is subject to various annual corporate maintenance requirements such as: annual fee to the Registrar of Companies, appointment of auditors and filing of an annual report with the Registrar of Companies.

Branch / representative office

- Registration of an already existing corporate entity (excluding a partnership) organized outside of Israel (the Original Entity) with the Israeli Registrar of Companies
- Defined under the Israeli Companies Law – 1999, as a “Foreign Company”, and
- Not a separate legal entity (same entity as the Original Entity)

**MINIMUM CAPITAL REQUIREMENT**

**Company**

No minimal requirement.

**Branch / representative office**

Not applicable.

**LEGAL LIABILITY**

**Company**

Shareholders of a company are generally not liable for the debts of a company aside from their financial contribution to the company.

**Branch / representative office**

Same as the original entity.

**TAX PRESENCE**

**Company**

A company is taxed at 2 levels. First, the company pays a corporate tax on its corporate income; shareholders are then taxed on dividends distributed by the company (if distributed).

**Branch / representative office**

Only taxed at the corporate entity level on income.

**INCORPORATION PROCESS**
Company

Filing of various documents with the Israeli Registrar of Companies, including the company’s articles of association and other incorporation forms.

Branch / representative office

Filing of various documents with the Israeli Registrar of Companies, including a Hebrew translation of the Original Entity’s incorporation documents.

BUSINESS RECOGNITION

Company

Well regarded and widely used.

Branch / representative office

Well regarded and not uncommon for corporation with limited local presence (eg limited sales or marketing activity).

SHAREHOLDER MEETING REQUIREMENTS

Company

Required to hold a general meeting of the shareholders every year and no later than 15 months following the previous general meeting (unless otherwise determined in the articles of association). Unanimous written consents, in lieu of meetings, are generally permitted.

Branch / representative office

Not applicable.

BOARD OF DIRECTOR MEETING REQUIREMENTS

Company

The board convenes in accordance with the company’s requirements and at least once a year. Unanimous written consents, in lieu of meetings, are generally permitted.

Branch / representative office

Not applicable.

ANNUAL COMPANY TAX RETURNS
Company

Must annually file tax returns.

Branch / representative office

Must file tax returns annually.

BUSINESS REGISTRATION FILING REQUIREMENTS

Company

Depending on the type of business and is issued by the municipality in which the company’s facilities are located.

Branch / representative office

Depending on the type of business and is issued by the municipality in which the branch’s facilities are located.

BUSINESS EXPANSION

Company

No need to change as business expands.

Branch / representative office

No need to change as business expands. However, as the business expands, it may make sense to incorporate a local subsidiary instead of the representative office.

EXIT STRATEGY

Company

Voluntary liquidation is generally performed vis-à-vis the Registrar of Companies. Involuntary liquidation will generally require the involvement of the court and/or the Official Receiver.

Branch / representative office

Not applicable.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

Company

Annual meetings of the board of directors and of the shareholders; filing of annual report with the Registrar of Companies; payment of annual fee to the Registrar of Companies. The company is also required to notify the Registrar of Companies of various changes within the company on an ongoing basis (changes in share capital,
shareholdings and directors, etc).

Branch / representative office

Required to notify the Registrar of Companies of various changes within the branch and/or the Original Entity (changes in the organizational documents or board of directors of the Original Entity, changes relating to the authorized signatories of the branch, etc).

DIRECTOR / OFFICER REQUIREMENTS

Company

Minimum of 1 director. General manager and other officers are not required.

Branch / representative office

Not applicable.

For more information on directors’ duties, see our Global Guide to Directors’ Duties.

LOCAL CORPORATE SECRETARY REQUIREMENT

Company

None beyond the required director.

Branch / representative office

Required to register the name and address of a person residing in Israel who is authorized to accept judicial documents and other notices on behalf of the Foreign Company.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Company

None beyond the required director.

Branch / representative office

Not applicable.

LOCAL OFFICE LEASE REQUIREMENT

Company
None required.

Branch / representative office

Not applicable.

OTHER PHYSICAL PRESENCE REQUIREMENTS

Company

None required.

Branch / representative office

Not applicable.

SUFFICIENCY OF VIRTUAL OFFICE

Company

Insufficient. While physical presence is not required, a company must maintain a valid local registered mailing address.

Branch / representative office

Insufficient. While physical presence is not required, a Foreign Company must be represented by at least 1 person who regularly resided in Israel.

PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Company

Allowed.

Branch / representative office

Allowed.

PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Company

Allowed.
Branch / representative office

Not applicable.

**NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS**

Company

None.

Branch / representative office

Required to execute a power of attorney in favor of a person regularly residing in Israel, authorizing him to act in its name.

**RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS**

Company

None.

Branch / representative office

Not applicable.

**SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF**

Company

Directors are elected by the shareholders and are the highest authority in the management of the company, and govern the organization by establishing broad policies and objectives. In contrast, the general manager is appointed by the directors to oversee day-to-day operations of the company.

Branch / representative office

Required to execute a power of attorney in favor of a person regularly residing in Israel, authorizing him to act in its name.

**PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS**

Company
Identity of directors and shareholders is publicly disclosed.

Branch / representative office

Identity of directors is publicly disclosed.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

Company

Shareholders – there must be a minimum of 1 shareholder, and while there is no maximum number, if a private company is not limited to less than 50 shareholders then it must file a balance sheet together with its annual report to the Registrar of Companies. Additionally, offering securities to over 35 individuals or entities may subject the company to various securities regulations and requirements (similar to those imposed on publicly traded companies).

Directors – there must be at least 1 director and there is no maximum number.

Branch / representative office

Not applicable.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

Company

There must be at least 1 shareholder.

Branch / representative office

Not applicable.

REMOVAL OF DIRECTORS OR OFFICERS

Company

Directors are generally removed by a majority vote of the shareholders who appointed them. The board of directors appoints and removes the general manager.

Branch / representative office

Not applicable.

REQUIRED AND OPTIONAL OFFICERS

Company
None required. Any optional officer is allowed.

Branch / representative office

Not applicable.

**BOARD MEETING REQUIREMENTS**

**Company**

The board convenes in accordance with the company’s requirements and at least once a year. Unanimous written consents, in lieu of meetings, are generally permitted.

Branch / representative office

Not applicable.

**QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

**Company**

Shareholder meetings – Unless otherwise determined in the company’s articles of association, the presence of at least 2 shareholders holding at least 25 percent of the voting rights is required.

Board meetings – Unless otherwise determined in the company’s articles of association, the presence of a majority of the directors is required.

Branch / representative office

Not applicable.

**MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?**

**Company**

It is not possible to open a bank account prior to incorporation. Once opened, the account is not required to be local (though recommended for convenience purposes). Bank account will be required in order to open tax files (tax files are required in order to have any significant business activity, engage employees, etc)

Branch / representative office

It is not necessary to open a bank account prior to registration. Once opened, the account is not required to be local (though recommended for convenience purposes). Bank account will be required in order to open tax files (tax files are required in order to have any significant business activity, engage employees, etc).
AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?

Company

Companies are generally required to appoint an auditor. The auditor must be an Israeli certified accountant and the books must be in Hebrew and kept at the company’s registered offices.

Branch / representative office

Yes.

REQUIREMENT REGARDING PAR VALUE OF STOCK

Company

Nominal value is not required. However, when used the nominal value will generally not be lower than NIS0.01 per share.

Branch / representative office

Not applicable.

INCREASING OF CAPITALIZATION IF NEEDED

Company

Effectuated by shareholder action.

Branch / representative office

Not applicable.

SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)

Company

Generally by distribution of dividends, return of shareholder loans, etc.

Branch / representative office

Generally by distribution of dividends, return of shareholder loans, etc.

RESTRICTIONS ON TRANSFERABILITY OF SHARES
Company

Shares can be transferred to shareholders or other third parties, but are generally subject to the board of directors’ consent and registration of the transfer in the company’s shareholder register. The articles of association may apply various restrictions on transfer such as “right of first refusal” or “co-sale right.”

Branch / representative office

Not applicable.

OBTAINING A NAME AND NAMING REQUIREMENTS

Company

Names cannot be reserved and are subject to the approval of the Registrar of Companies. Names cannot be misleading, insult the public or its feelings and cannot contain registered trademarks unless given the consent of the holder of such trademark.

Branch / representative office

The branch will be registered under the same name as the Original Entity.

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

Company

To open a tax file, the company will need to have bank account and the bank will have the “know your client” requirements under Israeli anti money laundering laws.

Branch / representative office

To open a tax file, the company will need to have bank account and the bank will have the “know your client” requirements under Israeli anti money laundering laws.

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

Company

The shareholders must approve any amendment by such majority as determined in the articles of association (simple majority, if not otherwise determined).

Branch / representative office

Not applicable.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION
Company

Typically the only license required, if required, would be a business license issued by the municipality in which the company’s facility is located. However, the requirement of a business license, as well as other licenses and permits, is dependent on the type of business conducted by the company.

Branch / representative office

Typically the only license required, if required, would be a business license issued by the municipality in which the company’s facility is located. However, the requirement of a business license, as well as other licenses and permits, is dependent on the type of business conducted by the company.

**PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY**

Company

Not applicable.

Branch / representative office

Not applicable.

**KEY CONTACTS**

<table>
<thead>
<tr>
<th>Benjamin Sandler</th>
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</tr>
</thead>
</table>
ITALY

FORM OF ENTITY

Società a responsabilità limitata (S.r.l.)

Separate and distinct legal entity. A S.r.l. can be managed by:

- A sole director or
- A board of directors, composed by 2 or more members or
- Two or more directors acting jointly or severally

Directors can also be quota-holders. Directors are elected by the quota-holders with a proper decision.

ENTITY SET UP

Società a responsabilità limitata (S.r.l.)

Typical documents include: (i) a list of Italian company’s quota-holders and all information regarding the foreign company wishing to incorporate it; (ii) power of attorney, notarized and apostilled, if necessary, issued in favor of the persons who are requested to carry out the incorporation meeting in Italy; (iii) certificate of existence and good standing of the quota-holders; (iv) specific information about the company management; (v) Italian Fiscal Code of the Italian company’s directors and of the auditing body (if any) (at this respect, please note that any non-Italian citizen director must request the issuance of an Italian tax code); (vi) bylaws and deed of incorporation of the company, which must have the specific requirements provided by the Italian Civil Code.

At least 25 percent of the contributions in cash of the corporate capital must be deposited in a temporary deposit, in proportion of the interest underwritten by each quota-holder and all of the capital must be duly underwritten; otherwise, the incorporation meeting cannot take place. The remaining contributions of the corporate capital must be paid in when requested by the board of directors or the sole director. In case of sole quota-holder, the entire amount of the corporate capital must be paid in at time of incorporation.

Società per azioni (S.p.A.)
Typical documents include: (i) a list of Italian company’s shareholders and all the information regarding the foreign company wishing to incorporate it; (ii) the company shareholder’s ledger and shares’ certificates; (iii) Italian Fiscal Code of the Italian company’s directors and of the auditing body (please note that any non-Italian citizen director must request the issuance of an Italian tax code); (iv) bylaws and deed of incorporation of the company, which must have specific requirements provided by the Italian Civil Code.

The entity setup is subject to the following: (i) the share capital must be entirely underwritten; (ii) the provisions contained in Articles 2342, 2343 and 2343-ter of Italian Civil Code must be respected; (iii) the authorizations and the other conditions provided by special laws for the incorporation of the company, in relation to its particular purposed, shall apply.

**Branch office**

- Not a separate legal entity from its parent company

- However, it still has the power to permanently represent the parent company in Italy

- It is autonomous with respect to the way in which it organizes its activities in Italy

- It has decision-making ability to carry on the business of its parent company in Italy

- 1 or more persons are granted with the ability to represent the branch office in Italy (the so-called "preposto/i")

- It is taxed on its earnings at a corporate level. Once the gross profits have been taxed in Italy at the branch level, they can be transferred to the parent company (foreign headquarter) without further Italian taxation (technically they are not dividends since the net profit of an Italian branch already belongs to the parent company)

- Typical charter documents include: registration with the appropriate Companies’ Register, issuance of an Italian fiscal code and VAT code for the branch office, issuance of an Italian fiscal code for the legal representative(s) of the branch office, statement of new activity in Italy, power of attorney/proxy to be provided to the persons entitled to represent the branch office.

**Representative office**

- Not a separate legal entity from its parent company

- It does not have the power to represent the parent company in Italy

- It can only carry out promotional and advertising activities in Italy, receive and provide information on behalf of the parent company, carry out scientific research activity, create relationships with possible clients and monitor the Italian market

- Cannot bind the parent company to any 3rd party

- It is not subject to taxation in Italy (by definition a representative office does not carry out a business activity), and
• Typical charter documents include: registration with the Economic and Administrative Register (REA) and issuance of an Italian fiscal code for the representative office and for its legal representative.

**MINIMUM CAPITAL REQUIREMENT**

*Società a responsabilità limitata (S.r.l.)*

Minimum capital requirement of EUR 10,000. It is possible to incorporate a S.r.l. with a corporate capital of less than EUR 10,000 provided that:

- The corporate capital is at least equal to EUR 1
- The entire amount must be paid in cash by the directors of the company and
- A special reserve is formed to fill the gap in the capital with the future profits of the company.

*Società per azioni (S.p.A.)*

EUR 50,000.

**LEGAL LIABILITY**

*Società a responsabilità limitata (S.r.l.)*

Quota-holders of a corporation are generally not liable for the debts of the corporation. According to Italian law, their liability is limited to their contributions. The quota-holders are jointly liable with the directors in case they have intentionally decided or authorized the performance of harmful activities on the company, the quota-holders or third parties.

*Società per azioni (S.p.A.)*

No personal liability of the shareholders.

The different allocation of the corporate rights to shareholders is not allowed.

**TAX PRESENCE**

*Società a responsabilità limitata (S.r.l.)*

Its earnings are taxed at a corporate level and quota-holders are taxed on any distributed dividends.

**INCORPORATION PROCESS**

*Società a responsabilità limitata (S.r.l.)*
The S.r.l. may be incorporated either by contract or unilateral act and the articles of association shall be drafted by way of a public deed.

Therefore, the incorporation meeting takes place before an Italian Notary Public and provides for, inter alia, the filing and registration of the articles of association (and the annexed bylaws) with the competent Chamber of Commerce/Companies’ Register.

BUSINESS RECOGNITION

Società a responsabilità limitata (S.r.l.)

Well regarded and widely used. The most common corporate entity in Italy for small- to medium-sized businesses, especially due to the flexibility in management.

SHAREHOLDER MEETING REQUIREMENTS

Società a responsabilità limitata (S.r.l.)

The articles of association of an S.r.l. may provide that the decisions of the quota-holders are taken by way of written consultation or written consent. In the absence of this kind of provision in the articles of association and:

With reference to some items expressly provided by Italian law, ie:

- The amendments of the articles of association
- The decision to carry out the transactions entailing a substantial amendment of the corporate purpose or a substantial amendment of the rights of the shareholders
- In case of a decrease in the corporate capital for losses or
- When requested by 1 or more directors or a number of quota-holders representing at least 1/3 of the corporate capital, the decisions are taken by way of a quota-holder’s meeting.

Quota-holders are required to, at a minimum, approve the company’s financial statements each year.

Società per azioni (S.p.A.)

A shareholder’s meeting must be called at least once a year, in order to resolve upon the approval of the Financial Statements of the company. It is not possible to adopt written resolutions.

BOARD OF DIRECTOR MEETING REQUIREMENTS

Società a responsabilità limitata (S.r.l.)

The articles of association of a S.r.l. may provide that the decisions of the board of directors are taken by way of written consultation or written consent.
Directors are required to, at a minimum, approve the company’s draft financial statements each year.

Auditing body

- The S.r.l. is obliged to appoint an auditing body which can consist of either:
  - In a board of 3 effective members and 2 alternate members or
  - In a sole auditor or
  - In an external auditor.

- The following requirements/thresholds need to be met:
  - The company is required to prepare the consolidated financial statements
  - The S.r.l. controls a company which is subject to the legal auditing by an external auditor

- For 2 consecutive financial years, the company has exceeded at least 1 of the following thresholds:
  - The assets resulting from the balance sheet are equal to EUR 4 million
  - The profits are equal to EUR 4 million
  - The average number of the personnel employed by the company is 20 employees

- The obligation to appoint an auditing body in a S.r.l. ceases if, for 3 subsequent financial years, none of the aforementioned numeric limits have been exceeded.

For Società per azioni (S.p.A.):

The auditing body is mandatory in the joint stock companies, in the form of a board of statutory auditors

It is composed by 3 effective auditors and 2 alternate auditors, appointed by the shareholder’s meeting (with the exception of the first statutory auditors, appointed by the deed of incorporation).

The effective auditors must receive a remuneration for their office.

**ANNUAL COMPANY TAX RETURNS**

Società a responsabilità limitata (S.r.l.)

The S.r.l. must annually file tax returns with the Italian tax authority; the most common are (not exhaustive list):

- Corporate income tax return
- Regional income tax return
- VAT return and
- Withholding agent tax return

Moreover, other periodical (i.e., monthly or quarterly) tax declarations could be due, depending on the actual activity carried out; such as the Intrastat form or communication of any transactions with counterparties originating from the list of black listed countries.

**BUSINESS REGISTRATION FILING REQUIREMENTS**

*Società a responsabilità limitata (S.r.l.)*

The filings are made when required by law.

The financial statements must be filed each year after their approval by the shareholders' meeting, within 30 days from the approval itself.

**BUSINESS EXPANSION**

*Società a responsabilità limitata (S.r.l.)*

If a S.r.l. expands beyond a certain point (please refer to the Auditing body topic under Board of director meeting requirements) the company must appoint an auditing body, in the form of either a board of statutory auditors, or a sole statutory auditor, or an external auditor.

**EXIT STRATEGY**

*Società a responsabilità limitata (S.r.l.)*

The limited liability company dissolves (i) for the expiration of the company’s term; (ii) for the achievement of the corporate purpose or for the occurred impossibility to achieve it, unless the quota-holder’s meeting, called with no delay, does not resolve upon the relevant bylaws amendments; (iii) for the impossibility to operate or for the continuous inactivity of the quota-holder’s meeting; (iv) for the decrease in the corporate capital below the legal minimum required, unless what is provided by Articles 2447 and 2482-ter of Italian Civil Code; (v) in cases foreseen by Articles 2437-quater and 2473; (vi) in case the quota-holder’s meeting resolves so; (vii) for the other causes provided in the bylaws or the deed of incorporation; (viii) in case a judicial or controlled liquidation procedure (the so-called “procedura di liquidazione giudiziale e controllata”) is commenced.

The effects of dissolution are determined at the date of registration, at the Companies’ Register, of the declaration by which the directors of the company ascertain the causes of dissolution (with reference to the case described under number (vi) above, at the date in which the relevant minutes will be filed with the companies’ register).

*Società per azioni (S.p.A.)*

The joint stock company dissolves (i) for the expiration of the company’s term; (ii) for the achievement of the corporate purpose or for the occurred impossibility to achieve it, unless the shareholder’s meeting, called with no
delay, does not resolve upon the relevant bylaws amendments; (iii) for the impossibility to operate or for the continuous inactivity of the shareholder’s meeting; (iv) for the decrease in the share capital below the legal minimum required, unless what is provided by Articles 2447 and 2482-ter of Italian Civil Code; (v) in cases foreseen by Articles 2437 and 2473; (vi) in case the shareholder’s meeting resolves so; (vii) for the other causes provided in the bylaws or the deed of incorporation.

The effects of dissolution are determined at the date of registration, at the Companies’ Register, of the declaration by which the directors of the company ascertain the causes of dissolution (with reference to the case described under number (vi) above, at the date in which the relevant minutes will be filed with the companies’ register).

**ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

**Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)**

Approval of financial statements (both at quota-holders’ and directors’ level).

**DIRECTOR / OFFICER REQUIREMENTS**

**Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)**

*Italian Fiscal Code*

Directors are required.

Officers are not applicable.

According to a recent change in Italian corporate law, individuals assuming the office of directors of a limited liability or joint stock company are obliged to declare, before their appointment, the absence of the causes of ineligibility stated under article 2382 of the Italian Civil Code. Article 2382 of the Italian Civil Code states that the following persons cannot be appointed as directors and, if appointed, must cease from their office: (i) individuals who are subject to disqualification (interdetti), (ii) individuals who are subject to disablement (inabilitati), (iii) individuals who have filed bankruptcy or (iv) individuals who have been sentenced to punishment which entails interdiction from public offices or incapacity to assume managerial offices (uffici direttivi).

For more information on directors’ duties, see our [Global Guide to Directors’ Duties](#).

**LOCAL CORPORATE SECRETARY REQUIREMENT**

**Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)**

Not applicable for this jurisdiction.

**LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT**
Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)

The Italian entity shall appoint a legal representative who may be also a foreign individual.

None beyond the required directors. However, in practice, the transactions are easier if at least 1 of the directors is located in Italy.

LOCAL OFFICE LEASE REQUIREMENT

Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)

Not mandatory. The Italian entity may be domiciled at the bookkeeper office.

OTHER PHYSICAL PRESENCE REQUIREMENTS

Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)

Not applicable for this jurisdiction.

SUFFICIENCY OF VIRTUAL OFFICE

Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)

Not applicable for this jurisdiction.

PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)

Allowed, for a limited period of time.

PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)

Not allowed.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)
For certain jurisdictions, it could be necessary to assess whether reciprocity condition is satisfied.

**RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS**

*Società a responsabilità limitata (S.r.l.)* and *Società per azioni (S.p.A.)*

For shareholders or directors coming from certain jurisdictions, it could be necessary to assess whether reciprocity condition is satisfied.

**SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF**

*Società a responsabilità limitata (S.r.l.)*

- The limited liability company is managed by an administrative body, appointed by the quota-holder’s meeting (except for the first directors, who are appointed in the deed of incorporation).

- Directors are elected by the quota-holders and are the highest authority in the management of the company. A S.r.l. can be managed by:
  - A sole director or
  - A board of directors, composed by 2 or more members, or
  - Two or more directors acting jointly or severally.

- Directors can also be quota-holders.

- The directors are jointly liable towards the company for damages arising from the failed observance of their duties, imposed by law and by the deed of incorporation for the management of the company. However, directors proving to be not in fault and having opposed to that specific transaction to be carried out, are deemed as not liable.

- The remuneration for their office is not mandatory.

*Società per azioni (S.p.A.)*

- The joint stock company is managed by an administrative body, appointed by the shareholder’s meeting (except for the first directors, who are appointed in the deed of incorporation)

- It is possible to choose among (i) a sole director or (ii) a board of directors

- The directors must fulfil their duties, in accordance with the provisions set forth by the law and the articles of associations, and with the diligence required by the type of appointment and their specific competences. They are jointly liable towards the company with respect to the damages arising from the non-fulfilment of
such duties, provided that they are not specific powers of the executive committee or they are concrete functions exercised by 1 or more directors. They are jointly liable if, being aware of negative facts, they did not what they could to prevent the carrying out of such facts or to eliminate or mitigate the harmful consequences thereof. The directors of a joint stock company are also liable towards company’s creditors for the failed compliance with the obligations concerning the assets’ integrity

• The remuneration for their office is not mandatory.

**PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS**

*Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)*

Quota-holders, directors, members of oversight body (e.g., members of the board of statutory auditors, if any in the case of S.r.l., mandatory for the S.p.A.), and proxy-holders (if any) are publicly identified, since they are registered with the Companies’ Register. Registration of the special proxy-holders is not mandatory (except in certain cases, where, for instance, the attorney is granted with banking powers and banks could require the registration of the attorney’s powers with the Companies’ Register).

**MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS**

*Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)*

The minimum and maximum number of directors are specified in the bylaws. For directors, generally the minimum number is 1 (in this case, the management body of the company consists of a sole director).

**MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

*Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)*

1 quota-holder is sufficient.

**REMOVAL OF DIRECTORS OR OFFICERS**

*Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)*

Removal of directors is generally allowed by a vote of quota-holders should the relevant director be appointed for an unlimited period of time and without prejudice to an adequate notice period. Should the relevant director be appointed for a fixed period of time, they can be removed for “just cause” with a resolution of the quota-holders. In case of absence of a just cause, the quota-holders meeting can remove such director, but compensation for damages will be due.

**REQUIRED AND OPTIONAL OFFICERS**

*Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)*
Applicable (e.g., attorney in fact).

**BOARD MEETING REQUIREMENTS**

*Società a responsabilità limitata (S.r.l.)* and *Società per azioni (S.p.A.)*

The articles of association of a S.r.l. may provide that the decisions of the board of directors are taken by way of written consultation or written consent. Written resolutions are not allowed for the S.p.A.

**QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

*Società a responsabilità limitata (S.r.l.)* and *Società per azioni (S.p.A.)*

The quorum required for the meetings are provided by the Articles of Association or by law.

**MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?**

*Società a responsabilità limitata (S.r.l.)* and *Società per azioni (S.p.A.)*

The bank account may be opened even after the incorporation. In this case, the necessary sum to set-up the company (i.e., the corporate capital) can be kept in escrow by the Notary Public on his trust bank account and then can be transferred onto the Italian entity’s bank account when the latter is opened. The bank account is local.

**AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?**

*Società a responsabilità limitata (S.r.l.)* and *Società per azioni (S.p.A.)*

In an S.r.l., the appointment of the auditing body is not mandatory under Italian law, except for the cases described in the Auditing body topic under Board of director meeting requirements.

In the S.p.A. the auditing body is necessary.

The relevant books must be kept.

**REQUIREMENT REGARDING PAR VALUE OF STOCK**

*Società a responsabilità limitata (S.r.l.)*

Not applicable for this jurisdiction.
INCREASING OF CAPITALIZATION IF NEEDED

Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)

In order to resolve upon the increase in the corporate capital of a S.r.l. or S.p.A., a proper extraordinary quota-holders meeting must be held in front of the Italian Notary Public. The relevant decision is approved with the majorities provided by the articles of association.

SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)

Società per azioni (S.p.A.)

The funds can be divided between corporate capital and share premium.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)

Can be provided for in the bylaws within certain limitations.

OBTAINING A NAME AND NAMING REQUIREMENTS

Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)

The choice of the name for a limited liability is free; however, we suggest:

- To avoid choosing names which are equal or very similar to those of competitors companies and
- To carry out preliminary researches at the Italian Companies’ Register.
- Finally, the name of the company must include the legal form (i.e., "S.r.l." or "S.p.A.," as the case may be).

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)

Not applicable for this jurisdiction.

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)

The By-laws and the Deed of Incorporation can be amended with a quotaholder’s/shareholder’s meeting to be held before the Notary Public.
LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

_Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)_

Depends on the specific business of the corporation.

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

_Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)_

Applicable, if required but the shelf companies are not usual under Italian law.

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JAPAN

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**FORM OF ENTITY**

**Registered branch**

This form is often used by foreign companies seeking to gain presence and do business in Japan without establishing a subsidiary. A foreign company must appoint at least 1 representative in Japan.

**Kabushiki-Kaisha (KK)**

A KK is a distinct legal entity. KKS are most similar to C-corporations in other jurisdictions. The liability for shareholders is limited, and the KK is a well-established structure. The KK may be established with or without a board of directors.

**Godo-Kaisha (GK)**

A GK structure is similar to an LLC in other jurisdictions. The GK allows more flexibility in regards to corporate governance and management decisions. The annual corporate governance requirements costs are generally lower as there are few formal corporate governance requirements that must be observed.

**ENTITY SET UP**

**Registered branch**

- This form is used by foreign companies which wish to gain presence in Japan without establishing a subsidiary.

- Appointment of a representative in Japan who has an address in Japan is needed. Other than that, there are no requirements regarding corporate maintenance.

- This form is taxed on its income arising within Japan in principle.

**Kabushiki-Kaisha (KK)**

- Unlimited number of shareholders
• No personal liability of the shareholders

• Taxed on its earnings at a corporate level, and shareholders are taxed on any distributed dividends

• The corporate formalities are fairly strict.

• Directors have overall management responsibility. A KK may be established with or without a board of directors.

**Godo-Kaisha (GK)**

• Unlimited number of members allowed

• Liability of members is limited to the amount of equity participation.

• Taxed on its earnings at a corporate level, and members are taxed on any distributed profits

• There are few formal corporate governance requirements that must be observed.

• Members are designated to manage the business.

**MINIMUM CAPITAL REQUIREMENT**

Registered branch

Depends on the governing law of the foreign company.

*Kabushiki-Kaisha (KK)*

JPY 1.

*Godo-Kaisha (GK)*

JPY 1.

**LEGAL LIABILITY**

Registered branch

A registered branch is considered as a part of its foreign company, which will be liable for any activities or debts of the registered branch.

*Kabushiki-Kaisha (KK)*

Liability of shareholders is limited to the amount of equity participation.

*Godo-Kaisha (GK)*
Liability of members is limited to the amount of equity participation.

**TAX PRESENCE**

**Registered branch**

Income arising within Japan is, in principle, taxed, and income attributable to a branch arising in the countries other than Japan (if any) is subject to income tax in Japan.

*Kabushiki-Kaisha (KK)*

A KK is taxed at 2 levels. First, the KK is subject to corporate tax; then, shareholders are taxed on any dividends distributed by the KK.

*Godo-Kaisha (GK)*

A GK is taxed at 2 levels. First, the GK is subject to corporate tax; then, members are taxed on any dividends distributed by the GK.

**INCORPORATION PROCESS**

**Registered branch**

A foreign company is required to register with the Legal Affairs Bureau.

*Kabushiki-Kaisha (KK)*

Notarization of the Articles of Incorporation by Japanese notary public and registration with the Legal Affairs Bureau are required.

*Godo-Kaisha (GK)*

Registration with the Legal Affairs Bureau is required.

**BUSINESS RECOGNITION**

**Registered branch**

This form is used by foreign companies which wish to gain presence without establishing a subsidiary in Japan.

*Kabushiki-Kaisha (KK)*

Well regarded and widely used.

*Godo-Kaisha (GK)*

Some business entities may be hesitant in dealing with third-party GKs as the structure is relatively new. A GK
structure was introduced with the adoption of revised Japanese Companies Act in 2006, and it took some time to come to be recognized. However, as the number of GKs increased and some major global companies selected GKs as entities in Japan, GKs are getting to be commonly used.

**SHAREHOLDER MEETING REQUIREMENTS**

Registered branch

No requirements.

*Kabushiki-Kaisha (KK)*

A regular general shareholders meeting, in principle, must be held at least once every year. It must be held within 3 months of the end of the fiscal year in most KKs.

*Godo-Kaisha (GK)*

None.

**BOARD OF DIRECTOR MEETING REQUIREMENTS**

Registered branch

No requirements.

*Kabushiki-Kaisha (KK)*

A KK must hold board of directors meetings once in 3 months if the KK has a board of directors.

*Godo-Kaisha (GK)*

None.

**ANNUAL COMPANY TAX RETURNS**

Registered branch

A registered branch must annually file tax returns with the National Tax Agency.

*Kabushiki-Kaisha (KK)*

A KK must annually file tax returns with the National Tax Agency.

*Godo-Kaisha (GK)*

A GK must annually file tax returns with the National Tax Agency.
BUSINESS REGISTRATION FILING REQUIREMENTS

Registered branch

A foreign company intending to engage in business in Japan on a regular basis must register necessary information, which is also required from most other similarly situated companies in Japan, in order to carry out continuous transactions. In addition, the foreign company must register its governing law, name and address of its representative in Japan, and means by which it will provide public notice. A registered branch must also register changes to those items which have been registered in its corporate registry.

*Kabushiki-Kaisha (KK)*

Registration with the Legal Affairs Bureau is required. In addition, a KK must register changes of items that have been registered in its corporate registry.

*Godo-Kaisha (GK)*

Registration with the Legal Affairs Bureau is required. In addition, a GK must register changes of items that have been registered in its corporate registry.

BUSINESS EXPANSION

Registered branch

If the scope of business purpose is expanded, filing the changes with the Legal Affairs Bureau is required.

*Kabushiki-Kaisha (KK)*

If the scope of business purpose is expanded, the articles of incorporation must be amended by a special resolution of a general meeting of shareholders, which normally requires the presence of a majority of shareholders and an approval of 2/3 or more of votes. In addition, filing such changes with the Legal Affairs Bureau is required.

*Godo-Kaisha (GK)*

If the scope of business purpose is expanded, the Articles of Incorporation must be amended by a majority vote of its members, and filing such changes with the Legal Affairs Bureau is required.

EXIT STRATEGY

Registered branch

If all of the representatives in Japan have resigned, a branch office can be closed.

*Kabushiki-Kaisha (KK)*

Dissolution will be approved by a special resolution of a general meeting of shareholders which normally requires presence of a majority of shareholders, and an approval of 2/3 or more of votes. A liquidator must perform the
liquidation tasks. Dissolution and completion of liquidation are filed with the Legal Affairs Bureau.

_Godo-Kaisha (GK)_

Dissolution will be approved by all members, and a liquidator will perform liquidation tasks. Dissolution and completion of liquidation are filed with the Legal Affairs Bureau.

**ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

**Registered branch**

None.

**Kabushiki-Kaisha (KK)**

The requirements are an annual shareholders’ meeting for every KK and a board of directors meeting once every 3 months if the KK has a board of directors.

**Godo-Kaisha (GK)**

None. A GK may flexibly organize its maintenance policy.

**DIRECTOR / OFFICER REQUIREMENTS**

**Registered branch**

At least 1 representative in Japan who has an address in Japan is required.

**Kabushiki-Kaisha (KK)**

At least 1 director is required for every KK. A KK with a board of directors must have 3 or more directors and 1 or more statutory auditors. An accounting auditor which is a CPA or an accounting firm is required if the KK has stated capital of at least JPY500 million or liabilities of at least JPY20 billion (this kind of KK is called a "large company").

**Godo-Kaisha (GK)**

No requirements regarding directors. Normally, members execute the business of the GK, and such members represent the GK. The GK may also appoint specific members (ie, managing members) who execute the business. In this case, only the managing members represent the GK. In the case where a managing member is a legal entity, such legal entity must appoint natural person(s) who will execute the business affairs on behalf of such managing member as executive manager(s).

For more information on directors’ duties, see our Global Guide to Directors’ Duties.
LOCAL CORPORATE SECRETARY REQUIREMENT

Registered branch

None.

Kabushiki-Kaisha (KK)

None.

Godo-Kaisha (GK)

None.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Registered branch

None.

Kabushiki-Kaisha (KK)

None beyond the required directors, statutory auditor and accounting auditor.

Godo-Kaisha (GK)

None.

LOCAL OFFICE LEASE REQUIREMENT

Registered branch

To lease property in the name of a foreign company, most lessors require a certified copy of the registration with the Legal Affairs Bureau indicating that the foreign company is duly constituted and that the individual representative in Japan has been duly authorized to act on behalf of the company.

Kabushiki-Kaisha (KK)

None required for incorporation.

Godo-Kaisha (GK)

None required for incorporation.

OTHER PHYSICAL PRESENCE REQUIREMENTS

Registered branch
None. A representative in Japan's address will be considered the address of the branch if the branch office does not register its own address.

*Kabushiki-Kaisha (KK)*

None.

*Godo-Kaisha (GK)*

None.

**SUFFICIENCY OF VIRTUAL OFFICE**

Registered branch

Sufficient for registration.

*Kabushiki-Kaisha (KK)*

Allowed for incorporation.

*Godo-Kaisha (GK)*

Allowed for incorporation.

**PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

Registered branch

Allowed for registration.

*Kabushiki-Kaisha (KK)*

Allowed for incorporation.

*Godo-Kaisha (GK)*

Allowed for incorporation.

**PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

Registered branch

Allowed for registration.
Kabushiki-Kaisha (KK)
Allowed for incorporation.

Godo-Kaisha (GK)
Allowed for incorporation.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

Registered branch
At least 1 representative in Japan must have an address in Japan, but such person does not have to be a Japanese national.

Kabushiki-Kaisha (KK)
None.

Godo-Kaisha (GK)
None.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Registered branch
None.

Kabushiki-Kaisha (KK)
None.

Godo-Kaisha (GK)
None.

SUMMARY OF DIRECTOR'S, OFFICER'S AND SHAREHOLDER'S AUTHORITY AND LIMITATIONS THEREOF

Registered branch
Depends on the governing law of the foreign company. No relevant provisions under Japanese law.

Kabushiki-Kaisha (KK)
Directors are the highest authority in the management structure of a KK and govern the organization.

_Godo-Kaisha (GK)_

 Normally, members execute the business of a GK and such members represent the GK. A GK can also appoint specific members (ie, managing members) who execute the business. In this case, only the managing members represent the GK.

**PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS**

Registered branch

Name of directors, name and residential address of representative in Japan are registered on a corporate registry which is publicly accessible.

_Kabushiki-Kaisha (KK)_

Name of directors, statutory auditors, accounting auditor and residential address of the representative director are registered on a corporate registry which is publicly accessible; however, shareholders are not disclosed.

_Godo-Kaisha (GK)_

Name and address of managing members and executive managers, if appointed, are disclosed in a corporate registry which is publicly accessible; however, name and address of non-managing members are not disclosed.

**MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS**

Registered branch

At least 1 representative in Japan is needed.

_Kabushiki-Kaisha (KK)_

The minimum number of directors is 3 in a KK with a board of directors, but 1 for a KK without a board of directors. There is no limitation on the number of shareholders.

_Godo-Kaisha (GK)_

There is no limitation on the number of members and executive managers.

**MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

Registered branch

Depends on the governing law of the foreign company.
Kabushiki-Kaisha (KK)

One shareholder is sufficient.

Godo-Kaisha (GK)

One member is sufficient.

REMOVAL OF DIRECTORS OR OFFICERS

Registered branch

Depends on the governing law of the foreign company.

Kabushiki-Kaisha (KK)

Removal of directors is generally allowed by a majority vote of shareholders at the general meeting of shareholders.

Godo-Kaisha (GK)

A managing member who appointed its executive manager may freely remove its executive manager.

REQUIRED AND OPTIONAL OFFICERS

Registered branch

Depends on the governing law of the foreign company.

Kabushiki-Kaisha (KK)

An accounting auditor is required for a KK that has stated capital of at least JPY-500 million or liabilities of at least JPY-20 billion (this kind of KK is called a ”large company”). An accounting auditor is optional for all forms of KKs.

Godo-Kaisha (GK)

None.

BOARD MEETING REQUIREMENTS

Registered branch

Depends on the governing law of the foreign company.

Kabushiki-Kaisha (KK)

Board of director meetings are required once in 3 months. If permitted by the articles of incorporation of the KK, a resolution in relation to an agenda proposed by a director can be replaced by written consents of all directors,
unless none of the statutory auditors make an objection to such agenda.

_Godo-Kaisha_ (GK)

None.

**QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

**Registered branch**

Depends on the governing law.

_Kabushiki-Kaisha_ (KK)

For a shareholder meeting, usually a majority of shareholders must be present at the meeting and a majority vote of the shareholders present is required, or all shareholders must sign written consents to a particular agenda. For a board meeting, usually a majority of directors must be present at the meeting and a majority vote of directors present is required. The resolution may be replaceable by all directors' written consent as mentioned in "Board meeting requirements."

_Godo-Kaisha_ (GK)

A majority vote of members.

**MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?**

**Registered branch**

Not necessary for registration, and not limited to local accounts.

_Kabushiki-Kaisha_ (KK)

Not necessary in order to incorporate. Opening of a bank account for a KK before incorporation is not possible.

_Godo-Kaisha_ (GK)

Not necessary in order to incorporate. Opening of a bank account for a GK before incorporation is not possible.

**AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?**

**Registered branch**

None.
**Kabushiki-Kaisha (KK)**

An audit is required for a KK with statutory auditors or an accounting auditor. Statutory auditors review the financial statements of the company and are responsible for auditing the execution of duties by directors for compliance with statutes and the Articles of Incorporation unless such statutory auditor's scope of audit is limited to accounting matters. There is no requirement that a statutory auditor be an accountant, and they do not have to be located in local jurisdiction. A KK must keep its books for 10 years, must place its books for 5 years at its head office and must place a copy of its books for 3 years at its branch office (if any).

**Godo-Kaisha (GK)**

Since there are no statutory auditors or accounting auditors in a GK, auditing is not required for a GK. A GK must keep its books for 10 years.

**REQUIREMENT REGARDING PAR VALUE OF STOCK**

Registered branch

Depends on the governing law.

**Kabushiki-Kaisha (KK)**

None.

**Godo-Kaisha (GK)**

None.

**INCREASING OF CAPITALIZATION IF NEEDED**

Registered branch

Depends on the governing law of the foreign company.

**Kabushiki-Kaisha (KK)**

Increase of stated capital may be done by issuance of new shares. Filing the changes of the stated capital and the number of shares with the Legal Affairs Bureau is required.

**Godo-Kaisha (GK)**

Increase of stated capital may be done by capital injection by existing/new members. Filing the changes of the stated capital with the Legal Affairs Bureau is required.

**SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)**
Registered branch

A branch does not have equity participation shares, but the income of a branch may contribute to dividends of its head office.

Kabushiki-Kaisha (KK)

Funds can be repatriated abroad from Japan via dividends or distribution of residual assets upon liquidation.

Godo-Kaisha (GK)

Funds can be repatriated abroad from Japan via dividends or distribution of residual assets upon liquidation.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

Registered branch

Depends on the governing law of the foreign company.

Kabushiki-Kaisha (KK)

A KK can issue shares that cannot be transferred without the approval of the KK, if so prescribed in the Articles of Incorporation.

Godo-Kaisha (GK)

A member cannot transfer their equity without the consent of all members.

OBTAINING A NAME AND NAMING REQUIREMENTS

Registered branch

A corporate name cannot be mistaken for other companies, but this limitation is only applicable when other companies are located at the same address.

Kabushiki-Kaisha (KK)

A KK should use in its corporate name the words "Kabushiki-Kaisha." A corporate name cannot be mistaken for other companies, but this limitation is only applicable when other companies are located at the same address.

Godo-Kaisha (GK)

A GK should use in its corporate name the words "Godo-Kaisha." A corporate name cannot be mistaken for other companies, but this limitation is only applicable when other companies are located at the same address.

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS
Registered branch

There is no need to register information regarding the controller of the company. Only specific business operators, such as financial institutions, are required to conduct customer due diligence.

*Kabushiki-Kaisha (KK)*

There is no need to register information regarding the controller of the company. Only specific business operators, such as financial institutions, are required to conduct customer due diligence.

*Godo-Kaisha (GK)*

There is no need to register information regarding the controller of the company. Only specific business operators, such as financial institutions, are required to conduct customer due diligence.

**APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

Registered branch

Depends on the governing law of the foreign company.

*Kabushiki-Kaisha (KK)*

Special resolution of a shareholders meeting, which normally requires presence of a majority of shareholders and an approval of 2/3 or more of votes.

*Godo-Kaisha (GK)*

All members’ consent is needed.

**LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

Registered branch

Registration with the Legal Affairs Bureau is required to conduct continuous business. If the registered branch intends to operate a specific business which requires a license under the Japanese law, such license must be obtained before commencing such business.

*Kabushiki-Kaisha (KK)*

If the KK intends to operate a specific business which requires a license under the Japanese law, such license must be obtained before commencing such business.

*Godo-Kaisha (GK)*

If the GK intends to operate a specific business which requires a license under the Japanese law, such license must be obtained before commencing such business.
PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

Registered branch

There is no concept of a shelf company in this jurisdiction.

*Kabushiki-Kaisha (KK)*

There is no concept of a shelf company in this jurisdiction.

*Godo-Kaisha (GK)*

There is no concept of a shelf company in this jurisdiction.

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FORM OF ENTITY

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

Separate and distinct legal personality. Managed by a manager or a board of managers (collège de gérance) – who may or may not be shareholders - responsible for making major business decisions and overseeing the general affairs of the company. Managers are elected by the shareholders for a limited or unlimited term and represent the company acting alone, or as set out in the articles of incorporation/association, if more than one manager has been appointed.

Public limited liability company (Société anonyme or S.A.)

Separate and distinct legal personality. An SA may be organized as a 1-tier company (ie, managed by a sole director or a board of directors composed of at least 3 directors) or 2-tier company (ie, an executive board (directoire) and a supervisory board (conseil de surveillance). Directors are elected by the shareholders and represent the company acting alone or as set out in the articles of incorporation/association, if more than one director has been appointed.

Special limited partnership (Société en commandite spéciale or SCSp)

Largely inspired by the Anglo-Saxon limited partnership regimes, the special limited partnership has been designed to bolster Luxembourg’s position as the main alternative investment fund structuring hub in the EU at a time when the manager regulation is seen as a potential substitute for product regulation. With no legal personality, the SCSp is formed by written agreement – a limited partnership agreement – for a limited or unlimited duration, between 1 or more general partner(s) (associés commandités) jointly and severally liable for the partnership’s commitments and 1 or more limited partner(s) (associés commanditaires) whose liability does not extend beyond their commitment. High level of contractual freedom and structuring flexibility characterize the SCSp as most of the relevant provisions applicable to the SCSp may be contractually set forth in the limited partnership agreement.

ENTITY SET UP

On July 13, 2016, the Luxembourg Parliament adopted a major company law reform, which is:
Modernizing the Luxembourg corporate law

Granting legal certainty for certain practices that were previously subject to legal practices

Introducing the simplified company limited by shares (société par actions simplifiée or SAS) and

Introducing added flexibility in the mostly used form of companies.

The 2 underlying principles to this reform are enhancement of the contractual freedom and the promotion of a business-friendly environment. This reform adapts the legal framework to the economic realities and improves the consistency of Luxembourg corporate law and the competitiveness of the Grand Duchy of Luxembourg.

The forms of entities that are most commonly used in Luxembourg are the private limited liability company (société à responsabilité limitée or S.à r.l.), the public limited liability company (société anonyme or SA) and the special limited partnership (société en commandite spéciale or SCSp).

Other forms of entities commonly used in Luxembourg include the common limited partnership (société en commandite simple or SCS) and the corporate partnership limited by shares (société en commandite par actions or SCA).

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

- From one (1) to one hundred (100) shareholders
- Share capital may be divided into several classes of shares
- Generally no personal liability of the shareholders
- Typical incorporation documents include a notarial incorporation deed including articles of incorporation
- Shares register to be maintained at the registered office of the company
- Managed by a sole manager or a board of managers
- Annual accounts must be filed with the Luxembourg Register of Commerce and Companies
- For US tax purposes, an S.à r.l. qualifies as a check-the-box company

Public limited liability company (Société anonyme or S.A.)

- At least one (1) shareholder and no maximum number
- Share capital may be divided into several classes of shares
- Generally no personal liability of the shareholders
- Managed by a sole director (possible only if the company has a sole shareholder) or a board of directors composed of at least 3 directors or by an executive board (directoire) and a supervisory board (conseil de
Typical incorporation documents include a notarial incorporation deed including articles of incorporation

Shares register to be maintained at the registered office of the company

If organized as a one-tier company (which is the most common), managed by a sole director (only if a sole shareholder) or a board of directors composed of at least three (3) directors

Annual accounts must be filed with the Luxembourg Register of Commerce and Companies. For US tax purposes, an S.A. does not qualify as a check-the-box company

Special limited partnership (Société en commandite spéciale or SCSp)

At least one (1) general partner (associé commandité) and one (1) limited partner (associé commanditaire)

No legal personality and tax transparent

No minimum capital requirement; partnership units may be issued

Generally liability of the limited partners, limited to their contribution

The general partner(s) jointly and severally liable for the partnership’s commitments

The partnership may be managed by its general partner(s) or by a board of managers

Typical formation documents include a limited partnership agreement and a register of partnership interests

High level of contractual freedom and structuring flexibility

Annual accounts, if any, must be filed with the Luxembourg Register of Commerce and Companies for statistical purposes, but they are not published

**MINIMUM CAPITAL REQUIREMENT**

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

EUR 12,000, fully paid-up upon incorporation.

Public limited liability company (Société anonyme or S.A.)

EUR 30,000, fully subscribed and at least 1/4 of each share must be paid up.

Special limited partnership (Société en commandite spéciale or SCSp)

No minimum capital requirement.
LEGAL LIABILITY

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

Shareholders of the company are generally not liable for the debts of the company, aside from their financial contribution to the capital of the company.

Public limited liability company (Société anonyme or S.A.)

Shareholders of the company are generally not liable for the debts of the company, aside from their financial contribution to the capital of the company.

Special limited partnership (Société en commandite spéciale or SCSp)

General partner(s) (associés commandités) are jointly and severally liable for the partnership’s commitments, and the limited partner(s) (associés commanditaires) are normally not liable beyond their commitment.

TAX PRESENCE

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

The company pays a corporate tax on its corporate income (currently at the rate of 24.94 percent), and a withholding tax may apply when dividends are paid to its shareholders (at the rate of 15 percent, subject to reduction under applicable tax treaties). Exemptions are available under certain conditions.

Public limited liability company (Société anonyme or S.A.)

The company pays a corporate tax on its corporate income (currently at the rate of 24.94 percent), and a withholding tax may apply when dividends are paid to its shareholders (at the rate of 15 percent, subject to reduction under applicable tax treaties). Exemptions are available under certain conditions.

Special limited partnership (Société en commandite spéciale or SCSp)

The SCSp is, in principle, tax transparent.

INCORPORATION PROCESS

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

Prior to the incorporation meeting, the share capital amount (ie, at least EUR 12,000) must be deposited into the Luxembourg bank account opened in the name of the company. The bank will block the share capital amount and issue a blocking certificate to the attention of the instructed Luxembourg notary. The incorporation meeting must be held before a Luxembourg notary (to which the shareholders may be present or represented on the basis of proxies) at the occasion of which it will be decided to incorporate the S.à r.l. and adopt its articles of incorporation. The share capital amount will be released after incorporation and the instructed Luxembourg notary will issue a deblocking certificate, which will allow the bank to release the amount blocked. The incorporation deed, including the articles of incorporation, must be filed with the Luxembourg Register of
Commerce and Companies within one (1) month and will be published in full to the Luxembourg electronic gazette (Recueil Electronique des Sociétés et Associations).

An S.à r.l. may also be incorporated by means of a contribution in kind (or a mix of cash and kind), the value of such contribution having to be certified by the contributing shareholder, as founder of the company, to the Luxembourg notary. No external audit report is required.

An S.à r.l. exists as from the date of its incorporation meeting.

**Public limited liability company (Société anonyme or S.A.)**

Prior to the incorporation meeting, the share capital amount (ie, at least EUR30,000) must be deposited into the Luxembourg bank account opened in the name of the company. The bank will block the share capital amount and issue a blocking certificate to the attention of the instructed Luxembourg notary. The incorporation meeting must be held before a Luxembourg notary (to which the shareholders can be present or represented on the basis of proxies) at the occasion of which it will be decided to incorporate the S.A. and adopt its articles of incorporation. The instructed Luxembourg notary will issue a deblocking certificate, which will allow the bank to release the amount blocked.

The share capital amount will be released after incorporation. The incorporation deed including the articles of incorporation must be filed with the Luxembourg Register of Commerce and Companies within 1 month and will be published in full to the Luxembourg electronic gazette (Recueil Electronique des Sociétés et Associations).

An S.A. may also be incorporated by means of a contribution in kind (or a mix of cash and kind), the value of such contribution certified by an external auditor (réviseur d'entreprise agréé) designated by the founding shareholder(s) to the Luxembourg notary.

However, no report of an external auditor will be required if at least 90 percent of the share capital to be issued is paid by contribution(s) in kind, under the following conditions:

- The founding shareholders must agree to waive the issuance of the report
- A record of the waiver must be annexed to the deed of incorporation
- The contributing companies must have financial reserves, and these reserves must be at least equal to the nominal value or the nominal value of the shares (issued as consideration for the contribution(s) in kind)
- The contributing companies must guarantee the debts of the receiving company up to an amount equal to the nominal value or the par value of the shares (issued as consideration for the contribution or contributions in kind) until one (1) year after the publication of the first financial year accounts. During this period, the shares may not be transferred, and
- The contributing companies must allocate to a blocked reserve for three (3) years (starting from the publication of the first financial year accounts) a sum equal to the nominal value or the nominal amount of the shares (issued against the contribution(s) in kind).

An S.A. exists as from the date of its incorporation meeting.
Special limited partnership (Société en commandite spéciale or SCSp)

The SCSp may be formed under private seal (or before a Luxembourg notary, which is uncommon in practice). There is a high level of contractual freedom, the provisions applicable to the SCSp being contractually provided for in the limited partnership agreement. The SCSp is formed by the execution of the limited partnership agreement by at least 1 general partner (associé commandité) and at least 1 limited partner (associé commanditaire).

The contributions can be made by means of contributions in cash, kind or industry. No external valuation is required.

An SCSp exists as from the date of execution of its limited partnership agreement. Extracts of the limited partnership agreement must be filed with the Luxembourg Register of Commerce and Companies within 1 month from its execution and published with the Luxembourg electronic gazette (Recueil Electronique des Sociétés et Associations).

BUSINESS RECOGNITION

Private limited liability company (Société à responsabilité limitée or S.à r.l.)
Well regarded and widely used.

Public limited liability company (Société anonyme or S.A.)
Well regarded.

Special limited partnership (Société en commandite spéciale or SCSp)
Well regarded and widely used in the private equity and funds industry.

SHAREHOLDER MEETING REQUIREMENTS

Private limited liability company (Société à responsabilité limitée or S.à r.l.)
Except for amendments to the articles of incorporation/association, the holding of general meetings is not compulsory as long as there are no more than sixty (60) shareholders. In such case, each shareholder shall receive the proposed resolutions and shall cast their vote in writing. Where there are more than sixty (60) shareholders, at least one (1) annual shareholders’ meeting must be held each year at the time determined in the articles of incorporation/association.

Public limited liability company (Société anonyme or S.A.)
At least 1 general meeting must be held in the Grand Duchy of Luxembourg each year. The meeting must be held within 6 months from the end of the financial year in order to approve the annual accounts.

Special limited partnership (Société en commandite spéciale or SCSp)
There are no legal requirements to hold annual general partners’ meetings.
BOARD OF DIRECTOR MEETING REQUIREMENTS

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

Sole manager’s resolutions to be taken, or meetings of the board of managers (if more than one (1) manager) to be held in Luxembourg, at least once a year.

Managers may:

- Attend board meetings in person
- Grant power of attorney to another manager in order to be represented at a relevant meeting or
- Attend by means of conference call (ideally initiated from Luxembourg), unless otherwise provided by the articles of incorporation/association.

If the articles of incorporation/association allow it, the resolutions of the board of managers may be adopted unanimously in writing by means of circular resolutions.

Public limited liability company (Société anonyme or S.A.)

Sole director’s resolutions to be taken, or meetings of the board of directors to be held in Luxembourg, at least once a year. Directors may:

- Attend board meetings in person
- Grant power of attorney to another director in order to be represented at a relevant meeting or
- Attend by means of conference call (ideally initiated from Luxembourg), unless otherwise provided by the articles of association.

If the articles allow it, the resolutions of the board of directors may be adopted unanimously in writing by means of circular resolutions.

Special limited partnership (Société en commandite spéciale or SCSp)

The SCSp is managed by one (1) or several managers, which may be general partner(s), designated by its limited partnership agreement.

ANNUAL COMPANY TAX RETURNS

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

Annual filing of tax returns.

Public limited liability company (Société anonyme or S.A.)

Annual filing of tax returns.
Special limited partnership (Société en commandite spéciale or SCSp)

Annual tax returns should be filed for the SCSp (no tax returns for the investors).

**BUSINESS REGISTRATION FILING REQUIREMENTS**

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

Registration and filing with the Luxembourg Register of Commerce and Companies and publication of the incorporation deed and subsequent deeds in the Luxembourg electronic gazette (Recueil Electronique des Sociétés et Associations).

The identities of the shareholders are disclosed and published in the Luxembourg Register of Commerce and Companies.

Public limited liability company (Société anonyme or S.A.)

Registration and filings with the Luxembourg Register of Commerce and Companies and publication of the incorporation deed and subsequent deeds in the Luxembourg electronic gazette (Recueil Electronique des Sociétés et Associations).

The identities of the shareholders are not disclosed to the Luxembourg Register of Commerce and Companies nor published.

Special limited partnership (Société en commandite spéciale or SCSp)

Registration and filings with the Luxembourg Register of Commerce and Companies and publication of extracts of the limited partnership agreement and subsequent amendments (where applicable) in the Luxembourg electronic gazette (Recueil Electronique des Sociétés et Associations).

The identities of the limited partners are not disclosed to the Luxembourg Register of Commerce and Companies nor published.

**BUSINESS EXPANSION**

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

As long as there are no more than one hundred (100) shareholders and the company is not to be listed on a stock market, there is no need to change the legal form as business expands, as long as the activities are included in its corporate object.

Public limited liability company (Société anonyme or S.A.)

No need to change the legal form as business expands, to the extent that the activities remain within the corporate object of the limited liability company.

Special limited partnership (Société en commandite spéciale or SCSp)
No need to change the legal form as business expands, to the extent that the activities remain within the corporate object of the SCSp.

**EXIT STRATEGY**

**Private limited liability company (Société à responsabilité limitée or S.à r.l.)**

Specific exit strategies for the shareholders may be included in the articles of association or a shareholders’ agreement between the shareholders.

In addition, the S.à r.l. can be dissolved and liquidated by a decision of the shareholder(s) following the dissolution and liquidation procedure. When the S.à r.l. has a sole shareholder, it can also be dissolved without being liquidated, following the dissolution without liquidation procedure, in which case all the assets and liabilities of the S.à r.l. are transferred *ipso jure* to the sole shareholder.

The dissolution documents are to be filed with the Luxembourg Register of Commerce and Companies and published in the Luxembourg electronic gazette (*Recueil Electronique des Sociétés et Associations*).

**Public limited liability company (Société anonyme or S.A.)**

Specific exit strategies for the shareholders’ may be included in the articles of association or a possible shareholders’ agreement between the shareholders.

In addition, an S.A. can also be dissolved and liquidated by a decision of the shareholder(s) following the dissolution and liquidation procedure. When the S.A. has a sole shareholder, it can also be dissolved without being liquidated, following the dissolution without liquidation procedure, in which case all the assets and liabilities of the S.à r.l. are transferred *ipso jure* to the sole shareholder.

The dissolution documents are to be filed with the Luxembourg Register of Commerce and Companies and published in the Luxembourg electronic gazette (*Recueil Electronique des Sociétés et Associations*).

**Special limited partnership (Société en commandite spéciale or SCSp)**

Specific exit strategies for the partners may be included in the limited partnership agreement.

**ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

**Private limited liability company (Société à responsabilité limitée or S.à r.l.)**

Yearly approval by the shareholders of the balance sheet and profit and loss account prepared by the management. An annual shareholders’ meeting must be held if there are more than sixty (60) shareholders.

The annual accounts must be filed with the Luxembourg Register of Commerce and Companies within one (1) month following their approval and be published in full to the Luxembourg electronic gazette (*Recueil Electronique des Sociétés et Associations*).

**Public limited liability company (Société anonyme or S.A.)**
Annual shareholders’ meeting to be held in Luxembourg within six (6) months from the end of the financial year in order to approve the annual accounts.

The annual accounts must be filed with the Luxembourg Register of Commerce and Companies within one (1) month following their approval and be published in full to the Luxembourg electronic gazette (Recueil Electronique des Sociétés et Associations).

**Special limited partnership (Société en commandite spéciale or SCSp)**

No mandatory annual partners’ meeting.

**DIRECTOR / OFFICER REQUIREMENTS**

**Private limited liability company (Société à responsabilité limitée or S.à r.l.)**

At least one (1) manager required (individual or legal person).

**Public limited liability company (Société anonyme or S.A.)**

An S.A. may be organized as a one-tier company, in which case at least three (3) directors are required (individuals or legal persons). If a legal person is appointed as director, the company must appoint a permanent representative to perform such mission in the name and on behalf of the legal person. Directors are elected for a term of a maximum of six (6) years, which may be renewed.

If the S.A. is held by a sole shareholder, the company may be managed by a sole director.

An S.A. can also be organized as a two-tier company (i.e., an executive board (directoire) and a supervisory board (conseil de surveillance)).

**Special limited partnership (Société en commandite spéciale or SCSp)**

There is no board of directors. The SCSp is managed by one (1) or several managers, which may be unlimited partner(s). The limited partnership agreement must designate the managers of the SCSp.

For more information on directors’ duties, see our Global Guide to Directors’ Duties.

**LOCAL CORPORATE SECRETARY REQUIREMENT**

**Private limited liability company (Société à responsabilité limitée or S.à r.l.)**

None.

**Public limited liability company (Société anonyme or S.A.)**

None.
Special limited partnership (Société en commandite spéciale or SCSp)

None.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Private limited liability company (Société à responsabilité limitée or S.à r.l.)
The company must be managed in Luxembourg.

Public limited liability company (Société anonyme or S.A.)
The company must be managed in Luxembourg.

Special limited partnership (Société en commandite spéciale or SCSp)
The company must be managed in Luxembourg.

LOCAL OFFICE LEASE REQUIREMENT

Private limited liability company (Société à responsabilité limitée or S.à r.l.)
Registered office in Luxembourg required.

Public limited liability company (Société anonyme or S.A.)
Registered office in Luxembourg required.

Special limited partnership (Société en commandite spéciale or SCSp)
Registered office in Luxembourg required.

OTHER PHYSICAL PRESENCE REQUIREMENTS

Private limited liability company (Société à responsabilité limitée or S.à r.l.)
It is preferable from a corporate perspective that the managers (or at least 1/2 of the managers, if more than one (1)) reside or work in Luxembourg.

Public limited liability company (Société anonyme or S.A.)
It is preferable from a corporate perspective that the directors (or at least 1/2 of the directors, if more than one (1)) reside or work in Luxembourg.

Special limited partnership (Société en commandite spéciale or SCSp)
It is preferable from a corporate perspective that the manager(s) or managing general partner(s) reside (or work)
in Luxembourg.

**SUFFICIENCY OF VIRTUAL OFFICE**

Private limited liability company (*Société à responsabilité limitée* or S.à r.l.)

Real registered office required (domiciliation allowed).

Public limited liability company (*Société anonyme* or S.A.)

Real registered office required (domiciliation allowed).

Special limited partnership (*Société en commandite spéciale* or SCSp)

Real registered office required (domiciliation allowed).

**PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

Private limited liability company (*Société à responsabilité limitée* or S.à r.l.)

Corporate services providers may provide a registered office address.

Public limited liability company (*Société anonyme* or S.A.)

Corporate services providers may provide a registered office address.

Special limited partnership (*Société en commandite spéciale* or SCSp)

Corporate services providers may provide a registered office address.

**PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

Private limited liability company (*Société à responsabilité limitée* or S.à r.l.)

Corporate services providers may provide Luxembourg resident managers.

Public limited liability company (*Société anonyme* or S.A.)

Corporate services providers may provide Luxembourg resident managers.

Special limited partnership (*Société en commandite spéciale* or SCSp)

Corporate services providers may provide Luxembourg resident managers.
NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

No nationality or residency requirements for both managers and shareholders from a corporate perspective.

Public limited liability company (Société anonyme or S.A.)

No nationality or residency requirements both for directors and shareholders from a corporate perspective.

Special limited partnership (Société en commandite spéciale or SCSp)

No nationality or residency requirements both for managers and partners from a corporate perspective.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

The shareholders are deemed to be those indicated in the shareholders’ register of the company.

Public limited liability company (Société anonyme or S.A.)

The shareholders are deemed to be those indicated in the shareholders’ register of the company.

Special limited partnership (Société en commandite spéciale or SCSp)

The partners are deemed to be those indicated in the limited partnership agreement and the register of partnership interests of the SCSp.

SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

The manager or the board of managers, as the case may be, may carry out all acts necessary or useful to achieve the corporate object, except those reserved by law or the articles of incorporation/association to the shareholders.

Each manager shall represent the company against third parties and in legal proceedings, either as plaintiff or as defendant. The articles of incorporation/association may authorize 1 or more managers to represent the company in any instruments or in legal proceedings, either alone or jointly.

Public limited liability company (Société anonyme or S.A.)

The sole director or the board of directors, as the case may be, may carry out all acts necessary or useful to achieve the corporate object, except those reserved by law or the articles of incorporation/association to the
shareholders.

The sole director or the board of directors, as the case may be, represent the company against third parties and in legal proceedings, either as plaintiff or as defendant. The articles of incorporation/association may authorize 1 or more directors to represent the company in any instruments or in legal proceedings, either alone or jointly.

**Special limited partnership (Société en commandite spéciale or SCSp)**

Unless otherwise provided in the limited partnership agreement, each manager of the SCSp may carry out all acts necessary or useful to achieve the corporate purpose, except those reserved by law or the limited partnership agreement to the partners.

Each manager represents the SCSp towards third parties and before any courts.

**PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS**

**Private limited liability company (Société à responsabilité limitée or S.à r.l.)**

The identity of managers and the shareholders may be found in the Luxembourg Register of Commerce and Companies records and are published with the Luxembourg electronic gazette (Recueil Electronique des Sociétés et Associations).

**Public limited liability company (Société anonyme or S.A.)**

The identity of directors may be found in the Luxembourg Register of Commerce and Companies records and are published with the Luxembourg electronic gazette (Recueil Electronique des Sociétés et Associations).

**Special limited partnership (Société en commandite spéciale or SCSp)**

The identity of managers, if any, and general partner(s) may be found in the Luxembourg Register of Commerce and Companies records and are published with the Luxembourg electronic gazette (Recueil Electronique des Sociétés et Associations).

**MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS**

**Private limited liability company (Société à responsabilité limitée or S.à r.l.)**

One or several managers.

Maximum of 100 shareholders.

**Public limited liability company (Société anonyme or S.A.)**

Directors: at least 3 directors, or a sole director if there is a sole shareholder; no maximum number.

Shareholders: at least 1 shareholder; no maximum number.
Special limited partnership (Société en commandite spéciale or SCSp)

At least 1 general partner (associé commandité) and 1 limited partner (associé commanditaire); no maximum number.

**MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

There must be at least 1 shareholder.

Public limited liability company (Société anonyme or S.A.)

There must be at least 1 shareholder.

Special limited partnership (Société en commandite spéciale or SCSp)

At least 1 general partner (associé commandité) and 1 limited partner (associé commanditaire).

**REMOVAL OF DIRECTORS OR OFFICERS**

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

Managers may only be removed by the shareholders for legitimate reasons. The articles of incorporation/association can allow the removal ad nutum.

Public limited liability company (Société anonyme or S.A.)

Directors may be removed ad nutum by the general meeting of the shareholders.

Special limited partnership (Société en commandite spéciale or SCSp)

Managers must be designated in the limited partnership agreement. Their removal process is to be detailed in the limited partnership agreement.

**REQUIRED AND OPTIONAL OFFICERS**

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

None.

Public limited liability company (Société anonyme or S.A.)

None.

Special limited partnership (Société en commandite spéciale or SCSp)
BOARD MEETING REQUIREMENTS

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

If more than one (1) manager has been appointed, meetings of the board of managers would typically be held at least once a year and as many times as necessary.

If the articles of incorporation/association allow it, the resolutions of the board of managers may be adopted unanimously in writing by means of circular resolutions.

Public limited liability company (Société anonyme or S.A.)

If more than one (1) director has been appointed, meetings of the board of directors would typically be held at least once a year and as many times as necessary.

If the articles of incorporation/association allow it, the resolutions of the board of directors may be adopted unanimously in writing by means of circular resolutions.

Special limited partnership (Société en commandite spéciale or SCSp)

No specific requirement applicable.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

Shareholders’ meetings

Except in the event of an amendment to the articles and unless otherwise provided in the articles of incorporation/association of the company, no decision shall be validly adopted unless it has been adopted by shareholders representing more than half of the share capital of the company. Unless otherwise provided by the articles of incorporation/association, if that quorum is not reached at the first meeting or first written consultation, the shareholders shall be convened or consulted a second time, by registered letter, and decisions shall be adopted by a majority of the votes cast, regardless of the portion of capital represented.

Unless otherwise provided in the articles of incorporation/association of the company, the shareholders representing 3/4 of the share capital of the company may amend the articles of incorporation/association. The increase of the shareholders’ commitments can only be decided unanimously.

Board meetings

Unless otherwise provided in the articles of incorporation/association of the company, resolutions are validly adopted by a majority of the votes cast, provided that the majority of the managers are present or represented at the meeting.

Public limited liability company (Société anonyme or S.A.)
Shareholders’ meetings

Except in the event of an amendment to the articles of incorporation/association and unless otherwise provided in the articles of incorporation/association of the company, decisions are validly adopted by the majority of the votes cast, provided that the majority of the shareholders are present or represented at the meeting.

Unless otherwise provided in the articles of incorporation/association of the company, amendments to the articles of association of an S.A. require:

- That at least half of the share capital of the S.A. is represented at the meeting and
- The favorable votes of at least 2/3 of the votes cast.

If the first requirement is not met at the first meeting, a second general meeting may be convened at least fifteen (15) days in advance. At such second meeting, the amendments will be adopted by 2/3 of the votes cast, regardless of the portion of share capital represented.

The increase of the shareholders’ commitments can only be decided unanimously.

Board meetings

Unless otherwise provided in the articles of incorporation/association of the company, resolutions are validly adopted by a majority of the votes cast, provided that the majority of the directors are present or represented at the meeting.

Special limited partnership (Société en commandite spéciale or SCSp)

The form and quorum, if any, applicable to the decisions of the manager(s) must be detailed in the limited partnership agreement.

Decisions to be adopted by partners and the relevant quorums for partners’ meetings must be provided for in the limited partnership agreement.

Unless otherwise provided in the limited partnership agreement, the following rules apply:

Any decision of the partners will be adopted by the favorable vote of the majority of the votes cast, save for any amendments to the corporate purpose, the nationality, the transformation or the liquidation of the SCSp which must be adopted by the favorable votes of 3/4 of the partnership interests and in any event unanimously by the general partner(s).

MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

In case of incorporation by means of a contribution in cash, the share capital amount must be deposited in a bank account opened in the name of the company in Luxembourg prior to its incorporation.
Public limited liability company (Société anonyme or S.A.)

In case of incorporation by means of a contribution in cash, the share capital amount must be deposited in a bank account opened in the name of the company in Luxembourg prior to its incorporation.

Special limited partnership (Société en commandite spéciale or SCSp)

No bank account requirement.

AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

Internal auditor required if more than sixty (60) shareholders, and there is no certified statutory auditor.

Luxembourg certified statutory auditor required if the company exceeds 2 out of the 3 following thresholds in respect of total balance sheet (EUR4.4 million), net turnover (EUR8.8 million) and average number of personnel (50). If the company has a certified statutory auditor, it does not need to appoint an internal auditor.

The company’s books must be kept at the registered office of the company.

Public limited liability company (Société anonyme or S.A.)

Internal auditor is required if there is no certified statutory auditor.

Luxembourg certified statutory auditor required if the company exceeds 2 out of the 3 following thresholds in respect of total balance sheet (EUR4.4 million), net turnover (EUR8.8 million) and average number of personnel (50). If the company has a certified statutory auditor, it does not need to appoint an internal auditor.

The company’s books must be kept at the registered office of the company.

Special limited partnership (Société en commandite spéciale or SCSp)

No auditor required.

REQUIREMENT REGARDING PAR VALUE OF STOCK

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

Shares may be issued with or without nominal value.

Public limited liability company (Société anonyme or S.A.)

Shares may be issued with or without nominal value. Shares with different nominal values may be issued. Special limited partnership (Société en commandite spéciale or SCSp)
Partnership interests may be represented by partnership units or interests.

**INCREASING OF CAPITALIZATION IF NEEDED**

Private limited liability company (*Société à responsabilité limitée* or *S.à r.l.*)

The share capital of an *S.à r.l.* can be increased through a contribution in kind or cash by a decision of an extraordinary shareholders’ meeting (held before of a Luxembourg notary).

The articles of incorporation/association of the company may provide for authorized capital, in which case the share capital of the company can be increased by a decision of the board of managers, within the limits as set out in the articles of incorporation/association and subsequently recorded by notarial deed.

Equity contributions without the issuance of any shares can also be made to the capital contribution account of an *S.à r.l.* (account 115 “*compte des apports des actionnaires non rémunérés par des titres*” of the Luxembourg Chart of Accounts) connected to the shares of such company.

Public limited liability company (*Société anonyme* or *S.A.*)

The share capital of an *S.A.* can be increased through a contribution in kind or cash by a decision of an extraordinary shareholders’ meeting (held before a Luxembourg notary public). In case of a contribution in kind, the value of such contribution must, in principle, be certified by an external auditor (*réviseur d’entreprises agréé*) to the Luxembourg notary. The general meeting may limit or suppress the preferential subscription rights of the existing shareholders when increasing the share capital.

The company’s articles of incorporation/association may provide for an authorized capital, in which case the share capital of the company can be increased by a decision of the board of directors, within the limits as set out in the articles of incorporation/association, and subsequently recorded by notarial deed. The articles of incorporation/association may allow the limitation or suppression of the preferential subscription rights of the existing shareholders by the board of directors when increasing the share capital of the company using the authorized capital.

Equity contributions without the issuance of any shares can also be made to the capital contribution account of an *S.A.* (account 115 "*compte des apports des actionnaires non rémunérés par des titres*" of the Luxembourg Chart of Accounts) connected to the shares of such company.

Special limited partnership (*Société en commandite spéciale* or *SCSp*)

Conditions to be determined in the limited partnership agreement.

**SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)**

Private limited liability company (*Société à responsabilité limitée* or *S.à r.l.*)

Repatriation of funds can be made through payment of (interim) dividends, redemption of shares (capital decrease) or upon liquidation (*boni de liquidation*). Debt or hybrid instruments may also be put in place, in which case the
repatriation of funds can be made through interest payments, repayment of loans or redemption of securities.

Public limited liability company (Société anonyme or S.A.)

Repatriation of funds can be made through payment of (interim) dividends, redemption of shares (capital decrease) or upon liquidation (boni de liquidation). Debt or hybrid instruments may also be put in place, in which case the repatriation of funds can be made through interest payments, repayment of loans or redemption of securities.

Special limited partnership (Société en commandite spéciale or SCSp)

The distributions and reimbursements to the partners are to be provided for in the limited partnership agreement.

**RESTRICTIONS ON TRANSFERABILITY OF SHARES**

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

A transfer or issuance of shares to a non-shareholder must be approved by the shareholders representing at least 3/4 of the share capital given at a shareholders’ meeting. The articles of incorporation/association may lower this threshold up to the favorable votes of the shareholders representing at least half of the share capital.

Further to the reform, in the absence of consent from the shareholders, the shares can be acquired, with the transferring shareholder’s consent, by (i) the other shareholders, (ii) a third party approved by them or (iii) the company itself, within a period of three (3) months, which may be extended to six (6) months under certain conditions. The applicable conditions to determine the transfer price of the shares should be set out in the articles of incorporation/association, failing which if the parties cannot reach an agreement, the price will be determined by the competent Luxembourg court.

If the shares are not acquired in accordance with the aforementioned provisions, the shareholder may proceed with the initially proposed transfer. This represents a significant change to the previous rules under which shareholders of a S.à r.l. that wished to transfer their shares were unable to do so if they failed to obtain the requisite consent. It is however, still possible to provide for transfer restrictions in eg, a shareholders’ agreement.

Public limited liability company (Société anonyme or S.A.)

The shares issued by an S.A. are freely transferable. The articles of incorporation/association of the company, or a shareholders’ agreement, may provide for certain restrictions, within the limits of the Luxembourg law of 10 August 1915 on commercial companies, as amended from time to time.

Special limited partnership (Société en commandite spéciale or SCSp)

The limited partnership agreement should provide for the conditions at which the limited partnership interests or units issued by an SCSp may be transferred, dismembered (démembre) or pledged. Unless otherwise provided in the limited partnership agreement, any transfer other than because of death, dismemberment of ownership (démembrement) or pledge of limited partnership interests requires the unanimous consent of the general partner(s).

The limited partnership agreement should provide for the conditions at which the general partnership interests or units issued by an SCSp may be transferred, dismembered (démembre) or pledged. Unless otherwise provided in
the limited partnership agreement, any transfer other than because of death, dismemberment of ownership (démembrement) or pledge of general partnership interests requires the consent of the partners deciding in the same manner as for the amendment of the limited partnership agreement.

**OBTAINING A NAME AND NAMING REQUIREMENTS**

**Private limited liability company (Société à responsabilité limitée or S.à r.l.)**

The corporate name of an S.à r.l. must be different from the denominations of all the other existing Luxembourg companies. Availability of corporate name can be checked with the Luxembourg Register of Commerce and Companies prior to its incorporation, but cannot be reserved. Trademark and IP laws also apply to corporate denominations.

**Public limited liability company (Société anonyme or S.A.)**

The corporate name of an S.A. must be different from the denominations of all the other existing Luxembourg companies. Availability of corporate name can be checked with the Luxembourg Register of Commerce and Companies prior to its incorporation, but cannot be reserved. Trademark and IP laws also apply to corporate denominations.

**Special limited partnership (Société en commandite spéciale or SCSp)**

The corporate name of an SCSp must be different from the denominations of all the other existing Luxembourg companies and partnerships. Availability of corporate name can be checked with the Luxembourg Register of Commerce and Companies prior to its incorporation but cannot be reserved. Trademark and IP laws also apply to corporate denominations.

**SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS**

**Private limited liability company (Société à responsabilité limitée or S.à r.l.)**

Lawyers, banks and professionals of the financial sector, including domiciliation companies (corporate services providers), as well as notaries, are subject to KYC obligations.

The Luxembourg law setting-up a register of beneficial owners, implementing the EU Directive on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, lays down the following main obligations:

1. Obtaining and maintaining up-to-date information concerning beneficial owners of any Luxembourg entities at their registered office

2. Filing such information in a new, specially created, register in Luxembourg and

3. Providing information on beneficial owners to (i) national authorities (upon simple request) and (ii) certain professional organizations and professionals of the financial sector (upon grounded request).
The notion of "beneficial owner" is defined by the Luxembourg law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended from time to time. In a nutshell, it refers to any individual ultimately who either holds, directly or indirectly, more than 25 percent of the company's capital or voting rights, or exercises, by any other means, a control over the management or executive bodies of the company or over the general meeting of its shareholders.

In case it can be confirmed that no natural person owns, holds or controls, directly or indirectly, at least 25 percent of the relevant entity and, therefore, no person meets the requirements to be identified as beneficial owner, the name (and details) of the senior managing official(s) (dirigeant(s) principal/principaux) should be communicated to, and filed with, the Luxembourg beneficial owners register.

While no definition of the term "senior managing official(s)" has been provided by the Luxembourg law, the Circular LBR 19/02 of 18 March 2019 issued by the Luxembourg business registers (which is not a source of binding law, but is limited to provide a certain guidance on the interpretation of law) provides that the term of "senior managing official" refers to the entire management body of a "company".

Criminal sanctions amounting to fines ranging from EUR 1 250 to EUR 1 250 000 may be applied to entities within the scope and on the beneficial owners in case of non-compliance.

Public limited liability company (Société anonyme or S.A.)

Lawyers, banks and professionals of the financial sector, including domiciliation companies (corporate services providers), as well as notaries, are subject to KYC obligations.

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1. Obtaining and maintaining up-to-date information concerning beneficial owners of any Luxembourg entities at their registered office;
2. Filing such information in a new, specially-created, register in Luxembourg; and
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"senior managing official" refers to the entire management body of a "company".

Criminal sanctions amounting to fines ranging from EUR 1,250 to EUR 1,250,000 may be applied to entities within the scope and on the beneficial owners in case of non-compliance.

Special limited partnership (Société en commandite spéciale or SCSp)

Lawyers, banks and professionals of the financial sector, including domiciliation companies (corporate services providers) as well as notaries, are subject to KYC obligations.

Obligation to identify the beneficial owner of corporate and legal entities, which is, in principle, any natural person holding, directly or indirectly, at least 25 percent of the share capital of said corporate and legal entities.

Criminal sanctions amounting to fines ranging from EUR 1,250 to EUR 1,250,000 may be applied to entities within the scope and on the beneficial owners in case of non-compliance.

As from March 2019, a register of beneficial owners is accessible online.

**APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

In principle, amendments to the articles of association of an S.à r.l. require a decision of the extraordinary shareholders’ meeting (held in the presence of a Luxembourg notary), with shareholders representing 3/4 of the share capital of the company.

Public limited liability company (Société anonyme or S.A.)

In principle, amendments to the articles of association of an SA require a decision of the extraordinary shareholders’ meeting (held in the presence of a Luxembourg notary) where at least half of the share capital of the company is represented at the meeting with favorable votes of at least 2/3 of the votes cast.

Special limited partnership (Société en commandite spéciale or SCSp)

Unless otherwise provided in the limited partnership agreement, the approval of all partners is required to make amendments thereto.

**LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

Business permits may be required depending upon the professional activities to be carried out. Holding companies are typically exempted from such requirement.

Public limited liability company (Société anonyme or S.A.)

Business permits may be required depending upon the professional activities to be carried out. Holding companies are typically exempted from such requirement.
Special limited partnership (Société en commandite spéciale or SCSp)

Business permits may be required depending upon the professional activities to be carried out. Holding companies are typically exempted from such requirement. SCSp are not typically used to conduct commercial activities.

**PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY**

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

Shelf companies can be purchased from corporate services providers (not widely used as the articles of incorporation/association, and, in particular, the corporate object clause may need to be amended to fit a given transaction).

Public limited liability company (Société anonyme or S.A.)

Shelf companies can be purchased from corporate services providers (not widely used as the articles of incorporation/association, and, in particular, the corporate object clause may need to be amended to fit a given transaction).

Special limited partnership (Société en commandite spéciale or SCSp)

There is generally no shelf partnership. As there is a very high contractual freedom when setting up an SCSp, it is preferable to negotiate the limited partnership agreement directly among parties.

**KEY CONTACTS**

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FORM OF ENTITY

To start a business in Malaysia, the first step is to set up a business entity with the Companies Commission of Malaysia. There are 2 types of business entities:

- The unincorporated entity and
- The incorporated separate legal entity.

The unincorporated entities are:

- Sole proprietorship and
- Partnership.

A sole proprietorship is an entity with 1 person, whereas a partnership is a business entity that is owned by at least 2 persons but not more than 20 persons. Both the sole proprietorship and partnership do not constitute separate legal entities, and the business partners can sue and be sued in their personal names. A business owner or partners are exposed to personal risks and liabilities.

The incorporated separate legal entities are:

- A company limited by shares or private limited company
- A company limited by guarantee
- Unlimited company and
- Limited liability partnership.

Private limited companies are the most established business entities as the shareholders of private limited companies are not exposed to personal risks and liabilities; their liabilities are limited to the number of shares that are owned by them.
ENTITY SET UP

Private Limited Company (Sendirian Berhad)

- Liability of shareholders is limited to the amount of shares held by the shareholder.
- The minimum number of shareholders is 1 and the maximum number of shareholders is 50. If the number of shareholders exceeds 50, a private limited company will have to convert its status to a public company, which is an unlimited public company.
- Director will be appointed by the shareholders of a private limited company to manage such company. A director may or may not be a shareholder of the company.
- A private limited company is restricted from offering any of its shares to the public.
- The Companies Act 2016, Malaysia, largely regulates the power and duties of a private limited company.

MINIMUM CAPITAL REQUIREMENT

The minimum capital requirement is 1 share.

LEGAL LIABILITY

Shareholders of a private limited company are generally not liable for the debts of the company, aside from their financial contribution to the company.

TAX PRESENCE

A private limited company pays a corporate tax on its profits. These profits may then be distributed to their shareholders as dividends.

INCORPORATION PROCESS

A private limited company must be registered with the Companies Commission of Malaysia, and the promoter of such company must file the necessary incorporation documents to the Companies Commission of Malaysia.

Digitalized process for company registration:

Instead of manually filling in the required forms downloaded from the SSM website, entrepreneurs can now register their Sdn Bhd online by filling in the Super Form on the MyCoID 2016 portal.

BUSINESS RECOGNITION
A private limited company is a well-established and widely recognized business entity.

SHAREHOLDER MEETING REQUIREMENTS

A resolution of shareholders of a private limited company can be approved by way of written resolutions or shareholders' meeting.

BOARD OF DIRECTOR MEETING REQUIREMENTS

A resolution of directors of a private limited company can be approved by way of written resolutions, or directors may hold a board of directors' meeting as required.

ANNUAL COMPANY TAX RETURNS

A private limited company must annually file its annual tax returns with the relevant tax authorities.

BUSINESS REGISTRATION FILING REQUIREMENTS

A private limited company is required to file initial registration as well as annual filings.

BUSINESS EXPANSION

If number of shareholders of a private limited company exceeds 50, it must be converted to a public company.

EXIT STRATEGY

There are 4 types:

- Shareholders' voluntary winding up: the company is solvent, but the shareholders of the company decide to wind up the company

- Creditors' voluntary winding up: the company is insolvent, and the creditors choose to wind up the company to realize the company's assets

- Compulsory winding up by the court of Malaysia: the court finds that a particular company is unable to pay its debts and

- Striking off by the Companies Commission of Malaysia: the Companies Commission of Malaysia can strike off a company if such company is not carrying on a business, has contravened with the Companies Act 2016, is being used for unlawful purpose or has been wound up.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS
Annual return and financial statement of a private limited company are filed annually to the Companies Commission of Malaysia.

**DIRECTOR / OFFICER REQUIREMENTS**

- Must be a natural person and at least 18 years of age
- Must be of sound mind
- Must ordinarily reside in Malaysia by having a principal place of residence in Malaysia
- Not an undischarged bankrupt under the Insolvency Act 1967
- Not disqualified under the Companies Act 2016
- Has not been convicted, whether inside or outside of Malaysia, of any offense and
- Has not been imprisoned for any offenses prescribed under the Companies Act 2016 within 5 years immediately preceding their appointment.

For more information on directors’ duties, see our Global Guide to Directors’ Duties.

**LOCAL CORPORATE SECRETARY REQUIREMENT**

- Must be a natural person and at least 18 years of age.
- Must be a citizen or permanent resident of Malaysia who ordinarily resides in Malaysia and has a principal place of residence in Malaysia.
- Must be a member of a body prescribed in the 4th Schedule of the Companies Act 2016 or a person licensed by the Companies Commission of Malaysia.
- Must be an undischarged bankrupt under the Insolvency Act 1967.
- Not convicted, whether in or outside Malaysia, of any offences prescribed under the Companies Act 2016.

**LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT**

Not applicable for this jurisdiction.

**LOCAL OFFICE LEASE REQUIREMENT**
Not applicable for this jurisdiction.

OTHER PHYSICAL PRESENCE REQUIREMENTS

Not applicable for this jurisdiction.

SUFFICIENCY OF VIRTUAL OFFICE

Not applicable for this jurisdiction.

PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Local registered address with the corporate secretary is required.

PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Corporate secretary is required to be a resident of Malaysia and have a principal place of residence in Malaysia.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

At least 1 director of a private limited company is required to be a resident of Malaysia and have a principal place of residence in Malaysia.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Same requirements as for a director of a private limited company.

SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF

Not applicable for this jurisdiction.

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS
MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

A private limited company can have a minimum of 1 director. A private limited company can have a minimum of 1 shareholder and a maximum of 50 shareholders.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

A minimum of 1 shareholder.

REMOVAL OF DIRECTORS OR OFFICERS

Subject to a constitution of a private limited company, a director may be removed by ordinary resolution subject to a special notice prescribed under the Companies Act 2016. The ordinary resolution for the removal of a director must be passed at a physical shareholders’ general meeting and cannot be passed by way of a written resolution.

REQUIRED AND OPTIONAL OFFICERS

Not applicable for this jurisdiction.

BOARD MEETING REQUIREMENTS

Not applicable for this jurisdiction.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

Quorum for shareholders meeting is not fewer than 2 members for a company that has more than 1 shareholder.

Quorum for board of directors meeting is fixed to the total number of directors and, if not fixed, it is a majority of directors. Quorum for board meeting is not fewer than 2 directors for a company that has more than 1 director.

MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?

Not applicable for this jurisdiction.

AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT

Not applicable for this jurisdiction.
LOCALLY?

Yes.

REQUIREMENT REGARDING PAR VALUE OF STOCK

Not applicable for this jurisdiction.

INCREASING OF CAPITALIZATION IF NEEDED

Not applicable for this jurisdiction.

SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)

Not applicable for this jurisdiction.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

Shareholders of a private limited company is subject to pre-emptive rights.

OBTAINING A NAME AND NAMING REQUIREMENTS

The Companies Commission of Malaysia first approves the company name. A company name is unlikely to be approved if it is:

- Undesirable or unacceptable
- Identical to an existing company, corporation or business
- Identical to a name that is being reserved under the Companies Act 2016 or
- A name that the Companies Commission of Malaysia is ordered not to accept for registration by the Minister of Malaysia.

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

Not applicable for this jurisdiction.

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

Any amendment is passed by a majority of not less than 3/4 of the shareholders at a general meeting.
LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

Relevant licenses are required to conduct business depending on the nature of business.

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

Not applicable for this jurisdiction.

KEY CONTACTS

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FORM OF ENTITY

There are different types of entities to conduct business in or from Mauritius and the most common types are:

- Company limited by shares
- Company limited by guarantee
- Company limited by shares and by guarantee
- Unlimited company
- Foreign company
- Limited life company (constitutionally limited life not exceeding 50 years)
- Global Business corporation
- Authorized company
- Protected cell company
- Société
- Trust
- Foundations and
- Limited liability partnerships.

Companies are categorized between private companies and public companies.

The most common type of company is the private company limited by shares which is governed by the Companies Act 2001 of Mauritius (the Companies Act).
Global Business Corporations, Authorized Companies and Protected Cell Companies are also governed by the Companies Act.

Any entity which proposes to conduct business outside of Mauritius must apply for a license (Global Business Corporation License or Authorized Company License) from the Financial Services Commission of Mauritius (FSC).

**ENTITY SET UP**

**Limited Company**

The limited liability company requires a minimum of 1 shareholder at incorporation of any nationality and country of residence, 1 director who must be ordinarily resident in Mauritius and a minimum of share capital of MUR1. There are restrictions with regards to foreign ownership in the tourism, sugar and telecom industries.

The company is incorporated at the Registrar of Companies of Mauritius (Registrar of Companies). The application must contain the name of the registered office, the full name and address of each applicant, director and secretary of the company. There is a payment of MUR3,000 to make for the incorporation of a company.

A small private company (company which has a turnover of less than MUR50 million) is not required to appoint a secretary or auditor.

**Protected Cell Company**

A protected cell company consists of a core (non-cellular) and an indefinite number of cells (cellular) whereby each cell is isolated from one another and operates separately. This allows for the segregation of risks, assets and liabilities of different individual and/or corporate entities under a shared structure. A protected cell company must have the words “PCC” or “Protected Cell Company” at the end of its name, with each cell having its own designation or name.

**Global Business Corporation**

The Global Business Corporation can be set up with a minimum capital of USD1, 1 shareholder and 2 directors who must be ordinarily resident in Mauritius. Additional evidence that the company is managed from Mauritius is also required to be shown to the FSC, such as having at all times its principal bank account in Mauritius and keeping and maintaining its accounting records at its registered office in Mauritius. The Global Business Corporation must be administered locally by a management company.

**Authorized Company**

The Authorized Company can be set up with a minimum capital of USD1, 1 shareholder and 1 director who does not need to be resident in Mauritius. The setting up of an authorized company requires a resident registered agent, which shall be the management company, and which is in charge of maintaining company records. It is mandatory for an authorized company to file a return of its income with the Mauritius Revenue Authority and it must conduct business and have its place of effective management and control outside of Mauritius.

**Limited Liability Partnerships**
A limited liability partnership can be set up with a minimum of 2 partners who can both be non-residents. A minimum capital of USD1 is required per partner and, unless 1 of the partners is resident in Mauritius, every limited partnership shall at all times have and maintain in Mauritius a registered agent. The partnership must be registered with the Registrar of Limited Partnerships and if the partnership will conduct business outside of Mauritius, a license from the FSC is also required. The name of the limited partnership must end with the words “Limited Partnership,” “L.P.” or “LP.” The registered office of the limited partnership must be in Mauritius.

MINIMUM CAPITAL REQUIREMENT

For Global Business Corporations and Authorised Companies, the minimum capital requirement is USD1.

There is no minimum capital requirement for the PCC and for domestic companies. In practice, it will be of USD1 for PCC and MUR1 for domestic companies.

LEGAL LIABILITY

In a company limited by shares, the liability of its shareholders is limited by its constitution to any amount unpaid on the shares respectively held by the shareholder.

In a company limited by guarantee, the liability of its members is limited by its constitution to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up.

In an unlimited company, there is no limit placed on the liability of its shareholders.

TAX PRESENCE

Companies incorporated in Mauritius are liable to pay income tax at the uniform rate of 15 percent. However, a Global Business Corporation is entitled to foreign tax credits and may opt to claim credit for actual tax paid in another jurisdiction, resulting in an effective tax rate of 3 percent, or 0 percent in certain circumstances.

A Global Business Corporation that is controlled and managed and is tax resident in Mauritius may, upon written approval from the Commissioner of Income Tax, benefit from tax relief from any of the double taxation treaties Mauritius has with other countries.

An Authorized Company is not considered as resident for tax purposes and therefore cannot claim double taxation relief under the double taxation treaties in force in Mauritius.

There is no withholding tax in Mauritius on capital gains, dividends or interest, nor any stamp duty levied.

INCORPORATION PROCESS

The incorporation of a company is done by the Registrar of Companies by submitting an application online.

An application for incorporation is submitted to the Registrar of Companies with the name of the proposed
company, specifying whether the liability of the company will be limited or unlimited, whether the company is to be private, the registered address, the name and address of the applicant, the director, the shareholder and secretary of the company.

There is a prescribed fee of MUR3,000 to pay and the company will then be assigned a company number and a certificate of incorporation.

For Global Business Corporations and Authorized Companies, the application for incorporation must be made through a management company licensed by the FSC. An application to the FSC must also be made to obtain the Global Business Corporation License or the Authorized Company License.

BUSINESS RECOGNITION

Private companies limited by shares are well regarded and the most common type of company.

SHAREHOLDER MEETING REQUIREMENTS

Within 18 months of its incorporation, a company must hold its 1st annual meeting.

The board of directors shall call an annual meeting of shareholders to be held not more than once in each year, not later than 9 months after the balance sheet date of the company and not later than 15 months after the previous annual meeting. It is not necessary for private companies to hold an annual meeting – everything can be done by written resolution.

The proceedings of the meeting of shareholders depends on the constitution of the company and if the company does not have a constitution, the provisions of the Companies Act will apply.

BOARD OF DIRECTOR MEETING REQUIREMENTS

The proceedings of a board meeting will depend on the company’s constitution, and, if the company does not have a constitution, then the Eighth Schedule of the Companies Act will apply to the proceedings of the board.

A director may convene a meeting by sending notice to every director who is in Mauritius, which must include the date, time and place of the meeting, and the matters to be discussed. The meeting can then either be held in person at the date, time and place stated in the notice, or by means of audio, or audio and visual, communication, provided that all the directors can simultaneously hear each other, and a quorum is present. A quorum can be fixed by the board, and if not so fixed will be a majority of the directors. No business may be transacted unless a quorum is present.

ANNUAL COMPANY TAX RETURNS

Every company must file with the Registrar of Companies an annual return once a year. The annual return must be completed and filed with the Registrar of Companies within 28 days of the date of the annual meeting and must be signed by a director or secretary.
Global Business Corporations must respectively file their annual financial statements and financial summaries with the Financial Services Commission.

**BUSINESS REGISTRATION FILING REQUIREMENTS**

Companies are required to submit their application for business registration at the office of Registrar of Businesses or online via its website.

The information required to be provided:

- Name of the company
- Company file number
- The business name
- The general nature of the business and its location
- Date or proposed date of commencement of business
- Address of the principal place of business
- Postal address
- Workforce of the applicant and
- Telephone number, fax number, email address.

The registration fee which is payable depends on the workforce.

A foreign company must, within 1 month of establishing a place of business in Mauritius, register a branch of the foreign company in Mauritius.

**BUSINESS EXPANSION**

The Companies Act provides ways in which businesses can expand.

2 or more Mauritian companies may amalgamate and continue as 1 company, either as 1 of the amalgamating companies or as a new company. The solvency test should be satisfied following amalgamation and it should be in the best interest of the company.

Mergers and acquisitions of companies are also regulated in the Companies Act and the Securities Act 2005 of Mauritius. Acquisitions are usually accomplished by an acquisition of the share capital of the target company, pursuant to an offer of shares or cash made by an acquirer.

If the number of shareholders exceeds 50, then the private company must convert into a public company.
EXIT STRATEGY

Deregistration

If there are no liabilities and minimal assets. Application to deregister is lodged with the Registrar of Companies.

Liquidation

If there are insolvent or significant assets or liabilities to be dealt with. A formal process involving the appointment of a liquidator, providing proof of debts, realizing assets, paying creditors and distributing any surplus to shareholders.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

All companies must maintain statutory books and records that adequately show the transactions and financial position of the company. All companies, except for domestic private companies with turnover of less than MUR50 million, must have their financial statements audited. These must then be provided to the registrar.

Global Business Corporations and Authorized Companies are required to prepare and file annual audited financial statements/financial summaries with the FSC.

DIRECTOR / OFFICER REQUIREMENTS

All companies, except for Authorized Companies as specified above, are required to have a minimum of 1 director who must be ordinarily resident in Mauritius.

Global Business Corporations are required to have at least 2 directors who are resident in Mauritius and board meetings must be held in Mauritius. This is to show that the business is being managed and controlled from Mauritius. There is no requirement to have a resident director for an Authorized Company.

For more information on directors’ duties, see our Global Guide to Directors’ Duties.

LOCAL CORPORATE SECRETARY REQUIREMENT

The Companies Act also requires all companies other than small private companies to have a secretary and to be ordinarily resident in Mauritius.

A Global Business Corporation must have a management company duly licensed by the FSC as secretary. There is no statutory requirement for an Authorized Company to have a secretary in Mauritius but it must at all times have a registered agent in Mauritius who shall be a management company.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT
None beyond the required director(s) and company secretary/registered agent.

**LOCAL OFFICE LEASE REQUIREMENT**

The companies are required to have a registered office in Mauritius to which all communications and notices may be addressed and which shall constitute the address for service of legal proceedings on the company. Global Business Corporations and Authorized Companies must also have the name and address of its management company or its registered agent as its registered office address.

**OTHER PHYSICAL PRESENCE REQUIREMENTS**

Not applicable for this jurisdiction.

**SUFFICIENCY OF VIRTUAL OFFICE**

Companies are required to have a registered office in Mauritius.

Foreign companies are also required to have a registered office in Mauritius to which all communications and notices may be addressed. The registered office must be open and accessible to the public for not less than 4 hours on every day other than Saturdays, Sundays and public holidays. A virtual office is not sufficient.

**PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

Other than a small private company, local companies must at all times have a qualified company secretary who is resident in Mauritius. It can be either an individual or a corporate body. A law firm or a third-party service provider can also act as company secretary.

**PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

These services are provided by some law firms and there are third-party service providers which offer company secretarial services. For Global Business Corporations and Authorized Companies, the company secretary must be a management company duly licensed by the FSC.

**NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS**

Private and public company
A company incorporated in Mauritius can be 100 percent foreign-owned.

With respect to directors, at least 1 director should be ordinarily resident in Mauritius, unless it is an Authorized Company as specified above.

**Global Business Corporations**

A Global Business Corporation can be 100 percent foreign-owned.

With respect to directors, at least 2 directors should be ordinarily resident in Mauritius.

**Authorized Companies**

Shares can only be held by foreign entities/individuals.

**RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS**

Not applicable for this jurisdiction.

**SUMMARY OF DIRECTOR'S, OFFICER'S AND SHAREHOLDER'S AUTHORITY AND LIMITATIONS THEREOF**

According to the Companies Act, the business and affairs of a company is managed by or under the direction of the board. The company’s constitution will usually give the directors authority to take all day-to-day decisions concerning the operations of the company.

The company’s constitution may provide that certain decisions are taken only by the shareholders of the company. In addition, the Companies Act also provides that some powers of the company are only exercisable by its shareholders (such as putting the company into liquidation.)

**PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS**

Except for Global Business Corporations and Authorized Companies, details of directors and shareholders are publicly available on the Registrar of Companies’ website.

**MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS**

**Private Companies**

- Directors: minimum 1, no maximum; 2 directors required for a Global Business Corporation.
- Shareholders: minimum of 1, maximum of 50.
Public Companies

- Directors: minimum of 1, no maximum; 2 directors required for a Global Business Corporation.

- Shareholders: minimum of 50, no maximum.

**MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

Minimum of 1 shareholder (individual or corporate) required and need not be resident in Mauritius.

**REMOVAL OF DIRECTORS OR OFFICERS**

**Private company**

Unless the constitution of the company provides otherwise, a special resolution is required to remove a director from office.

A resolution to remove a director can only be passed at a meeting called for the purpose that includes the removal of the director.

**Public company**

The directors of a public company may be removed by an ordinary resolution; this is mandatory.

A resolution to remove a director can only be passed at a meeting called for the purpose that includes the removal of the director.

**REQUIRED AND OPTIONAL OFFICERS**

Except for resident directors (1 for domestic companies and 2 for global business corporations) and for a company secretary (registered agent for an Authorized Company), there are no other obligations under Mauritius laws.

**BOARD MEETING REQUIREMENTS**

A meeting of the board may be held by a number of the directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting.

A resolution of the board is passed if it is agreed to by all directors present without dissent or if a majority of the votes cast on it are in favor of it.

A majority of directors must be present at the meeting before a vote may be called and a company must keep minutes of all board meetings.
QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

Shareholders meetings

The quorum for a shareholders’ meeting is the number of shareholders able to exercise a majority of votes (in person, postal or by proxy) on the business to be dealt with, unless the company’s constitution specifies otherwise.

Board meetings

A quorum consists of the majority of directors, unless the company’s constitution provides otherwise.

A director who has a conflicting interest in the business of the meeting is counted for purposes of the quorum, unless the constitution prohibits this.

MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?

There is no requirement to open a bank account when registering a company in Mauritius.

However, there is a requirement for a Global Business Corporation to maintain, at all times, its principal bank account in Mauritius to show that the entity is managed and controlled from Mauritius.

AUDITING OF LOCAL FINANCEALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?

AUDITING OF LOCAL FINANCIALS

Private and public companies

A company is required to appoint an auditor at each annual meeting.

The board of a company must, within six months after the balance sheet date of the company, complete financial statements in relation to the company in accordance with International Accounting Standards.

The financial statements must be filed with the Registrar of Companies within 28 days of the date the statements are signed, together with a copy of the auditor’s report on those statements.

Small private company

A small private company whose turnover does not exceed MUR50 million can file a financial summary or its financial statements and is not required to file an annual return.

Global Business Corporations and Authorized Companies

A company holding a Global Business License must file its audited financial statements with the FSC every year,
while an Authorized Company must file a financial summary with the FSC every year.

Foreign company

A foreign company registered as a branch in Mauritius must file its balance sheet annually, together with any documents that are required to be filed in the country of incorporation of the foreign company.

LOCATION OF THE AUDITOR

A person who is not ordinarily resident in Mauritius shall not be appointed or act as an auditor of a company.

KEEPING OF COMPANY’S BOOKS

The company’s accounting records shall be kept in Mauritius, except where the directors determine that the accounting records may be kept outside Mauritius.

A Global Business Corporation shall maintain at all times its accounting records at its registered office in Mauritius.

REQUIREMENT REGARDING PAR VALUE OF STOCK

Any shares created or issued after the commencement of the Companies Act shall be shares with no par value.

With respect to a company applying for or holding a Global Business License or an Authorized Company or company applying as Authorized Company, shares at par value may be issued.

INCREASING OF CAPITALIZATION IF NEEDED

There is no concept of authorized or maximum capital. Increased capitalization can occur at any time and must be authorized by ordinary resolution of directors or as otherwise determined by the Constitution of the company.

SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)

Funds can be repatriated abroad from Mauritius via dividends or redemption. There is no withholding tax on dividends and interest. There are also no exchange controls in force in Mauritius and funds can be repatriated freely.

The Customs Act 1988 of Mauritius does not prohibit the transportation of currency or bearer negotiable instruments by any traveler into or out of Mauritius. However, any person making a physical cross-border transportation of currency or bearer negotiable instruments of more than MUR500,000 or its equivalent in any foreign currency must declare the amount of the currency or bearer negotiable instruments in their possession, their origin and intended use.

Failure or refusal to make this declaration or making a declaration that is false or misleading is an offence liable to a fine not exceeding MUR1 million and imprisonment for a term not exceeding 5 years.
RESTRICTIONS ON TRANSFERABILITY OF SHARES

Private company

The Companies Act provides that any change in ownership of company shares should be subject to existing shareholders’ pre-emptive rights, unless the company’s constitution provides otherwise.

A private company’s constitution may place other types of limitations on the transferability of shares.

Private company shares and debentures cannot be offered to the public.

Public company

Public company shares are freely transferrable.

OBTAINING A NAME AND NAMING REQUIREMENTS

In order to incorporate a company in Mauritius, a company name may be reserved with the Registrar of Companies before an application for incorporation is lodged.

Where the liability of the shareholders of a company is limited, the registered word "Limited" or the word “Limitée” or the name of the company shall end with the abbreviation "Ltd" or "Ltée."

Almost any name can be used, provided that it is not the same as, or similar to, another corporate name and that the use of the corporate name does not cause any confusion with or infringe on another company’s name or trademark.

The use of certain words in the name of a company are prohibited unless you obtain the written consent of the ROC. These words include: Authority, Government, Mauritius, National, etc.

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

Know your client requirements (ie, anti-money laundering) apply to banks, law practitioners and law firms, management companies and other financial institutions in accordance with the Financial Intelligence and Anti-Money Laundering Act 2002 of Mauritius.

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

A company may alter its constitution by special resolution (ie, passed by shareholders holding at least 75 percent of the voting shares).

Once a resolution amending a constitution has been passed, the board must give notice of the alteration to the Registrar of Companies within 14 days of the amendment.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION
Most licenses are industry-specific rather than company structure-specific.

A company conducting certain businesses activities in Mauritius (for example, construction, electronic communications, energy, financial services, mining, real estate and activities impacting environment) may require licenses or other forms of authorization.

Industry-specific laws and regulations apply to companies operating within certain industries – for example, the Banking Act 2004 of Mauritius and the Financial Services Act 2007 of Mauritius.

**PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY**

Rarely used in Mauritius.

**KEY CONTACTS**

MEXICO
MEXICO

FORM OF ENTITY

S.A. de C.V.

Separate legal entity, independent from its shareholders. Two shareholders are required at all times. Shareholders’ meetings are the supreme organ of the corporation. Managed by a board of directors or a sole administrator, which is responsible for taking major business decisions and overseeing the general affairs of the corporation. Directors are elected by the shareholders of the corporation. Officers, who run the day-to-day operations of the corporation, are appointed by the directors or the shareholders’ meeting.

S. de R.L. de C.V.

Separate legal entity, independent from its partners. Two partners are required at all times. Partners’ meetings are the supreme organ of the company. Managed by a board of directors or a sole administrator, which is responsible for taking major business decisions and overseeing the general affairs of the company. Directors are elected by the partners of the company. Officers, who run the day-to-day operations of the company, are appointed by the directors or the partners’ meeting.

S.A.P.I. de C.V.

Separate legal entity, independent from its shareholders. Two shareholders are required at all times. Shareholders’ meetings are the supreme organ of the corporation. Managed by a board of directors, which is responsible for taking major business decisions and overseeing the general affairs of the corporation. Directors are elected by the shareholders of the corporation. Officers, who run the day-to-day operations of the corporation, are appointed by the directors or the shareholders’ meeting.

ENTITY SET UP

There are 3 types of commercial entities that generally are incorporated or formed under Mexican federal law:

- **Sociedad Anónima de Capital Variable** (S.A. de C.V.), which is similar to a corporation in the US
- **Sociedad de Responsabilidad Limitada de Capital Variable** (S. de R.L. de C.V.), which is similar to an LLC in the


US) and

- **Sociedad Anónima Promotora de Inversión de Capital Variable (S.A.P.I de C.V.),** a subtype of S.A. de C.V., regulated under the Stock Markets Law (**Ley del Mercado de Valores**).

**S.A. de C.V.**

Unlimited number of shareholders.

Generally no personal liability of the shareholders.

Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends.

Shareholders have preemptive rights to subscribe and pay shares if the S.A. de C.V. approves to increase its capital.

Typical charter documents include the articles of incorporation, bylaws, stock certificates and (a) stock ledger, (b) shareholders’ meetings ledger (c) board of directors ledger and (d) capital variations ledger.

Board of directors (or sole administrator) has overall management responsibility; officers have day-to-day responsibility.

Shareholders typically incorporate the corporation or may purchase shares from existing shareholders.

Shareholders can enter into shareholders’ agreements in which they agree to certain rights and obligations such as drag-along and tag-along rights, put and call options, deadlock solution procedures and the issuance of non-voting shares, among others. Such provisions can likewise be included in the company’s bylaws.

Relevant law requires a shareholders’ annual meeting to approve:

- Preceding year-end financial statements
- Ratification or appointment of new director(s) and statutory examiners
- The fees paid to directors and statutory examiners and
- Separation of 5 percent of the profits, if any, for a legal reserve, which shall reach an amount equivalent to the 20 percent of the social capital.

Federal law requires, when there is foreign investment in the capital of the S.A. de C.V., to register before the National Registry of Foreign Investments and file an annual report with such agency, reporting the preceding year’s year-end financial statements.

**S. de R.L. de C.V.**

Up to 50 partners; contributions of the partners to the capital are represented by equity interests (not shares) which are not negotiable instruments.

Generally no personal liability of the partners.
Taxed on its earnings at a corporate level and partners are taxed on any distributed dividends.

Subject to US tax law (check the box related) requirements, the Mexican S. de R.L. de C.V. may qualify as a pass-through entity.

Partners have preemptive rights to subscribe and pay equity interests if the S. de R.L. de C.V. approves to increase its capital, as well as to acquire any equity interest of a selling partner, in case the relevant sale is made to a non-partner.

Typical charter documents include articles of formation, bylaws and (a) partners ledger, (b) partners’ meetings ledger, (c) board of directors ledger and (d) capital variations ledger.

Board of directors (or sole administrator) has overall management responsibility; officers have day-to-day responsibility.

Partners typically form the company or may acquire equity interests from existing partners, subject to the waiver of other partners’ preemptive rights.

Relevant law requires a partners’ annual meeting to approve:

- Preceding year-end-financial statements
- Ratification or appointment of new director(s) and statutory examiners, if any
- The fees paid to directors and statutory examiners, if any, and
- Separation of 5 percent of the profits for a legal reserve, which shall reach an amount equivalent to 20 percent of the social capital.

Federal law requires, when there is foreign investment in the capital of the S. de R.L. de C.V., to register before the National Registry of Foreign Investments and file an annual report with such agency, reporting the preceding year’s year-end financial statements.

**S.A.P.I de C.V.**

Same legal requirements and provisions for the S.A. de C.V., although relevant law provides certain differences in the operation of the S.A.P.I. de C.V., particularly in the possibility to adopt the administration regime of the S.A.B. (public company) and the possibility of the company to acquire its own shares.

A S.A.P.I de C.V. must be managed by a board of directors (a sole administrator is not allowed).

**MINIMUM CAPITAL REQUIREMENT**

**S.A. de C.V.**

No minimum capital requirement.

**S. de R.L. de C.V.**
No minimum capital requirement.

S.A.P.I. de C.V.

No minimum capital requirement.

**LEGAL LIABILITY**

S.A. de C.V.

Shareholders of a corporation are generally not liable for the debts of a corporation aside from their financial contribution to the corporation.

S. de R.L. de C.V.

Partners of a company are generally not liable for the debts of a company aside from their financial contribution to the company.

S.A.P.I. de C.V.

Shareholders of a corporation are generally not liable for the debts of a corporation aside from their financial contribution to the corporation.

**TAX PRESENCE**

S.A. de C.V.

A S.A. de C.V. is taxed at 2 levels (commonly referred to as double taxation). First, the S.A. de C.V. pays a corporate tax on its corporate income; then, the S.A. de C.V. distributes profits to shareholders, who then pay income tax on those dividends.

S. de R.L. de C.V.

A S. de R.L. de C.V. is taxed at 2 levels (commonly referred to as double taxation). First, the S. de R.L. de C.V. pays a corporate tax on its corporate income; then, the S. de R.L. de C.V. distributes profits to partners, who then pay income tax on those dividends.

S.A.P.I. de C.V.

A S.A.P.I. de C.V. is taxed at 2 levels (commonly referred to as double taxation). First, the S.A.P.I. de C.V. pays a corporate tax on its corporate income; then, the S.A.P.I. de C.V. distributes profits to shareholders, who then pay income tax on those dividends.

**INCORPORATION PROCESS**

S.A. de C.V.
• Request of use of corporate name

• Drafting and approval of bylaws and articles of incorporation

• Integration of a KYC file

• Formalization of the documents with a Mexican Notary Public, and

• Registration of the public deed with Public Registry of Commerce.

S. de R.L. de C.V.

• Request of use of corporate name

• Drafting and approval of bylaws and articles of formation

• Integration of a KYC file

• Formalization of the documents with a Mexican Notary Public, and

• Registration of the public deed with Public Registry of Commerce.

S.A.P.I. de C.V.

• Request of use of corporate name

• Drafting and approval of bylaws and articles of incorporation

• Integration of a KYC file

• Formalization of the documents with a Mexican Notary Public, and

• Registration of the public deed with Public Registry of Commerce.

BUSINESS RECOGNITION

S.A. de C.V.

Well regarded and widely used.

S. de R.L. de C.V.

Well regarded and widely used.

S.A.P.I. de C.V.

Well regarded and widely used.
SHAREHOLDER MEETING REQUIREMENTS

S.A. de C.V.
Required to hold annual meeting of shareholders to vote on certain items.

S. de R.L. de C.V.
Required to hold annual meeting of partners to vote on certain items.

S.A.P.I. de C.V.
Required to hold annual meeting of shareholders to vote on certain items.

BOARD OF DIRECTOR MEETING REQUIREMENTS

S.A. de C.V.
Unless otherwise provided for in the corporation’s bylaws, no annual meeting of the directors is required.

S. de R.L. de C.V.
Unless otherwise provided for in the company’s bylaws, no annual meeting of the directors is required.

S.A.P.I. de C.V.
Unless otherwise provided for in the corporation’s bylaws, no annual meeting of the directors is required.

ANNUAL COMPANY TAX RETURNS

S.A. de C.V.
Must annually file tax returns with federal and state tax authorities.

S. de R.L. de C.V.
Must annually file tax returns with federal and state tax authorities.

S.A.P.I. de C.V.
Must annually file tax returns with federal and state tax authorities.

BUSINESS REGISTRATION FILING REQUIREMENTS

S.A. de C.V.
With the Public of Registry of Commerce, the National Registry of Foreign Investments and, if applicable, with the
federal and state tax authorities.

S. de R.L. de C.V.

With the Public of Registry of Commerce, with the National Registry of Foreign Investments, if applicable, with the federal and state tax authorities.

S.A.P.I. de C.V.

With the Public of Registry of Commerce, with the National Registry of Foreign Investments, if applicable, with the federal and state tax authorities.

**BUSINESS EXPANSION**

S.A. de C.V.

No need to change as business expands (unless the business expansion entails a change in its organizational documents).

S. de R.L. de C.V.

No need to change as business expands (unless the business expansion entails a change in its organization documents).

S.A.P.I. de C.V.

No need to change as business expands (unless the business expansion entails a change in its organizational documents).

**EXIT STRATEGY**

S.A. de C.V.

Dissolution and winding up shall be approved by the shareholders’ meeting. Generally, it is a long and complex process.

S. de R.L. de C.V.

Dissolution and winding up shall be approved by the partners’ meeting. Generally, it is a long and complex process.

S.A.P.I. de C.V.

Dissolution and winding up shall be approved by the shareholders’ meeting. Generally, it is a long and complex process.

**ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**
S.A. de C.V.
Annual shareholders’ meeting and annual filing with the Foreign Investments Bureau.

S. de R.L. de C.V.
Annual partners’ meeting and annual filing with the Foreign Investments Bureau.

S.A.P.I. de C.V.
Annual shareholders’ meeting and annual filing with the National Registry of Foreign Investments.

DIRECTOR / OFFICER REQUIREMENTS

S.A. de C.V.
Either a sole administrator or a board of directors.

S. de R.L. de C.V.
Either a sole manager or a board of managers.

S.A.P.I. de C.V.
A board of directors.

For more information on directors’ duties, see our Global Guide to Directors’ Duties.

LOCAL CORPORATE SECRETARY REQUIREMENT

S.A. de C.V.
The secretary is responsible to maintain and keep the corporate books updated. The corporate books shall remain in Mexico; thus, it is advisable to appoint a Mexican resident as secretary of the board of directors.

S. de R.L. de C.V.
The secretary is responsible to maintain and keep the corporate books updated. The corporate books shall remain in Mexico; thus, it is advisable to appoint a Mexican resident as secretary of the board of managers.

S.A.P.I. de C.V.
The secretary is responsible to maintain and keep the corporate books updated. The corporate books shall remain in Mexico; thus, it is advisable to appoint a Mexican resident as secretary of the board of directors.
LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

S.A. de C.V.

Appointment of a statutory examiner (comisario).

S. de R.L. de C.V.

No legal requirement.

S.A.P.I. de C.V.

Appointment of a statutory examiner (comisario) or a surveillance committee.

LOCAL OFFICE LEASE REQUIREMENT

S.A. de C.V.

Not required for incorporation.

S. de R.L. de C.V.

Not required for formation.

S.A.P.I. de C.V.

Not required for incorporation.

OTHER PHYSICAL PRESENCE REQUIREMENTS

S.A. de C.V.

To obtain its tax registration, an S.A. de C.V. must have a domicile. If, upon incorporation, the S.A. de C.V. does not have one, accountants normally provide theirs.

S. de R.L. de C.V.

To obtain its tax registration, an S. de R.L. de C.V. must have a domicile. If, upon formation, the S. de R.L. de C.V. does not have one, accountants normally provide theirs.

S.A.P.I. de C.V.

To obtain its tax registration, an S.A.P.I. de C.V. must have a domicile. If, upon incorporation, the S.A.P.I. de C.V. does not have one, accountants normally provide theirs.

SUFFICIENCY OF VIRTUAL OFFICE

S.A. de C.V.
If accountants (or any other third party) agree to provide their domicile as tax domicile of the entity, a virtual office suffices.

S. de R.L. de C.V.

If accountants (or any other third party) agree to provide their domicile as tax domicile of the entity, a virtual office suffices.

S.A.P.I. de C.V.

If accountants (or any other third party) agree to provide their domicile as tax domicile of the entity, a virtual office suffices.

**PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

S.A. de C.V.

Sufficient for tax registration.

S. de R.L. de C.V.

Sufficient for tax registration.

S.A.P.I. de C.V.

Sufficient for tax registration.

**PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

S.A. de C.V.

Permitted; usually common.

S. de R.L. de C.V.

Permitted; usually common.

S.A.P.I. de C.V.

Permitted; usually common.

**NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS**
S.A. de C.V.

Requirements for shareholders depend on the corporate purpose of the entity (certain activities have foreign investment limitations). For directors or officers, there are no specific requirements (except if the corporation grants powers of attorney to such directors or officers, in which case, to be able to exercise such powers, they are required to have a proper visa).

S. de R.L. de C.V.

Requirements for partners depend on the corporate purpose of the entity (certain activities have foreign investment limitations). For managers or officers, there are no specific requirements (except if the entity grants powers of attorney to such directors or officers, in which case, to be able to exercise such powers, they are required to have a proper visa).

S.A.P.I. de C.V.

Requirements for shareholders depend on the corporate purpose of the entity (certain activities have foreign investment limitations). For directors or officers, there are no specific requirements (except if the corporation grants powers of attorney to such directors or officers, in which case, to be able to exercise such powers, they are required to have a proper visa).

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

S.A. de C.V.

None.

S. de R.L. de C.V.

None.

S.A.P.I. de C.V.

None.

SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF

S.A. de C.V.

The board of directors (as an organ, not the members individually) is elected by the shareholders and is the highest authority in the management of the corporation, governing the organization by establishing policies and objectives, provided that any shareholder or group of shareholders holding more than 25 percent of the capital stock shall have the right to appoint a director.

In contrast, officers are appointed by the board of directors or the shareholders to oversee day-to-day operations
of the corporation.

**S. de R.L. de C.V.**

The board of managers (as an organ, not the members individually) is elected by the partners and is the highest authority in the management of the entity, governing the organization by establishing policies and objectives. In contrast, officers are appointed by the board of managers or the partners to oversee day-to-day operations of the corporation.

**S.A.P.I. de C.V.**

The board of directors (as an organ, not the members individually) is elected by the shareholders and is the highest authority in the management of the corporation, governing the organization by establishing policies and objectives, provided that any shareholder or group of shareholders holding more than 10 percent of the capital stock shall have the right to appoint a director.

In contrast, officers are appointed by the board of directors or the shareholders to oversee day-to-day operations of the corporation.

**PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHCOLDERS**

**S.A. de C.V.**

A summary of the organizational documents is public as the incorporation public deed shall be registered with the Public Registry of Commerce.

A shareholders’ registry must be kept and must contain: (i) each shareholder’s name, nationality and address, as well as an indication of their shares in number, series, class and any other particularity; (ii) the amount contributed to capital/invested by the shareholder in the company; and (iii) the transfer of any of the shares.

When the inscription of a shareholder in the shares’ registry book is registered, a notice must be posted in the electronic system of the Ministry of Economy (Secretaría de Economía) and will have legal effect the day after the notice is posted. The Ministry will make sure that the information regarding the shareholder’s name, nationality and address is kept confidential, with the exception of where being required by a competent authority.

**S. de R.L. de C.V.**

A summary of the organization documents is public as the formation public deed shall be registered with the Public Registry of Commerce.

A partners’ registry book must be kept and contain (i) the partners’ name and address indicating; (ii) their contributions; and (iii) the transfer of social parts. When any of the above is registered, notice must be posted in the electronic system of the Ministry of Economy (Secretaría de Economía) and will have legal effects the day after the notice is posted. Any person that can prove legitimate interest, will be granted access to the partners registry book, which will be at the care of the administrators, and these will respond personally, and jointly and severally, of its existence and the accuracy of its content.
S.A.P.I. de C.V.

A summary of the organizational documents is public as the incorporation public deed shall be registered with the Public Registry of Commerce.

A shareholders’ registry must be kept and must contain (i) each shareholder’s name, nationality and address, as well as an indication of their shares in number, series, class and any other particularity; (ii) the amount contributed to capital/invested by the shareholder in the company; and (iii) the transfer of any of the shares.

When the inscription of a shareholder in the shares’ registry book is registered, a notice must be posted in the electronic system of the Ministry of Economy (Secretaría de Economía) and will have legal effect the day after the notice is posted. The Ministry will make sure that the information regarding the shareholder’s name, nationality and address is kept confidential, with the exception of where being required by a competent authority.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

S.A. de C.V.

There must be a minimum of 2 shareholders and there is no maximum number. No minimum or maximum limitations for directors.

de R.L. de C.V.

There must be a minimum of 2 partners and a maximum of 50. No minimum or maximum limitation for directors.

S.A.P.I. de C.V.

There must be a minimum of 2 shareholders and there is no maximum number. No minimum or maximum limitations for directors.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

S.A. de C.V.

Two shareholders.

S. de R.L. de C.V.

Two partners.

S.A.P.I. de C.V.

Two shareholders.

REMOVAL OF DIRECTORS OR OFFICERS

S.A. de C.V.
Removal of directors is allowed by a vote of the majority of the shares. However, directors appointed by shareholders or a group of shareholders holding at least 25 percent of the capital stock of the company, in exercise of such minority right, can only be removed by the shareholder or group of shareholders that appointed such director.

de R.L. de C.V.

Removal of managers is allowed by a vote of the majority of the partners (partners have one for each MXN1.00).

S.A.P.I. de C.V.

Removal of directors is allowed by a vote of the majority of the shares. However, directors appointed by shareholders or group of shareholders holding at least 10 percent of the capital stock of the company, in exercise of such minority right, can only be removed by the shareholder or group of shareholders that appointed such director.

REQUIRED AND OPTIONAL OFFICERS

S.A. de C.V.

All are optional.

S. de R.L. de C.V.

All are optional.

S.A.P.I. de C.V.

All are optional.

BOARD MEETING REQUIREMENTS

S.A. de C.V.

No legal requirement.

S. de R.L. de C.V.

No legal requirement.

S.A.P.I. de C.V.

No legal requirement.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

S.A. de C.V.
There are 2 kinds of shareholder meeting:

- General, which include all the shares representing the capital stock of the company and
- Special, which include only a specific class or series of shares.

Both such kinds of shareholders’ meetings are sub-classified in:

- Ordinary, which requires 1/2 of the shares to be represented for deeming as legally convened a meeting, and its resolutions shall be adopted by at least the majority of votes present in a specific meeting and
- Extraordinary, which requires 3/4 of the shares to be represented for deeming as legally convened a meeting, and its resolutions shall be adopted at least, by the shareholders representing 1/2 of the capital stock of the company.

Board of directors shall be considered as legally convened if 1/2 of its members are present in a specific meeting, its resolutions shall be adopted by at least majority of votes.

S. de R.L. de C.V.

There is only 1 kind of partners meeting. Such partners’ meeting requires 1/2 of the capital to be represented for deeming as legally convened a meeting, and its resolutions shall be adopted by at least the majority of votes present in a specific meeting; provided that:

- For amending the corporate bylaws, the vote of the partners representing 3/4 of the social capital is required and
- For amending the corporate purpose or increasing the partners’ obligations, the unanimous vote of all the partners is required.

Board of managers shall be considered as legally convened if 1/2 of its members are present in a specific meeting, its resolutions shall be adopted by at least majority of votes.

S.A.P.I. de C.V.

There are 2 kinds of shareholder meeting:

- General, which include all the shares representing the capital stock of the company and
- Special, which include only a specific class or series of shares.

Both such kinds of shareholders’ meetings are sub-classified in:

- Ordinary, which requires 1/2 of the shares to be represented for deeming as legally convened a meeting, and its resolutions shall be adopted by at least the majority of votes present in a specific meeting and
- Extraordinary, which requires 3/4 of the shares to be represented for deeming as legally convened a meeting, and its resolutions shall be adopted, at least, by the shareholders representing 1/2 of the capital stock of the company.
Board of directors shall be considered as legally convened if 1/2 of its members are present in a specific meeting, its resolutions shall be adopted by at least majority of votes.

**MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?**

**S.A. de C.V.**
Not necessary for incorporation. When necessary, a bank account may be opened anywhere.

**S. de R.L. de C.V.**
Not necessary for formation. When necessary, a bank account may be opened anywhere.

**S.A.P.I. de C.V.**
Not necessary for incorporation. When necessary, a bank account may be opened anywhere.

**AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?**

**S.A. de C.V.**
Audits are required if the corporation exceeds certain thresholds determined by Mexican tax laws. Generally, the corporate books should be either kept by the corporation or the corporation’s attorneys.

**S. de R.L. de C.V.**
Audits are required if the entity exceeds certain thresholds determined by Mexican tax laws. Generally, the corporate books should be either kept by the entity or the entity’s attorneys.

**S.A.P.I. de C.V.**
Audits are required if the corporation exceeds certain thresholds determined by Mexican tax laws. Generally, the corporate books should be either kept by the corporation or the corporation’s attorneys.

**REQUIREMENT REGARDING PAR VALUE OF STOCK**

**S.A. de C.V.**
MXN1.00, or shares may be non-par value shares.

**S. de R.L. de C.V.**
S.A.P.I. de C.V.

MXN1.00, or shares may be non-par value shares.

**INCREASING OF CAPITALIZATION IF NEEDED**

**S.A. de C.V.**

Depends if made to the fixed part, then approval of an extraordinary shareholders meeting is required and the amendment of the bylaws; if made to the variable part, approval of an ordinary shareholders meetings is required.

**S. de R.L. de C.V.**

Depends if made to the fixed part, then approval of an extraordinary partners meeting is required and the amendment of the bylaws; if made to the variable part, approval of an ordinary partners meetings is required.

**S.A.P.I. de C.V.**

Depends if made to the fixed part, then approval of an extraordinary shareholders meeting is required and the amendment of the bylaws; if made to the variable part, approval of an ordinary shareholders meetings is required.

**SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)**

**S.A. de C.V.**

Funds can be repatriated abroad from the US via dividends or redemption.

**S. de R.L. de C.V.**

Funds can be repatriated abroad from the US via dividends or redemption.

**S.A.P.I. de C.V.**

Funds can be repatriated abroad from the US via dividends or redemption.

**RESTRICTIONS ON TRANSFERABILITY OF SHARES**

**S.A. de C.V.**

Shares can generally be transferred between shareholders or third-parties via a written agreement, except when:

- There is a “Right of First Refusal” provision in the S.A. de C.V. bylaws or
- The company has issued “Restricted Transfer Shares” which transfer requires the approval of the board of
Partners have “Right of First Refusal” when a sale is intended to be carried out in favor of a non-partner. Likewise, the consent of the majority of the partners is required for any equity transfer.

S.A.P.I. de C.V.

Shares can generally be transferred between shareholders or third-parties via a written agreement, except when:

- There is a “Right of First Refusal” provision in the S.A.P.I. de C.V. bylaws or
- The company has issued “Restricted Transfer Shares” which transfer requires the approval of the board of directors.

OBTAINING A NAME AND NAMING REQUIREMENTS

S.A. de C.V.

Proposed name shall be approved by the Ministry of Economy.

S. de R.L. de C.V.

Proposed name shall be approved by the Ministry of Economy.

S.A.P.I. de C.V.

Proposed name shall be approved by the Ministry of Economy.

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

S.A. de C.V.

Required by Notary Public for incorporation purposes: filing of a questionnaire, provide proof of legal existence and powers of attorney granted by the shareholders, if applicable.

S. de R.L. de C.V.

Required by Notary Public for formation purposes: filing of a questionnaire, provide proof of legal existence and powers of attorney granted by the partners, if applicable.

S.A.P.I. de C.V.

Required by Notary Public for incorporation purposes: filing of a questionnaire, provide proof of legal existence and powers of attorney granted by the shareholders, if applicable.
APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

S.A. de C.V.
Through an extraordinary shareholders meeting.

S. de R.L. de C.V.
Through an extraordinary partners meeting.

S.A.P.I. de C.V.
Through an extraordinary shareholders meeting.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

S.A. de C.V.
Only for certain corporate purposes.

S. de R.L. de C.V.
Only for certain corporate purposes.

S.A.P.I. de C.V.
Only for certain corporate purposes.

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

S.A. de C.V.
Shelf companies can be purchased but are not widely used and, since the enactment of the Mexican Anti-Money Laundering Law, we expect even fewer cases.

S. de R.L. de C.V.
Shelf companies can be purchased but are not widely used and, since the enactment of the Mexican Anti-Money Laundering Law, we expect even fewer cases.

S.A.P.I. de C.V.
Shelf companies can be purchased but are not widely used and, since the enactment of the Mexican Anti-Money Laundering Law, we expect even fewer cases.
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FORM OF ENTITY

Branch office

Not a separate legal entity. A branch office is a local office of a non-Dutch legal entity in the Netherlands (the head office).

B.V. (private company with limited liability)

Separate and distinct legal entity. Managed by a board of directors, which is responsible for making major business decisions, overseeing the general affairs and running the day-to-day operations of the BV. Directors are appointed by the shareholders of the BV. A BV can have a supervisory board to supervise the policies of the board of directors and the general course of affairs of the BV and its affiliated business. It is also possible to create a so-called 1-tier board, consisting of executive and non-executive directors.

Co-operative U.A.

Separate and distinct legal entity. Managed by a management board, which is responsible for making major business decisions, overseeing the general affairs and running the day-to-day operations of the co-operative. Directors are appointed by the members of the co-operative. A co-operative can have a supervisory board to supervise the policies of the management board and the general course of affairs of the co-operative and its affiliated business. It is also possible to create a so-called 1-tier board, consisting of executive and non-executive directors.

C.V. (a limited partnership)

A CV is not a legal entity under Dutch law. It is a partnership agreement between 1 or more general partners and 1 or more limited partners. The general partner has overall management and day-to-day responsibility. The partnership agreement can provide for the possibility that the partners elect a management committee, which will manage the day-to-day business activities of the CV and carry out the business and activities of the CV on behalf of the general partner in accordance with the power granted to them by the general partner.

ENTITY SET UP

Branch office (local office of a non-Dutch legal entity in the Netherlands)
• Not a separate legal entity. The branch office is a local business office of a non-Dutch legal entity in the Netherlands (the head office)

• A branch office is ‘established’ by a resolution of (the appropriate corporate body under the governing law of) the head office to establish a branch office, followed by registration thereof in the Dutch Trade Register

• Governing law of the head office applies in respect of all corporate legal matters (such as liability of the shareholders, charter documents, responsibility of directors and capital requirements), and

• If the head office under its governing law requires to file annual accounts in its country of origin, then such annual accounts shall also be filed for the branch office with the Dutch Trade Register

B.V. (a private company with limited liability)

• Unlimited number of shareholders

• Generally no personal liability of the shareholders

• Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends

• Typical charter documents include: articles of incorporation (included in its deed of incorporation or later deed of amendment, which both require to be executed before a civil-law notary in the Netherlands) and shareholders register

• Board of directors has overall management and day-to-day responsibility

• Shareholders typically acquire shares at incorporation of the BV or by deed of issue thereafter. Shares in the capital of a BV are registered shares for which, in general, no (non-transferable) share certificates are issued. Different types of shares can be created (common, preferred, without voting rights or without profit entitlement), and

• A BV requires to file annual accounts with the Dutch Trade Register. Exemptions can apply – for instance, in the case of consolidation and when certain conditions are met.

Co-operative U.A. (a co-operative association with exclusion of liability)

• Unlimited number of members (with a minimum of 2)

• Generally, no personal liability of the members (which is indicated by use of “U.A.” in the name of the co-operative). Please note there can also be co-operative associations in the Netherlands with a different level of liability for its members, such as the co-operative BA (with limited liability of its members to contribute to a deficit) and the co-operative WA (with statutory liability for its members). This overview is limited to the (most commonly used) co-operative UA (with exclusion of liability for its members), hereinafter also referred to as “co-operative.”

• Taxed on its earnings at a corporate level, and members are taxed on any distributed dividends
• Typical charter documents include: articles of incorporation (included in its deed of incorporation or later deed of amendment, which both require to be executed before a civil law notary in the Netherlands), a membership agreement (agreement between the members and the co-operative) and a members’ register

• Management board has overall management and day-to-day responsibility

• Members typically acquire a membership interest at incorporation of the co-operative or at a later date by being admitted as a new member of the co-operative. A co-operative does not have a capital divided by shares. Capital contributions made by each member to the co-operative are kept in the member accounts kept by the co-operative in the name of each member, and

• A co-operative requires to file annual accounts with the Dutch Trade Register

C.V. (a Dutch limited partnership)

• Unlimited number of partners (with a minimum at least 1 general partner and at least 1 limited partner)

• A general partner is jointly and severally liable for any indebtedness of the CV towards third parties. The liability of a limited partner is limited to the amount of its contribution to the CV, provided that the limited partner does not act on behalf of or for the benefit the CV towards third parties

• A CV is not a legal entity under Dutch law. It is an (partnership) agreement between 1 or more general partners and 1 or more limited partners. The partners can either be legal persons or natural persons

• Since the CV is not a legal entity, it is not possible for the CV to own goods. Therefore, in most limited partnership agreements, it is provided that the general partner will hold all assets (for example, shares in subsidiaries) of the CV from a property law perspective. The general partner and the limited partner will jointly hold the beneficial ownership of the assets on behalf of the CV

• A CV that qualifies as a so-called open CV, meaning that the limited partners may be admitted or replaced without the consent of all partners (both limited and general partners), is opaque for Dutch tax purposes. A closed CV is transparent for Dutch tax purposes

• Typical charter documents include: partnership agreement to be signed by all partners and a partners register

• The general partner has overall management and day-to-day responsibility. The partnership agreement can provide for the possibility that the partners elect a management committee, which will manage the day-to-day business activities of the CV and carry out the business and activities of the CV on behalf of the general partner in accordance with the power granted to them by the general partner

• A CV is being established by means of execution of the partnership agreement and contribution of capital or other assets as to be agreed by the partners. Capital contributions made by each partner to the CV are kept in the capital accounts kept by the CV in the name of each partner, and

• A CV only requires preparing and filing annual accounts with the Dutch Trade Register if, in short, all its general partners are capital companies under foreign law.
MINIMUM CAPITAL REQUIREMENT

Branch office

Determined by governing law of the head office.

B.V. (private company with limited liability)

No minimum capital requirement. Issued capital can be as small as EUR0.01 (or 1 cent in any other currency).

Co-operative U.A.

No minimum capital requirement. The membership agreement or, if so determined in the articles, the general meeting of members, can commit a member to make a payment of initial or additional equity into the co-operative.

C.V. (a limited partnership)

No minimum capital requirement, as long as each partner contributes some capital or other assets to the CV, as to be agreed by the partners.

LEGAL LIABILITY

Branch office

Determined by governing law of the head office.

B.V. (private company with limited liability)

Shareholders of a BV are generally not liable for the debts of a BV aside from their financial contribution to the BV.

Co-operative U.A.

Members of a co-operative UA are not liable for the debts of the co-operative aside from their financial contribution to the co-operative.

C.V. (a limited partnership)

A general partner is jointly and severally liable for any indebtedness of the CV towards third parties. The liability of a limited partner is limited to the amount of its contribution to the CV, provided that the limited partner does not act on behalf of or for the benefit the CV towards third parties.

TAX PRESENCE

Branch office
Entities that are not a resident of the Netherlands for tax purposes are subject to Dutch corporate income tax, only if and to the extent income is derived and gains are realized from specific Dutch sources. An important category of income that is subject to Dutch corporate income tax is tax profit derived from a business carried on in the Netherlands by a non-tax resident entity via a Dutch permanent establishment or a Dutch permanent representative.

**B.V. (private company with limited liability)**

Dutch corporate income tax is imposed on worldwide profits of the BV. The tax rate on the first EUR395,000 of taxable profit is 15 percent. The rate on taxable profit in excess of EUR395,000 is 25.8 percent. Benefits derived by the BV from a so-called participation (deelneming) in an entity are exempt from Dutch corporate income tax (participation exemption) (deelnemingsvrijstelling). The participation exemption seeks to prevent double taxation of business profits at different corporate levels.

**Co-operative U.A.**

Dutch corporate income tax is imposed on worldwide profits of the co-operative. The tax rate on the first EUR395,000 of taxable profit is 15 percent. The rate on taxable profit in excess of EUR395,000 is 25.8 percent. Benefits derived by the co-operative from a so-called participation (deelneming) in an entity are exempt from Dutch corporate income tax (participation exemption) (deelnemingsvrijstelling). The participation exemption seeks to prevent double taxation of business profits at different corporate levels.

**C.V. (a limited partnership)**

A CV can either be considered tax transparent or opaque from a Dutch tax perspective. Depending on the partnership agreement, the tax status of the CV is determined.

**INCORPORATION PROCESS**

**Branch office**

A branch office is ‘established’ by a resolution of (the appropriate corporate body under the governing law of) the head office to establish a branch office, followed by registration thereof in the Dutch Trade Register. For such registration, notarized and apostilled copies of the charter documents of the head office are required, as well as an original apostilled extract of the head office from the local commercial register and original signed data cards and notarized and apostilled passport copies of the directors of the head office and any proxy holders of the branch office appointed in the resolution regarding its establishment.

**B.V. (private company with limited liability)**

Execute a deed of incorporation (including articles of association) before a civil law notary officiating in the Netherlands. The incorporator/shareholder can grant written power of attorney to the notary so that no personal appearance in the Netherlands will be required. After execution of the deed, the notary files the articles of the BV, and the details of its directors, its ultimate beneficial owners (natural persons directly or indirectly holding more than 25 percent of the shares or the voting rights) and of the shareholder (only in case of 100-percent shareholding) with the Dutch Trade Register. The notary prepares a shareholders’ register of the BV, which thereafter requires to be kept by the board of directors of the BV at its office address.
Co-operative U.A.

Execute a deed of incorporation (including articles of association) before a civil law notary officiating in the Netherlands. Incorporators/members can grant written power of attorney to the notary so that no personal appearance in the Netherlands will be required. After execution of the deed, the notary files the articles of the co-operative and the details of its board members and its ultimate beneficial owners (natural persons directly or indirectly holding more than 25 percent of the interests in the co-operative or the voting rights) with the Dutch Trade Register. The notary prepares a members’ agreement (to be signed by the members of the co-operative) and a members’ register of the co-operative, which thereafter requires to be kept by the management board of the co-operative at its office address.

C.V. (a limited partnership)

Execute partnership agreement. After execution of the partnership agreement, it is often the notary who files the details of the limited partnership, its general partners and its ultimate beneficial owners (natural persons directly or indirectly holding more than 25 percent of the interests in the CV or the voting rights) with the Dutch Trade Register.

BUSINESS RECOGNITION

Branch office

Widely used.

B.V. (private company with limited liability)

Well regarded and widely used.

Co-operative U.A.

Well regarded and widely used.

C.V. (a limited partnership)

Widely used.

SHAREHOLDER MEETING REQUIREMENTS

Branch office

Determined by governing law of the head office.

B.V. (private company with limited liability)

Required to hold annual meeting of shareholders to vote on certain items, such as appointment of directors and adoption of annual accounts.

Co-operative U.A.
Required to hold an annual meeting of members to vote on certain items, such as appointment of board members and adoption of annual accounts.

C.V. (a limited partnership)

The partnership agreement usually includes a requirement to hold an annual meeting of partners.

**BOARD OF DIRECTOR MEETING REQUIREMENTS**

**Branch office**

Determined by governing law of the head office.

**B.V. (private company with limited liability)**

Normally 1 annual meeting of the directors is held. Tax substance may require more than 1 meeting to be held per year in the Netherlands.

**Co-operative U.A.**

Typically an annual meeting of the board members is being held. Tax substance may require more than 1 meeting to be held per year.

**C.V. (a limited partnership)**

Generally no requirements.

**ANNUAL COMPANY TAX RETURNS**

**Branch office**

The foreign company that owns the branch (ie, the head office) must annually file tax returns with Dutch tax authorities.

**B.V. (private company with limited liability)**

Must annually file tax returns with Dutch tax authorities.

**Co-operative U.A.**

Must annually file tax returns with Dutch tax authorities.

**C.V. (a limited partnership)**

Must annually file tax returns with Dutch tax authorities, if the CV is considered an open CV.

**BUSINESS REGISTRATION FILING REQUIREMENTS**
Branch office

A branch office must be registered in the Dutch Trade Register within 8 days after its establishment. Information on its directors and proxy holders must be up to date in the Trade Register. Changes must be filed within 8 days.

B.V. (private company with limited liability)

A BV must be registered in the Dutch Trade Register within 8 days after its incorporation. Information on its directors, its ultimate beneficial owners (natural persons directly or indirectly holding more than 25 percent of the shares or the voting rights) and shareholder (only in case of 100-percent shareholding) must be up to date in the Trade Register. Changes must be filed within 8 days.

Co-operative U.A.

A co-operative must be registered in the Dutch Trade Register within 8 days of its incorporation. Information on its board members and its ultimate beneficial owners (natural persons directly or indirectly holding more than 25 percent of the interests in the co-operative or the voting rights) must be up to date in the Trade Register. Changes must be filed within 8 days.

C.V. (a limited partnership)

A CV must be registered in the Dutch Trade Register within 8 days after its establishing the CV. Information on its general partner, its ultimate beneficial owners (natural persons directly or indirectly holding more than 25 percent of the interests in the CV or the voting rights) and management committee members (proxy holders), if any, must be up to date in the Trade Register. Changes must be filed within 8 days.

BUSINESS EXPANSION

Branch office

No need to change as business expands.

B.V. (private company with limited liability)

No need to change as business expands.

Co-operative U.A.

No need to change as business expands.

C.V. (a limited partnership)

No need to change as business expands.
EXIT STRATEGY

Branch office

File a deregistration form with the Dutch Trade Register pursuant to a resolution of (the appropriate corporate body under the governing law of) the head office to terminate the branch office and terminate Dutch activities.

B.V. (private company with limited liability)

File dissolution documents with the Dutch Trade Register after completing a voluntary liquidation procedure (including a mandatory 2 month waiting period in which creditors can file opposition against liquidation accounts).

Co-operative U.A.

File dissolution documents with the Dutch Trade Register after completing a voluntary liquidation procedure (including a mandatory 2-month waiting period in which creditors can file opposition against liquidation accounts).

C.V. (a limited partnership)

File dissolution documents with the Dutch Trade Register after completing liquidation requirements as may be included in the partnership agreement.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

Branch office

Determined by governing law of the head office.

B.V. (private company with limited liability)

Annual director and shareholder meeting.

Co-operative U.A.

Annual management board and members meeting.

C.V. (a limited partnership)

Annual partners meeting (if so required by the partnership agreement).

DIRECTOR / OFFICER REQUIREMENTS

Branch office

Determined by governing law of the head office.

B.V. (private company with limited liability)
A BV must have at least 1 director. Tax substance rules require that at least 50 percent of the board consist of Dutch tax resident directors. There is no requirement to have any officers (which under Dutch law are proxy holders to whom the board of directors of the BV can grant representation powers).

**Co-operative U.A.**

A co-operative must have at least 1 board member. Only members of the co-operative can be appointed as board members, unless the articles of association allow non-members to be appointed as board members. Tax substance rules require that at least 50 percent of the board consist of Dutch tax resident directors. There is no requirement to have any officers (which under Dutch law are proxy holders to whom the management board of the co-operative can grant representation powers).

**C.V. (a limited partnership)**

A CV must have at least 1 general partner. If provided for by the partnership agreement, a CV can have a management committee (who are proxy holders granted representation powers by the general partner).

For more information on directors’ duties, see our [Global Guide to Directors’ Duties](#).

**LOCAL CORPORATE SECRETARY REQUIREMENT**

**Branch office**

None.

**B.V. (private company with limited liability)**

None.

**Co-operative U.A.**

None.

**C.V. (a limited partnership)**

None.

**LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT**

**Branch office**

The head office may appoint 1 or more proxy holders who can represent the branch office in the Netherlands (limited or general power of attorney for the activities of the branch office). These proxy holders must be registered in the Dutch Trade Register.
B.V. (private company with limited liability)

None beyond the required director. If there is no presence in the Netherlands yet, a Dutch trust company can provide a local representative(s), office address and administration services to the BV.

Co-operative U.A.

None beyond the required board member. If there is no presence in the Netherlands yet, a Dutch trust company can provide a local representative(s), office address and administration services to the co-operative.

C.V. (a limited partnership)

None beyond the requirement of at least 1 general partner.

LOCAL OFFICE LEASE REQUIREMENT

Branch office

The head office must either own or lease the office address of the branch in the Netherlands or use domiciliation services of a Dutch trust company. The office address of the branch must be registered in the Trade Register.

B.V. (private company with limited liability)

An office address (in or outside the Netherlands) is required for incorporation. The office address of the BV must be registered in the Trade Register within 8 days of incorporation. Tax substance rules require that the BV has its office address in the Netherlands.

Co-operative U.A.

An office address (in or outside the Netherlands) is required for incorporation. The office address of the co-operative must be registered in the Trade Register within 8 days of incorporation. Tax substance rules require that the co-operative has its office address in the Netherlands.

C.V. (a limited partnership)

An office address (in or outside the Netherlands) is required for establishment of the CV. The address of the CV may be outside the Netherlands, if the CV is considered a closed CV for Dutch tax purposes.

OTHER PHYSICAL PRESENCE REQUIREMENTS

Branch office

None.

B.V. (private company with limited liability)

None.
Co-operative U.A.

None.

C.V. (a limited partnership)

None.

**SUFFICIENCY OF VIRTUAL OFFICE**

**Branch office**

Not sufficient.

**B.V. (private company with limited liability)**

Not sufficient.

Co-operative U.A.

Not sufficient.

C.V. (a limited partnership)

Not sufficient.

**PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

**Branch office**

Allowed. In the Netherlands, there are trust companies that provide these services. Law firms in the Netherlands are not allowed to do so.

**B.V. (private company with limited liability)**

Allowed. In the Netherlands, there are trust companies that provide these services. Law firms in the Netherlands are not allowed to do so.

Co-operative U.A.

Allowed. In the Netherlands, there are trust companies that provide these services. Law firms in the Netherlands are not allowed to do so.

C.V. (a limited partnership)

Allowed. In the Netherlands, there are trust companies that provide these services. Law firms in the Netherlands are not allowed to do so.
PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Branch office

Allowed and commonly provided by Dutch trust companies. Law firms in the Netherlands are not allowed to provide these services.

B.V. (private company with limited liability)

Allowed and commonly provided by Dutch trust companies. Law firms in the Netherlands are not allowed to do so.

Co-operative U.A.

Allowed and commonly provided by Dutch trust companies. Law firms in the Netherlands are not allowed to do so.

C.V. (a limited partnership)

Allowed – however, not commonly provided for Dutch CVs.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

Branch office

Determined by governing law of the head office.

B.V. (private company with limited liability)

None from a pure legal perspective, however tax substance rules require that at least 50 percent of the board consist of Dutch tax resident directors.

Co-operative U.A.

None from a pure legal perspective, however tax substance rules require that at least 50 percent of the board consist of Dutch tax resident directors.

C.V. (a limited partnership)

None.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Branch office
Determined by governing law of the head office.

B.V. (private company with limited liability)

The concept of nominee shareholders itself is not known in the Netherlands. However, there are possibilities under Dutch law to achieve a similar result.

Nominee directors not allowed.

Co-operative U.A.

The concept of nominee shareholders (members for a co-operative) itself is not known in the Netherlands. However, there are possibilities under Dutch law to achieve a similar result.

Nominee board members not allowed.

C.V. (a limited partnership)

The concept of nominee partners itself is not known in the Netherlands. However, there are possibilities under Dutch law to achieve a similar result.

Nominee directors not applicable.

SUMMARY OF DIRECTOR'S, OFFICER'S AND SHAREHOLDER'S AUTHORITY AND LIMITATIONS THEREOF

Branch office

Determined by governing law of the head office.

B.V. (private company with limited liability)

Directors are elected by the shareholders' meeting, and the board of directors is responsible for making major business decisions, overseeing the general affairs and running the day-to-day operations of the BV. The directors of the BV have collective powers and responsibilities. They share responsibility for all decisions and acts of the board and for the acts of each individual director. If the board of directors has appointed any proxy holders (officers), their authority to represent the BV is limited by the content of the powers granted to them.

Co-operative U.A.

Board members are elected by the meeting of members, and the management board is responsible for making major business decisions, overseeing the general affairs and running the day-to-day operations of the co-operative. The board members of the co-operative have collective powers and responsibilities. They share responsibility for all decisions and acts of the board and for the acts of each individual board member. If the management board has appointed any proxy holders (officers), their authority to represent the co-operative is limited by the content of the powers granted to them.

C.V. (a limited partnership)
The general partner is responsible for making major business decisions, overseeing the general affairs and running the day-to-day operations of the CV. The partnership agreement can provide for the possibility that the partners elect a management committee, which will manage the day-to-day business activities of the CV and carry out the business and activities of the CV on behalf of the general partner in accordance with the power granted to them by the general partner.

**PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS**

**Branch office**

Identity of directors of the head office and proxy holders (if appointed) of the branch office is publicly disclosed, by registration in the Dutch Trade Register.

**B.V. (private company with limited liability)**

Identity of directors, ultimate beneficial owners (natural persons directly or indirectly holding more than 25 percent of the shares or the voting rights) and proxy holders (officers) is publicly disclosed by registration in the Dutch Trade Register, although it is also possible not to register, and therefore not to disclose the identity of, proxy holders (officers); identity of the shareholder is disclosed only if it holds 100 percent of the shares of the BV.

**Co-operative U.A.**

Identity of board members, ultimate beneficial owners (natural persons directly or indirectly holding more than 25 percent of the interests in the co-operative or the voting rights) and proxy holders (officers) is publicly disclosed by registration with the Dutch Trade Register, although it is also possible not to register, and therefore not to disclose the identity of, proxy holders (officers); identities of the members are not disclosed.

**C.V. (a limited partnership)**

Identity of the general partner(s), the ultimate beneficial owners (natural persons directly or indirectly holding more than 25 percent of the interests in the CV or the voting rights) and the management committee members (proxy holders), if any, is publicly disclosed, although it is also possible not to register, and therefore not to disclose the identity of, proxy holders (officers); identity of the limited partner(s) is not disclosed.

**MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS**

**Branch office**

Determined by governing law of the head office.

**B.V. (private company with limited liability)**

There must be a minimum of 1 shareholder, and there is no maximum number. For directors, the minimum number is 1 (sometimes more local Dutch tax resident directors are required for tax substance), while there is no
maximum number.

Co-operative U.A.

A minimum of 2 members is required, although it is possible that a co-operative temporarily has only 1 member. There is no maximum number of members. For board members, the minimum number is 1, while there is no maximum number.

C.V. (a limited partnership)

A minimum of 2 partners (at least 1 general and 1 limited partner) is required, and there is no maximum number.

**MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

Branch office

Determined by governing law of the head office.

B.V. (private company with limited liability)

1 shareholder is sufficient.

Co-operative U.A.

A co-operative should have at least 2 members.

C.V. (a limited partnership)

A minimum of 2 partners (at least 1 general and 1 limited partner) is required.

**REMOVAL OF DIRECTORS OR OFFICERS**

Branch office

Determined by governing law of the head office.

B.V. (private company with limited liability)

Directors can be dismissed by a resolution of the shareholders meeting.

Co-operative U.A.

Board members can be dismissed by a resolution of the meeting of members.

C.V. (a limited partnership)

Members of the management committee, if any, can be dismissed in the way as provided for in the partnership agreement.
REQUIRED AND OPTIONAL OFFICERS

Branch office
Determined by governing law of the head office.

B.V. (private company with limited liability)
None required; optional officers (proxy holders) are allowed.

Co-operative U.A.
None required; optional officers (proxy holders) are allowed.

C.V. (a limited partnership)
None required; optional management committee members (proxy holders) are allowed.

BOARD MEETING REQUIREMENTS

Branch office
Determined by governing law of the head office.

B.V. (private company with limited liability)
Typically 1 annual director meeting is being held, however more than 1 physical board may be advisable to create sufficient tax substance in the Netherlands.

Co-operative U.A.
Typically 1 annual board meeting is being held, however more than 1 physical board may be advisable to create sufficient tax substance in the Netherlands.

C.V. (a limited partnership)
None.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

Branch office
Determined by governing law of the head office.

B.V. (private company with limited liability)
For a shareholders’ meeting, usually a majority of shareholders must be present (unless the articles of the BV prescribe otherwise). Shareholders can adopt resolutions without holding a meeting (for example, in writing). For
directors, typically a majority of directors must be present during a board meeting (unless the articles prescribe otherwise); alternatively, the directors can execute written resolutions (observing the provision included in the articles and any restrictive tax substance requirements).

Co-operative U.A.

For a meeting of members, usually a majority of members must be present (unless the articles of the co-operative prescribe otherwise). If provided for in the articles, the members can adopt resolutions in writing without holding a meeting. For board members, typically a majority of them must be present during a board meeting (unless the articles prescribe otherwise); alternatively, the board members can execute written resolutions (taking into account the relevant provisions in the articles and any restrictive tax substance requirements).

C.V. (a limited partnership)

For a partners’ meeting, usually a majority of partners must be present (unless the partnership agreement provides otherwise). The partners can adopt resolutions in writing without holding a meeting. If the partnership agreement provides for the possibility to elect a management committee, then it will also include requirements in respect of meetings of the management committee (such as minimum number of meetings per year, quorum requirements and place of meetings).

MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?

Branch office

Not necessary in order to establish a branch office. When necessary, a bank account can be opened anywhere.

B.V. (private company with limited liability)

Not necessary in order to incorporate. When necessary, a bank account can be opened anywhere (however the tax substance rules require that the most important bank account is managed and controlled from the Netherlands).

Co-operative U.A.

Not necessary in order to incorporate. When necessary, a bank account can be opened anywhere (however the tax substance rules require that the most important bank account is managed and controlled from the Netherlands).

C.V. (a limited partnership)

Not necessary in order to establish a CV. When necessary, a bank account can be opened anywhere.

AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?
Branch office

Determined by governing law of the head office. If the head office under its governing law requires filing annual accounts in its country of origin, then such annual accounts shall also be filed for the branch office with the Dutch Trade Register. The governing law of the head office also determines if the accounts need to be audited.

B.V. (private company with limited liability)

An audit is not generally required for a BV, unless it is considered a medium company or large company (when certain threshold amounts are exceeded in respect of assets, net turnover and employee number). Generally, corporate books and records of the BV are kept at the address of the BV; it is the obligation of the board of directors to keep the books and records in such way that the BV’s rights and obligations can be known at any time. Tax substance rules require that the bookkeeping takes place in the Netherlands.

Co-operative U.A.

An audit is not generally required for a co-operative, unless it is considered a medium company or large company (when certain threshold amounts are exceeded in respect of assets, net turnover and number of employees). Generally, corporate books and records of the co-operative are kept at the address of the co-operative. It is the obligation of the board to keep the books and records in such way that the co-operative’s rights and obligations can be known at any time. Tax substance rules require that the bookkeeping takes place in the Netherlands.

C.V. (a limited partnership)

A CV only requires preparing and filing annual accounts with the Dutch Trade Register if, in short, all its general partners are capital companies under foreign law. If this is the case, an audit is not generally required for a CV, unless it is considered a medium company or large company (when certain threshold amounts are exceeded in respect of assets, net turnover and number of employees, which is very unlikely for a CV). Generally, corporate books and records of the CV are kept at the address of the CV. Tax substance rules require that the bookkeeping takes place in the Netherlands.

REQUIREMENT REGARDING PAR VALUE OF STOCK

Branch office

Determined by governing law of the head office.

B.V. (private company with limited liability)

The Minimum par value per share can be denominated in Euro or any other currency.

Co-operative U.A.

Not applicable. A co-operative does not have a capital divided into shares.

C.V. (a limited partnership)

Not applicable. A CV does not have a capital divided into shares.
INCREASING OF CAPITALIZATION IF NEEDED

Branch office

Determined by governing law of the head office.

B.V. (private company with limited liability)

The articles of a BV only require mentioning the par value per share, not the amount of issued capital. Issuance of additional shares requires execution of a notarial deed before a civil law notary in the Netherlands on the basis of a shareholders’ resolution (and powers of attorney of the BV and the acquirer, unless they personally appear in front of the notary). A shareholder can also contribute capital on the already existing shares it holds in the capital of the BV by way of a share premium contribution (without issuance of shares).

Co-operative U.A.

The articles of a co-operative do not mention the amount of its capital; they only mention in which currency the member accounts are denominated. The membership agreement or, if so determined in the articles, the general meeting of members can commit a member to make a payment of initial or additional equity into the co-operative, which will be credited to the member account kept by the co-operative in such member’s name.

C.V. (a limited partnership)

The partners of the CV must each make an initial contribution in the form of capital or other assets. Generally, the limited partner contributes cash and/or goods. If the general partner does not contribute cash or goods, it can, for example, contribute the know-how, skills and experience required to conduct the business of the CV. The partnership agreement of a closed CV often requires that additional capital contributions to the CV after its formation require the prior unanimous written consent of all partners.

SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)

Branch office

Determined by governing law of the head office.

B.V. (private company with limited liability)

Funds can be repatriated via dividends (including repayment from reserves) or redemption.

Co-operative U.A.

Funds can be repatriated via dividends (including repayment from reserves) and repayments from the member accounts.

C.V. (a limited partnership)

Funds can be repatriated via dividends and repayments from the capital accounts (for which, in most cases, the
partnership agreement will require prior unanimous written consent of all partners).

General contract law applies to the CV, mandatory rules of corporate law do not apply. General rules on reasonableness and fairness limit the contractual freedom of the parties involved. Please note that not all profits may be allocated to 1 partner and that partners cannot be excluded from a profit right.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

Branch office

Determined by governing law of the head office.

B.V. (private company with limited liability)

Shares must be transferred by execution of a deed before a civil law notary in the Netherlands. Articles of a BV often contain a share transfer restriction provision (in the form of a right of first refusal or the requirement of prior consent from the shareholders’ meeting).

Co-operative U.A.

As a general rule, a membership interest in a co-operative is personal, but if the articles allow it, membership interests can become freely transferable. Based upon tax implications, a co-operative is generally organized in such way that its articles contain a certain restriction to the free transferability of membership interests (requirement of consent from the members). Unless the articles of the co-operative prescribe that a membership interest can only be transferred by notarial deed, it can be transferred by private agreement.

C.V. (a limited partnership)

Section 2(3)(c) STA defines the term “open CV.” An entity qualifies as an open limited partnership if – save for cases involving bequests or inheritance – limited partners can join the partnership or be replaced without the consent of all partners, both managing and limited partners.

To safeguard the closed nature of a CV, all partners, both managing and limited, must each separately grant permission.

OBTAINING A NAME AND NAMING REQUIREMENTS

Branch office

Proposed names cannot be reserved in the Dutch Trade Register. Usually, the notary checks in the online Dutch Trade Register if the name is still available (ie, not yet registered as name of another company). The name of a branch office is often composed of the name of the head office followed by “Netherlands branch” or “Dutch branch.”

B.V. (private company with limited liability)

Proposed names cannot be reserved in the Dutch Trade Register. Usually, the notary checks in the online Dutch Trade Register if the name is still available (ie, not yet registered as name of another company). The name of a BV
must begin or end with “B.V.”

Co-operative U.A.

Proposed names cannot be reserved in the Dutch Trade Register. Usually, the notary checks in the online Dutch Trade Register if the name is still available (ie, not yet registered as name of another company). The name of a co-operative UA must include the word “Coöperatief” and “U.A.”

C.V. (a limited partnership)

Proposed names cannot be reserved in the Dutch Trade Register. Usually, the notary checks in the online Dutch Trade Register if the name is still available (ie, not yet registered as name of another company). The name of a CV must include “C.V.” To prevent the limited partner from becoming liable as if they were a general partner, the name of the limited partner shall not be included in the name of the CV.

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

Branch office

Dutch civil law notaries and trust companies each have their own KYC requirements. Generally, clients are required to disclose the identities of ultimate beneficial owners (natural persons directly or indirectly holding more than 25 percent of the shares or the voting rights) and provide documentation, such as notarized and apostilled passport copies, of individuals involved with the branch office as director or proxy holder.

If no ultimate beneficial owner, holding more than 25 percent, exists in the structure, pseudo-UBOs must be designated (for example, the members of the board).

B.V. (private company with limited liability)

Dutch civil law notaries and trust companies each have their own KYC requirements. Generally, clients are required to disclose the identities of ultimate beneficial owners (natural persons directly or indirectly holding more than 25 percent of the shares or the voting rights) and provide documentation, such as notarized and apostilled passport copies, of individuals involved with the BV as director or (representative of) shareholder.

If no ultimate beneficial owner, holding more than 25 percent, exists in the structure, pseudo-UBOs must be designated (for example, the members of the board).

Co-operative U.A.

Dutch civil law notaries and trust companies each have their own KYC requirements. Generally, clients are required to disclose the identities of ultimate beneficial owners (natural persons directly or indirectly holding more than 25 percent of the interests in the co-operative or the voting rights) and provide documentation, such as notarized and apostilled passport copies, of individuals involved with the co-operative as board member or (representative of) member.

If no ultimate beneficial owner, holding more than 25 percent, exists in the structure, pseudo-UBOs must be designated (for example, the members of the board).
C.V. (a limited partnership)

Dutch lawyers, civil law notaries and trust companies each have their own KYC requirements. Generally, clients are required to disclose the identities of ultimate beneficial owners (natural persons directly or indirectly holding more than 25 percent of the interests in the CV or the voting rights) and provide documentation, such as notarized and apostilled passport copies, of individuals involved with the CV as a partner (or management committee member).

If no ultimate beneficial owner, holding more than 25 percent, exists in the structure, pseudo-UBOs must be designated (for example, the general partners of the CV).

**APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

**Branch office**

Determined by governing law of the head office.

**B.V. (private company with limited liability)**

Any amendment to the Articles of Association of a BV requires a resolution of the shareholders meeting (with a majority prescribed in the Articles) and execution of a deed of amendment before a civil-law notary in the Netherlands.

**Co-operative U.A.**

Any amendment to the Articles of Association of a Co-operative requires a resolution of the general meeting of members (with a majority prescribed in the Articles) and execution of a deed of amendment before a civil-law notary in the Netherlands.

**C.V. (a limited partnership)**

The partnership agreement usually provides that it can be amended by all partners jointly.

**LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

**Branch office**

Generally, no license is required to do business in the Netherlands, except for certain sectors, such as banking and insurance.

**B.V. (private company with limited liability)**

Generally, no license is required to do business in the Netherlands, except for certain sectors, such as banking and insurance.

**Co-operative U.A.**

Generally, no license is required to do business in the Netherlands, except for certain sectors, such as banking and insurance.
insurance.

C.V. (a limited partnership)

Generally, no license is required to do business in the Netherlands, except for certain sectors, such as banking and insurance.

**PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY**

**Branch office**

Not applicable.

**B.V. (private company with limited liability)**

Since the BV can be incorporated within 1 to 2 weeks, the purchase of a shelf company has become very unusual, if at all available.

**Co-operative U.A.**

Not applicable.

**C.V. (a limited partnership)**

Not applicable.

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NEW ZEALAND

FORM OF ENTITY

Limited liability companies

Limited liability companies incorporated in accordance with the Companies Act 1993 (Companies Act) are the most common corporate structure used in New Zealand. Limited liability companies generally limit the liability of shareholders, except: 1) to the extent of any amount unpaid on a share held by a shareholder, 2) as provided for under that company’s constitution and 3) for other specific exceptions as set out in the Companies Act. The board of directors (Board) generally manages and supervises the conduct of business and the general affairs of companies (which, subject to certain limitations, may be delegated to a committee). Directors are generally appointed by way of ordinary resolution of a company’s shareholders but can also be appointed by the Board, where the constitution or other governing document (as may be applicable) expressly provides a power of appointment.

Limited liability companies with 50 or more shareholders (and 50 or more share parcels) and assets of at least NZD30 million (including the assets of their respective subsidiaries) or revenue of at least NZD15 million (including the revenue of their subsidiaries) are “code companies” for the purposes of the Takeover Regulations 2000 and the Takeovers Code. Code companies are subject to the provisions of the Takeovers Code and are subject to strict requirements when shareholders (including their respective associates) hold 20 percent or more of the shares on issue and that shareholder wishes to increase its shareholding in the code company.

Limited liability companies that wish to list on a licensed market operated by NZX Limited, including the NZX, will be subject to the relevant listing rules and other legislative requirements (including the Companies Act and the NZX listing rules) and will also be considered code companies under the Takeovers Code. There is no limit on public companies’ ability to raise funds from the public (either through an initial public offer – or IPO – or through a post-listing capital raise or rights issue), provided that the various disclosure requirements and other statutory rules are complied with, including those set out in the Financial Markets Conduct Act 2013 (FMCA).

Branch

Overseas companies “carrying on business” in New Zealand must register as a branch of an overseas company with the New Zealand Companies Office (Companies Office). The Companies Office is a government agency in New Zealand that provides business registry services in relation to corporate entities, personal property and capital market securities. The term “carrying on business” is not comprehensively defined under New Zealand law, although it generally captures businesses that have employees in New Zealand, have an office or business premises
in New Zealand or that regularly transact business in New Zealand. For this reason, it is advisable that foreign companies seek professional advice before commencing business in New Zealand to ensure compliance with New Zealand law.

Note: In addition to the above, there are other forms of legal entity that can be established under New Zealand law, including a general partnership, limited partnership and trust. However, these are less commonly used in New Zealand for business purposes and are not considered further.

ENTITY SET UP

Limited liability company

Limited liability companies must have 1) a registered office and an address for service at a physical address in New Zealand; 2) at least 1 shareholder appointed and 1 share issued to a shareholder; 3) at least 1 director appointed who either lives in New Zealand or lives in Australia and is also a director of a company incorporated in Australia. In addition, limited liability companies must provide to the Registrar of Companies the details of the relevant ultimate holding company (to the extent applicable).

Limited liability companies are taxed on their earnings at the corporate tax rate and can attach imputation credits to their distributions to shareholders.

Limited liability companies can elect to adopt a constitution that sets out the operational procedures and other matters applying to their operations and governance. However, there is no mandatory requirement for companies to adopt a constitution. If a constitution is not adopted, the default provisions of the Companies Act will apply.

Directors are subject to a number of legislative and common law duties that are generally owed to the company to which they are appointed.

Companies can issue shares to shareholders and to third parties in accordance with the requirements set out in the Companies Act and their constitutions (as may be applicable and to the extent that they have adopted a constitution). The Board is generally responsible for determining the issue price per share, which must be fair and reasonable to the company and all existing shareholders.

Companies may issue different classes of shares that have different rights and interest attaching to them, but this right is subject to the provisions of the Companies Act and/or their constitution.

Capital raisings must be done in accordance with the requirements of the FMCA and other applicable law.

Branch

To establish branches, overseas companies must be registered with the Companies Office and be assigned a New Zealand Company Number.

Branches are not separate legal entities, and overseas companies have the full legal responsibility and liability for the actions of their New Zealand branch operations in New Zealand.

Branches must appoint one person who is authorized to accept service of documents in New Zealand.
Branches must also provide their “principal place of business in New Zealand.” Branches are taxed as separate entities in New Zealand and are taxed on all their New Zealand taxable profits, which include income sourced from New Zealand less any attributable expenses. A foreign company with a branch in New Zealand may be required to provide its financial statements (or specifically prepared financial statements) to the Companies Office and/or Inland Revenue.

As with limited liability companies, Overseas Investment Office approval under the Overseas Investment Act 2005 may be required before a branch of an overseas company can acquire shares and assets of a certain value, or to purchase certain land that is considered “sensitive land” (which is a term defined in the Overseas Investment Act 2005).

Branches are not required to display the identity of their shareholders on the Companies Office.

MINIMUM CAPITAL REQUIREMENT

Limited liability company

Limited liability companies have no specified minimum capital requirements. However, the Board must be satisfied that the relevant company satisfies the solvency test set out in the Companies Act immediately after making a distribution. The solvency test will be satisfied if: (1) the company is able to pay its debts as they become due in the normal course of business; and (2) the value of the company’s assets is greater than the value of its liabilities (including contingent liabilities).

Branch

No specified minimum capital requirement.

LEGAL LIABILITY

Limited liability company

Shareholders’ liability of limited liability companies are generally limited to the extent of their initial investment and the amount, if any, of the issue price of their shares which is unpaid. Additionally, certain provisions of the Companies Act may place liability on shareholders in connection with the relevant company, including where that liability is expressly provided in a company’s constitution, where a shareholder’s actions place it in the position of a director (ie, a deemed director) and director liability arises, or where a shareholder is liable to repay a distribution if that the distribution is recoverable under the Companies Act. It is possible for companies to become an 'unlimited' liability company where the shareholders' liability will be unlimited, which can enable a company to check-the-box for US tax purposes.

Branch

Foreign companies have full legal responsibility for the actions of their New Zealand branches and can sue and be sued in New Zealand.

TAX PRESENCE
Limited liability company

Limited liability company are subject to tax on its taxable profits. Profits are usually distributed by way of dividend authorised by the directors. Limited liability companies can attach imputation credits to a dividend that allows New Zealand tax resident shareholders to benefit from the tax paid by a company. In some circumstances, if imputation credits are attached, then it is not necessary to withhold tax from dividends.

Goods and Services Tax (GST)

Limited liability companies will generally be required to register for GST.

Branch

Foreign companies are taxed on their taxable profits as a separate entity in New Zealand, which will include all income derived from New Zealand less attributable expenses.

Goods and Services Tax (GST)

Foreign companies carrying on business in New Zealand through a branch may also be required to register for GST.

INCORPORATION PROCESS

Limited liability company

An application to register a limited liability company, including the payment of the prescribed fee, is required to be lodged with the Companies Office. The application requires at least one director (subject to New Zealand residency rules, or an Australian resident who is also a director of an Australian company), one shareholder, one share issued and a registered office. The registered office must be a physical address (not being a post office box) in New Zealand. In addition, the directors and shareholders will be required to sign and file with the Companies Office consents under which the directors agree to be appointed directors and the shareholders agree to hold shares.

Upon incorporation, the Companies Office will issue to the company a certificate of incorporation and a New Zealand Company Number. It is also possible to register for tax as part of the registration process.

Branch

Overseas companies’ registration with the Companies Office establishes branch offices.

Overseas companies wishing to apply for registration as a branch should reserve the proposed name with the Companies Office to ensure that it is available. Registering as the branch of an overseas company will require the relevant overseas company to file certified copies of its certificate of incorporation (or evidence of incorporation in its originating jurisdiction), its constitutional documents (with English translations if necessary), the details of its directors and the name of a person in New Zealand who is authorized to accept process notices on its behalf. Registration can take up to a few days to complete. Once registered, it will have on-going statutory filing obligations with the Companies Office, including the obligation to file annual returns. 'Large' overseas companies must file audited financial statements for the New Zealand branch and for the overseas company. If the branch is
also 'large' in its own right, then the branch and the relevant overseas company will need to file their audited financial statements.

BUSINESS RECOGNITION

Limited liability company

Well regarded and widely used.

Branch

Less common (and thus less well known to third parties) than a subsidiary.

SHAREHOLDER MEETING REQUIREMENTS

Limited liability company

Limited liability companies are generally required to hold an annual general meeting within 18 months of incorporation and within six months of their balance date. However, companies will not be required to hold an annual general meeting if there is nothing to be done at the meeting, the Board has resolved that it is in the best interests of the relevant company to not hold that meeting and the constitution does not require one to be held.

Except as required under the Companies Act or constitution (as applicable), actions requiring shareholder approval require a resolution to be passed by the shareholders holding the majority of voting shares at a shareholders’ meeting or approved by at least 75 percent of shareholders by way of a written resolution in lieu of a meeting. The requisite majority is most commonly a simple majority, but can be 75 percent (or higher percent) for certain matters (including the adoption of a new constitution).

Branch

Meeting requirements are subject to the overseas company's home jurisdiction requirements.

BOARD OF DIRECTOR MEETING REQUIREMENTS

Limited liability company

There are no prescribed minimum requirements relating to any minimum or maximum number of board meetings to be held under the Companies Act. However, it is advisable to hold at least one board meeting each year to approve accounts or to confirm solvency (with other meetings determined by the governance needs of the business).

Branch

Meeting requirements are subject to the overseas companies' home jurisdiction requirements.

ANNUAL COMPANY TAX RETURNS
Limited liability company and Branch

Must file a company tax return each year, even if the business does not expect to pay any income tax. Other tax filings may also be required.

BUSINESS REGISTRATION FILING REQUIREMENTS

Limited liability company

A limited liability company must confirm its corporate details and must pay an annual return fee to the Companies Office annually. See also the section headed Annual corporate maintenance requirements.

Depending on the size and shareholder make-up of the relevant company, that company may be required to lodge audited financial statements with the Companies Office within five months of its balance date (ie, the financial year end).

Branch

If the branch of overseas companies meets the 'large' thresholds set out in the Companies Act and the Financial Reporting Act 2013, they will be required to lodge audited financial statements with the Companies Office within five months of their balance date. Branches are also required to file an annual return each year.

BUSINESS EXPANSION

Limited liability company

There is no need to change from a limited liability company structure as its business expands, but please see our comments above if a company becomes a code company under the Takeovers Code (ie, it has 50 shareholders and 50 share parcels and has assets of at least NZD30 million or revenue of at least NZD15 million, or it is listed on a licensed market operated by NZX Limited).

Branch

No need to change as business expands.

EXIT STRATEGY

Limited liability company

Removal from the register: If limited liability companies have no liabilities, no assets, and there are no outstanding filings due to the Inland Revenue, it is possible to apply for the company to be removed from the Companies Office register. The application must be accompanied by a letter from the Inland Revenue confirming that it has no objection to that removal.

Liquidation: There is a formal process involving the appointment of a liquidator if there are insolvent or significant assets or liabilities to be dealt with. The role of the liquidators includes providing proof of debts,
realizing assets, paying creditors and distributing any surplus to shareholders.

Branch

If a branch intends to cease to carry on business in New Zealand, it must give public notice in a local paper and in the Gazette three months before it can apply to be deregistered from the Companies Office.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

Limited liability company

A limited liability company must confirm its corporate details and pay an annual return fee to the Companies Office each year. Depending on whether it qualifies as a "large company" (determined by reference to revenue, gross assets and identity of shareholders), audited financial statements may need to be filed each year. Unless granted relief from the Companies Office, large companies that are required to prepare an annual financial report must appoint an auditor. A company is classified as a large company for a particular financial year if one of the following 2 tests applies:

• as at the balance date of each of the two preceding accounting periods, the total assets of the entity and its subsidiaries (if any) exceed NZD66 million; or

• in each of the two preceding accounting periods, the total revenue of the entity and its subsidiaries (if any) exceeds NZD33 million.

The Company must also notify the Companies Office of any changes to the Board composition within 20 working days of any such change.

Branch

Once the overseas company is registered, it is required to lodge the following with the Companies Office:

• Audited financial statements (if it is "large").

• Annual return along with annual return fee.

• An overseas company will be considered "large" if either of the following 2 tests applies:

  ◦ As at the balance date of each of the 2 preceding accounting periods, the total assets of the entity and its subsidiaries (if any) exceed NZD22 million; or

  ◦ In each of the 2 preceding accounting periods, the total revenue of the entity and its subsidiaries (if any) exceeds NZD11 million.

Changes to directors of the overseas company within 20 working days of the change.

DIRECTOR / OFFICER REQUIREMENTS
Limited liability company

Limited liability companies must have at least one director appointed, and at least one director must be a New Zealand resident or a person who is a resident of Australia and is also a director of a company registered in Australia.

Companies listed on a licensed market operated by NZX Limited must have at least 3 directors. There must be at least 2 directors who are residents in New Zealand and 2 directors who are independent.

Branch

Not required to have a local director.

LOCAL CORPORATE SECRETARY REQUIREMENT

Limited liability company

Limited liability companies are not required to have a secretary.

Branch

Branches of overseas companies are not required to have a secretary.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Limited liability company

None beyond the required director. Listed and 'large' companies must have an auditor.

Branch

None beyond having someone who is authorized to accept service on behalf of the branch.

LOCAL OFFICE LEASE REQUIREMENT

Limited liability company

Must have a registered office and an address for service in New Zealand. This does not have to be owned or leased, but the person who owns or leases that property must consent to it being the registered office. Corporate records (including the share register) must be kept and maintained at the registered office, subject to specific exceptions as set out in the Companies Act.

Branch

Must have a principal place of business in New Zealand. This does not have to be owned or leased by the overseas company.
OTHER PHYSICAL PRESENCE REQUIREMENTS

Limited liability company
Not applicable for New Zealand.

Branch
Not applicable for New Zealand.

SUFFICIENCY OF VIRTUAL OFFICE

Limited liability company
Limited liability companies must have registered offices in New Zealand. On registration, the address specified in the application for registration becomes the address of the registered office. The registered office can be changed by resolution of directors, and any change must be notified to the Companies Office.

Branch
No requirements. A virtual office is sufficient.

PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Limited liability company
Allowed.

Branch
Allowed.

PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Limited liability company
Allowed (but internal rules and insurance limitations may restrict law firm professionals from taking on this role).

Branch
Provision of a local agent by a third-party service provider is allowed (but internal rules/insurance limitations may restrict law firm professionals from taking on this role).

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS,
DIRECTORS AND OFFICERS

Limited liability company

Must have at least one director who is resident in New Zealand, or who is a person that is resident in Australia and is also a director of an Australian registered company.

There are no nationality requirements for shareholders. However, if a company has more than 25 percent of its shares owned by overseas persons, the company will be considered an "overseas person" and may be subject to the Overseas Investment Act 2005. This could restrict its ability to acquire additional businesses, shares, or an interest in “sensitive land.”

Branch

A branch must have a person authorized to accept service on the branch’s behalf in New Zealand. This is often a business professional.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Limited liability company

No restrictions apply to the appointment of a nominee shareholder or director. However, the terms of the Overseas Investment Act 2005 will apply if an overseas person nominates a New Zealand resident to hold the beneficial interest in shares on their behalf.

Branch

Not applicable; this is subject to the requirements of the overseas company’s place of incorporation.

SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF

Limited liability company

The Board has overall management responsibility. Shareholders have no direct management rights but can appoint and remove directors and may be required to approve certain corporate actions (including major transactions, the issue of shares where shareholders have pre-emptive rights, share buy-backs and the revocation/adoptions of a constitution). If a non-director shareholder is involved in the management and governance, they could be deemed a director. Additionally, directors have obligations under the Companies Act with which they must comply when exercising their power and authority as directors. Any failure to comply with these obligations could lead to personally liability for those directors.

Branch

No liability in New Zealand for a person who is authorized to accept service on behalf of a branch.
PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

Limited liability company

Director and shareholders' details are made publicly available by the Companies Office, including all directors' full names, residential addresses and date of appointment.

Branch

Details of the overseas company's directors and person authorized to accept service in New Zealand are publicly available at the Companies Office. Shareholder details are not publicly available.

In relation to companies listed on the NZX, the register of shareholders is also available to be searched.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

Limited liability company

There must be a minimum of one shareholder and one director. There is no maximum number of directors or shareholders. However, the constitution may limit the maximum number of directors that can be appointed to the board from time to time.

Branch

Not applicable, this is subject to the requirements of the overseas company's place of incorporation.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

Limited liability company

One shareholder is sufficient.

Branch

Not applicable; this is subject to the requirements of the overseas company's place of incorporation.

REMOVAL OF DIRECTORS OR OFFICERS

Limited liability company

Generally, directors may be removed by shareholders by ordinary resolution except to the extent provided otherwise in the applicable company's constitution.

Branch

The removal of directors is subject to the laws in the jurisdiction where the overseas company is incorporated.
The branch must notify the Companies Office if the person authorized to accept service on behalf of the branch changes.

**REQUIRED AND OPTIONAL OFFICERS**

**Limited liability company**

Not applicable for New Zealand.

**Branch**

Not applicable for New Zealand.

**BOARD MEETING REQUIREMENTS**

**Limited liability company**

There are no formally required board meetings, but there is usually at least 1 board meeting per year. Board decisions can be effected by way of a written resolution in lieu of a meeting signed by all directors entitled to receive notice of that meeting. However, a company’s constitution can change the requirement for a unanimous resolution.

**Branch**

Not applicable, this is subject to the requirements of the overseas company’s place of incorporation.

**QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

**Limited liability company**

Unless otherwise specified in the company’s constitution, a quorum is present if shareholders, or their proxies, are present or have cast postal votes who are enough between them able to exercise a majority of the votes of the business. A company may pass a resolution without a general meeting if not less than the greater of 1) 75 percent or 2) such other percentage, as a company’s constitution may require, for passing a special resolution. Shareholders sign a document containing a statement that they are in favor of the resolution set out in the document.

Unless otherwise specified in the company’s constitution, the quorum for a Board meeting is a majority of directors. The directors of a company may pass a resolution without a Board meeting if all the directors entitled to vote on the resolution sign a document containing a statement that they are in favor of the resolution set out in the document.

**Branch**

Not applicable, this is subject to the requirements of the overseas company’s place of incorporation.
MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?

Limited liability company

It is not necessary to have a bank account opened before a company may be incorporated.

Branch

Not necessary to register an overseas company.

AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?

Limited liability company

- Companies must keep accounting records and these must be kept at their registered office.
- A company's accounting records will only need to be audited if the company is 'large'.
- If the company is required to appoint an auditor, the auditor does not have to be registered in New Zealand but is subject to various qualification criteria.
- In general, for tax purposes a limited liability company is required to maintain business records for a period of 7 years after the end of the income year to which they relate. Those records should support the New Zealand tax positions taken during that period.

Branch

If it is 'large', an overseas company must lodge the following financial statements with the Companies Office annually:

- Balance sheet.
- Profit and loss statement.
- Cash flow statement.
- Auditor’s statement.

In general, for tax purposes, any New Zealand taxpayer (including a branch) is required to maintain business records for a period of 7 years after the end of the income year to which they relate. Those records should support the New Zealand tax positions taken during that period.

REQUIREMENT REGARDING PAR VALUE OF STOCK
Limited liability company

Shares of limited liability companies are not permitted to have shares issued at par value. The 'issue price' is determined by Board at the time of issue, and it must be fair and reasonable to the company and the existing shareholders except where all entitled persons agree otherwise. Whether a share is issued fully or partly paid is determined by reference to the amount of the issue price paid by the subscribing shareholder to the company.

Branch

Not applicable, this is subject to the requirements of the overseas company's place of incorporation.

INCREASING OF CAPITALIZATION IF NEEDED

Limited liability company

There is no concept of authorized or maximum capital. Increased capitalization can occur at any time and must be authorized by the board of directors, unless the constitution provides otherwise. The Board must ensure that the requirements under the Companies Act and the FMCA are fully complied with when raising funds by way of a capitalization (including the issue of the applicable financial product).

Branch

Not applicable, this is subject to the requirements of the overseas company's place of incorporation.

SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)

Limited liability company

Funds can be repatriated by dividends or return of capital if the directors are satisfied that the company can satisfy the solvency test immediately following the payment of any dividend. A dividend, or in some cases a return of capital by a limited liability company, can be subject to withholding tax.

Branch

Repatriation of funds may generally be undertaken at any time. There is no withholding tax on a distribution by a foreign company with a New Zealand branch.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

Limited liability company

A signed share transfer form is required to transfer shares. Stamp duty is not applicable, and there is no general capital gains tax in New Zealand.

The constitution or other governing document (including a shareholders' agreement) of many private limited liability companies contain pre-emptive rights which require that a transferor offers shares for transfer to other
shareholders before those shares can be offered to third parties. Frequently, the governing documents give the
directors the right to refuse to register a share transfer without the directors necessarily being required to give a
reason for a refusal to register.

Generally, companies that are listed on the NZX are not permitted to have restrictions on the transfer of shares.
There are very few listed companies that have placed restrictions on the free transferability of shares.

Branch

Not applicable, this is subject to the requirements of the overseas company's place of incorporation.

**OBTAINING A NAME AND NAMING REQUIREMENTS**

**Limited liability company**

New companies must have a name that is different from the name of any other company that is already registered
(i.e., the reserved name cannot be identical to, or almost identical to, the name of any existing registered company).
A limited liability company must have 'Limited' or 'Tapui (Limited)' as part of its name. Additionally, certain names
are expressly protected or restricted and may not be used (for example, the use of 'royal' in a company name) and
cannot be used.

Branch

The branch of an overseas company must be identical to the name used to register the company in its home
country.

**SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS**

**Limited liability company**

Financial institutions, professionals working within the financial sector, bullion and gambling sectors as well as
other regulated entities (i.e., reporting entities) are required to satisfy their respective KYC obligations. Legal
service providers are now subject to the Anti-Money Laundering and Countering Financing of Terrorism Act 2009
(AML/CFT) due diligence compliance requirements, in addition to their own internal KYC requirements. In
general, this requires identity verification of the ultimate beneficial owners of an entity but can vary depending on
the nature of the business conducted by the entity.

Branch

Financial institutions, professionals working within the financial sector, bullion and gambling sectors as well as
other regulated entities (i.e., reporting entities) are required to satisfy their respective KYC obligations. Legal
service providers are now subject to the Anti-Money Laundering and Countering Financing of Terrorism Act 2009
(AML/CFT) due diligence compliance requirements in addition to their own internal KYC requirements.

**APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

**Limited liability company**
Any changes to a constitution must be approved by a special resolution (ie, passed by shareholders holding at least 75 percent of the voting shares being voted on the issue in person or by proxy or other such higher percentage as set out in the applicable constitution).

Branch

Not applicable, this is subject to the requirements of the overseas company's place of incorporation.

**LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

**Limited liability company**

At a minimum, a limited liability company will require a New Zealand Company number and be registered for tax. Many businesses also choose to register for a New Zealand Business Number.

Any business providing financial services in New Zealand is required to register on the Register of Financial Service Providers. Certain types of financial service providers (such as fund managers, financial advisers and derivatives issuers) also require licenses issued by the Financial Markets Authority under the FMCA.

There are no other general registrations, licenses or permits that are required to establish a company or conduct business in New Zealand which depends on the nature of the business conducted and the products and/or services supplied in connection with that business.

Branch

An overseas company doing business in New Zealand is required to register with the Companies Office and to get an IRD number.

Any business providing financial services in New Zealand is required to register on the Register of Financial Service Providers. Certain types of financial service providers (such as financial advisers and derivatives issuers) also require licenses issued by the Financial Markets Authority under the FMCA.

There are no other general registrations, licenses or permits that are required to conduct business in New Zealand.

**PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY**

Branch

Not applicable in New Zealand.

Proprietary company

A “shelf” company may be purchased from third-party suppliers, but, given the speed and ease of incorporation, this is rarely used.
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The vehicles through which a business may be set up and conducted in Nigeria are as follows:

- Company limited by shares (private/public company)
- Unlimited company (private/public)
- Company limited by guarantee
- Limited liability partnership
- Limited partnership
- Business names
- Incorporated trustees

**ENTITY SET UP**

**Private company**

A private company is a company which expresses in its Memorandum of Association (Memo) to be a private company. Private limited companies are the most commonly used business vehicles in Nigeria.

The features of a private company include:

- It must have a maximum of 50 members (excluding the shares held under an employee share scheme and persons who have continued to hold the shares in the company after the determination of their employment)
- It must by its articles of association (articles) restrict the transferability of its shares and also provide that the company shall not without the consent of all its members, sell assets having a value of more than 50
percent of the total value of the company’s assets

• that a member shall not sell its shares to a 3rd party without first offering such shares to existing members;

• A member or group of members acting together, shall not sell or agree to sell more than 50 percent of the shares of the company to a non-member unless such 3rd party has offered to buy all the existing members’ interests on the same terms.

• It must have a stated issued share capital of not less than NGN100,000.00.

• Unless authorized by specific law, a private company is prohibited from inviting the public to subscribe for any of its shares or debentures or deposit money for fixed periods or payable call whether or not bearing interest.

• The name of a private company limited by shares must end with “Limited” or “LTD.”

• Private companies can use written resolutions signed by all the members in place of resolutions passed at general meetings.

• A private company shall not invite the public to 1) subscribe for any share or debenture of company or 2) deposit money for fixed periods or payable at call, whether or not bearing interest.

Public company

A public company is any company other than a private company, and which is expressed in its Memorandum to be a public company. The features of a public company include:

• It can raise money from the public by offering its shares or debentures to the public and inviting them to subscribe to its shares.

• It must have a minimum of 2 members. However, there is no maximum limit to the number of members of a public company.

• It must have a minimum of 2 directors at all times.

• The stated issued share capital of a public company shall not be less than NGN2,000,000.

• Where a person who is 70 years and above is to be appointed as a director of a public company, special notice of the appointment must be given to the company and such director must disclose the fact of their age to the members of the company.

• A public company must have at least 3 independent directors who must qualify to be so appointed subject to the definition of an independent director according to the Companies and Allied Matters Act 2020 (the Act). An independent director, according to the Act, is a director or relative of the director who satisfies the following requirements in the 2 years before their proposed appointment:

  a. Was not an employee of the company
b. Did not make payments to or receive payments of more than NGN20,000,000 from the company.

c. Did not directly or indirectly own more than 30 percent of shares in an entity that made payments to or received payments of more than NGN20,000,000 from the company.

d. Did not act as a partner, director or officer of a partnership or company that made payments to or received payments of more than NGN20,000,000 from the company.

e. Did not directly or indirectly own 30 percent of the shares in the company, directly or indirectly.

f. Was not engaged directly or indirectly as an auditor for the company.

It is also worthy that the Nigerian Code of Corporate Governance 2018, (the Governance Code) provides a more stringent definition of an independent director as a person who:

a. Does not own more than 0.01 percent of the paid-up share capital of the company.

b. Does not represent a shareholder which can significantly influence or control management.

c. Is not employee of the company and has not been employed by the company or group within the previous 5 years.

d. Is not closely related to any of the company’s advisers, directors, senior employees, substantial shareholders, customers, creditors, auditors, consultants or suppliers.

e. Does not have or has not had a material business relationship with the company in the last 5 years with the company or as a partner, director, shareholder or senior employee of an entity that has such relationship with the company.

f. Has not served at directorate level or above at the company’s regulator within the last 3 years.

g. Does not render any professional, consultancy or other advisory services to the company or the group other than in their capacity as a director.

h. Does not receive additional remuneration from the company other than standard directors’ fees and sitting allowances.

i. Has not served on the Board for more than 9 years.

The Governance Code applies to listed and unlisted public companies, private companies that are holding companies of public companies or other regulated entities, concessioned or privatized companies, and all regulated private companies.

Regulated private companies are such entities that file returns to any regulatory authority other than the Federal Inland Revenue Service and the Corporate Affairs Commission.
In addition to possessing the requisite knowledge and experience required of a company secretary, the company secretary of a public company may be a legal practitioner; a chartered accountant; a chartered secretary; or a firm of any of them, or must have held the office of company secretary of a public company for at least 3 of the 5 years immediately preceding their appointment in a public company.

- A public company must hold its statutory meeting within 6 months of incorporation.

- A public company is statutorily required to have an audit committee.

- In addition to the statutory notice required to be given to those entitled to attend general meetings of a public company, such notice must be published in at least 2 daily newspapers.

- The name of a public company limited by share must end with “Public Limited Company” or “PLC.”

**Unlimited company**

An unlimited company is a company incorporated with an issued share capital not less than the minimum issued capital having its members personally liable in full for the debts of the company while a member of the company. The registered name of the company must end with “Unlimited” or “ULTD.” An unlimited company may either be private or public. In practice, an “unlimited company” is generally unattractive for business purposes due to the unlimited liability of its members.

**Company Limited by Guarantee**

Where a company is formed for the promotion of commerce, art, science, religion, sports, culture, education, research, charity or other similar objects, it may be registered as a company limited by guarantee. Other features include the following:

- The income and property of the company are to be applied solely towards the promotion of its objects and no part is to be transferred directly or indirectly to the members of the company.

- A company limited by guarantee cannot be incorporated for the purpose of making and distributing profits to its members.

- The memorandum of a company limited by guarantee cannot be registered without the authority of the Attorney General of the Federation, if after 30 days, the Attorney General does not authorize the Memorandum, promoters of the Company may advertise in 3 national daily newspapers and invite objections (if any).

- Where no objection is received, the Commission shall assent to the application and register same.

- The name of a company limited by guarantee must end with the words “Limited by Guarantee”

- The total liability of members to contribute to the assets of the company in the event of being wound is to a minimum of NGN100,000.00.

- Each member undertakes that, if the company is wound up while they are a member or within 1 year after
ceasing to be a member, they shall contribute to the assets of the company such amount as may be required for 1) payment of debts and liabilities of the company contracted before they cease to be a member and payment of the costs, charges and expenses of winding up; and 2) adjustment of the rights of the contributories among themselves, not exceeding a specified amount.

**Limited Liability Partnership**

- The Nigerian Company Law provides for a Limited Liability Partnership as a vehicle for conducting business in Nigeria. A limited liability Partnership is a body corporate separate from the partners and has perpetual secession.
- Every Limited Liability Partnership must have at least 2 partners and also appoint at least 2 designated partners who are individuals and at least 1 of the designated partners must be resident in Nigeria.
- A Limited Liability Partnership must have the words “Limited Liability Partnership” or “LLP” as the last words of its name.
- A Limited Liability Partnership can sue and be sued in its registered name.

**Limited Partnership**

- The name of a Limited partnership must end with the words “Limited Partnership” or “LP.”
- The members of a limited partnership is limited to a maximum of 20 members. It shall have 1 or more persons called general partners.
- A limited partner is not allowed to take part in the management of the partnership business otherwise such limited partner will be liable for all debts and obligations of the firm incurred while they took part in the management.
- The death, bankruptcy or incapacity of a limited partner is not a ground for winding up a limited partnership.

**Incorporated Trustees**

An incorporated Trustee is formed where 2 or more trustees are appointed by any community of persons bound by custom, religion, kinship or nationality for any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose. The features include the following:

- The minimum number of trustees is 2.
- An incorporated trustee is a corporate body which can sue and be sued in the name of its trustees with perpetual succession and may have a common seal.
- The name of an incorporated trustee must contain the words “Incorporated Trustees of”
- The replacement of some or all the trustees and the appointment of additional trustees is done by a resolution at the general meeting subject to approval by the Corporate Affairs Commission (CAC).
• The income and property of the company is to be applied strictly to the promotion of the objects of the company and no portion is to be paid directly or indirectly by way of dividend or bonus to the members.

• Mergers between 2 or more incorporated trustees, having similar aims and objects is permitted subject to certain conditions.

• The Commission has the power to suspend the trustees of an association and appoint an interim manager, subject to oversight by the court.

Small Company

A company qualifies as a small company if it meets the following qualifying conditions;

• It is a private company.

• Its yearly turnover is not more than NGN25,000,000.

• Its yearly net value is not more than half the value of the prescribed turnover.

• None of its members are alien.

• None of its members is a government, government corporation or agency.

• The directors between themselves hold at least 51 percent of its equity share capital.

MINIMUM CAPITAL REQUIREMENT

The minimum issued share capital of a private company shall be a sum not less than NGN100,000.00. However, for a public company, the minimum issued share capital is not to be less than NGN2,000,000. It is worthy of mention that companies with foreign participation are required to have a minimum capital of NGN10,000,000.

Some sector-specific laws and regulations have also imposed higher minimum capital requirements for companies operating within that sector.

LEGAL LIABILITY

Limited Liability Company

Limited liability companies, whether private or public, are recognized as having a separate legal personality from their members. The liability of a member in a limited liability company is limited to the amount, if any, left unpaid on the shares held by such member in the company.

Unlimited Company

An unlimited company, like every other corporate entity, has a separate legal personality from its members. However, its members do not enjoy the full benefits of this separate legal personality as there is no limit to their
liability for the debts of the company.

**Limited liability partnership**

A limited liability partnership is a legal entity separate from its partners. However, a designated partners so appointed is liable to all penalties imposed on the limited liability partnership for any contraventions to the provision of the Act.

**Limited Partnership**

In a limited partnership, the general partner is liable for all debts and obligations of the firm. The liability of the limited partners is limited to the amount agreed to contribute as capital at the inception of the partnership.

Company Limited by Guarantee. The total liability of members to contribute to the assets of the company in the event of being wound is to a minimum of NGN100,000.

**Incorporated Trustees**

Trustees appointed under an Incorporated Trustee are legally liable for handling of assets held in trust, regulatory obligations.

**TAX PRESENCE**

The following taxes are of general application to all companies in Nigeria, whether private or public:

**Companies Income Tax (CIT):** The CIT is mandated to be paid by companies in Nigeria based on the profits made by the company. It is charged at a graduated scale depending on the turnover of the company. Companies with turnovers of NGN100,000,000 or more are charged at 30 percent, medium companies with turnovers of NGN25,000,000 to NGN100,000,000 are charged at 20 percent and companies with turnovers less than NGN25,000,000 are not required to pay CIT.

- Nonresident companies (NRCs) providing professional, consultancy, management and technical services to residents in Nigeria are subject to tax at 10 percent where such company has a significant economic presence in Nigeria, while the income of NRCs with permanent establishment in Nigeria is taxable based on actual profits as resident companies.

- Withholding tax (WHT) is a tax payment method which ensures income tax collections from the payer of the income due to the recipient company. Generally, WHT is charged at the following rates:
  
a. Dividend, interest, and rents at 10 percent
b. Royalties at 10 percent
c. Hire of equipment, motor vehicles, plants and machinery at 10 percent
d. Commission, consultancy, technical and management fees, legal fees, audit fees and other professional fees at 10 percent
e. Construction of roads bridges, building and power plant or other types of construction at 5 percent
f. All types of contracts and agency arrangements, other than sales in the ordinary course of business, at 5
percent

**Capital Gains Tax (CGT):** The CGT is a 10-percent charge on the profits or gains realized by a company upon the disposal of chargeable assets. Chargeable assets are:

1. Any foreign currency
2. Gains from share disposal of a Nigerian company’s shares where the proceeds from the disposal are more than NGN100,000,000
3. Compensation for loss of office where the payments exceed NGN10,000,000
4. Any form of property created by the person disposing of it or otherwise coming to be owned without being acquired
5. Options, debts and incorporeal property, generally

**Education Tax:** This tax is imposed on Nigerian companies and has recently been increased from 2 percent to 2.5 percent of all assessable profit for each year of assessment and is payable within 2 months of an assessment notice from the Federal Inland Revenue Service (FIRS).

**Police Fund Levy:** This is a levy under the Nigerian Police Trust Fund Act of 0.005 percent of the net profit of companies operating in Nigeria.

**Personal Income Tax:** This is a tax that is levied on the income of individuals employed in a company. It is charged at a graduated scale from 7 to 24 percent depending on the amount of the taxed individual. However, every taxable person is liable to a minimum income tax of 1 percent of their gross income save those earning minimum wage or less. **Stamp Duties:** The Stamp Duties Act regulates the payment of stamp duties on instruments in Nigeria. For the purposes of stamp duty assessment, instrument is defined to include every written document. The Act requires that any instrument executed in Nigeria, or whosesoever executed, which relates to any property situate in Nigeria, or to any matter or thing done, or to be done in Nigeria, must be stamped upon payment of the requisite stamp duty at the rate specified in the Schedule to the Act. An instrument which is not duly stamped will not, except in criminal proceedings, be admissible in evidence in a court of law in Nigeria or be available for any other purpose whatsoever. The duties payable under the Act are divided into fixed duties and ad valorem duties. Fixed duties do not vary with the consideration for the document to be stamped; ad valorem, on the other hand, vary with the amount of consideration and in accordance with the scales stated in the schedule of the Act.

**Value-Added Tax (VAT):** All suppliers of goods and services (except exempt) are required charge a 7.5 percent tax on their invoices, collect the tax from buyers and remit the amount so collected to the relevant VAT authorities. The scope of goods has been expanded to include any intangible products, asset or property except interest in land. However, exemptions are granted in respect of all medical and pharmaceutical products, basic food items, books and educational items, baby products, fertilizer, agricultural and veterinary medicine, farming machinery and farming transport equipment.

It should be noted that employers of labor are expected to make contributions to social security schemes such as the Employee Compensation Scheme at a minimum monthly contribution of 1 percent of their monthly payroll managed by the Nigeria Social Insurance Trust Fund. Similarly, the employer must contribute 1 percent of their annual payroll cost to the Industrial Training Fund, 2.5 percent of their monthly basic salary to National Housing Fund and 18 percent of monthly emoluments to their pension.

**INCORPORATION PROCESS**
Companies operating in Nigeria must be incorporated with the Corporate Affairs Commission (CAC). The process for incorporation includes:

- Conducting a name availability check on the proposed names of the entity at the CAC[1]. Subject to availability, the name is reserved for use with the CAC for 60 days.

- Preparation of memorandum and articles of association detailing the objects of the business and the terms of relationship within the entity. The form of memorandum and articles of association set out in the 16th schedule of the Companies regulations is typically adopted.

- Completing the incorporation form online with the relevant details of the directors, shareholders, secretary and proposed address of the new entity.

- Stamping of incorporation documents

- Filing of incorporation documents including forms of identification for directors and shareholders.

- Obtaining the certificate of incorporation together with the Tax Identity Number of the new entity.

[1] It is usually advisable to have at least two name options

**BUSINESS RECOGNITION**

**Private limited company**

Well regarded and most commonly used.

**Business names**

Generally used by sole proprietors as it is relatively cheap and easy to register.

**Public limited company**

Well regarded and commonly used for large enterprises.

**Unlimited company**

Not commonly used.

**Limited liability partnerships and Limited Partnership**

Mostly used for professional businesses such as legal and accounting businesses.

**Incorporated Trustees**

Well regarded and mostly used by religious and educational institutions.
SHAREHOLDER MEETING REQUIREMENTS

Private company

A private company is required to hold its first Annual General Meeting (AGM) within 18 months of its incorporation and once every year thereafter to the extent that not more than 15 months lapse between the date of one AGM and that of the next.

The ordinary businesses of an AGM include a declaration of dividend; the presentation of financial statements and report of the directors and auditors; the election of directors in the place of those retiring; the appointment; and the fixing of the remuneration of the auditors and disclosure of remuneration of managers. An AGM must be held in Nigeria. Small companies and companies with a single shareholder is not obligated to hold an AGM. Private companies are allowed to convene a virtual general meeting provided it is done in accordance to the Articles of the company.

In addition to an AGM, an extraordinary general meeting (EGM) of the company may be convened where special businesses may be considered. An EGM may be convened by the Board of Directors of the company or requisitioned by any member of the company holding at least 1/10 of the paid-up capital of the company.

A 21-day statutory notice period is required for all general meetings of a private company. However, a shorter notice for an AGM may be given upon the consent of all the members entitled to attend and vote at the meeting. Additionally, notice of meeting can be sent via electronic mail in addition to personal service and post.

For an EGM, the consent of the majority of members holding not less than 95 percent in nominal value of the shares, or 95 percent of the voting rights for a company without a share capital, is required for shorter notice.

Public company

The shareholder meeting requirements for a private company, as indicated above, also apply to a public company. In addition, a public company is required to hold a statutory meeting within 6 months of incorporation. Notices of meetings are also required to be published in at least 2 daily newspapers.

BOARD OF DIRECTOR MEETING REQUIREMENTS

A board of directors meeting may either be convened by a director or by the company secretary on the requisition of a director. The first meeting of the directors must be held not later than 6 months after the incorporation of the company.

The law provides that the directors may regulate their meetings as they think fit. However, this is subject to the provisions of the articles of association of the company or the express provisions of the law.

Unless otherwise provided by the articles of association of a company, every director shall be entitled to receive the Notice of a Board Meeting not less than 14 days before the meeting. Unless provided otherwise by the Articles of Association, it is not necessary to give notice to a director’s absence from the country. However, where such director has given an address in Nigeria, the Notice will be sent to such address.

The meeting of the Board is regulated by a chairman, elected from among the members of the Board. Where an elected chairman is not present at the meeting after 5 minutes of the scheduled meeting time, the members
present may choose another individual from the group to serve as chairman of the meeting.

In all meetings of the directors, each director is entitled to one vote.

**ANNUAL COMPANY TAX RETURNS**

Nigerian resident companies are liable to pay Companies Income Tax (CIT) on their worldwide income while non-resident companies deriving income in Nigeria are liable to pay CIT on their Nigerian-sourced income. CIT is between 20 and 30 percent of assessable profit, assessed on a preceding-year basis.

Companies are required to register for tax and file their audited accounts and tax computations with the Federal Inland Revenue Service (FIRS) within 6 months of their financial year-end on a self-assessment basis or 18 months after incorporation (whichever comes first). A company may file an application for extension of filing tax returns for up to 2 months at the discretion of the FIRS.

**BUSINESS REGISTRATION FILING REQUIREMENTS**

Companies are required to be registered with the Corporate Affairs Commission (CAC) before commencing business in Nigeria. The registration process is commenced and completed online via the CAC portal, and the following documents will be submitted on the portal as part of the application:

- Form CAC1.1
- Memorandum and Article of Association (MEMART).
- Recognized form of identification for Director(s)/Subscriber(s) or Secretary where appointed
- Evidence of payment to the Corporate Affairs Commission

The certificate of incorporation, certified MEMART and approved application form will then be issued.

Upon registration, a company is required to file any increase in share capital or change in directorship, auditors, allotment of shares or change of company secretary, among others, within 15 days of such changes. In addition, the company is required to file annual returns and its financial statement within 14 days of its annual general meeting.

**BUSINESS EXPANSION**

Generally, companies are at liberty to engage in and pursue business expansion strategies and there would be no need to change the legal structure as a result. However, a private company whose membership has increased beyond the statutory maximum of 50 and intend to stay beyond the prescribed maximum would be expected to convert to a public company (listed or unlisted). At a minimum, such company would be required to raise its minimum issued share capital to NGN2,000,000 before re-registration is permitted at the Corporate Affairs Commission, of which at least ¼ of the nominal value of the share and the whole of any premium on it is expected to be paid up. Furthermore, the company’s auditor would be required to issue a written statement that the
amount of the company’s net assets was not less than the aggregate of its called-up share capital and distributable reserves at the balance sheet date.

**EXIT STRATEGY**

Companies may be deregistered by the CAC either through a winding up process or by the exercise of the powers of the CAC to deregister a defunct company on its own application or by application of the company.

A company may be wound up voluntarily by the members of the company or creditors of the company, by the court or subject to the supervision of the court. Upon the winding up of a company, the company stands dissolved and the assets of the company will be liquidated and distributed in accordance with the rules of priority.

The CAC may strike off the name of a company from the register where it has reasonable cause to believe that such company is not carrying on business. In addition, a company may voluntarily apply to the CAC to strike off its name from the register of companies after passing a special resolution to this effect.

**ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

The law requires every company to keep and maintain accounting records which should disclose with reasonable accuracy, and at all times, the financial position of the company and should enable the directors to ensure that financial statements of the company are prepared in accordance with the law, both in form and content. The content of the accounting records must be available for inspection at all times by the officers of the company.

The financial statements for the company in each accounting year shall be prepared by the directors and should include the following:

- A statement of accounting policies (not compulsory for private companies)
- The balance sheet as at the last day of the year
- A profit and loss account
- Notes on the account.
- The auditors’ report
- The directors’ report
- Changes in equity (not compulsory for private companies)
- A statement of the source and application of fund (not compulsory for private companies)
- A value added statement of the year (not compulsory for private companies)
- A 5 year financial summary (not compulsory for private companies)
• In the case of a holding company, the group financial statements

• Each public company shall keep its audited accounts displayed on its website.

Companies are required to file with the CAC, their annual return together with their audited financial statements or statement of affairs within 42 days after the holding of the AGM in each year. The Chief Executive Officer or Chief Financial Officer of companies, other than small companies, are required to certify that the officer who signed the audited financial statements has confirmed that the statements does not contain any untrue statements or concealed material facts.

DIRECTOR / OFFICER REQUIREMENTS

A company, whether private or public, is required to have at least 2 directors, save for small companies, which are allowed to have a single directorship. The directors must be natural persons and may either be Nigerians or foreigners. The following persons are disqualified from being directors:

1. An infant, that is, a person under the age of 18 years
2. A lunatic or person of unsound mind
3. A bankrupt and
4. A corporation, other than its representative

A public company is required to have at least 3 independent directors. Where a person proposed to be appointed or appointed as a director of a public company who is 70 years or more of age, the company is required to give special notice in respect of the resolution appointing or approving the appointment of such a director which shall state the age of the director and the director is required to disclose this fact to the members of the company. They must also disclose multiple directorships when applicable.

LOCAL CORPORATE SECRETARY REQUIREMENT

Except small companies, every company, whether private or public, is required to have a company secretary. The qualifications of a company secretary depends on the type of company.

Private company

The person to be appointed a company secretary must have the requisite knowledge and experience to discharge the functions required of a secretary.

Public company

Any person to be appointed a Secretary of a Public Company must either be:

• A member of the Institute of Chartered Secretaries of Nigeria, or
• A Legal practitioner
• A member of the Institute of Chartered Accountants of Nigeria or any other Body of accountants
• A person who had held the office of the company secretary for 3 years in a public company of the 5 years preceding their appointment in a public company or

• A body corporate or a firm of any of (a) – (d)

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Not applicable to this jurisdiction.

LOCAL OFFICE LEASE REQUIREMENT

Every company duly registered in Nigeria is required to have a registered office which must be situate in Nigeria.

This is required to be stated as such in its memorandum of association and documents of registration and shall be the address to which all communications and notices to the company may be addressed. The company is required to notify the local registry of any changes to its registered address.

OTHER PHYSICAL PRESENCE REQUIREMENTS

Not applicable for this jurisdiction.

SUFFICIENCY OF VIRTUAL OFFICE

This is not sufficient under local law.

PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

There are no restrictions imposed against the use of the address of a law firm or 3rd-party service provider as the local registered address.

PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

This is permitted for Law firms duly registered locally to practice in Nigeria and meet the requirements for appointment as directors in Nigeria. Third-party service providers, on the other hand, are also permitted to provide local director or Company Secretary services where they meet the qualifications for the office of a Director and Company secretary in Nigeria.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS
There is no restriction on the nationality or residency of a shareholder, director or officer of a Nigerian company. However, any foreigner who wishes to be resident in Nigeria must be issued a work permit, specifically the Combined Expatriate Residence Permit and Aliens Card (CERPAC). Notably, under the Nigerian Investment Promotion Commission (NIPC) Act, foreign ownership is permitted in all industries. However, there are restrictions on the acquisition of shares by foreign nationals in specific industries, including the oil and gas, aviation, broadcasting, advertising, pharmaceutical, engineering and marine industries.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

There are no restrictions regarding the appointment of nominee shareholders and directors. It is worthy of mention that, under Nigerian Company Law, it is the person whose name is entered into the register of members that is recognized as the legal owner of the shares of the company. However, this does not preclude any person on whose behalf the interests have been held by the nominee shareholder or director from enforcing their rights and obligations under the instrument appointing the director or shareholder.

SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF

A company typically acts through 2 major organs: (i) the board of directors and (ii) its members in general meeting. The articles of association of a company usually expressly states the powers of the organs of the company, subject to mandatory provisions of the Nigerian Company Law. Under the Nigerian Company Law, the board of directors is vested with the day-to-day management of the company and each director is required to act in good faith and with diligence. With the exception to the mandatory provisions of the Nigerian Company Law, the members in general meeting may act where there is deadlock on the board, to ratify actions of the board or institute legal proceedings in the name and on behalf of the company.

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

There are no specific requirements for the public disclosure of the identity of the shareholder, directors or officers of a private company. However, every company is required to file with the local corporate registry particulars of the persons that are directors and shareholders of the company. The filing makes such information public records to which anyone may have access following an application. A public company is required to disclose to CAC in writing, of its substantial shareholder holding a beneficial interest amounting to 5 percent and above and a public company shall also keep a register of its substantial shareholders. Every company is required to keep a register of its directors indicating the number, description and amount of shares in the company which shall be open to inspection during business hours or such period prescribe by the Articles of Association of the Company. The Securities and Exchange Commission (SEC) and, where such entity is a listed entity, the Nigerian Stock Exchange are to be notified where applicable.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

Under Nigerian Law, the minimum number of directors of a company is prescribed as 2 with the maximum
number left to be fixed by the Articles of Association or sectoral regulations specific to industries. Additionally, a small company in practice can have a single director and a public company is expected to have at least 3 independent directors.

**MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

**Private company**

A private company is one which has a minimum of 1 member and a maximum of 50 members.

**Public company**

A public company must have a minimum of 2 members and no stated maximum number of members.

**REMOVAL OF DIRECTORS OR OFFICERS**

The procedure for the removal of a director of a company is provided under section 288 of the Companies and Allied Matters Act (CAMA/Nigerian Company Law). The section provides that a company may by ordinary resolution remove a director before the expiration of their period of office, notwithstanding anything in its articles of association or in any agreement between the company and the director.

It is worthy to note that a special notice is required to be issued to the company and the director prior to any resolution to remove such director. The director may, however, on receipt of such notice, make a representation to the company and shall be entitled to be heard at the meeting.

The removal of an officer (other than a director or company secretary) is subject to the provisions of such officer’s contract of employment. Where such officer is the company secretary of a public company, their removal will be subject to procedure set out under the Nigerian Company Law.

Directors removed from office before the end of their tenure may now be regarded as ineligible for future directorship appointments.

**REQUIRED AND OPTIONAL OFFICERS**

A small company is required to have at least 1 director, it is not required to have a company secretary or an external auditor. A public company is required to have at least 2 directors, a company secretary and an external auditor. It is, however, worthy to note that certain sector-specific regulations mandate the employment of specific officers in a company.

**BOARD MEETING REQUIREMENTS**

Under the Nigerian Company Law, directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they see fit, provided that the first meeting of the directors shall be held not later than 6 months after the incorporation of the company. A director, and a secretary on the requisition of a director, may summon a meeting of the directors. A meeting may only be validly convened where a notice of such
meeting is issued at least 14 days before the date of the meeting to all members entitled to attend and vote at such meeting. The business of the meeting can be conducted where the quorum for the meeting has been formed. The directors may elect from amongst themselves a chairman who will preside over their meetings for a designated period. Decisions of the board are to be taken by a majority of votes and, in case of unequal votes, the chairman has a casting vote. Every director shall be entitled to receive notice of a meeting and failure to give notice shall invalidate the meeting. The notice period for a meeting of the board of directors shall be 14 days subject to the provisions of the articles of association.

**QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

Shareholders’ Meetings

Unless otherwise provided in the articles of association, the quorum for the meeting of the company shall be 1/3 of the total number of members of the company or 25 members (whichever is less) present in person or by proxy. Provided that, where the number of members is not a multiple of 3, then the number nearest to 1/3, and where the number of members is 6 or less, the quorum shall be 2 members.

Board Meetings

Unless the articles of association provide otherwise, the quorum necessary for the transaction of the business of directors shall be 2 where there are not more than 6 directors, but where there are more than 6 directors, the quorum shall be 1/3 of the number of directors, and where the number of directors is not a multiple of 3, then the quorum shall be 1/3 of the nearest number.

**MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?**

There is no regulatory requirement to open a bank account prior to incorporation, and this is not a perquisite to doing business in Nigeria. It is, however, advisable to open and maintain a local bank account for a smooth and efficient business operations in Nigeria. It is also worthy to note that in Nigeria, the corporate documents of an already incorporated entity are required as a KYC prerequisite for opening a corporate bank account for such entity.

**AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?**

Under Nigerian law, companies other than a small company is required to in engage an auditor each year for the purpose of auditing its financial statements and such appointed auditor shall be a person who is a member of the Institute of Chartered Accountants of Nigeria. Every Nigerian company is required to keep accounting records which sufficiently explain and evidence the transactions and disclose the financial position of the company. The accounting records of a company are required to be kept at the registered office of the company or such other place in Nigeria as the directors think fit.
REQUIREMENT REGARDING PAR VALUE OF STOCK

Every company on incorporation is required to state the amount of its issued share capital and the division into shares and the par/nominal value of the shares. However, the law does not stipulate the minimum par value of the shares of a company; it is fixed at incorporation but may be changed by members’ resolution amending the Memorandum of Association.

INCREASING OF CAPITALIZATION IF NEEDED

A company having a share capital may increase its issued share capital by way of an ordinary resolution of the shareholders at a general meeting by the creation of new shares of such amount as it believes to be expedient. The Nigerian Company Law requires for at least 25 percent of the share capital including any increase to be paid up. Following an increase in its share capital, the company will be required to, within 15 days after the passing of the resolution, file with the local registry the particulars of the increase in the share capital.

SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)

Under Nigerian law, any person may invest in any enterprise or security with foreign currency or capital imported into Nigeria through an authorized dealer. The importation of capital through this recognized channel guarantees the ease of repatriation of capital or investment return in foreign currency. When the capital is imported into Nigeria through an authorized dealer (a Nigerian bank), the authorized dealer issues a Certificate of Capital Importation (CCI) evidencing the investment for the benefit of the investor.

An investor may also import capital into Nigeria through payment into a domiciliary account or any other means. However, where the investor did not import the capital through an authorized dealer, such capital or investment returns in foreign currency will only be sourced from the unregulated parallel market at a price influenced by the forces of demand and supply and subject to availability.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

Shares in a company are transferable instruments subject to provisions such as preemptive rights in the articles of association of a company and Companies and Allied Matters Act 2020. The law now permits electronic instrument of transferring shares. The law specifically requires a private company to restrict the transferability of its shares in its articles of association. A public company is not required to have any form of restrictions on the transferability of its shares. Under Nigerian Law, where there are no further restrictions on the transfer of shares of a company in the articles of association of such company, any member may transfer all or any of their shares by instrument in writing in any usual or common form or any other form which the directors may approve.

The first step towards incorporating a company in Nigeria is to conduct an “availability search” at the registry in order to confirm that the proposed name of the company has not already been used and that same does not offend any provisions of the law or any existing trademark or trade name. Certain names (usually containing words such as “Federal,” “National” or “State”) can only be used with the consent of the relevant authorities. In addition,
the Registrar-General of the companies’ registry may require supporting evidence for the use of certain words such as “group” or “holdings.”

Where following an “availability search,” the proposed name of the company is available, the same would be reserved for the use of the promoters of the company for an initial period of 60 days and for further renewable periods of 60 days. During the period of reservation, no other company can be registered with the reserved name or any other name which in the opinion of the companies’ registry is similar or identical to the reserved name.

OBTAINING A NAME AND NAMING REQUIREMENTS

The first step towards incorporating a company in Nigeria is to conduct an “availability search” at the registry in order to confirm that the proposed name of the company has not already been used and that same does not offend any provisions of the law or any existing trademark or trade name. Certain names (usually containing words such as “Federal,” “National” or “State”) can only be used with the consent of the relevant authorities. In addition, the Registrar-General of the companies’ registry may require supporting evidence for the use of certain words such as “group” or “holdings.”

Where following an “availability search,” the proposed name of the company is available, the same would be reserved for the use of the promoters of the company for an initial period of 60 days and for further renewable periods of 60 days. During the period of reservation, no other company can be registered with the reserved name or any other name which in the opinion of the companies’ registry is similar or identical to the reserved name.

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

Please note that there are sector specific KYC requirements applicable to each company based on their assessed value. However, the general KYC requirements include the following:

- Evidence of registration in the Country of Incorporation (for corporates)
- Certificate of incorporation
- Relevant resolution approving the transaction
- Passport photograph
- Valid form of identification
- Name, place and date of birth
- Gender
- Address and proof of residency
- Occupation
APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

A shareholder’s resolution is required to amend the constitutional document of the company. A company may, at a meeting of which notice in writing has been duly given to all members by special resolution, alter the provisions of its memorandum and articles of association with respect to the business or objects of the company, or other specific provisions. Where an alteration is made to the memorandum or articles of association of a company, the altered memorandum and/or articles of association must be filed with the companies’ registry within 15 days after the passing of the resolution. For companies regulated by the SEC, where there are any major changes in the company which could affect the information filed in respect of the company’s registration, same should be filed with the SEC. Some sector-specific regulations may also require notification to the relevant regulatory body where there is an amendment to a regulated company’s memorandum and articles of association.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

It is noteworthy that, where a non-Nigerian entity sets up an entity in Nigeria and/or acquires shares in an already existing entity, there are certain sector specific approvals that must necessarily be obtained and maintained.

There are, however, 2 general approvals that are required to be procured irrespective of the sector; the Certificate of Business Registration obtained from the Nigerian Investment Promotion Commission and the Business Permit obtained from the Federal Ministry of Interior. Under Nigerian Law, a non-Nigerian is restricted from establishing a business or registering a company in Nigeria without these licenses. In practice however, consent is obtained after the incorporation of the company.

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

Not applicable for this jurisdiction.

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NORWAY

FORM OF ENTITY

Private limited liability companies (private LLCs)

Separate and distinct legal entity managed by a board of directors, which is responsible for making major business decisions. The board of directors also has a supervisory function in relation to the company’s activities and the executive managers of the company. Directors are elected by the shareholders of the company. Employees may have right to appoint a minority of the board members if the number of employees exceed certain thresholds. The day-to-day operations of the company are usually carried out by the general manager, who is appointed by the board of directors. However, private LLCs are not obligated to have a general manager. If this is the case, the chairman of the board of directors is responsible for the day-to-day management. The shareholders of the company constitute the general meeting, which is the superior body of the company.

Public limited liability companies (public LLCs)

Separate and distinct legal entity. Governmental structure of public LLCs is unitary with private LLCs. Public LLCs must have a general manager which is responsible for the day-to-day management of the company. The general manager is appointed by the board of directors. Only public LLCs or other similar foreign companies can be listed on a regulated market.

Partnerships with unlimited liability

Separate and distinct legal entity managed by the partnership meeting. Partnership meeting can appoint a board of directors and a general manager to manage the company and handle the day-to-day responsibilities.

ENTITY SET UP

Private LLCs

- Unlimited number of shareholders
- No personal liability for shareholders
- Taxed on its earnings at a corporate level. Shareholders are taxed on any distributed dividends
Typical charter documents include: memorandum of incorporation, articles of association and shareholders' register.

Board of directors has the overall management responsibility. General manager has the day-to-day responsibility.

Shareholders subscribe for shares in a company. A company may have different share classes, for instance preference shares.

Incorporation has to be registered in the Norwegian Register of Business Enterprises (the NRBE), within 3 months of incorporation.

Public LLCs

- Unlimited number of shareholders
- No personal liability for shareholders
- Taxed on its earnings at a corporate level. Shareholders are taxed on any distributed dividends
- Typical charter documents include memorandum of incorporation and articles of association
- Shareholders are registered in a shareholders' register at a securities depository

Partnerships with unlimited liability

- Unlimited number of partners
- As a general rule, partners jointly have unlimited liability for all of the company's obligations. However, partners may agree to the partnership agreement that they will be severally liable according to its pro rata ownership in a partnership
- Not taxed on its earnings at a corporate level. Partners are taxed at their individual rates based on each partner's part of the profits
- Typical charter documents include: partnership agreement
- Every partner has to sign the partnership agreement. Since this agreement is registered with the NRBE, the identity of partners is public information

MINIMUM CAPITAL REQUIREMENT

Private LLCs

NOK30,000
Public LLCs

NOK1 million.

Partnerships with liability

No minimum capital requirement.

LEGAL LIABILITY

Private LLCs

Shareholders’ liability is generally limited to the shareholders’ equity contributions.

Public LLCs

Shareholders’ liability is generally limited to the shareholders’ equity contributions.

Partnerships with liability

Partners are jointly liable for all partnership’s obligations. However, partners can agree to be severally liable for the partnership’s obligations.

TAX PRESENCE

Private LLCs

Private LLCs are taxed at 2 levels. At first a private LLC pays a corporate tax on its corporate income; next a private LLC distributes profits to shareholders who then pay income tax on those dividends. Dividend received by legal entities being shareholders may be taxed at a lower level.

Public LLCs

Public LLCs are taxed at 2 levels. First, a public LLC pays a corporate tax on its corporate income; next a public LLC distributes profits to shareholders who then pay income tax on those dividends. Dividend received by legal entities being shareholders may be taxed at a lower level.

Partnerships with liability

Pass-through entity with only 1 level of taxation. The partnership profits "pass through" to the partners, who then pay taxes on the profits at their individual tax rates.

INCORPORATION PROCESS

Private LLCs

Incorporation starts with signing a memorandum of incorporation setting out among other the name of the
company, the purpose, number of shares and share capital. Subsequently, the minimum share contribution has to be made. If the contribution shall be made in cash, the company has to establish a Norwegian bank account to make the contribution. Following this, incorporation of the company is filed on a coordinated register notification with the NRBE along with memorandum of incorporation, articles of association and a declaration from an auditor or financial institution stating that the share capital has been paid to the company mentioned. If some part or all of the share capital is going to be contributed as non-cash contributions, a statement from the founders regarding the contribution in kind, confirmed by an auditor, also has to be filed with the NRBE.

Public LLCs

The incorporation process for public LLCs is similar to the process for private LLCs.

Partnerships with liability

Incorporation starts with signing a partnership agreement setting out among other the name of the partners, the purpose, the ownership percentage and whether the partners' liability is pro rata or joint and several. If the partners are obligated to pay a contribution to the partnership, the partnership agreement has to reflect this. If a partnership will have a board of directors and/or an auditor, partnership meeting minutes with appointments and a declaration of willingness from the auditor will have to be attached as well. Following this, incorporation of the company is filed on a Coordinated Register Notification with the NRBE along with the partnership agreement attached.

BUSINESS RECOGNITION

Private LLCs

Well regarded and widely used.

Public LLCs

Well regarded, but not widely used because private LLCs fits most company requirements.

Partnerships with liability

Well regarded, but not widely used except in particular sectors.

SHAREHOLDER MEETING REQUIREMENTS

Required to hold an annual general meeting/partnership meeting to approve the annual accounts and other items required by law, articles of association or the partnership agreement.

BOARD OF DIRECTOR MEETING REQUIREMENTS

Private LLCs

At least 1 meeting each year to approve annual accounts. Further required to hold board meetings to resolve matters of unusual or significant nature, as well as matters to be resolved by the board of directors in accordance
with the Norwegian Private Limited Liabilities Companies Act.

**Public LLCs**

At least 1 meeting each year to approve annual accounts. Further required to hold board meetings to resolve matters of unusual or significant nature, as well as matters to be resolved by the board of directors in accordance with the Norwegian Public Limited Liabilities Companies Act.

**Partnerships with liability**

If a partnership has appointed a board of directors, at least 1 meeting each year to approve annual accounts is required.

**ANNUAL COMPANY TAX RETURNS**

**Private LLCs**

Must annually file tax returns and annual accounts with government authorities.

**Public LLCs**

Must annually file tax returns and annual accounts with government authorities.

**Partnerships with liability**

Partnerships must file a tax return, in addition to a tax return filed by each partner, which partners file together with their respective annual tax returns. A partnership is transparent for tax purposes, and each partner is taxable for their proportionate share of income.

**BUSINESS REGISTRATION FILING REQUIREMENTS**

It is required with initial registration, as well as annual filings.

**BUSINESS EXPANSION**

No need to change form of entity as business expands.

**EXIT STRATEGY**

**Private LLCs**

Resolution by the general meeting to dissolve the company is filed with the NRBE. Following a mandatory 6 weeks' creditor notice period, the final dissolution documents are filed with the NRBE.

**Public LLCs**
Resolution by the general meeting to dissolve the company is filed with the NRBE. Following a mandatory 6 weeks' creditor notice period, the final dissolution documents are filed with the NRBE.

Partnerships with liability

Resolution by a partnership meeting to dissolve a partnership is filed with the NRBE. Following a mandatory 6 weeks' creditor notice period, final dissolution documents are filed with the NRBE.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

Private LLCs and public LLCs must file a register of shareholders as of December 31 each year by January 31.

DIRECTOR / OFFICER REQUIREMENTS

Private LLCs

All directors must be of age. Therefore, directors must be above the age of 18 and have legal capacity to act.

Public LLCs

All directors must be of age. Therefore, directors must be above the age of 18 and have legal capacity to act. It is further a requirement that both sexes are elected as directors. The number of directors required from each sex will depend on the total number of directors.

Partnerships with liability

All directors must be of age. Therefore, directors must be above the age of 18 and have legal capacity to act.

For more information on directors’ duties, see our Global Guide to Directors’ Duties.

LOCAL CORPORATE SECRETARY REQUIREMENT

Not applicable for this jurisdiction.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Not applicable for this jurisdiction.

LOCAL OFFICE LEASE REQUIREMENT

Not applicable for this jurisdiction.
OTHER PHYSICAL PRESENCE REQUIREMENTS

Not applicable for this jurisdiction.

SUFFICIENCY OF VIRTUAL OFFICE

Virtual offices and c/o address is sufficient.

PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Private LLCs, public LLCs and partnerships must be registered with a Norwegian address.

PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Not applicable for this jurisdiction.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

Private LLCs

The general manager and at least 1/2 of the directors have to

- Be resident in Norway or
- Be citizens with residence of an EEC country

Public LLCs

A requirement that the general manager and at least 1/2 of the directors have residence in Norway. Equivalent to Norwegian residents are citizens with residence in a country that is party to the EEA Agreement.

Partnerships with liability

No nationality or residency requirements.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

A nominee shareholder may not be appointed in public LLCs. If the shares of a private LLC is registered in a securities register, a nominee shareholder may also be appointed for shares in a private LLC.
A nominee director may not be appointed.

SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF

Private LLCs and public LLCs

• Director’s authority consists of managing the company. The board of directors shall ensure a proper organization of the business and draw up plans, guidelines and budgets for the company’s business. The board of directors shall keep itself informed of the company’s financial position and is obliged to ensure that its activities, accounts and capital management are subject to adequate control. The board of directors shall effectuate any inspections they consider necessary. The board of directors shall supervise the day-to-day management and may issue instructions to the general manager. If the company does not have a general manager, the chairperson is responsible for the day-to-day management of the company as well.

• The general manager’s authority consists of the responsibility for the day-to-day management. The manager shall comply with the guidelines and instructions issued by the board of directors. The day-to-day management does not comprise matters of an unusual kind or major importance. The general manager shall ensure that the company’s accounts are in accordance with statutory law and regulations, and that the capital management is properly organized.

• The shareholder’s authority consists of exercising the supreme authority in the company through the general meeting. The authority can only be exercised through a summoned general meeting and is superior to all other corporate bodies. The general meeting can pass decisions in all matters, except when authority is assigned to another body through law.

Partnerships with liability

• If a board of directors is appointed, the director’s authority consists of managing the company. The board of directors shall ensure a proper organization of the business and draw up plans, guidelines and budgets for the company’s business. The board of directors shall keep itself informed of the company’s financial position and is obliged to ensure that its activities, accounts and capital management are subject to adequate control. The board of directors shall effectuate any inspections they consider necessary. The board of directors shall supervise the day-to-day management and may issue instructions for the general manager.

• The general manager’s authority consists of the responsibility for the day-to-day management. The manager shall comply with the guidelines and instructions issued by the board of directors. The day-to-day management does not comprise matters of an unusual kind or major importance. The general manager may decide matters under authorization from the board of directors in each case or whenever the board of directors’ decision cannot be awaited without major inconvenience to the company. The general manager shall ensure that the company’s accounts are in accordance with statutory law and regulations, and that the capital management is properly organized.

• The partner’s authority consists of exercising the supreme authority in the company through the partnership meeting. The authority can only be exercised through a summoned partnership meeting. The partnership meeting is superior to all other corporate bodies. The partnership meeting can pass resolutions
in all matters, except when authority is assigned to another body through law.

This summary of authority and limitations is not exhaustive.

**PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS**

The name of the directors and general manager is public information register in the NRBE. Also, the partners in a partnership is public information which has to be registered in the NRBE.

All shareholders in private LLCs and public LLCs as of December 31 each year shall be registered with the Norwegian tax authorities. Based on this information, the shareholders of a Norwegian company become public information. However, this information is not updated throughout the year and can therefore not be relied upon as evidence of who is a shareholder in a company from time to time.

**MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS**

**Private LLCs**

There must be a minimum of 1 director in the board of directors.

There must be a minimum of 1 shareholder.

No regulation of the maximum number of directors or shareholders, unless stated otherwise in the articles of association.

**Public LLCs**

There must be a minimum of 3 directors in the board of directors. Companies with corporate assembly must have minimum 5 directors.

There must be a minimum of 1 shareholder.

No regulation of the maximum number of directors or shareholders, unless stated otherwise in the Articles of Association.

**Partnerships with unlimited liability**

If the partnership meeting appoints a board of directors, there must be a minimum of 1 director.

There must be a minimum of 2 partners.

No regulation of the maximum number of directors or shareholders, unless stated otherwise in the partnership agreement.

**MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**
See Minimum and maximum number of directors and shareholders.

**REMOVAL OF DIRECTORS OR OFFICERS**

**Private LLCs**

A director can be removed by the general meeting. This does not apply to directors chosen of the company’s employees. If the company has a general assembly, the director may be removed by the general assembly.

**Public LLCs**

A director can be removed by the general meeting. This does not apply to directors chosen of the company’s employees. If the company has a general assembly, the director may be removed by the general assembly.

**Partnerships with liability**

A director can be removed by the partnership meeting.

**REQUIRED AND OPTIONAL OFFICERS**

**Private LLCs**

It is not mandatory to have a general manager in private LLCs. CFO and COO are deemed as ordinary employees and are not mandatory.

**Public LLCs**

Public LLCs must have a general manager who is responsible for the day-to-day management of the company. No other officer is mandatory. CFO and COO are deemed as ordinary employees and are not mandatory.

**Partnerships with unlimited liability**

It is not mandatory to have a general manager or any other officers in a partnerships.

**BOARD MEETING REQUIREMENTS**

As a general rule, a board meeting is held by a physical meeting. The meeting may be held by written resolution or telephone conference if the chairperson decides that it is an adequate manner to deal with the matters to be dealt with. Further, a temporarily act on exemptions from requirements for physical meetings is approved to remedy the consequences of the outbreak of Covid-19. The act applies for physical meetings in *inter alia* private LLCs and public LLCs until 1 June 2021.

**QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

**Private LLCs**
The board of directors forms a quorum when more than 1/2 of the directors are present or participate in the board meeting. Stricter requirements may be determined in the articles of association. All directors must be given the opportunity to participate in the meeting for the board to form a quorum.

There are no quorum requirements for the general meeting, but, as some decisions require unanimity, there will in effect be quorum requirements for such decisions. Notice of the general meeting must, as a general rule, be sent at least 1 week before the general meeting. Stricter requirements may be set out in the articles of association. Shareholders may waive the notice requirements.

Public LLCs

The board of directors forms a quorum when more than 1/2 of the directors are present or participate in the board meeting. Stricter requirements may be determined in the articles of association. All directors must be given the opportunity to participate in the meeting for the board to form a quorum.

There are no quorum requirements for the general meeting, but, as some decisions require unanimity, there will in effect be quorum requirements for such decisions. Notice of the general meeting must, as a general rule, be sent at least 2 weeks before the general meeting. Stricter requirements may be set out in the articles of association. Shareholders may waive the notice requirements.

Partnerships with liability

The board of directors has a quorum when more than 1/2 of the director are present or participate in the board meeting. Stricter requirements may be determined in the partnership agreement. All directors must be given the opportunity to participate in the meeting for the board to form a quorum.

All decisions made by the partnership meeting must be unanimous, unless the partnership agreement states otherwise.

**MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?**

Private LLCs

If the initial share contribution shall be made in cash, a Norwegian bank account must be opened prior to the registration with the NRBE.

Public LLCs

If the initial share contribution shall be made in cash, a Norwegian bank account must be opened prior to the registration with the NRBE.

Partnerships with liability

As there is no minimum capital requirement, no bank account must be created prior to incorporation.

**AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED**
IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?

If the company has an auditor, the auditor must be approved by the Financial Supervisory Authority of Norway.

Annual accounts and other mandatory accounts, annual reports and auditors’ reports shall be stored in Norway for five years after the end of the financial year. The documents may be stored electronically in Norway, Denmark, Finland, Iceland or Sweden. If the documents should be electronically stored outside of the Nordics, an application to the Norwegian Tax Authorities is required.

The accounting materials shall be available in a readable format and shall be capable of being printed on paper in Norway throughout the storage period.

Private LLCs

For private LLCs, it is not an absolute requirement to have an auditor if (i) the company’s operating income is less than NOK6 million, (ii) the company’s balance sum is less than NOK23 million and (iii) the company on average has fewer than 10 full-time equivalent employees. If an auditor is elected, a declaration of willingness from the auditor must be attached to the filing.

Public LLCs

Public LLCs are obligated to have any auditor.

Partnerships with liability

For partnerships with liability, it is not an absolute requirement to have an auditor if (i) the company’s operating income is less than NOK5 million, (ii) there are 5 or fewer partners, (iii) if all partners are legal persons and do not have assets in the company’s balance sum above NOK20 million and (iv) the company on average has fewer than 10 full-time equivalent employees. If an auditor is elected, a declaration of willingness from the auditor must be attached to the filing.

REQUIREMENT REGARDING PAR VALUE OF STOCK

The number of shares and the par value of the stock has to be at least equal the minimum share capital of a private LLC and a public LLC.

Not applicable for partnership.

INCREASING OF CAPITALIZATION IF NEEDED

Private LLCs and public LLCs

Share capital increases are adopted by the general meeting following a proposal from the board of directors. The board of directors may be granted authority by the general meeting to adopt share capital increases on specific terms. Such authorization may not be valid for more than 2 years and must be limited to a maximum of 1/2 of the share capital as of the date the authorization was granted.
Partnerships with liability

Capitalization of a partnership is adopted by the partnership meeting.

**SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)**

**Private LLCs**

Funds may be repatriated as a dividend or a share capital decrease. Both types are adopted by the general meeting following a proposal by the board of directors. The company may only distribute dividends to the extent that, after the distribution, it still has net assets covering the company’s share capital and other restricted equity, such as funds for unrealized gains and valuation differences. Upon a share capital decrease, the share capital decrease may not be set lower than the minimum share capital of NOK30,000. A share capital decrease may be completed by a redemption of shares or reduction of the par value. A share capital reduction is subject to a 6 weeks creditors’ notice period before it may be implemented. Finally, the company shall at all times have equity and liquidity which is adequate in terms of the risk and scope of the company’s business.

**Public LLCs**

Funds may be repatriated as a dividend or a share capital decrease. Both types are adopted by the general meeting following a proposal by the board of directors. The company may only distribute dividends to the extent that, after the distribution, it still has net assets covering the company’s share capital and other restricted equity, such as funds for unrealized gains and valuation differences. Upon a share capital decrease, the share capital decrease may not be set lower than the minimum share capital of NOK1 million. A share capital decrease may be completed by a redemption of shares or reduction of the par value. A share capital reduction is subject to a 6 weeks creditors’ notice period before it may be implemented. Finally, the company shall at all times have equity and liquidity which is adequate in terms of the risk and scope of the company’s business.

Partnerships with liability

Distribution of profit is subject to resolution of the partnership meeting. The company may only distribute profit if the funds are not necessary to cover obligations of the company or company business. Profit cannot be distributed if this evidently would harm the interests of the company or its creditors.

**RESTRICTIONS ON TRANSFERABILITY OF SHARES**

**Private LLCs**

As a principal rule, transfer of shares is subject to right of first refusal and approval by the board of directors. This may be modified in the articles of association whereby the shares may still be freely transferrable. The articles of association may also contain specific requirements in order to be approved as shareholder.

**Public LLCs**

As a general rule, shares are freely transferrable and therefore not subject to approval by the board of directors or right of first refusal. This principle may be modified in the articles of association, but this is uncommon for
public LLCs.

Partnerships with liability

As a general rule, a transfer of shares is subject to approvals from the other partners. This principle can be modified in the partnership agreement. If partnership agreement contains a right to transfer, such transfer may be subject to first refusal by the other partners.

OBTAINING A NAME AND NAMING REQUIREMENTS

Private LLCs

The name must include the word "aksjeselskap" or the abbreviation "AS." The name may not be identical to a name already registered with the NRBE and contain at least 3 letters.

Public LLCs

The name must include the word "allmennaksjeselskap" or the abbreviation "ASA." The name may not be identical to a name already registered with the NRBE and contain at least 3 letters.

Partnerships with unlimited liability

If the partners have joint and several liability, the company name must include the words "ansvarlig selskap" or the abbreviation "ANS." If the partners’ liability is pro rata, the company name must include the words "selskap med delt ansvar" or the abbreviation "DA." The name may not be identical to a name already registered with the NRBE and contain at least 3 letters.

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

Required by banks in order to open a bank account.

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

Private LLCs

Amending the articles of association requires at least 2/3 majority of the votes and the share capital represented at the general meeting. Stricter requirements may be included in the articles of association.

Public LLCs

Amending the articles of association requires at least 2/3 majority of the votes and the share capital represented at the general meeting. Stricter requirements may be included in the articles of association.

Partnerships with unlimited liability

A resolution by the partnership meeting to amend the partnership agreement must be unanimous unless otherwise has been agreed in the partnership agreement.
LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

As a general rule, not applicable, but may be required for certain industries.

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

Shelf companies may, in general, be purchased on short notice. The shelf company may be utilized immediately after the transfer of the shelf company has completed.

KEY CONTACTS
**PERU**

Last modified 25 July 2022

**FORM OF ENTITY**

The most common types of business organizations operating in Peru are (i) sociedades anónimas (S.A.), or stock corporations or corporations; (ii) sociedades de responsabilidad limitada (S.R.L.), or limited liability companies/partnerships; and, (iii) branches of foreign entities.

**Corporation (Sociedad Anónima or S.A.)**

This type of company is mainly regulated by Law No. 26887 (the Corporations Act), as well as by the Corporations’ Registry Regulations (Reglamento del Registro de Sociedades).

A corporation may be open (public), in which case it would be a sociedad anónima abierta (S.A.A.) or private, in which case it could be: (i) a closed stock corporation or sociedad anónima cerrada (S.A.C.); or, (ii) a regular corporation or sociedad anónima (S.A.).

Open corporations are those that register, voluntarily or by legal obligation, their shares in the Public Registry of the Securities Market of the Superintendency of the Securities Market (Registro Público del Mercado de Valores de la Superintendencia del Mercado de Valores) and are under control of such Superintendency. Closed stock corporations are those incorporated as such and may not have more than 20 shareholders. Finally, corporations are those that do not qualify as open or closed.

A corporation share capital is divided into shares. In case of open corporations, the shares may be transferred without limitation. Restrictions to shares’ transfers regulated in their bylaws or in shareholders’ agreements are not enforceable. On the contrary, a right of first refusal applies to closed stock corporations, unless otherwise provided in their bylaws. In case of regular corporations, the shares may be transferred without limitation, except if certain restrictions are established in their bylaws or in shareholders’ agreements.

The liability of shareholders is limited to the amount of their contributions to capital.

Corporations (except for some closed stock corporations) are managed by a board of directors, formed by -at least- 3 members, appointed by the shareholders. The board is responsible for the administration and representation of the company and is entitled to delegate part of its powers to the CEO and other officers. A director’s term of appointment, which is set forth in the bylaws, cannot be less than 1 year and shall not exceed 3 years. Directors may also be re-elected indefinitely.
If the shareholders of a closed stock corporation decide so, such entity could refrain from having a board of directors, in which case it would be managed by a CEO.

**Limited Liability Company (Sociedad de Responsabilidad Limitada or S.R.L.)**

This type of company is mainly regulated by Law No. 26887 (the Corporations Act), as well as by the Corporations’ Registry Regulations (Reglamento del Registro de Sociedades). The liability of the members of a S.R.L. is limited to the amount of their contributions. A right of first refusal shall always be applicable and equity rights may only be transferred by virtue of a public deed that shall be recorded before the Public Registry of the domicile of the corresponding entity. There is great flexibility as to the rules that may be included in the bylaws.

The management of a S.R.L. is entrusted to one or more managers (whether partners or not), who shall represent it in all matters relating to its company purpose. The managers are prohibited to engage (for their own account or for the account of others) in the same type of business that corresponds to the company purpose.

**Branch of a Foreign Legal Entity (Sucursal)**

A branch acts as an alternative form of entity, as it corresponds to the presence of a foreign company (the parent company) in Peru that does not seek to incorporate a new company, but instead only establishes a branch of the existing company. It is not a separate legal entity, except for tax purposes. The parent company is ruled by its local laws, but shall comply with the applicable Peruvian legislation regarding the obligations undertaken by the branch in Peru. The Corporations Act contains certain special rules regarding the establishment (and amendments) of a branch by foreign companies.

A branch is managed by a permanent legal representative appointed by the parent company.

**ENTITY SET UP**

**Corporation (Sociedad Anónima or S.A.)**

- At least 2 shareholders and up to 749 shareholders.
- The liability of shareholders is limited to the amount of their contributions to capital.
- Profits distribution decision corresponds to the annual obligatory shareholders’ meeting.
- Typical charter documents include:
  - Bylaws and its amendments
  - Shares’ ledger
  - Share certificates
  - A book of minutes of shareholders’ meetings
  - A book of minutes of board of directors’ meetings
• Managed by a board of directors appointed by the shareholders. The board is responsible for the administration and representation of the company and is entitled to delegate part of its powers to the CEO and other officers.

• Shares may be transferred without limitation, except if certain restrictions are established in the bylaws or in shareholders’ agreements.

Closed Stock Corporation (Sociedad Anónima Cerrada or S.A.C.)

• At least 2 shareholders and up to 20 shareholders.

• The liability of shareholders is limited to the amount of their contributions to capital.

• Profits distribution decision corresponds to the annual obligatory shareholders’ meeting.

• Typical charter documents include:
  
  ○ Bylaws and its amendments
  ○ Shares’ ledger
  ○ Share certificates
  ○ A book of minutes of shareholders’ meetings
  ○ A book of minutes of board of directors’ meetings (if the bylaws considers the board of directors as a corporate body).

• May be managed by a board of directors or only by a CEO appointed by the shareholders. The board (or the CEO, where applicable) is responsible for the administration and representation of the company.

• A right of first refusal applies, unless otherwise provided in the bylaws.

Open Corporation (Sociedad Anónima Abierta or S.A.A.)

• The corporation is open when one or more of the following conditions are met:

  1. It has executed a primary public offering of shares or debentures convertible into shares;
  2. It has more than 750 shareholders;
  3. More than 35% of its capital is owned by 175 or more shareholders, without considering within this number those shareholders whose individual shareholding does not reach 2 per 1,000 of the capital or exceeds 5% of the capital;
  4. It is incorporated as such; or,
  5. All shareholders with voting rights unanimously approve the submission to such regime.

• The liability of shareholders is limited to the amount of their contributions to capital.
• Profits distribution decision corresponds to the annual obligatory shareholders’ meeting.

• Typical charter documents include:
  ◦ Bylaws and its amendments
  ◦ Share certificates
  ◦ A book of minutes of shareholders’ meetings
  ◦ A book of minutes of board of directors’ meetings.

• Managed by a board of directors appointed by the shareholders. The board is responsible for the administration and representation of the company and is entitled to delegate part of its powers to the CEO and other officers.

• Shares may be transferred without limitation. Restrictions regulated in the bylaws or in shareholders’ agreements are not enforceable.

• Must be subject to an annual external audit that shall be carried out by external auditors registered before the External Audit Firms Registry (Registro de Sociedades de Auditoría Externa).

**Limited Liability Company (**Sociedad de Responsabilidad Limitada or S.R.L.)**

• At least 2 partners and up to 20 partners.

• The liability of the members of a S.R.L. is limited to the amount of their contributions.

• Rules for distribution of profits shall be included in the Partners have the freedom to decide about this matter in the bylaws.

• Typical charter documents include:
  ◦ Bylaws and its amendments
  ◦ A book of minutes of partners’ meetings

• The management of the S.R.L. is entrusted to one or more managers (whether partners or not), who shall represent it in all matters relating to its company purpose.

• A right of first refusal is always applicable and equity rights may only be transferred by virtue of a public deed that shall be recorded before the Public Registry of the domicile of the corresponding entity.

• There is great flexibility as to the rules that may be included in the bylaws.

**Branch of a Foreign Legal Entity (Sucursal)**

• No minimum or maximum requirement for shareholders or partners of the parent company.
• The parent company is ruled by foreign laws, but shall comply with the applicable Peruvian legislation regarding the obligations undertaken by the branch in Peru.

• A branch is managed by a permanent legal representative appointed by the parent company.

• No limitations on remittance of profits from the branch to the parent company, subject to compliance of tax obligations.

• Typical charter documents include:
  ◦ Certificate of good standing of the parent company
  ◦ Bylaws of the parent company (which shall include a provision stating that such entity may establish branches abroad)
  ◦ The minutes of the competent corporate body of the parent company containing, among others, the resolution regarding the establishment of a branch in Peru and the appointment of the permanent legal representative of the latter.

**MINIMUM CAPITAL REQUIREMENT**

Corporation, Closed Stock Corporation and Open Corporation (*Sociedad Anónima* or *S.A.*, *Sociedad Anónima Cerrada* or *S.A.C.* and *Sociedad Anónima Abierta* or *S.A.A.*)

There is no obligation for a minimum capital.

Limited Liability Company (*Sociedad de Responsabilidad Limitada* or *S.R.L.*)

There is no obligation for a minimum capital.

Branch of a Foreign Legal Entity (*Sucursal*)

There is no obligation for a minimum capital.

**LEGAL LIABILITY**

Corporation, Closed Stock Corporation and Open Corporation (*Sociedad Anónima* or *S.A.*, *Sociedad Anónima Cerrada* or *S.A.C.* and *Sociedad Anónima Abierta* or *S.A.A.*)

The liability of shareholders is limited to the amount of their contributions to capital.

Limited Liability Company (*Sociedad de Responsabilidad Limitada* or *S.R.L.*)

The liability of the partners of an S.R.L. is limited to the amount of their contributions.
Branch of a Foreign Legal Entity (Sucursal)

The parent company shall comply with the applicable Peruvian legislation regarding the obligations undertaken by the branch in Peru. Therefore, the parent company will be liable for such obligations.

**TAX PRESENCE**

The Peruvian tax regime levies taxes at 2 levels. First, the company pays a corporate tax on its income. Then, stockholders pay a personal tax on dividends. The structure of the general tax regime is the following:

**Distributed or partially integrated tax regime:** Corporate tax is paid by the company at a 29.5 percent rate. To this regard, domiciled entities are subject to Peruvian Income Tax on a worldwide basis; however, branches, agencies, and permanent establishments of non-domiciled entities incorporated in Peru are subject to Peruvian Income Tax only on their Peruvian-sourced income. Peruvian income tax applies on an annual and accrual basis and taxpayers are also subject to monthly advanced income tax payment.

In addition, stockholders pay personal tax only on distribution by the company. To this regard, non-domiciled and domiciled individuals are subject to a withholding tax at a rate of 5%. Domiciled entities are not subject to withholding tax.

**Other regimen:** there are some other tax regimes applicable to corporations with an annual revenue up to approximately US$ 130,000 (Régimen Especial del Impuesto a la Renta - RER) and approximately US$ 1’856,079 (Regimen de la Micro y Pequeña Empresa – RMYPE).

**Under RER, the income tax is determined applying a 1.5% on the monthly revenue and in the RMYPE the tax rate is applied on net income, as follows:**

<table>
<thead>
<tr>
<th>Net Income</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to -approximately- US$ 15,000</td>
<td>10%</td>
</tr>
<tr>
<td>Excess</td>
<td>29.5%</td>
</tr>
</tbody>
</table>

**INCORPORATION PROCESS**

Corporation, Closed Stock Corporation and Open Corporation (*Sociedad Anónima* or *S.A.*, *Sociedad Anónima Cerrada* or *S.A.C.* and *Sociedad Anónima Abierta* or *S.A.A.*)

Corporations are incorporated by a public deed, which contains the bylaws. An abstract of the incorporation public deed must be registered in the Public Registry of Legal Entities of the company’s domicile, within 30 days from the date of the public deed.
Limited Liability Company (*Sociedad de Responsabilidad Limitada or S.R.L.*)

A S.R.L. shall be incorporated by a public deed, which contains the bylaws. An abstract of the incorporation public deed must be registered in the Public Registry of Legal Entities of the company’s domicile, within 30 days from the date of the public deed.

Branch of a Foreign Legal Entity (*Sucursal*)

Branches of foreign legal companies are established in Peru by their respective parent companies. For this purpose, a public deed granted by a Peruvian Notary Public and the following documents shall be filed before the Public Registry of Legal Entities of the branch’s domicile, duly apostilled in its official language and (if applicable) translated into Spanish by an official translator recognized as such by the Peruvian Ministry of Foreign Affairs:

- A certificate of good standing of the parent company;
- An authentic copy of the current bylaws of the parent company (which shall include a provision stating that such entity may establish branches abroad); and,
- The minutes of the of the competent corporate body of the parent company containing, among others, the resolution regarding the establishment of a branch in Peru and the appointment of the permanent legal representative of the latter.

An abstract of the abovementioned documents and the public deed must be registered in the Public Registry of Legal Entities of the branch’s domicile.

**BUSINESS RECOGNITION**

*Corporation (Sociedad Anónima or S.A. and Sociedad Anónima Abierta or S.A.A.)*

Well regarded and widely used for big businesses and companies seeking financing options in the equity market.

*Closed Stock Corporation (Sociedad Anónima Cerrada or S.A.C.)*

Well regarded and used regularly by small and medium-sized family enterprises and businesses.

*Limited Liability Company (Sociedad de Responsabilidad Limitada or S.R.L.)*

Well regarded and used regularly by small and medium-sized family enterprises and businesses, as well as by corporate groups with holding companies domiciled in U.S.

*Branch of a Foreign Legal Entity (Sucursal)*

Only used by foreign companies that participate in bidding or tender processes called by Peruvian governmental entities in order to prove their experience in certain industry or projects.

**SHAREHOLDER MEETING REQUIREMENTS**
Corporation, Closed Stock Corporation and Open Corporation (Sociedad Anónima or S.A., Sociedad Anónima Cerrada or S.A.C. and Sociedad Anónima Abierta or S.A.A.)

At least an annual obligatory shareholders’ meeting shall be held, within the first three months of every year, in order to approve or reject the balance sheet and the other financial statements of the corporation, the distribution of profits, the appointment of the members of the board of directors (if applicable), among other matters.

In closed stock corporations and, if provided in their bylaws, in regular and in open corporations, the meetings may be held by technological means.

Limited Liability Company (Sociedad de Responsabilidad Limitada or S.R.L.)

At least an annual obligatory partners’ meeting shall be held, within the first three months of every year, in order to approve or reject the balance sheet and the other financial statements of the entity, as well as the distribution of profits.

Branch of a Foreign Legal Entity (Sucursal)

Not applicable to Peruvian branches. The parent company shall comply with the applicable foreign laws.

BOARD OF DIRECTOR MEETING REQUIREMENTS

Corporation, Closed Stock Corporation and Open Corporation (Sociedad Anónima or S.A., Sociedad Anónima Cerrada or S.A.C. and Sociedad Anónima Abierta or S.A.A.)

At least once per year, before the annual obligatory shareholders’ meeting, the board of directors of corporations shall meet. The board meeting may be held by technological means.

Limited Liability Company (Sociedad de Responsabilidad Limitada or S.R.L.)

S.R.L.s do not have board of directors.

Branch of a Foreign Legal Entity (Sucursal)

Not applicable to Peruvian branches. The parent company shall comply with the applicable foreign laws.

ANNUAL COMPANY TAX RETURNS

Corporation, Closed Stock Corporation and Open Corporation (Sociedad Anónima or S.A., Sociedad Anónima Cerrada or S.A.C. and Sociedad Anónima Abierta or S.A.A.)

Files tax returns annually and monthly. Its individual shareholders file annually, if corresponds.

Limited Liability Company (Sociedad de Responsabilidad Limitada or S.R.L.)

Files tax returns annually and monthly. Its individual partners file annually, if corresponds.
Branch of a Foreign Legal Entity *(Sucursal)*

Files tax returns annually and monthly.

**BUSINESS REGISTRATION FILING REQUIREMENTS**

Corporation, Closed Stock Corporation and Open Corporation *(Sociedad Anónima or S.A., Sociedad Anónima Cerrada or S.A.C. and Sociedad Anónima Abierta or S.A.A.)*

Its incorporation, amendments to its bylaws and the appointment and removal of its directors, CEO and other legal representatives must be registered before the Public Registry of Legal Entities of its domicile. Additionally, open corporations and its shares must be registered in the Public Registry of the Securities Market of the Superintendency of the Securities Market *(Registro Público del Mercado de Valores de la Superintendencia del Mercado de Valores)*.

Limited Liability Company *(Sociedad de Responsabilidad Limitada or S.R.L.)*

Its incorporation, amendments to its bylaws, the appointment and removal of its managers and other legal representatives, as well as any transfer of its equity rights must be registered before the Public Registry of Legal Entities of its domicile.

Branch of a Foreign Legal Entity *(Sucursal)*

Its establishment, amendments to its assigned capital and the appointment and removal of its permanent legal representative and other legal representatives must be registered before the Public Registry of Legal Entities of its domicile.

**BUSINESS EXPANSION**

Corporation, Closed Stock Corporation and Open Corporation *(Sociedad Anónima or S.A., Sociedad Anónima Cerrada or S.A.C. and Sociedad Anónima Abierta or S.A.A.)*

If a closed stock corporation turns to have more than 20 shareholders, it shall be transformed into a *sociedad anónima* or S.A. or to a *sociedad anónima abierta* or S.A.A.

If a *sociedad anónima* or S.A. turns to have more than 750 shareholders or more than 35% of its capital is owned by 175 or more shareholders (without considering within this number those shareholders whose individual shareholding does not reach 2 per 1.000 of the capital or exceeds 5% of the capital), it shall be transformed into a *sociedad anónima abierta* or S.A.A.

Limited Liability Company *(Sociedad de Responsabilidad Limitada or S.R.L.)*

Limited to 20 partners. An S.R.L. may not operate in the banking or insurance industry.

Branch of a Foreign Legal Entity *(Sucursal)*

No need to change as business expands.
EXIT STRATEGY

Certain dissolution documents and a final balance sheet must be filed before the competent Public Registry of Legal Entities, after they are published in the Official Gazette and other local newspaper. Additionally, certain forms and documents recorded before the Public Registry of Legal Entities, as well as a final tax return, must be filed before the Peruvian tax authority.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

Not applicable for this jurisdiction.

DIRECTOR / OFFICER REQUIREMENTS

A company must have a legal representative registered before the Peruvian tax authority who must be a Peruvian resident. This is not applicable to directors and other officers.

For more information on directors’ duties, see our Global Guide to Directors’ Duties.

LOCAL CORPORATE SECRETARY REQUIREMENT

Not applicable for this jurisdiction.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

A company must have a legal representative registered before the Peruvian tax authority, who must be a Peruvian resident. This is not applicable to directors and other officers.

LOCAL OFFICE LEASE REQUIREMENT

An entity must have a local address within the Peruvian territory for tax purposes.

OTHER PHYSICAL PRESENCE REQUIREMENTS

Not applicable for this jurisdiction.

SUFFICIENCY OF VIRTUAL OFFICE

A virtual office is not accepted as a legal address by the Peruvian tax authority. However, a virtual office may be
used as a valid address for receiving notifications from the tax authority.

**PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

If agreed by the respective parties, the domicile of a law firm or another third-party service provider may be used as the legal address (fiscal residence) of a specific company.

**PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

Not applicable for this jurisdiction.

**NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS**

Partners or shareholders may be local or foreign. However, they must be registered as such before the Peruvian tax authority. Additionally, a company must have a legal representative registered before the Peruvian tax authority who must be a Peruvian resident. This is not applicable to directors and other officers.

**RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS**

Not applicable for this jurisdiction.

**SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF**

Corporation, Closed Stock Corporation and Open Corporation (*Sociedad Anónima* or S.A., *Sociedad Anónima Cerrada* or S.A.C. and *Sociedad Anónima Abierta* or S.A.A.)

Board of directors: This corporate body has all powers to manage and legally represent the company, except in those matters that the law or the bylaws establish as privative of the shareholders’ meeting. The foregoing does not preclude the representation of the CEO. Consequently, there is not a list of matters submitted to the board of directors; instead, the law defines those matters that can only be agreed by the shareholders given their relevance.

In Peru, directors do not hold the power to represent the company individually. However, the board of directors as a corporate body may delegate some of its powers to the main executives, managers or lawyers of the company; to a director or to a committee of directors; and to other individuals.

Officers: In corporations, the board of directors (or the shareholders’ meeting when there is no board of directors) must appoint a CEO. Unless otherwise provided in the bylaws or expressly agreed by the general
shareholders’ meeting or the board of directors, the CEO is presumed to have sufficient powers to: (i) enter into and execute the ordinary acts and contracts corresponding to the corporate purpose of the company; (ii) represent the company, with the general and special powers provided for in the Code of Civil Procedure and the powers provided for in the Arbitration Law; (iii) attend the meetings of the board of directors and of the shareholders and act as secretary in the same; and, (iv) issue certificates and certifications with respect to the contents of the books and records of the company. Additionally, the shareholders’ meeting and the board may grant additional (or less) powers of attorney to the CEO and other officers.

Shareholders: Each shareholder has 1 vote for each share it owns. At least an annual obligatory shareholders’ meeting shall be held, within the first three months of every year, in order to approve or reject the balance sheet and the other financial statements of the company, the distribution of profits, the appointment of the members of the board of directors (if applicable), among other matters. Other meetings may be held at any time, when required by the company, to decide on any matter that the law or the bylaws provide to the knowledge of the shareholders’ meetings and provided that such matters are indicated in the corresponding citation.

Matters that may be discussed by the general shareholders’ meeting are the following: (i) the removal of the members of the board of directors; (ii) any amendment to the bylaws; (iii) the increase or decrease of the capital stock; (iv) the issuance of debentures; (v) the disposal, in a single act, of assets which book value exceeds 50% of the capital stock of the company; (vi) the execution of special investigations and audits; (vii) the transformation, merger, spin-off, reorganization and dissolution of the company, as well as its liquidation, among others.

Limited Liability Company (Sociedad de Responsabilidad Limitada or S.R.L.)

Determined by the bylaws. In case of silence, rules of the corporations (sociedad anónima or S.A.) will apply.

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

The identity of directors, CEOs and other legal representatives of a company are recorded in the Public Registry of Legal Entities of the company’s domicile. Additionally, the identity of the partners of a S.R.L. are also recorded in such public registry and the identity of the shareholders of an open corporation are registered in Public Registry of the Securities Market of the Superintendency of the Securities Market (Registro Público del Mercado de Valores de la Superintendencia del Mercado de Valores).

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

Minimum number of directors for corporations: 3.

Maximum number of directors for corporations: not applicable.

They must be individuals and either Peruvian or foreign.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED
Corporation (Sociedad Anónima or S.A.)

Minimum number of shareholders: 2.

Maximum number of shareholders: 749.

They may be individuals or legal entities and either Peruvian or foreign.

Closed stock corporation (Sociedad Anónima Cerrada or S.A.C.)

Minimum number of shareholders: 2.

Maximum number of shareholders: 20.

They may be individuals or legal entities and either Peruvian or foreign.

Open corporation (Sociedad Anónima Abierta or S.A.A.)

Minimum number of shareholders: 2.

Maximum number of shareholders: not applicable.

They may be individuals or legal entities and either Peruvian or foreign.

Limited Liability Company (Sociedad de Responsabilidad Limitada or S.R.L.)

Minimum number of partners: 2.

Maximum number of partners: 20.

They may be individuals or legal entities and either Peruvian or foreign.

Branch of a Foreign Legal Entity (Sucursal)

No minimum or maximum requirement for shareholders or partners of the parent company. The parent company is ruled by foreign law.

REMOVAL OF DIRECTORS OR OFFICERS

Directors may be freely removed by the shareholders of a corporation. Removal does not need to affect all of the directors, since the removal of 1 or more of the members of the board is allowed. Officers are freely appointed and removed by the board of directors or by the shareholders’ or partners’ meeting, as applicable.

REQUIRED AND OPTIONAL OFFICERS

The board of directors (and when not applicable, the shareholders’ or the partners’ meeting) shall appoint 1 or more managers. One of them will be the CEO. These corporate bodies are allowed to appoint any additional officers and legal representatives.
BOARD MEETING REQUIREMENTS

Corporation, Closed Stock Corporation and Open Corporation (Sociedad Anónima or S.A., Sociedad Anónima Cerrada or S.A.C. and Sociedad Anónima Abierta or S.A.A.)

Board of directors’ meetings –if the company is administered by a board–.

At least once per year, before the annual obligatory shareholders’ meeting, the board of directors of corporations shall meet. The board meeting may be held by technological means.

Limited Liability Company (Sociedad de Responsabilidad Limitada or S.R.L.)

Not applicable for a Peruvian S.R.L.

Branch of a Foreign Legal Entity (Sucursal)

Not applicable for a Peruvian branch. The parent company shall comply with the applicable foreign laws.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

In corporations (sociedades anónimas or S.A.) and closed stock corporations (sociedades anónimas cerradas or S.A.C.), unless otherwise stated in the bylaws, in first call, the assistance quorum for shareholders’ meetings is 50% of the issued shares with voting rights; and, in second call, any number of issued shares with voting rights, except regarding certain specific matters when, in first call, the assistance quorum is 2/3 of the issued shares with voting rights; and, in second call, 3/5 of the issued shares with voting rights. The resolutions must be adopted by absolute majority of the issued shares with voting rights that attend the meeting, except regarding certain specific matters, when the resolutions must be adopted by the absolute majority of the issued shares with voting rights.

In open corporations (sociedades anónimas abiertas or S.A.A.), unless otherwise stated in the bylaws, in first call, the assistance quorum for shareholders’ meetings is 50% of the issued shares with voting rights; and, in second call, any number of issued shares with voting rights, except regarding certain specific matters when, in first call, the assistance quorum is 50% of the issued shares with voting rights, in second call, 25% of the issued shares with voting rights and in third call, any number of issued shares with voting rights. The resolutions must be adopted by absolute majority of the issued shares with voting rights that attend the meeting.

In limited liability companies (sociedades de responsabilidad limitada or S.R.L.) the assistance quorum and the majority required for the approval of any matter must be specifically regulated in the bylaws.

MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?

Not prior to incorporation. It is mandatory to open a bank account in the Peruvian National Bank (Banco de la Nación).

The supply of certain goods and services -taxed with VAT- are subject to withholding tax. To this regard, the
purchaser or service recipient shall withhold a percentage of the transaction price and deposit such amount within the supplier’s Peruvian National Bank account (Banco de la Nación). It must be noticed that the right of the purchaser or user of the service to offset input VAT related to such goods and services shall be exercised only after the deposit has been made.

Such funds are not free of disposal and they must be used to pay taxes. Under certain conditions, companies are entitled to get the cash back.

**AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?**

Local financials of open corporations and of companies that belong to certain industries must be audited. In case of open corporations, an annual external audit shall be carried out by external auditors registered before the External Audit Firms Registry (Registro de Sociedades de Auditoría Externa).

For all entities, company books must be kept locally.

**REQUIREMENT REGARDING PAR VALUE OF STOCK**

Not applicable for this jurisdiction.

**INCREASING OF CAPITALIZATION IF NEEDED**

Corporation (Sociedad Anónima or S.A.)

Capital is divided into shares and is established in the bylaws. It shall be subscribed and paid, at least, in 25% and, if applicable, the difference shall be cancelled under the conditions stipulated in the bylaws or as agreed by a shareholders’ meeting. If the obliged shareholder does not comply with the applicable conditions, it will not be able to exercise its right to vote with respect to its unpaid shares and such shares will not be computable to form the quorum in the shareholders’ meetings or to determine the majority in voting.

Capital may only be increased or decreased by agreement of the shareholders’ meeting, unless such corporate body delegates a specific agreement regarding those matters to the board of directors. That agreement shall be reflected in an amendment of the bylaws (complying with formal requirements that include the issuance of a public deed and the registration of the latter). Additionally, for the decrease of the capital stock, the corresponding resolution must be published in 3 different opportunities in the Official Gazette and in other local newspaper. If no creditor of the company opposes to such decrease within 30 days of the last publication, then the reduced capital shall be recorded before the Public Registry of Legal Entities of the domicile of the company, after the corresponding public deed is issued.

Likewise, in open corporations the new shares must be registered in the Public Registry of the Securities Market of the Superintendency of the Securities Market (Registro Público del Mercado de Valores de la Superintendencia del Mercado de Valores).

Limited Liability Company (Sociedad de Responsabilidad Limitada or S.R.L.)
Capital is represented by equity rights and is established in the bylaws. The amount of the company’s capital may be increased or decreased by means of an amendment to the company’s bylaws (complying with formal requirements that include a public deed, registration and publications).

Branch of a Foreign Legal Entity (Sucursal)

The parent company must declare the assigned capital of the branch.

In order to increase or decrease the branch’s assigned capital, an agreement of the competent corporate body will be required. The same shall be included in a public deed granted by a Peruvian Notary Public and recorded in the Public Registry of Legal entities of Lima of the domicile of the branch.

**SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)**

Subject to compliance of tax obligations, there is no regulatory restriction to repatriation of funds (i.e., dividends or redemption).

**RESTRICTIONS ON TRANSFERABILITY OF SHARES**

In case of open corporations, the shares may be transferred without limitation. Restrictions to shares’ transfers regulated in their bylaws or in shareholders’ agreements are not enforceable. On the contrary, a right of first refusal applies to closed stock corporations, unless otherwise provided in the bylaws. In case of regular corporations, the shares may be transferred without limitation, except if certain restrictions are established in their bylaws or in shareholders’ agreements.

Regarding limited liability companies, a right of first refusal is always applicable and equity rights may only be transferred by virtue of a public deed that shall be recorded before the Public Registry of the domicile of the corresponding entity.

Additionally, antitrust laws shall be taken into account.

**OBTAINING A NAME AND NAMING REQUIREMENTS**

As a general rule, the name of a company shall be established in the bylaws. The name may be freely agreed by shareholders or partners, but the use of a name may be restricted by companies that already use the same name.

**Corporation (Sociedad Anónima or S.A.)**

The name must include the words “Sociedad Anónima” or the acronym “S.A.”.

**Closed Stock Corporation (Sociedad Anónima Cerrada or S.A.C.)**

The name must include the words “Sociedad Anónima Cerrada” or the acronym “S.A.C.”.
Open Corporation (Sociedad Anónima Abierta or S.A.A.)

The name must include the words “Sociedad Anónima Abierta” or the acronym “S.A.A.”.

Limited Liability Company (Sociedad de Responsabilidad Limitada or S.R.L.)

The name must include the words “Sociedad de Responsabilidad Limitada” or the acronym “S.R.L.”.

Branch of a Foreign Legal Entity (Sucursal)

The competent corporate body of the parent company shall agree the name under which the branch will operate in Peru, which must include the words “Sucursal del Peru”.

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

Required by banks and insurance companies.

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

Except regarding certain regulated industries, no regulatory approval is required for amending charter documents.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

Only required for certain industries (ie, banking, insurance, education, etc.).

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

Not applicable for this jurisdiction.
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FORM OF ENTITY

Subsidiary

A subsidiary is a domestic stock corporation, either wholly or partially owned (but controlled) by a foreign corporation. It has a separate and distinct legal entity from its parent. It is managed by its board of directors, which exercises all corporate powers, conducts all business and controls all property of the corporation.

Directors are elected by the stockholders themselves. Officers are elected by the directors, and they perform the duties imposed on them by law and the bylaws of the corporation.

Branch office

It is an extension of, and not a separate and distinct entity from, the foreign corporation. It carries out business activities of the head office and derives income from the Philippines. A resident agent is designated, to whom summons and other legal processes may be served on behalf of the foreign corporation.

Representative office

It is an extension of, and not a separate and distinct entity from, the foreign corporation. It deals directly with the clients of the head office in the Philippines but does not derive income from the country and is fully subsidized by its head office. A resident agent is designated, to whom summons and other legal processes may be served on behalf of the foreign corporation.

Regional or area headquarters

It is an administrative branch of a multinational company and, thus, not a separate and distinct legal entity. It is established to supervise, communicate and coordinate the multinational company’s subsidiaries, affiliates and branches in the Asia-Pacific region. It is not allowed to do business or derive any income from sources within the Philippines. Its operations must be fully subsidized by way of inward remittances from its head office.

Regional operating headquarters

It is an administrative branch of a multinational company and, thus, not a separate and distinct legal entity. It is established to perform qualifying services to the multinational company’s affiliates, subsidiaries or branches in the
Philippines, the Asia-Pacific region and other foreign markets. It is prohibited from offering its services to entities other than the foregoing. It is also prohibited, directly or indirectly, to solicit or market goods and services on behalf of the multinational company or any of its affiliates or subsidiaries. It is allowed to derive income from sources within the Philippines.

**Partnership**

Partnership has a legal personality separate and distinct from its partners. Generally, each partner is considered an agent of the partnership and their acts are binding, unless otherwise provided in the articles of partnership. A foreign corporation may be a partner in a domestic partnership only after such foreign corporation obtained a license to transact business in the Philippines.

**One Person Corporation**

The Revised Corporation Code (RCC) introduced the new concept of a One Person Corporation (OPC), which is defined as “a corporation with a single stockholder.” This corporation may only be formed by a natural person, trust or an estate. Similar to ordinary corporations, an OPC has no minimum capital stock requirement. Unlike an ordinary corporation, however, an OPC is not required to submit corporate bylaws.

The single stockholder serves as the sole director and president of the OPC. The OPC is required to appoint a treasurer, corporate secretary and other officers as necessary within 15 days from the issuance of its certificate of incorporation. However, the single stockholder is proscribed from being appointed as the corporate secretary.

The single stockholder is required to designate a nominee and an alternate nominee who shall take their place as director in the event of their death or incapacity. The extent and limitations of the authority of the nominee and alternate nominee shall be stated in the articles of incorporation. The nominee and alternate nominee may be changed at any time and without need of amendment of the articles of incorporation.

In case of death or permanent incapacity, the nominee shall sit as director only until the legal heirs of the single stockholder have been lawfully determined, and the heirs have designated 1 of them or have agreed that the estate shall be the single stockholder.

In lieu of meetings, a written resolution signed and dated by the single stockholder and recorded in the minutes book shall be sufficient when action is needed on any matter. Aside from the minutes book, the OPC shall also be required to submit reportorial requirements. Failure to submit such requirements 3 times within a period of 5 years may place the OPC under delinquent status. The reportorial requirements are as follows:

- Annual financial statements
- A report containing explanations or comments by the president on every qualification, reservation or adverse remark or disclaimer made by the auditor in the latter’s report
- A disclosure of all self-dealings and related party transactions and
- Other reports required by the SEC.

The RCC allows the conversion from an ordinary corporation to an OPC and from an OPC to an ordinary stock corporation. An ordinary stock corporation may be converted to an OPC when the single stockholder acquires all
the stocks of an ordinary stock corporation and files an application for conversion with the SEC. An OPC may be converted into an ordinary stock corporation after due notice to the SEC of such fact and of the circumstances leading to the conversion. One such circumstance provided by the law is the death of the single stockholder. In such a case, the legal heirs may decide to either wind up and dissolve the OPC or convert it into an ordinary stock corporation.

**ENTITY SET UP**

**Subsidiary**

- Two or more persons (but not exceeding 15) must act as incorporators and sign the articles of incorporation of the subsidiary.

- Any person, partnership, association or corporation singly or jointly may organize a corporation for any lawful purpose. Previously, only natural persons may act as incorporators. The Revised Corporation Code has removed the minimum requirement of 5 incorporators, but has retained 15 as the maximum number of incorporators. The SEC rules, however, provide that the minimum number of incorporators is 2 (except for OPC which is one).

- No more than 15 natural persons should act as directors.

- There is no limitation on the number of shareholders. However, if the subsidiary would sell/issue shares of stock to more than 19 persons during a 12-month period, it must register its securities with the Philippines Securities and Exchange Commission (SEC). If the issuance would be to fewer than 20 persons (who are not existing shareholders) in a 12-month period, in lieu of registration, a notice of exemption may be filed with the SEC.

- Generally no personal liability of shareholders.

- Taxed at 30 percent of its taxable income from all sources within and without the Philippines or, beginning on the 4th taxable year, immediately following the year in which such corporation commenced its business operations, 2 percent of its gross income from all sources within and without the Philippines, whichever is higher. The Philippines is presently implementing tax reform in phases and expects to pass a new tax reform bill which will lower the corporate income tax rate. Dividends received by a nonresident foreign corporation from a Philippines subsidiary are subject to 30-percent withholding tax, subject to reduction pursuant to applicable tax treaties or to the dividends tax sparing rate of 15 percent under domestic law, subject to conditions.

- Typical charter documents: articles of incorporation and bylaws.

- Shares are either common (always voting) or preferred (voting or non-voting).

- Reportorial requirements to be submitted to the SEC annually, including audited financial statements (AFS).

**Branch office**

- As an extension of its head office/foreign parent, the liabilities of the branch are deemed liabilities of the
head office.

- May operate only with a resident agent, who may also be the general manager, as its officer.

- Taxed at 30 percent of its taxable income or, beginning on the 4th taxable year immediately following the year in which such corporation commenced its business operations, 2 percent of its gross income, whichever is higher, from Philippine sources only. There is also a 15-percent branch profit remittance (to head office) tax.

- Reportorial requirements to be submitted to the SEC annually, including AFS.

**Representative office**

- As an extension of its head office/foreign parent, the liabilities of the representative office are deemed liabilities of the head office.

- May operate only with a resident agent.

- Not obligated to pay income tax, value added tax or local business taxes as it derives no income from the Philippines. Local government units, however, require the payment of fees for certain services provided to its constituents who conduct business within its jurisdiction.

- Reportorial requirements to be submitted to the SEC annually, including AFS.

**Regional or area headquarters**

- As an administrative branch of its head office/foreign parent, the liabilities of the regional or area headquarters are deemed liabilities of the head office.

- Not allowed to participate in any manner in the management of any subsidiary or branch that it might have in the Philippines.

- Granted tax incentives and benefits such as exemption from corporate income tax, and local taxes, fees or charges except real property tax on land improvements and equipment. It is subject to value-added tax except when the regional or area headquarters were already enjoying VAT exemption as of January 1, 2018.

- Reportorial requirements to be submitted to the SEC annually, including AFS.

**Regional operating headquarters**

- As an administrative branch of its head office/foreign parent, the liabilities of the regional operating headquarters are deemed liabilities of the head office.

- Subject to a tax rate of 10 percent of its taxable income and is subject to value-added tax. It is entitled to tax incentives such as exemption from local taxes, fees, or charges imposed by a local government unit except real property tax on land improvements and equipment.
• Reportorial requirements to be submitted to the SEC annually, including AFS.

Partnership

• At least 2 persons binding themselves to contribute money, property or industry to a common fund, with the intention of dividing the profits between/among themselves. A foreign individual or foreign company may be a partner in a domestic partnership. A foreign company must obtain a license to transact business in the Philippines from the SEC to be a general partner. No such license is required for a limited partner (foreign partner entered the partnership for investment purposes only and in no case will it participate in the management and control of the business operation).

Partners are liable pro rata with all their property and, after all the partnership assets have been exhausted, for contracts entered into in the name and for the account of the partnership.

• Generally, every partner is an agent of the partnership, and the act of every partner binds the partnership. The articles of partnership is the contract or agreement of the partnership.

• A partnership is taxed as a corporation and is thus subject to regular corporate income tax of 30 percent of its taxable income. Since a partnership is taxed as a corporation, the tax rate might be reduced in light of the pending tax reforms in the Philippines, as indicated above.

Note: Under the Foreign Investment Act of 1991 (FIA), 100-percent foreign equity may be allowed in all areas of investment, except those reserved wholly or partially to Filipino citizens, by mandate of the Philippine Constitution and other existing laws. The Foreign Investment Negative List (FINL) indicates the industries where foreign equity is restricted.

MINIMUM CAPITAL REQUIREMENT

Subsidiary

USD200,000 equity capital for domestic market enterprise, or USD100,000 paid-in capital, if:

• Involved in advanced technology as determined and certified by the Philippines' Department of Science and Technology (DOST) or

• Employs at least 50 direct employees (Filipino personnel) as certified by the appropriate regional office of the Department of Labor and Employment (DOLE).

• Above minimum capitalization requirement is not applicable if the subsidiary intends to export more than 60 percent of its products, in which case the company will be incorporated as an export market enterprise.

Branch office

• USD200,000 equity capital for domestic market enterprise

• USD100,000 paid-in capital if:
  ○ Involved in advanced technology as determined and certified by the DOST or
Employs at least 50 direct employees (Filipino personnel) as certified by the appropriate regional office of the Department of Labor and Employment (DOLE)

- Above minimum capitalization requirement is not applicable if the subsidiary intends to export more than 60 percent of its products

- The Revised Corporation Code has removed the prescribed minimum paid-up capital requirement of PHP5,000. However, for certain corporations regulated by special laws which prescribe a minimum capitalization, such minimum capitalization will continue to apply. Further, if the branch will engage in business as a domestic market enterprise (ie, not for export) it is required to comply with the USD200,000 (or USD100,000) minimum capital discussed above.

- In addition to the minimum capital requirement, the branch must deposit with the SEC acceptable securities with market value of PHP500,000

- Within 6 months after each fiscal year, the branch must deposit additional securities equivalent in market value to 2 percent of its gross income in excess of PHP10 million

**Representative office**

Initial remittance of at least USD30,000. This is a one-time remittance requirement, but the representative office is fully subsidized by the head office.

**Regional or area headquarters**

Annual inward remittance of at least USD50,000.

**Regional operating headquarters**

Initial remittance of USD200,000. This is a one-time remittance requirement.

**Partnership**

- USD200,000 equity capital for domestic market enterprise

- USD100,000 paid-in capital if:
  - Involved in advanced technology as determined by the DOST or
  - Employs at least 50 direct employees (Filipino personnel).

- Above minimum capitalization requirement is not applicable if the partnership intends to export more than 60 percent of its products

**LEGAL LIABILITY**

**Subsidiary**

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A corporation has a personality separate and distinct from its individual stockholders. Liability of stockholders is limited only to the extent of their capital contribution. However, the privilege of being considered as a separate and distinct entity is confined to limited uses. Should this be exercised for fraudulent, unfair or illegal purposes (e.g., to evade taxes, escape liabilities to third parties, confuse legitimate issues of employer-employee relationship, protect fraud), the veil of corporate entity may be pierced, and the stockholder may then be held personally liable.

Partnership

Partners are liable pro rata with all their property and, after all the partnership assets have been exhausted, for contracts entered into in the name and for the account of the partnership.

All other entity types

Liability of an entity type is deemed to be a liability of the head office.

**TAX PRESENCE**

**Subsidiary**

- Subject to corporate income tax for income from sources within and outside the Philippines.
- Also subject to value-added tax (VAT) for gross receipts derived from sale, barter or exchange of goods or properties/services rendered in the Philippines.
- Also subject to local business taxes.
- Dividends received by the foreign entity/head office from its subsidiary are subject to withholding tax without prejudice to applicable treaties and domestic law provision, allowing the dividends tax sparing rate of 15 percent subject to conditions.

**Branch office**

- Subject to income tax from sources within the Philippines
- Subject to VAT and local business taxes
- Subject to branch profit remittance tax

**Representative office**

Not subject to income tax, VAT or local business taxes as it is not allowed to earn income from the Philippines.

**Regional or area headquarters**

Not subject to corporate income tax or local business taxes, but subject to VAT.

**Regional operating headquarters**
Subject to income tax and VAT but not subject to local business taxes except real property taxes on land improvements and equipment.

**Partnership**

Subject to regular corporate income tax, VAT and local business taxes.

**INCORPORATION PROCESS**

To apply for incorporation, the incorporators must access online [https://crs.sec.gov.ph](https://crs.sec.gov.ph) and fill out an application form. The availability of the name is verified online by filing the application. The required documents are uploaded to the SEC system and, upon approval, an email is sent to the applicant. Upon payment of fees and presentation of proof of payment, the applicant then submits the original signed and notarized documents to the SEC onsite.

**Subsidiary**

File the following with the SEC:

- Articles of incorporation and bylaws
- Name verification slip (reserving a corporation name) and
- Treasurer’s Affidavit (please see note)

Note: Pursuant to the Revised Corporation Code, the corporation is now required to declare in its articles of incorporation that the treasurer-in-trust has certified that the information with respect to the capital structure of the corporation is correct and that the paid-up portion of the subscription in cash for the benefit and credit of the corporation has been duly received. This declaration removes the requirement of a Treasurer’s Affidavit. We note, however, that the SEC has yet to issue guidelines on incorporation requirements pursuant to these changes brought about by the Revised Corporation Code.

Further to this, a certificate of deposit issued by a bank showing that the paid-up capital portion of the authorized capital stock is duly deposited in this bank is generally not required by the SEC. However, the deposit must be completed and available to be in compliance with applicable law. It is recommended to obtain the bank certificate for ease of processing of the incorporation.

Basic filing fee in the amount of 1/5 of 1 percent of the authorized capital stock of the proposed company or the subscription price of the subscribed capital stock, whichever is higher, plus an additional amount of 1 percent of the basic filing fee for legal research fund, which in no case should be less than PHP2,000.

**Branch office**

File the following with the SEC:

- Application form
- Name verification slip
• Apostilled copy of the board resolution authorizing the establishment of a branch, designating the resident agent and stipulating that, in the absence of such agent or upon cessation of its operations in the Philippines, any summons or legal processes may be served to SEC as if the same is made upon the corporation at its home office.

• Apostilled copy of the financial statements as of a date not exceeding 1 year immediately prior to the application, certified by an independent Certified Public Accountant of the home country.

• Apostilled copy of the articles of incorporation with an English translation if in a language other than English.

• Proof of inward remittance, such as a bank certificate of inward remittance.

• Resident agent’s acceptance of appointment (not required if agent is the signatory in the application form).

• Affidavit executed by the resident agent stating that the applicant is solvent and in sound financial condition and

• Endorsement/clearance from other government agencies, if applicable.

The filing fee is 1 percent of the actual inward remittance of the corporation converted into Philippine currency, but not less than PHP3,000.

Representative office

Same requirements as for a branch office.

Filing fee is 1/10 of 1 percent of the actual inward remittance of the corporation into Philippine currency, but not less than PHP3,000.

Regional or area headquarters

File the following with the SEC:

• Application form

• Name verification slip

• Certification from the Philippine Consulate/Embassy or the Philippine Commercial Office or from the equivalent office of the Philippine Department of Trade and Industry in the applicant’s home country that the said foreign firm is an entity engaged in international trade with affiliates, subsidiaries or branch offices in the Asia Pacific and other foreign markets.

• Apostilled copy of the certification from the principal officer of the foreign entity that the said foreign entity has been authorized by its board of directors or governing body to establish its regional or area headquarters of regional operating headquarters in the Philippines.

• Affidavit of undertaking to change corporate name (not required if already stated in the application form).
• Endorsement of the Board of Investments and

• Endorsement/clearance from appropriate government agencies, if applicable.

Filing fee is PHP5,000, plus 1 percent of the filing fee.

Regional operating headquarters

Same requirements as for a regional or area headquarters.

Filing fee is 1 percent of the actual remittance but not less than 1 percent of peso equivalent of PHP200,000 at the time of remittance.

Partnership

File the following with the SEC:

• Name verification slip

• Articles of partnership

• Joint affidavit of 2 partners to change partnership name (not required if already stated in the articles of partnership)

• Endorsement/clearance from other government agencies, if applicable and

• Foreign Investment Act Form 105.

Filing fee of 1/5 of 1 percent of the partnership's capital but not less than PHP2,000 plus 1 percent of the amount as a legal research fee.

BUSINESS RECOGNITION

Subsidiary

Being a separate and distinct legal entity from its parent company, it is an attractive investment option for foreign entities wishing to do business in the Philippines.

Branch office

Appeals to entities that wish to maintain the decision making as being centralized with the foreign company’s board of directors (or its equivalent) abroad.

Representative office

Caters to entities that do not intend to engage in business or derive income from the Philippines. It is allowed to undertake limited activities, such as information dissemination, promotion of the home office/foreign company's products and quality control.
Regional or area headquarters

Caters to entities that do not intend to engage in business or derive income from the Philippines. The purpose of a regional or area headquarters is limited to supervising, superintending, inspecting and/or coordination all subsidiaries, affiliates and branches in the Asia-Pacific region of the home office/foreign company. It is an administrative branch and is not allowed to participate in the management of any subsidiary/branch office the foreign company may have; it also cannot solicit or market goods and services.

Regional operating headquarters

Caters to entities that wish to avail of certain tax incentives. Unlike a regional or area headquarters, it may derive income from the Philippines and perform qualifying services such as general administration and planning, business planning and coordination, sourcing/procurement of raw materials/components, marketing control and sales promotion, training and personnel management, logistic services and corporate finance advisory services.

Partnership

Easier to form since it will no longer go through an incorporation process and only articles of partnership would be required. No need to obtain a license to do business in the Philippines if a foreign company intends to be a limited partner (as opposed to a general partner, which is required to secure such license).

Instead of having directors and officers elected/appointed to perform certain activities and exercise powers, its partners may perform acts which would bind the partnership.

SHAREHOLDER MEETING REQUIREMENTS

Generally not applicable. Exception is a subsidiary where it is required to hold an annual stockholders' meeting to vote on certain matters, such as election of directors.

BOARD OF DIRECTOR MEETING REQUIREMENTS

Generally not applicable. Exception is a subsidiary where regular meetings of the board of directors must be held monthly, unless bylaws provide otherwise.

ANNUAL COMPANY TAX RETURNS

It is required to file an annual income tax return for subsidiaries, branch offices, regional operating headquarters and partnerships.

Representative offices and regional/area headquarters are also required to file an annual income tax return and no income must be declared.

BUSINESS REGISTRATION FILING REQUIREMENTS

Must secure business permits from the local government unit where it is located and register with the Bureau of
Internal Revenue (BIR), Social Security System (SSS), Philhealth and Pag-Ibig.

BUSINESS EXPANSION

Generally not applicable. Exception is a subsidiary where articles of incorporation must be amended and filed with the SEC when authorized capital stock is increased.

EXIT STRATEGY

Subsidiary

A voluntary dissolution may be effected by amending the articles of incorporation to shorten the corporate term or provide for a fixed corporate term. This requires a majority vote of the board of directors ratified by stockholders owning at least 2/3 of the outstanding capital stock. Company is deemed dissolved upon approval of the amended articles of incorporation by the SEC. Under the RCC, corporations have a perpetual existence unless the articles of incorporation provide otherwise.

A voluntary dissolution where no creditors are affected may be effected by a majority vote of the board of directors and by a resolution duly adopted by the affirmative vote of the stockholders owning at least 2/3 of the outstanding capital stock. A notice of stockholders’ meeting is required to be published for 3 consecutive weeks in a newspaper published in a location where the principal office of a company is located. In case none is available, then in a newspaper of general circulation. The application for dissolution must be submitted to the SEC.

Voluntary dissolution where creditors are affected: file Petition for Dissolution with the SEC.

File necessary documents with other government agencies where the subsidiaries hold permits/registrations.

Partnership

File Articles of Dissolution or Affidavit of Dissolution with the SEC, and cancellation of local business permit and BIR registration, including registrations with other applicable government agencies such as the Social Security System, Philippine Health Insurance Corporation and Home Development and Mutual Fund.

All other entity types

File a Petition for Withdrawal of License with the SEC, cancellation of business permit from the local government and cancellation of BIR registration, including registrations with other applicable government agencies such as the Social Security System, Philippine Health Insurance Corporation and Home Development and Mutual Fund.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

General Information Sheet (GIS) and AFS stamped "received" by the BIR to be submitted annually to the SEC. The BIR annual registration form/fee must be filed/paid on or before January 31 of every year. The mayor’s permit (from LGUs) must be renewed before January 20 of each year.

In case of a partnership, only the BIR annual registration form/fee must be filed/paid on or before January 31 of
every year. The mayor’s permit (from LGUs) must be renewed before January 20 of each year.

**DIRECTOR / OFFICER REQUIREMENTS**

Generally not applicable.

As an exception in subsidiary, there must be:

- No more than 15 directors, each of whom must own at least 1 share in the capital stock of the corporation registered in their name in the books of the company.

- At least 3 officers:
  - President, who must be a director
  - Treasurer, who must be a Philippine resident and
  - Secretary, who must be a resident and citizen of the Philippines.

Note: No person may be president and secretary, or president and treasurer, at the same time.

**LOCAL CORPORATE SECRETARY REQUIREMENT**

Not applicable in general. Exception is a subsidiary that must have a secretary, who must be a resident and a citizen of the Philippines. The OPC is also required to have a secretary.

**LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT**

Generally, a resident agent is required.

As an exception for a subsidiary, only the 3 officers mentioned above are mandatory. The OPC is also required to have a secretary. The single stockholder may also act as treasurer.

Not applicable for a partnership.

**LOCAL OFFICE LEASE REQUIREMENT**

It is required to indicate a local principal office address. A lease contract/accommodation letter is a requirement when applying for a business permit.

**OTHER PHYSICAL PRESENCE REQUIREMENTS**

Not applicable for this jurisdiction.
SUFFICIENCY OF VIRTUAL OFFICE

Not applicable for this jurisdiction.

PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Not applicable for this jurisdiction.

PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Generally not applicable. Exception is a subsidiary and OPC where there is no prohibition.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

Not applicable in general.

There are some exceptions:

Subsidiary

Not more than 15 incorporators. Number of foreigners allowed to be incorporators would depend on the restrictions under the FIA, Philippine Constitution and other relevant laws.

Not more than 15 directors. If business activity is partly nationalized, number of seats for foreigners on the board of directors is measured by a proportion of their present foreign equity to the number of directors as stated in the articles of incorporation. Additionally, the number of their seats should not exceed the proportion of the allowable foreign equity to the number of directors in the articles of incorporation in accordance with the Anti-Dummy Law.

Nationality of shareholders depends on the classification of the business entity (partly nationalized, 100 percent foreign or reserved for Filipinos).

Partnership

Subject to allowable foreign partners’ interest under the FINL.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Not applicable in general. Exception is a subsidiary where a nominee shareholder should comply with nationality requirement (if the corporation is subject to foreign equity restrictions). Each director must own at least 1 share.
in the corporation to qualify as director.

**SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF**

Generally not applicable.

Exception is a subsidiary where directors exercise all corporate powers, conduct all business and control all property of the corporation. Officers exercise powers granted to them by law and the corporation’s bylaws. Their acts are limited by instances when approval and/or ratification of the stockholders is necessary as provided by the Revised Corporation Code of the Philippines (e.g., to amend articles of incorporation and bylaws, extend/shorten corporate term, increase/decrease capital stock, declaration of stock dividends).

**PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS**

Yes, because the names and nationalities of the directors, officers and top 20 stockholders must be indicated in the GIS, which is available to the public upon request. Further, pursuant to recent regulations by the SEC, the beneficial owners of the shares of a local corporation and beneficial owners of SEC registered foreign corporations are required to be disclosed in the GIS. The beneficial ownership page, however, is not accessible by the public. In relation to this, the SEC has also issued Guidelines in Preventing the Misuse of Corporation for Illicit Activities through Measures Designed to Promote Transparency of Beneficial Ownership (Guidelines). The Guidelines require incorporators/shareholders/directors or trustees to disclose their principals or persons on whose behalf the registration was applied for. The disclosure includes the full names, country of residence, nationality, tax identification numbers (TIN) or passport numbers of the nominators or principals. If the nominator or principal is a corporation, the disclosure must contain the registered name of the corporation, its country of registration, names of its incorporators and directors, its beneficial owners, and its TIN. This information is not accessible to the public.

Not applicable for partnerships.

**MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS**

Generally not applicable.

Exception is a subsidiary where the requirement is as follows:

- Directors: minimum of 2 and maximum of 15.
- Shareholders: depending on nationality requirements.

**MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

Not applicable in general.
REMOVAL OF DIRECTORS OR OFFICERS

Generally not applicable.

Exception is a subsidiary where a director can be removed from office by a vote of the stockholders representing at least 2/3 of the outstanding capital stock. Removal of officers is governed by the bylaws.

REQUIRED AND OPTIONAL OFFICERS

Subsidiary

Required: president, treasurer and secretary.

OPC

Required: treasurer and secretary. The single shareholder is the sole director and president of the OPC. They may also act as the treasurer, but they cannot be the secretary.

Branch office, representative office, regional or area headquarters and regional operating headquarters

Required: resident agent.

Partnership

Not applicable.

BOARD MEETING REQUIREMENTS

Not applicable in general.

Exception is a subsidiary where a notice (date, time, place, agenda) and presence of a quorum is required.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

Generally not applicable.

Exception is a subsidiary:

- Majority of a board of directors as provided in the articles of incorporation, unless otherwise provided in bylaws and

- Stockholders representing a majority of the outstanding capital stock, unless otherwise provided in bylaws.

MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?
AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?

Generally, AFS is required to be submitted annually to the BIR and the SEC.

Subsidiary

If paid-up capital is PHP50,000 or more, the auditor must be accredited by the Board of Accountancy. Books must be kept locally.

Branch office

If assigned capital is PHP1 million or more, auditor must be accredited by the Board of Accountancy.

Representative office

Local auditor/keeping of books locally not required. Should not earn income in the Philippines.

Regional or area headquarters

Local auditor/keeping of books locally not required. Should not earn income in the Philippines.

Regional operating headquarters

If total revenue is PHP1 million or more, auditor must be accredited by the Board of Accountancy.

Partnership

Books must be kept locally (principal office).

REQUIREMENT REGARDING PAR VALUE OF STOCK

Generally not applicable.

Exception is a subsidiary where any or all of shares or series of shares may have a par value or have no par value as may be provided for in the articles of incorporation, except for banks, trust companies, insurance companies, public utilities and building and loan associations (not permitted to issue no-par value shares of stock).

INCREASING OF CAPITALIZATION IF NEEDED

Generally not applicable.

Exception is a subsidiary where such increase requires approval by majority vote of the board of directors and
shareholders representing 2/3 of the outstanding capital stock. Articles of incorporation must be amended and filed with the SEC.

**SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)**

**Subsidiary**

Dividends paid by the subsidiary to the head office/parent foreign corporation, subject to presence of sufficient unrestricted retained earnings.

Capital can be repatriated after dissolution and liquidation of the subsidiary. The capital to be repatriated cannot be denominated in pesos. To be able to source foreign currency through the banking system, the foreign company must secure a Bangko Sentral Registration Document (BSRD) to register its foreign equity investments with the Bangko Sentral ng Pilipinas (BSP). The registration is optional but must be done within 1 year from the date of inward remittance. Without a BSRD, foreign currency has to be sourced outside the banking system.

**Branch office**

Branch profit remittance.

Remaining assigned capital may be repatriated after withdrawal of license has been issued by the SEC and upon proper liquidation.

To be able to repatriate capital through the banking system, the company must have a BSRD, as discussed above.

**Representative office**

Remaining assigned capital may be repatriated after withdrawal of license has been issued by the SEC and upon proper liquidation.

To be able to repatriate capital through the banking system, the company must have a BSRD, as discussed above.

**Regional or area headquarters**

Remaining assigned capital may be repatriated after withdrawal of license has been issued by the SEC and upon proper liquidation.

To be able to repatriate capital through the banking system, the company must have a BSRD, as discussed above.

**Regional operating headquarters**

Dividends.

Remaining assigned capital may be repatriated after withdrawal of license has been issued by the SEC and upon proper liquidation.

To be able to repatriate capital through the banking system, the company must have a BSRD, as discussed above.
Partnership

Dividends.

Remaining profits may be repatriated after dissolution and winding up of the partnership.

To be able to repatriate capital through the banking system, the company must have a BSRD, as discussed above.

REstrictions on Transferability of Shares

In subsidiaries, transfer of ownership of shares must comply with nationality requirements, if applicable. Other restrictions may be provided in the articles of incorporation and/or bylaws, such as right of first refusal, put and call option and tag along rights.

Such restriction is not applicable for all other entity types.

Obtaining a Name and Naming Requirements

Proposed name must be verified and reserved with the SEC to ensure that it is distinguishable from names which are already reserved or registered for use by another corporation, or from names already protected by law, or that its use is not contrary to existing law, rules and regulations. The RCC now requires corporations to manifest its willingness to change its corporate name, immediately upon receipt of notice or directive from the SEC that another corporation, partnership or person has acquired a prior right to the use of such name or that the name has been declared as misleading, deceptive, confusingly similar to a registered name or contrary to public morals, good customs or public policy.

Entity’s name must end with “Corporation,” “Corp.,” “Incorporated” or “Inc.”

Summary of "Know Your Client" Requirements

In compliance with the Anti-Money Laundering Act of 2001, a bank is covered by the "Know-Your-Customer" Rule of the BSP and is obligated to implement procedures that would properly identify/verify the existence of its clients. As such, the foreign company must comply with the bank’s procedure/requirements to be able to open an account/remit the necessary funds to set up its business in the Philippines.

Approval Requirements for Amending Charter Document

Subsidiary

Amendment of articles of incorporation: majority vote of the board of directors and vote or written assent of stockholders representing at least 2/3 of the outstanding capital stock, unless a higher vote is required under the bylaws

Amendment of bylaws: majority vote of the board of directors and vote of stockholders representing at least a majority of the outstanding capital stock, unless a higher vote is required under the bylaws
In a partnership, it is governed by the articles of partnership.

Not applicable for branch offices, representative offices, regional/area headquarters or regional operating headquarters.

**LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

**Subsidiary**

Certificate of incorporation issued by the SEC; registration/permits/licenses issued by the BIR, local government unit and other government agencies, as applicable.

**Partnership**

Certificate of registration issued by the SEC; registration/permits/licenses issued by the BIR, local government unit and other government agencies, as applicable.

**All other entity types**

License to Transact Business in the Philippines issued by the SEC; registration/permits/licenses issued by the BIR, local government unit and other government agencies, as applicable.

**PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY**

Purchase of shares of a shelf company is subject to payment of applicable capital gains tax and documentary stamp tax, and application for a BIR Certificate Authorizing Registration. When a shelf company becomes 100-percent foreign-owned, it is subject to FIA registration and minimum capitalization requirements, as previously discussed.

**KEY CONTACTS**

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View bio
POLAND

FORM OF ENTITY

Foreign companies can conduct business activity in Poland in forms similar to those that can be found in other European countries. These include:

- Commercial companies (limited liability companies and joint-stock companies, in the future also simplified joint-stock companies)
- Partnerships (general partnerships, professional partnerships, limited partnerships and limited joint-stock partnership)
- Branch offices of foreign companies
- Representative offices of foreign companies

ENTITY SET UP

Partnerships

General partnership (Spóka jawna, sp. j.)

- A partnership which runs an enterprise under its own business name and is not any other commercial partnership
- Has no legal personality of its own, which means that partners bear joint and several liability for the obligations of the partnership
- In general, each partner may represent the partnership and manage its affairs (unless otherwise specified in the deed of partnership)
- Decisions regarding management of the partnership are made at partner meetings
- No share capital requirements exist
Professional partnership (Spóka partnerska, sp. p.)

- Runs an enterprise under its own business name
- Formed for the purpose of practicing 1 or more freelance professions
- Partners may only be natural persons and must be licensed to practice a freelance profession, as defined by Polish law (ie, advocates, pharmacists, architects, building engineers, expert auditors, insurance brokers, tax consultants, securities brokers, investment advisers, accountants, physicians, dental surgeons, veterinary surgeons, notaries, nurses, midwives, legal counsels, patent agents, property experts and sworn translators)
- Partners are not liable for actions or omissions of other partners or personnel supervised by other partners
- Partners may appoint a management board to run and represent a partnership

Limited liability partnership (Spóka komandytowa, sp. k.)

- An enterprise under its own business name
- At least 1 partner (general partner) has unlimited liability for the partnership’s obligations towards the partnership’s creditors and at least 1 partner (limited partner) has limited liability in this respect
- Business name of a limited partnership must include surname(s) of 1 or more of general partners and an additional designation of "spóka komandytowa"

Limited joint-stock partnership (Spóka komandytowo-akcyjna, SKA)

- An enterprise under its own business name
- Considered to be a partnership, whilst incorporating elements of a joint-stock company (eg, it has a general meeting and a supervisory board – the latter only being mandatory in respect of larger enterprises)
- At least 1 partner (general partner) has unlimited liability towards partnership's creditors and at least 1 partner is a shareholder
- Initial capital is at least PLN50,000
- There must be at least 2 partners: 1 general partner and 1 limited partner

Corporations (commercial companies)

Limited liability company (Spóka z ograniczon odpowiedzialnoci)

- One or more shareholders (some restrictions re-establishment by a sole shareholder described below)
- PLN5,000 minimum share capital
• Liability limited to share capital

• Procedures of formation and dissolution prescribed by statute

• Most popular legal entity form in Poland

• Represented by its management board

• May be required to appoint a supervisory board (if share capital exceeds PLN500,000 and number of shareholders exceeds 25)

*Joint-stock company (Spółka akcyjna)*

• 1 or more shareholders

• PLN100,000 minimum share capital

• Liability limited to share capital

• Generally suited for a larger number of shareholders

• Stocks fungible and can be traded on stock markets

• Shares must have dematerialized form from 1 March 2021

• Represented by its management board

• Obligatory supervisory board and/or audit committee

*Simplified joint-stock company (Prosta spółka akcyjna)*

• Planned effective date of regulation – July 2021

• 1 or more shareholders

• PLN1 minimum share capital

• Liability limited to share capital

• Generally suited for a startup project

• Stocks cannot be traded on stock markets

• Represented by its management board or the board of directors

• Supervisory board not obligatory
Branches and representative offices of a foreign company

Branches

- May only conduct business activity of the same scope as that conducted by the foreign parent company in its home state
- Must be registered with the relevant registry court
- Must conduct business under a business name which includes the business name of the parent company as well as the designation "branch"
- Separate books and accounts must be kept in Polish and in PLN by the branch

Representative offices

- May only conduct promotion and advertising activity in Poland for the benefit of the foreign parent company (no sale of products or services in Poland is permitted)
- Must be entered in a register of foreign representative offices (with exceptions made for banks and credit institutions)
- Must include business name of the foreign parent company and a designation "representative office" in its name
- Registration needs to be renewed every 2 years

MINIMUM CAPITAL REQUIREMENT

PLN5,000 for limited liability companies, PLN100,000 for joint-stock companies, PLN1 for simplified joint-stock companies and PLN50,000 for limited joint-stock partnerships. No limits exist in respect of other organizational forms.

As of March 1, 2021, all shares in non-public joint-stock companies and limited joint-stock partnerships are subjected to general and mandatory dematerialization. Shares in these entities can no longer exist in paper form but must instead exist as a digital record (ie, dematerialized form).

Mandatory dematerialization generates numerous obligations for joint-stock companies, in particular the companies are obliged to conclude an agreement with the external entity responsible for handling the register of shares.

LEGAL LIABILITY

Generally, shareholders of limited liability companies, simplified joint-stock companies and joint-stock companies are not liable towards creditors if share contribution has been paid in full, with exceptions provided for the by statute (inter alia, in certain cases at the stage of incorporation of the company, prior to registration in the
business register, shareholder may be liable when acting in the name of the company).

Partners in partnerships are jointly and severally liable for all liabilities of the partnership, with 2 exceptions:

- Partners in professional partnerships are generally not liable for the actions or omissions of other partners and/or personnel supervised by those other partners

- Limited partners in limited liability partnerships and limited joint-stock partnerships are liable only up to the amount they have paid in as a contribution.

Liability in respect of branches and representative offices is generally borne by their founding entities.

**TAX PRESENCE**

Corporations are subject to Polish taxes, including corporate income tax (19 percent), VAT on goods and services provided (different rates up to 23 percent) and personal income tax on dividends paid out (19 percent). Special conditions apply to branches and representative offices because they do not constitute separate legal entities under Polish law.

Partnerships (except limited partnerships and limited joint-stock partnerships) are exempt from corporate income tax – income tax is only paid by the partners.

**INCORPORATION PROCESS**

**Corporations**

In respect to limited liability companies, the prospective shareholders generally must first execute articles of association in the form of a notarial deed. Such incorporation document must specify:

- Business name and registered office of a company

- Type of business activity to be conducted by the company

- Amount of share capital

- Whether a shareholder can possess more than 1 share

- Number and nominal value of shares taken up by respective shareholders

- and Term of a company (if it is not indefinite)

Similar requirements are in case of joint-stock companies subject to some additional requirements regarding their incorporation document – statute.

Then shareholders should pay their contributions to the company. After the management board is appointed (and a supervisory board or audit committee if required by the articles of association or the applicable law), the company must be entered in the business register. Similar requirements apply to limited joint-stock partnerships –
subject to variations provided for in Polish law.

It is possible to register limited liability companies online.

**Partnerships**

A similar process applies to partnerships – articles of association (in different form depending on partnership) must be executed by the partners (some elements of which are prescribed by law and differs depending on the partnerships), and then the entity must be entered in the business register.

It is possible to register some partnerships online.

**Branches**

The founding foreign company must decide, usually by means of a management board resolution (although this depends on the legal requirements in the foreign company’s home state), to establish a branch, which must then be entered in the business register.

**BUSINESS RECOGNITION**

**Limited liability, joint-stock companies and simplified joint-stock companies**

A limited liability company is the most popular organizational form for doing business in Poland, whilst joint-stock companies are typically used to serve large, complex and multi-service undertakings. It is envisaged that simplified joint-stock companies will be used for start-up projects.

**Partnerships**

Partnerships are more popular among freelance professions, in family businesses and in undertakings founded upon mutual trust between the partners.

**Branches**

Branches are set up by foreign companies that do not wish to have a full-scale presence in the country through a separate Poland-based entity.

**SHAREHOLDER MEETING REQUIREMENTS**

With respect to commercial companies and limited joint-stock partnerships, at least 1 shareholders’ meeting (general meeting) must be held each year, within 6 months after the end of the previous financial year, to vote on and adopt resolutions on matters, such as distribution of profit or coverage of losses, granting approval of duties performance by members of the entity’s bodies and approving financial statements of the entity for the previous financial year.

No such requirements apply to other partnerships, branches or representative offices.

In case of joint-stock companies and limited liability companies, the shareholders may participate in a shareholder meeting (general meeting) also with the use of electronic communication means, unless the articles of association
provides otherwise. The person convening the meeting shall decide on holding the meeting on-line. The supervisory board, and in the absence thereof, shareholders, must set out the rules of participation in the shareholder meeting (general meeting) with the use of electronic communication means.

A public joint-stock company are obliged to ensure the broadcast of the general meeting in real time.

**BOARD OF DIRECTOR MEETING REQUIREMENTS**

In limited liability companies, joint-stock companies and limited joint-stock partnerships, in order for any resolution to be valid, each member of the board of directors (management board) must be properly notified about the meeting and about the matters to be discussed.

The management board meetings of limited liability companies and joint-stock companies can be held also on line (subject to some restrictions under corporate law and articles of association).

**ANNUAL COMPANY TAX RETURNS**

Commercial companies, some partnerships and branches must file annual tax returns with the tax authorities. In other partnerships, every partner is obliged to file an annual tax return.

**BUSINESS REGISTRATION FILING REQUIREMENTS**

Initial registration filings are mandatory (after the execution of founding documents); annual filings may also be necessary. Any change of information disclosed in the business register (eg, change of the articles of association, change of the business name, changes in the management board or other corporate bodies, a change of shareholder) must also be filed and recorded within 7 days. Commercial companies, partnerships and branches are registered with the National Court Register (Krajowy Rejestr Sdowy), while representative offices are entered into a separate register. Like other correspondences with the registry court, all proceedings before the court take place online via official platforms.

**BUSINESS EXPANSION**

There is no need to change the form as the business expands. Poland-based entities may expand by means of domestic branches and representative offices.

**EXIT STRATEGY**

With respect to commercial companies and partnerships, liquidation proceedings are initiated by the shareholders/partners adopting a dissolution resolution. The liquidation process, aimed at settling any outstanding debts of the company and distributing its remaining assets, usually takes at least 6 months from the registration of the dissolution resolution; in more complex cases, it can take more than 1 year. At the end of the liquidation process, when interests of creditors have been secured, the company or partnership is dissolved and deleted from the business register. This does not apply to branches which may be deregistered on the basis of the resolution without conducting the liquidation process.
With respect to partnerships (except limited joint-stock partnerships), if partners reach a unanimous agreement, the partnership can be deleted from the business register without going through a liquidation process.

**ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Commercial companies, partnerships, branches and representative offices must approve and file annual financial statements with the registry court. In commercial companies and joint-stock partnerships, approval is granted by means of shareholders’ meeting resolution (unless prescribed otherwise in the articles of association). Commercial companies, joint-stock limited partnerships and certain partnerships must also draw up and adopt a report on the entity’s operations in the preceding financial year. A shareholders’ meeting to adopt these documents must be called within 6 months of the previous financial year end. Financial statements of a branch are deemed approved when the founding foreign company has approved its own financial statements, which include financials of the branch. Within 15 days from the approval, the financial documents must be filed online with the Repository of Financial Documents (Repozytorium Dokumentów Finansowych).

**DIRECTOR / OFFICER REQUIREMENTS**

**General provisions**

Only a natural person with full capacity for acts in law can be a member of a management board, supervisory board, or audit commission. No person who was convicted by a valid judgment for the specific offences determined by the applicable law can be a member of the management board, supervisory board or audit commission.

**Partnerships**

A management board may be appointed in a professional partnership. Member of the management board of professional partnership can be a 3rd party. However, at least 1 partner shall be a member of the management board. In other partnerships, business is generally managed by partners.

**Corporations**

Commercial companies are represented by management board members.

**Limited liability companies**

Appointment of a supervisory board or an audit committee is mandatory only if the share capital exceeds PLN500,000 and if the company has at least 25 shareholders.

**Joint-stock companies and joint-stock partnerships**

Appointment of a supervisory board or an audit committee is always required. In limited joint-stock partnerships, a supervisory board must be appointed where the number of shareholders exceeds 25. In simplified joint-stock companies, a supervisory board is optional.

**Branches**
In branches and representative offices, a person representing the founding foreign company must be listed in the business register.

**LOCAL CORPORATE SECRETARY REQUIREMENT**

Not applicable for this jurisdiction.

**LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT**

Not applicable for this jurisdiction. However, in case of branches, a representative in Poland must be indicated.

**LOCAL OFFICE LEASE REQUIREMENT**

Filing for incorporation requires having a registered office in Poland (this applies to all organizational forms, including branches and representative offices). Proof of the address where the business activity is actually carried out may be required for tax registration purposes.

**OTHER PHYSICAL PRESENCE REQUIREMENTS**

Not applicable for this jurisdiction.

**SUFFICIENCY OF VIRTUAL OFFICE**

Generally sufficient; however, potentially problematic for tax purposes (especially VAT registration).

**PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

Generally sufficient; however, potentially problematic for tax purposes (especially VAT registration).

**PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

Relevant services are available on the market, most readily for limited liability and joint-stock companies.

**NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS**

Not applicable for this jurisdiction.
RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Not applicable to shareholders. Management board members must have full legal capacity and no criminal record. They can be obliged to meet further requirements if set by a resolution of the shareholders or the company’s articles of association/statutes (applicable only to commercial companies).

SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF

Partnerships

Partnerships are represented by their partners with possible modifications. Professional partnerships may appoint a management board.

Corporations

In commercial companies, management board members represent the company and manage its affairs, whether in court or out of court. These rights may be limited only by law, the articles of association (statutes) and resolutions of shareholders. Shareholders have equal rights and equal obligations in the company, unless applicable laws or the company’s articles of association (statutes) provide otherwise.

Under the articles of association (statutes), personal rights may be conferred upon an individual shareholder. Such rights may include the authorization to appoint or remove members of the management board or the supervisory board, or the entitlement to receive special pay-outs from the company.

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

The business register contains a list of shareholders that have more than 10 percent of share capital in a limited liability company and that have 100 percent of share capital in a joint-stock company, as well as a list of the company’s management board members (including their residential addresses), a list of people representing a foreign company in its Polish branch and a list of partners in partnerships.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

In limited liability companies and joint-stock companies, at least 1 shareholder and at least 1 director (board member) are necessary. This is not applicable to other organizational forms (although partners in a limited joint-stock partnership are often referred to as shareholders).

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

At least 1 shareholder is required in a commercial company. A single-shareholder limited liability company cannot be established by another single-shareholder limited liability company.
REMOVAL OF DIRECTORS OR OFFICERS

Generally, it is the shareholders’ meeting in limited liability companies and the supervisory board in joint-stock companies that appoints and dismisses directors, unless the articles of association state otherwise. Changes in the board of directors (management board) must be recorded in the business register.

REQUIRED AND OPTIONAL OFFICERS

Not applicable for this jurisdiction.

BOARD MEETING REQUIREMENTS

There is no statutory requirement with respect to any of the entities. In general, a management board meeting can be held if all management board members had been properly notified. However, articles of association can set further requirements to be met.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

Generally, no quorum applies to shareholders’ meetings (in limited liability companies, joint-stock companies and limited joint-stock partnerships); however, the Commercial Companies Code provides for several exceptions to this rule – and further exceptions may be specified in the company’s articles of association.

MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?

There is no such obligation; however, in practice, Polish authorities will not return VAT to a foreign bank account.

AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?

As of October 1, 2018, preparation and filing of financial statements must take place in electronic form.

Corporations

Under the Accounting Act, preparation of annual financial statements by the statutory deadline in commercial companies is the responsibility of the management board members. Auditing of the annual financial statements is mandatory for joint-stock companies and for limited liability companies that meet at least 2 of the following requirements: (1) employ at least 50 people (2) and that have total balance sheet assets of more than EUR2.5 million or (3) net revenue from the sale of goods and services and financial operations for the financial year of
more than EUR5 million at the end of a financial year. Company’s books must be drawn up in Polish language, however, there is no statutory rule as to where the books must be kept (in any case, Polish tax authorities must be informed about the place where the books and records are kept).

As of January 1, 2022, instead of the past requirement of signing the financial statements only with an electronic signature by all management board members, it is sufficient for an esignature to be affixed by at least one person who is a member of the management board, provided that the signing of the financial statements in XML format takes place after the other members of that body have made declarations that the financial statements meet the requirements provided for in the Polish Accounting Act, or have refused to make such declarations (in electronic form or in writing).

Partnerships

With respect to partnerships, only those partnerships that meet at least 2 of the requirements listed above have the duty to subject their financial statements to an audit.

Branches

Branches of foreign banks, credit institutions, insurance companies and investment companies are obliged to submit their financial statements to an audit. This obligation also applies to branches that meet the aforementioned requirements regarding the value of assets, the volume of operations and the number of people employed.

REQUIREMENT REGARDING PAR VALUE OF STOCK

The registered nominal amount must be at least PLN50 per share in limited liability companies and at least PLN0.01 per share in joint-stock companies and limited joint-stock partnerships.

INCREASING OF CAPITALIZATION IF NEEDED

Applies only to limited liability companies, joint-stock companies and limited joint-stock partnerships because only these entities have share capital. An increase in share capital may be decided upon by means of a resolution of the shareholders' meeting or the general meeting. In case of limited joint-stock partnerships, all the general partners must consent to such an increase.

SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)

With respect to all organizational forms, funds can be repatriated via profit withdrawal in accordance with the relevant tax provisions. Shares can be redeemed if the company's articles of association provide so (this also applies to limited joint-stock partnerships). Dividends and advances against dividends are paid in commercial companies in accordance with relevant laws.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

A shareholder in a limited liability company, a joint-stock company or a limited joint-stock partnership cannot
dispose of its shares before the entity is entered in the business register. Also, once the company or limited joint-stock partnership is registered, its articles of association may limit the transferability of shares by its shareholders by means of imposing certain consent requirements (eg, where a resolution of a shareholders' meeting or the management board is necessary for a transfer to go through).

Partners in a partnership may transfer all of their rights and obligations to third parties (subject to any consent requirement that may apply).

Any transfer of shares in a company or a partnership owning agricultural real property may be subject to the statutory pre-emption right of the National Agriculture Supporting Centre.

There are some new restrictions under Act on control of certain investments (additional to the already existing regulation concerning specific companies listed in the executive regulation) in case of any significant acquisition (20 percent or 40 percent of the general number of votes at the general meeting or of shares in such company) conducted by a foreign entity from outside of EU or OECD regarding companies that meet requirements set out in the Act.

OBTAINING A NAME AND NAMING REQUIREMENTS

Commercial companies and partnerships can operate under any name as long as it is distinguishable and it includes the name of the legal form of the company (eg, spółka z ograniczon odpowiadzialności or sp. z o.o. in respect of limited liability companies, and spółka akcyjna or S.A. in respect of joint-stock companies). The requirement that the name, full or abbreviated, must appear in the business name of an entity also applies to partnerships. In addition, business names of partnerships must feature the name of at least 1 of the partners.

Business names are recorded in the business register. They may be changed following the incorporation, normally by means of a resolution of the partners (with respect to partnerships) or of the shareholders' meeting or the general meeting (with respect to commercial companies and limited joint-stock partnerships).

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

The Polish "know your client" requirements, applicable to all organizational business forms, are mostly contained in the Act on Combating Money Laundering and the Financing of Terrorism. The requirements contained in this act are based on the relevant EU laws that set forth a host of registry, identification and reporting duties on companies, partnerships and foreign entities conducting business in Poland through branches and representative offices. There are some additional, local requirements under guidance of the Ministry of Finance on the due diligence on verification of contracting parties. As of July 2020, all partnerships (except of professional partnerships) and all commercial companies (except of public joint-stock companies) are obliged to file information about their Ultimate Beneficiary Owner (the “UBO”) to the public register called: Central Register of Beneficiary Owners (Polish: Centralny Rejestr Beneficjentów Rzeczywistych). Filling can be done only in an electronic form with a qualified electronic signature issued by one of the Polish providers or with a trusted signature (by using state platform called ePUAP) of individual(s) authorized to represent a company.

Information on the UBO have to be reported within 7 days. Failure to comply with the abovementioned
requirements may result in a fine up to EUR1 million.

**APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

**Corporations**

A resolution of the shareholders’ meeting (or general meeting in the latter cases) must be adopted. Amendments to articles of association (charter) become effective once they are entered in the business register.

**Limited liability companies**

A majority of 2/3 is necessary to pass an amendment to the articles of association (unless it pertains to amending the subject of business activity, in which case a majority of 3/4 applies). Such resolutions must be executed in the form of a notarial deed and registered in the business register to be effective.

**Joint-stock companies**

A majority of 3/4 applies to any and all amendments to the statutes. Such resolutions must be executed in the form of a notarial deed and registered in the business register to be effective.

**Limited joint-stock partnerships**

Changes to statutes must be agreed to by all the general partners and executed by means of a resolution of general meeting in a form of a notarial deed. Amendments become effective once they are entered in the business register.

**Partnerships**

An amendment to the articles of association of a partnership requires the consent of all the partners (with respect to professional partnerships and general partnerships) or all the general partners (with respect to limited partnerships) expressed by means of a partner’s resolution. Any changes must be recorded in the business register.

**Branches**

Branches and representative offices do not have separate charter documents.

**LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

Licenses or concessions are mandatory for certain types of business activity, irrespective of the organizational form of the entity undertaking it, such as:

- Prospecting and exploring of hydrocarbon and solid mineral deposits covered by mining ownership
- Prospecting or exploring of an underground carbon dioxide storage complex
- Extracting minerals from deposits
- Storing substances underground without the use of tanks
- Depositing waste in underground landfills
- Storing carbon dioxide underground
- Manufacturing and trading in explosives, arms and ammunition, and products and technology for military or police purposes
- Manufacturing, processing, storing or reloading, transmitting, distributing and trading in fuel and energy
- Protecting persons and property
- Broadcasting radio and television programs, excluding programs broadcasted exclusively in a data transmission system which are not broadcasted either through air, satellite or cable networks
- Carrying air passengers/freight or
- Operating a gambling casino

Other types of business activity may require registration with, notification to, or obtaining the consent of a given authority before commencing operations.

**PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY**

A share purchase agreement is needed to purchase a company. As a rule, shelf companies will be limited liability companies, joint-stock companies or limited joint-stock partnerships. Following the completion of the purchase, new shareholders and management/supervisory board members must be entered in the business register. Commercial companies and partnerships may act as purchasers. Branches and representative offices do not have the legal capacity to act as a contractual party (the founding foreign company acts as the purchaser).
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PORTUGAL

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FORM OF ENTITY

Portuguese law provides for various types of companies, 2 of which are most commonly used:

- Limited liability companies by shares (S.A. or Sociedade Anónima) and
- Limited liability companies by quota (or Sociedade por Quotas).

**LDA. Companies**

These companies are incorporated with at least 2 shareholders. There is also a sub-type of company bearing 1 single shareholder, being in this case identified by the denomination Sociedade Unipessoal LDA. (sole shareholder company). However, an individual may only be the sole shareholder of 1 Sociedade Unipessoal.

The share capital in these companies is divided in quotas[1]. As a rule, and upon incorporation, each shareholder has one single quota, which nominal value may vary from EUR 1 to any given amount. Consequently, the minimum share capital of LDA. companies is EUR 2, and for the Sociedade Unipessoal sub-type, the minimum share capital is EUR 1.

Quotas are registered with the Commercial Registrar of Companies, do not have a physical existence, and cannot be listed in a Stock Exchange.

**LDA. companies have a simplified governance structure, comprising the following corporate bodies:**

- General Meeting (which in the case of a Sociedade Unipessoal is assured by the sole shareholder)
- 1 or more directors
  
  1 accountant (TOC).

Additionally, 1 Independent Auditor or a Supervisory Board is required should, for a period of 2 years, if 2 of the following thresholds are met:

- Balance exceeds 5 million
Total turnover and other revenue of at least EUR3 million

Average number of 50 or more employees.

**S.A. Companies**

These companies are incorporated with at least 5 shareholders, except in cases where a company is the sole shareholder.

The share capital is represented by shares which can have, or not, a nominal value. In the first case, all shares must have the same nominal value. The minimum nominal value – or, for shares with no nominal value, the minimum issue value – is of EUR 0.01. In any case, the minimum share capital required is EUR 50,000.

Shares are nominative, and may be in book entry form, or titled, and are registered (i) with the company, in a share ledger book, (ii) in a banking entity or (iii) in a central registration entity.

Governance structure is more complex than LDA. companies, and 3 different governance structures are available:

1) **Portuguese “traditional” system:**

   - General meeting
   - 1 director (provided the share capital remains below EUR200,000), or a board of directors (more than 1 member and not necessarily in an odd number)
   - Supervisory body, which may be:
     - 1 Independent Auditor (plus their substitute; both must be chartered accountants or a chartered accountants’ firm), or
     - A supervisory board (minimum of 3 members plus 1 substitute; at least 1 of the effective members must be a chartered accountant or a chartered accountants’ firm), plus a chartered accountant or a chartered accountant firm (mandatory for Stock Exchange listed companies).

2) **2-tier system:**

   - General meeting
   - A 2-tier board structure comprising
     - A general and supervisory board
     - An executive board of directors or 1 executive director (provided the share capital remains below EUR 200,000)
   - 1 independent auditor.
3) 1-tier system:

- General meeting
- A board of directors which includes an audit committee of no fewer than 3 members
- 1 independent auditor

A company secretary (who must have an appropriate degree or be a paralegal) is only mandatory for Stock Exchange listed companies.

[1] Normally also translated as shares, quotas are nonetheless subject to a different legal regime under Portuguese law.

ENTITY SET UP

**Phase 1:** Definition of type of company and draft of the company’s bylaws. These include:

- Name
- Purpose
- Registered office;
- Share capital
- For LDA. companies, number of shareholders and distribution of share capital
- Management structure and binding form of the company
- For companies, supervision structure.

In case the shareholder is a non-resident entity (company or individual), it is mandatory to apply for a Portuguese Taxpayer Number (NIPC/ NIF). In case the shareholder(s) is(are) non-EU resident(s) it is mandatory to appoint a tax representative. The representative can be an individual or a company resident in Portugal.

**Phase 2:** Application for approval of the corporate name.

**Phase 3:** Opening of bank account, for the purposes of the deposit of the share capital.

**Phase 4:** Execution of the incorporation documentation, comprising the incorporation agreement and the bylaws. These documents are submitted to the Registrar of Companies for public registration purposes (regular registration requests cost EUR 475, urgent requests approx. EUR 950).

**Phase 5:** Ultimate Beneficial Owner (UBO) declaration submission declaration to the Central Registry of Beneficial Ownership (Registo Central do Beneficiário Efetivo)[2].
The share capital may be contributed in cash or in kind (in which case additional formalities for the evaluation and/or registration of the contributions to the share capital may be required).

Under Directives (EU) 2016/2258 and 2015/849, on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and their transposition to Portuguese jurisdiction, through Laws no. 83/2017, August 18 and no. 89/2017, August 21, all Portuguese companies are now required to comply with information disclosure requirements regarding their ultimate beneficial ownership (UBO).

**MINIMUM CAPITAL REQUIREMENT**

Save for some supervised entities (eg, fund management companies or collective investment companies), there are no capital requirements, except for the share capital minimum amounts above detailed in FORM OF ENTITY.

**LEGAL LIABILITY**

Portuguese corporate law is based on the principle of limited liability, meaning that, as a general rule the liability of shareholders is limited to its contribution to the share capital.[1]

Notwithstanding, there are exceptions to this principle of limited liability:

- **Liability over fully owned subsidiaries or subordinated companies**: A parent company is liable for the financial responsibilities of a subsidiary if: (i) there is a subordination contract between the parent company and the subsidiary (according to which a parent company is given broad legal powers over the subsidiary company); or (ii) such subsidiary is fully owned (100 percent) by the parent company.

- **Joint liability of the shareholder in case of losses caused to the company or to other shareholders by a director appointed by such shareholder**: Shareholders or groups of shareholders who have the right to appoint a director, without the need of the vote of other shareholders, are jointly liable with such director for any losses that they cause to the company or to other shareholders.

- **Liability of the sole shareholder in case of bankruptcy**: In case a fully owned subsidiary is declared bankrupt the sole shareholder shall have unlimited liability for the debts and liabilities created after it has become the sole shareholder of such subsidiary, provided that it has not complied with the rules on the allocation of the assets of the company.

[1] In the particular situation of the initial contributions to share capital of an LDA company, shareholders may be jointly liable for all the contributions to the share capital that have been agreed in the incorporation agreement. In such cases, even if a given shareholder has been excluded or its share has been re-integrated by the company, the other shareholders are jointly liable towards the company for the payment of such amount.

**TAX PRESENCE**

**Tax on Dividends**: Dividends paid to a non-resident company are subject to a 25 percent withholding tax (35 percent if paid to a company incorporated in a tax haven or offshore jurisdiction). However, as per the Portuguese qualified shareholding exemption regime, dividends received from a domestic company may be exempted if certain...
criteria set out in the law are met and the recipient of the dividends is resident in EU/EEA or in a jurisdiction covered by a tax treaty. If the qualified shareholding exemption regime does not apply, the rate may be reduced under the provisions of a tax treaty.

**Other Taxes:** Other operations between a company and other non-resident companies may be subject to tax or other reporting tax obligations which must be assessed, on a case-by-case analysis (e.g., transfer pricing).

**INCORPORATION PROCESS**

**Regular/Traditional Incorporation process:**

Documents (incorporation agreement and bylaws) are executed by the shareholders or its representatives, and physically submitted to the Registrar of Companies office, together with a specific registration form that is usually signed by a lawyer. The documents are verified and once cleared by the registration authority, the commercial certificate is made available to the email address provided upon request for registration, and the company is considered as duly incorporated as from the date of the submission of the registration request.

The registrar of companies will automatically provide the newly incorporated company’s details to the Tax Authority, so that it will send to the company’s registered address an access code to its internet portal, allowing the company’s accountant to register the beginning of the company’s activity and enroll the company, its employees and directors with the Social Security.

**Online incorporation process:**

Similar to the registration process as to the execution of the incorporation agreement and the bylaws by the representatives of the shareholder, the main difference is that a lawyer submits online, through a specific internet access portal - requiring professional authentication - the scanned incorporation documents. In this case, pre-approved company name and pre-approved standard bylaws are also available and allow for a swifter process. The documentation is then sent to a random registration office, which will verify and clear the documentation. The commercial certificate is made available to the email address provided upon request for registration, and the company is considered duly incorporated as from the date of the submission of the documentation.

The registrar of companies will automatically provide the newly incorporated company’s details to the Tax Authority, so that it will send to the company’s registered address an access code to its internet portal, allowing the company’s accountant to register the beginning of the company’s activity and enroll the company, its employees and directors with the Social Security.

**“On the Spot Firm” process:**

The shareholders, or their representatives, personally attend a registration office, and chose from a pre-approved company name (names are available in an official list) and pre-approved standard bylaws with a basic corporate governance model.

Since names and bylaws follow are pre-approved, signatories and their powers and quality are cleared, and the company is immediately registered and considered duly incorporated.

Since this process is undertaken in specific offices, acting as 1-stop shops, if the relevant form is already signed by the company’s accountant, it may be immediately filed with the Tax Authority.
A notarized hard copy of the bylaws is provided to the shareholders, as well as in internet access code to access the commercial certificate of the incorporated company.

BUSINESS RECOGNITION

Smaller businesses tend to use LDA. companies, as they have basic governance structure and are therefore easier to manage in terms of corporate compliance.

Multinational foreign companies tend to choose single shareholding structures, either Sociedade Unipessoal or S.A. companies’ types.

S.A. companies are mandatory for most of supervised/regulated activities.

Share capital is currently losing its traditional perception as to being an expression of the commitment of the shareholders to the company’s activity. Whereas until some years ago LDA. and Sociedade Unipessoal companies had a minimum of EUR 5,000 share capital, recent legislation changed this minimum to EUR 1 per quota, thus dramatically decreasing the importance of the share capital. Nonetheless, even for LDA. companies, some activities may require a given share capital (eg, road freight requires a minimum share capital of EUR 10,000).

SHAREHOLDER MEETING REQUIREMENTS

Shareholders must meet at least 1 time per year to resolve on the annual accounts. Shareholders’ resolutions are taken either in physical presence, through electronic means (unless otherwise provided for in the company’s bylaws) or by means of a unanimous written resolution.

BOARD OF DIRECTOR MEETING REQUIREMENTS

Directors should meet at least 1 time every month on S.A. companies (unless otherwise provided for in the company’s bylaws). Similarly to shareholders’ meetings, resolutions are taken either in physical presence, through electronic means (unless otherwise provided for in the company’s bylaws) or by means of a unanimous written resolution.

No requirements for other types of companies.

ANNUAL COMPANY TAX RETURNS

The company’s accountant must submit online using a specific Tax Authority platform the company’s yearly accounts’ declaration (IES). IES declaration must be submitted until the 15th day of the 7th month following the fiscal year end.

BUSINESS REGISTRATION FILING REQUIREMENTS

Not applicable.
BUSINESS EXPANSION

No general requirements apply.

EXIT STRATEGY

Shareholders may freely resolve on the winding up of a company.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

1. Yearly approval of accounts
2. Filling of yearly accounts with the Tax Authority
3. Appointment of corporate bodies (depending on duration of mandates set under the bylaws).

DIRECTOR / OFFICER REQUIREMENTS

Prior to being appointed, a director must be granted a Portuguese taxpayer number (NIF). This is easily obtained, as the appointee or a proxy may request for said number in a Tax Authority office. Non-EU residents are required to appoint a tax representative (some 3rd-party service providers are able to provide this as a service).

For supervised entities an adequacy assessment (on professional qualifications, independency and accumulation of positions) may apply.

Directors are not employees of the company. If a labor agreement was in place prior to the appointment, such agreement is either terminated, or suspended and reinstated after the end of the relevant mandate.

LOCAL CORPORATE SECRETARY REQUIREMENT

Not mandatory for any type of company, except for Stock Exchange listed companies.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Not applicable.

LOCAL OFFICE LEASE REQUIREMENT

Not applicable.

OTHER PHYSICAL PRESENCE REQUIREMENTS

Management decisions must be taken in Portuguese territory. As such, and in order to give tax substance to
companies whose directors are mostly located outside of Portugal, companies usually arrange for at least the most relevant management decisions to be taken by means of a physical meeting in the company’s registered office.

**SUFFICIENCY OF VIRTUAL OFFICE**

The registered office must be located in the Portuguese territory and a physical address must be provided for all legal purposes.

**PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

No legal impediments; it is a common practice for multinational companies whose directors are not permanently located in Portugal.

**PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

Local directors are not a legal requirement. Law firms usually do not provide for local directors, although some 3rd-party service providers do. Corporate secretary is not a common practice, but both law firms and 3rd-party service providers are able to provide this as a service.

**NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS**

There is no citizenship or residency requirements.

**RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS**

There is no such distinction under Portuguese law; a shareholder or a director is liable under the general legal terms.

**SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF**

- **Directors**

A company is bound by the acts performed by the directors on behalf of the company. Bylaws set the binding rules and its mechanisms, such as the number of directors’ signatures required.

The general rule is that the simple majority of the directors will bind the company. Nevertheless, the company’s bylaws may determine that a fewer number of signatories is required. In order for any written document validly
bind the company it must be signed by the director(s) in such capacity.

The directors may also be shareholders. Directors are bound by the resolutions of the shareholders, by law and the bylaws, and act only on the company’s best interest. In that sense, directors are independent from the shareholders and do not have to follow the instructions of a specific shareholder.

- Shareholders

Shareholders have the powers to resolve on structural issues in connection with the company, namely the change of bylaws, capital contributions of the shareholders, removal of directors, yearly approval of accounts, among others. Acquisition and sale of real estate property and participations in other companies are also subject to the shareholders’ decision, unless otherwise provided for in the company’s bylaws. Shareholders may only resolve on management matters following a specific request of the directors.

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

- Directors

All directors are registered with the Registrar of Companies and publicly disclosed in the relevant company’s commercial certificate.

- Shareholders

Shareholders are registered with the Registrar of Companies and publicly disclosed in the relevant company’s commercial certificate in case of LDA and Sociedade Unipessoal companies.

In case of S.A. companies, these are not publicly disclosed and are registered in internal documentation only.

- Beneficial Owners

Beneficial Owners are registered with the Beneficial Owners Database (RCBE) and access to the database is public, although subject to a justification. Despite any registered person may access the information, all accesses are recorded.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

Directors

- At least 1 director must be appointed for each company. Companies with share capital higher than EUR 200,000 must have at least 2 directors.

- No maximum number of directors provided under Portuguese law.

Shareholders
• A companies: At least 5 shareholders, except in cases where a company is the sole shareholder

• LDA companies: At least 2 shareholders

• Sociedade Unipessoal: 1 shareholder.

No maximum number of shareholders provided under Portuguese law.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

Please refer to Minimum and maximum number of directors and shareholders above.

REMOVAL OF DIRECTORS OR OFFICERS

Appointment

• Directors must be appointed by the company’s shareholders (via a shareholders’ general meeting or by unanimous written resolution).

• A resolution appointing a director must be filed at the companies’ registry office within 60 days from the approval of the resolution. A director’s residential address and the director’s Portuguese taxpayer number must be provided to the commercial registry office.

• The companies’ registry office must also be provided with an acceptance declaration on the appointment issued by the relevant director. In such declaration the relevant director must state that he/she is not aware of any circumstances that may prevent them from performing such function.

Removal

• Directors may be removed from office at any time by means of a shareholder. If removal is without a cause, directors may be subject to a compensation.

• A director may also resign at any time through the issuance of a resignation letter.

• The resignation or the resolution on director’s dismissal must be filed at the commercial registry office within 60 days from the date of the shareholders resolution or the issuance of the resignation letter.

REQUIRED AND OPTIONAL OFFICERS

Not applicable.

BOARD MEETING REQUIREMENTS

Please refer to Board of director meeting requirements above.
QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

- Shareholders’ meetings quorum requirements:

There is no specific quorum required, except for any matters in connection with the merger, demerger, transformation, dissolution of the company and, in general, decisions requiring approval by a qualified majority, in which a meeting quorum at least 1/3 of the share capital is required.

- Directors’ meetings quorum requirements:

The majority of the directors needs to be present or represented at the meeting.

MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?

A bank account needs to be upon incorporation. The share capital of LDA companies may be deposited until the end of the relevant tax year. There are no legal requirements as to having a bank account in a Portugal-based bank. Nonetheless, tax-related issues, such as the origin of corporate income apply, so as a rule companies open their bank accounts in Portugal.

AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?

The appointment of 1 auditor (Revisor Oficial de Contas) is required for LDA companies whenever 2 of following thresholds are met for 2 consecutive years (and the company has not, in the meantime, adopted a Supervisory Board):

- Balance exceeds EUR 5 million
- Total turnover and other revenue of at least EUR 3 million
  Average number of 50 or more employees throughout the year

In S.A. companies the appointment of one auditor is mandatory, and the auditor may act as Sole Supervisor of the company, or in complementarity with a Supervisory Board.

The auditor must be an individual or a company registered with the Portuguese Chartered Accountants Professional Association (OROC). For some supervised entities, these must also be registered with the Portuguese Securities Market Authority (CMVM).

Company’s books should be kept at the company’s registered office.

REQUIREMENT REGARDING PAR VALUE OF STOCK
LDA. companies’ quota: at least 1 EUR par value; S.A. companies’ shares: at least EUR 0.01 par value (shares with no nominal value are also permitted).

**INCREASING OF CAPITALIZATION IF NEEDED**

Companies must keep an equity amount of at least 1/2 of its share capital. Should a company’s equity reaches below this level, the shareholders need to resolve on i) dissolution of the company, ii) share capital decrease or iii) capital contributions by the shareholders.

**SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)**

Shares’ redemptions are subject to tight legal requirements.

Dividends may be paid to shareholders provided that at least the amount equal to the share capital plus the legally mandatory reserves is maintained. In any case, previously carried forward losses must be fully covered.

**RESTRICTIONS ON TRANSFERABILITY OF SHARES**

**LDA. companies:** Transfers to non-shareholders are subject to the company’s prior consent, unless otherwise provided for in the company’s bylaws. A pre-emption right for the remaining shareholders of the company may also apply.

Bylaws may also forbid any transfers of shares; however, in that case, shareholders may exonerate themselves 10 years after the incorporation of the company.

**S.A. companies:** Bylaws cannot forbid transfers of shares, despite they may (i) set a prior consent of the company to the transfer of shares, or (ii) set a pre-emption right for the remaining shareholders of the company.

**OBTAINING A NAME AND NAMING REQUIREMENTS**

In the traditional and online incorporation processes, the company’s name approval must first be obtained with the relevant authority. This name is suggested by the shareholders or its representatives, in a slot of 3 proposed names. Upon of name approval request, the registered office and activity of the company must also be presented in connection with the names suggested.

Names are approved in obedience to an assessment of non-susceptible to confusion with previously approved names, in particular in the same geographical area, and subject to a strict connection with the company’s corporate purpose.

**SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS**

The beneficial owner(s) of a company must be disclosed upon:
a. Incorporation
b. Any change to the bylaws
c. Submission of the yearly accounts (IES) and
d. Occurrence of any changes to the information previously

Law firms and other services providers (eg, audit firms) are subject to KYC proceedings, depending on the type of services provided. For instance for law firms, KYC proceedings are required if the firm is receiving and paying any amounts on behalf of the client.

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

Amendments of bylaws are subject to a shareholders’ resolution. In case of multiple shareholders, the decision is taken by a 2/3 majority of the votes cast (unless the bylaws determine a higher decision majority), and provided that at least 1/3 of the share capital holders are present or represented at the relevant meeting.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

Licenses depend on the chosen activity of the company.

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

Shelf companies may be acquired by means of a shares’ transfer, as other regular shares acquisitions. As a rule, these are undertaken by means of an agreement between the seller and the purchaser, and no special formalities are required. The transfers of shares of LDA. and Sociedade Unipessoal companies are registered with the Registrar of Companies.

The Tax Authority must be notified of the sale and acquisition of shares of S.A. companies. These transfers are not otherwise subject to public registration, but the new shareholder is inscribed in the relevant shares’ accounts or shares’ titles.

KEY CONTACTS

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FORM OF ENTITY

Corporations

Corporations are entities whose liability is separate and distinct from that of their shareholders, directors and officers. Corporations may be established for any lawful business purposes, with limited exceptions. They may be organized by individual(s) and/or legal entities by filing a certificate of incorporation at the Puerto Rico State Department. A corporation has the power to enter into contracts, hold property and sue and be sued in its own name; it also has continuity of existence and free transferability of ownership interests. Generally, the certificate of incorporation grants the corporation legal existence as soon as it is filed with the Puerto Rico Secretary of State.

Puerto Rico corporations must maintain a designated principal office and registered agent for service of process in Puerto Rico.

Limited Liability Companies

Limited liability companies (LLCs) are becoming the preferred method of doing business in Puerto Rico. LLCs may be organized by any natural or legal person by filing articles of organization (also referred to as the certificate of formation) in the Puerto Rico State Department. LLCs offer their owners the same limited liability protection granted by law to corporations and the flexibility to manage their internal affairs as a partnership, corporation or a combination of both in accordance with an LLC agreement (also referred to as an operating agreement), which typically governs the entity. LLCs are taxed by default as corporations and are subject to tax at both the business entity and shareholder levels. However, an LLC may elect to be treated as partnership for tax purposes, receiving pass-through treatment by making an election on Form SC 6045 on or before the due date, including extensions, of the LLC’s Puerto Rico income tax return for the taxable year in which the election is to become effective. The Secretary of the Puerto Rico Treasury Department may issue further guidance as to the form and manner of making such election. Although a Puerto Rico LLC is automatically treated as a corporation for US federal tax purposes, it may elect to be treated as a partnership or disregarded entity, as applicable. This election is accomplished through the filing of Form 8832 with the IRS.

Puerto Rico limited liability companies, as is the case with corporations, must maintain a designated principal office and registered agent for service of process in Puerto Rico.
Note: Additional forms of entity structures also exist and could be useful in some instances but are not covered in this guide either because they are less commonly used types of entity structures or not as likely to be relevant to the reader.

ENTITY SET UP

Puerto Rico corporate matters are regulated by the Puerto Rico General Corporations Law and the Internal Revenue Code of 2011. Puerto Rico offers several attractive alternate vehicles for persons doing business in Puerto Rico. Corporations and limited liability companies are the most common entities by which investors enter the Puerto Rican marketplace.

Corporations

- Unlimited number of shareholders
- Generally no personal liability for shareholders
- Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends
- Typical charter documents include articles of incorporation, bylaws, organizational board resolutions, stock certificates and stock ledger
- Board of directors has overall management responsibility; officers have day-to-day responsibility

Limited Liability Companies

- Unlimited number of members allowed
- Generally no personal liability for the members
- May elect to be treated as a corporation or partnership under Puerto Rico tax laws
- Under US tax laws, a Puerto Rico LLC is automatically treated as a foreign corporation. However, it may elect to be treated as a partnership or disregarded entity by filing Form 8832 with the IRS
- Typical charter documents include: certificate of formation; operating agreement
- Operating agreement sets forth how the business is to be managed; a member (owner) or manager can be designated to manage the business
- Members typically contribute money or services to the LLC and receive an interest in profits and losses

MINIMUM CAPITAL REQUIREMENT
Corporations

No minimum capital requirement.

Limited Liability Companies

No minimum capital requirement.

**LEGAL LIABILITY**

Corporations

Shareholders of a corporation are generally not liable for the debts of a corporation aside from their financial contribution to the corporation.

Limited Liability Companies

Members are generally not liable for the debts of the LLC aside from their financial contribution to the LLC.

**TAX PRESENCE**

Corporations

A corporation is taxed at 2 levels (commonly referred to as double taxation). First, the corporation pays a corporate tax on its corporate income; then, when the corporation distributes profits to its shareholders, they pay income tax on those dividends.

Limited Liability Companies

LLCs are taxed by default as corporations and are subject to tax at both the business entity and member levels. However, an LLC may elect to be treated as a partnership for tax purposes, receiving pass-through treatment by making an election on Form SC 6045, which must be filed on or before the due date, including extensions, of the LLC’s Puerto Rico income tax return for the taxable year in which the election is to become effective. The Secretary of the Puerto Rico Treasury Department may issue further guidance as to the form and manner of making such election. Although a Puerto Rico LLC is automatically treated as a corporation for US federal income tax purposes, it may elect to be treated as a partnership or disregarded entity, as applicable. This election is accomplished through the filing of Form 8832 with the IRS.

**INCORPORATION PROCESS**

Corporations

- Online filing of the certificate of incorporation or articles of incorporation with the Secretary of State
- Filing fee of a for-profit corporation is USD150
- Filing fee of a non-profit corporation is USD5
Limited Liability Companies

- Online filing of the certificate of formation or certificate of organization with the Secretary of State
- Filing fee of USD250

BUSINESS RECOGNITION

Corporations
Well regarded and used.

Limited Liability Companies
Well regarded and used.

SHAREHOLDER MEETING REQUIREMENTS

Corporations
Required to hold annual meeting of shareholders to vote on certain items, such as election of directors.

Limited Liability Companies
Annual meetings of the members are not required. The provisions of the operating agreement will typically determine any meeting requirements.

BOARD OF DIRECTOR MEETING REQUIREMENTS

Corporations
Annual meeting of directors is required.

Limited Liability Companies
Annual meeting of the managers is not required. If the provisions of the operating agreement allow for the creation of a board of directors, said agreement will determine any meeting requirements.

ANNUAL COMPANY TAX RETURNS

Corporations
Must annually file tax returns with the Puerto Rico Treasury Department. In addition, corporations generally must also file municipal gross receipts tax declarations and personal property tax returns.

Limited Liability Companies
LLCs are taxed by default as corporations. However, LLCs may elect to be treated as partnerships for tax purposes, where profits "pass through" to its members who pay taxes annually at their individual tax rates. In addition, LLCs generally must also file municipal gross receipts tax returns and personal property tax returns.

**BUSINESS REGISTRATION FILING REQUIREMENTS**

**Corporations**

Initial registration, as well as annual filings, which include an annual report with a balance sheet. In the case of corporations with a business volume of USD3 million or more, the annual report must include financial statements audited by a Certified Public Accountant (CPA) with a valid license from the Government of Puerto Rico.

**Limited Liability Companies**

Initial registration, as well as payment of an annual fee.

**BUSINESS EXPANSION**

**Corporations**

No need to change as business expands.

**Limited Liability Companies**

No need to change as business expands.

**EXIT STRATEGY**

**Corporations**

File dissolution documents with the Secretary of State. Liquidation will entail filings and certain disclosures with the Puerto Rico Treasury Department.

**Limited Liability Companies**

File dissolution documents with the Secretary of State. Liquidation will entail filings and certain disclosures with the Puerto Rico Treasury Department.

**ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

**Corporations**

- Annual shareholder meeting
- Filing of an annual report on or before April 15. The filing fees for annual reports are USD150 for a for-profit corporation and USD5 for a non-profit corporation
• All annual reports must include a balance sheet that shows the financial condition of the corporation at the close of operations

• If the volume of business of a corporation exceeds USD 3 million, the balance sheet must be audited by a Certified Public Accountant (CPA) with a valid license from the Government of Puerto Rico

Limitied Liability Companies

Annual fee of USD 150 on or before April 15 each year.

DIRECTOR / OFFICER REQUIREMENTS

Corporations

• A corporation must have at least 1 director. There is no maximum limit to the number of directors

• Generally, a corporation's certificate of incorporation or its bylaws state the number of directors on the board

• Every corporation must have officers with such titles and duties as are provided in the corporation’s bylaws or in a resolution of the board of directors. One of the officers must be appointed president, chief executive officer or any other analogous title

Limited Liability Companies

• No director/officer requirement, unless otherwise established in the operating agreement

LOCAL CORPORATE SECRETARY REQUIREMENT

Corporations

One of the officers of the corporation is required to record the proceedings of the meetings of the shareholders and directors in a book to be kept for that purpose.

Limited Liability Companies

Not required, unless otherwise provided in the operating agreement.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Corporations

Not applicable for this jurisdiction.

Limited Liability Companies
Not applicable for this jurisdiction.

**LOCAL OFFICE LEASE REQUIREMENT**

Corporations

Not required for incorporation. However, every corporation shall maintain a registered office and a resident agent for service of process in Puerto Rico. Note that office space may be required for certain tax registrations, such as the municipal license tax, that require a use permit which in turn requires office space in the corporation’s name.

Limited Liability Companies

Not required for organization/formation. However, every corporation shall maintain a registered office and a resident agent for service of process in Puerto Rico. Note that office space may be required for certain tax registrations, such as the municipal license tax, which require a use permit, which in turn requires office space in the LLC’s name.

**OTHER PHYSICAL PRESENCE REQUIREMENTS**

Corporations

To obtain certain tax registrations, physical presence is required. If, upon incorporation, the corporation does not have a physical address, then accountants, lawyers or the resident agent normally provide theirs.

Limited Liability Companies

To obtain certain tax registrations physical presence is required. If, upon incorporation, the LLC does not have a physical address, then accountants, lawyers or the resident agent normally provide theirs.

**SUFFICIENCY OF VIRTUAL OFFICE**

Corporations

A virtual office suffices for purposes of incorporation and tax registrations, provided that the corporation’s business may be carried out virtually without a need for physical space.

Limited Liability Companies

A virtual office suffices for purposes of organization/formation and tax registrations, provided that the LLC’s business may be carried out virtually without a need for physical space.

**PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

Corporations
Permitted and sufficient for tax registrations.

**Limited Liability Companies**

Permitted and sufficient for tax registrations.

**PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

**Corporations**

Permitted.

**Limited Liability Companies**

Permitted.

**NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS**

**Corporations**

Nonresidents of Puerto Rico and non-US citizens may own stock and serve as directors and officers of a Puerto Rico corporation.

**Limited Liability Companies**

Nonresidents of Puerto Rico and non-US citizens may own membership interests and serve as managers of a Puerto Rico LLC.

**RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS**

**Corporations**

None. Nominee shareholders and directors are rarely seen, as Puerto Rico corporations are not required to disclose shareholders or directors, other than the initial officers, in public documents.

**Limited Liability Companies**

None. Nominee members and managers are uncommon, as Puerto Rico LLC’s are not required to disclose members or directors, other than the initial managers, in public documents.

**SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF**
Corporations

Directors

The board of directors (the board) controls the business of the corporation, in the manner and to the extent set forth in the articles of incorporation and bylaws. Some basic board functions include selecting officers, controlling executive compensation, delegating administrative authority to a committee, determining dividend payments and supervising the welfare of the whole enterprise. The board possesses this authority without consulting with or obtaining the consent of the shareholders. However, the board’s powers extend only to the ordinary and regular course of business of the corporation. The board does not have unlimited power to deal with property and affairs of a corporation; instead, their powers are conferred so that the corporation's business can be transacted for the profit of the shareholders. Similarly, the directors' authority does not extend to changes of a fundamental character in the corporation.

Officers

Officers are responsible for the management and day-to-day operations of a corporation and are appointed by the board. Generally, the officers of a corporation are enumerated in its bylaws and include a president, vice-president, secretary, treasurer and sometimes others. The president is responsible for the overall day-to-day activities of the corporation (some of which are often delegated to other officers).

The president signs major contracts, stock certificates and other legal documents, as required. The president acts under the direction of the board.

The treasurer is responsible for the financial matters of the corporation. The treasurer is the only officer, absent express contrary provision in the bylaws or charter documents, to receive and keep funds of the corporation and is bound to disburse the funds only under the orders of the board or other officers in charge of the corporate business.

The secretary is charged with maintaining the corporate records of the corporation and preparing minutes of board and shareholder meetings. The secretary may also be required to provide certification for banks or other financial institutions and may also be required to provide requested copies of corporate documents.

Shareholders

As a general rule, shareholders are not permitted to act on behalf of the corporation. All the capacity of a corporation is vested in its board, and all its authority is supposed to be exercised by the board. It is the function of the board to manage and conduct the business of the corporation through the corporation’s officers. The shareholders (i.e., those who are not also directors or officers of the corporation) have no authority to act for the corporation. They are limited to acting in an advisory capacity only, to electing directors or to approving or disapproving such measures as are submitted to them by the board. The mere ownership of a majority of shares does not give a particular shareholder authority to act for the corporation.

The powers of management vesting in the shareholders as a body are few. They control the affairs of the corporation, while it exists and does business, through the directors appointed by them, which in turn manage the corporation through officers appointed by them. Typically, they have the right and power to hold meetings, elect directors, remove directors and increase or decrease the capital stock.
Limited Liability Companies

Members, much like shareholders, have no authority to act for the LLC, unless the operating agreement so establishes. They control the affairs of the LLC, while it exists and does business, through the managers appointed by them. The powers and authority of the members are established in the operating agreement.

If the operating agreement allows for directors and officers, their authority and limitations are generally established in the LLC’s operating agreement.

**PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS**

**Corporations**

None. Puerto Rico corporations are not required to list shareholders or directors in public documents. However, upon incorporation, disclosure of the corporation’s officers is required.

**Limited Liability Companies**

None. Puerto Rico LLCs are not required to list members or directors in public documents. However, upon formation/organization, disclosure of the LLC’s managers/administrators is required.

**MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS**

**Corporations**

Determined by governing law of the head office.

- A corporation must have at least 1 shareholder
- No minimum or maximum number of directors is required
- Generally, a corporation’s certificate of incorporation or its bylaws state the number of shareholders and directors on the board

**Limited Liability Companies**

- An LLC must have at least 1 member
- No minimum or maximum number of directors is required
- The operating agreement will determine the number of directors and officers, if any

**MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

No text yet.
REMOVAL OF DIRECTORS OR OFFICERS

Corporations

Generally, any director or the entire board of directors may be removed, with or without just cause, by the majority of the shareholders entitled to vote to elect directors.

Limited Liability Companies

Generally, any director or the entire board of directors may be removed, with or without just cause, by the majority of the members entitled to vote to elect directors, or as otherwise provided in the LLC’s operating agreement.

REQUIRED AND OPTIONAL OFFICERS

Corporations

President and secretary are required. All others are optional.

Limited Liability Companies

None, unless otherwise required in the LLC’s operating agreement.

BOARD MEETING REQUIREMENTS

Corporations

The board of directors may hold meetings within or outside the Commonwealth of Puerto Rico, unless otherwise provided by the certificate of incorporation or the bylaws. The meetings of the board of directors shall be notified to the directors pursuant to the provisions of the corporation’s bylaws.

Limited Liability Companies

None, unless otherwise provided in the LLC’s operating agreement.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

Corporations

- Board meetings: A majority of the total number of directors shall constitute a quorum for the transaction of business, unless the certificate of incorporation or bylaws require a greater number.

- Shareholder meetings: Unless otherwise provided in the certificate of incorporation or bylaws, a majority of the shares entitled to vote, whose holders are present in person or represented by proxy, shall constitute a quorum at a shareholders’ meeting.
Limited Liability Companies

None, unless otherwise provided in the LLC’s operating agreement.

MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?

Corporations

Not required for incorporation. When necessary, a bank account may be opened anywhere.

Limited Liability Companies

Not required for formation. When necessary, a bank account may be opened anywhere.

AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?

Corporations

Audited financial statements issued by a Puerto Rico licensed Certified Public Accountant (PR CPA) are required to be filed along with the corporation’s Puerto Rico income tax returns if the corporation’s volume of business equals or exceeds USD 10 million during the corporation’s calendar or fiscal year. If the corporation’s volume of business is at least USD1 million but less than USD10 million, such corporation may elect to file an Agreed Upon Procedures (AUP) report or compliance attestation (collectively, AUP Report) prepared by a PR CPA along with its Puerto Rico income tax return instead of the audited financial statements. If the corporation’s volume of business is less than USD1 million, such corporation may voluntarily file an AUP Report prepared by a PR CPA along with its Puerto Rico income tax return in order to be allowed to claim certain deductions for alternative minimum tax (AMT) purposes. Notwithstanding, the corporation may elect to file audited financial statements issued by a PR CPA in lieu of the AUP Report to claim such deductions for AMT purposes.

In addition, the municipal volume of business return and personal property tax returns should also be accompanied by audited financial statements issued by a PR CPA if the corporation’s volume of business equals or exceeds USD 3 million during the corporation’s calendar or fiscal year, provided, however, that an AUP Report prepared by a PR CPA may be provided in lieu of the audited financial statement for the municipal volume of business return. Generally, the corporate books should be kept in Puerto Rico. In addition, an audited balance sheet issued by a Puerto Rico certified public accountant must also be filed with the Puerto Rico State Department if the corporation’s volume of business equals or exceeds USD 3 million during the corporation’s calendar or fiscal year.

Limited Liability Companies

The same rules in respect of AUP Reports and audited financial statements applicable under Corporations, are also applicable to limited liability companies. Generally, the corporate books should be kept in Puerto Rico. However, unlike corporations, limited liability companies need not file financial information with the Puerto Rico
State Department.

**REQUIREMENT REGARDING PAR VALUE OF STOCK**

**Corporations**

USD 0.01 or non-par value.

**Limited Liability Companies**

Not applicable for this jurisdiction.

**INCREASING OF CAPITALIZATION IF NEEDED**

**Corporations**

Permitted. A corporation may amend its certificate of incorporation to increase its authorized capital stock.

**Limited Liability Companies**

Permitted. An LLC may amend its operating agreement to reflect an increase in capitalization.

**SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)**

**Corporations**

A corporation’s funds may be repatriated from Puerto Rico through distributions or redemption, as applicable.

**Limited Liability Companies**

An LLC’s funds may be repatriated from Puerto Rico through dividends or redemption, as applicable.

**RESTRICTIONS ON TRANSFERABILITY OF SHARES**

**Corporations**

Shares can generally be transferred between shareholders or 3rd parties via written agreements, except when (i) there is a "right of first refusal" provision in the shareholders agreement or bylaws or (ii) the corporation has issued "restricted transfer shares," which transfer requires the approval of the board of directors.

**Limited Liability Companies**

Membership interests can generally be transferred between members or 3rd parties via written agreements, except when (i) there is a provision otherwise in the operating agreement or (ii) the operating agreement requires the consent of some or all of the members for any transfer of membership interests.
If the operating agreement of the LLC so establishes, members may have right of first refusal when a sale is intended to be carried out in favor of a non-member. Similarly, the consent of a majority of the members may be required for any transfer of membership interests.

**OBTAINING A NAME AND NAMING REQUIREMENTS**

**Corporations**

The name of the corporation must include 1 of the following terms: (i) Corporation, (ii) Corp., (iii) CRL, (iv) SRL, (v) Incorporated, (vi) Inc. or (vii) words or abbreviations of similar importance in other languages, provided they are written in roman letters or characters.

Note that, whenever words or abbreviations of similar importance in other languages are used, Corporation, Corp., Incorporated or Inc. must be included at the end of the corporate name.

**Limited Liability Companies**

The name of every LLC must contain the terms: (i) Limited Liability Company, (ii) Compañía de Responsabilidad Limitada, (iii) L.L.C. (iv) C.R.L., (v) LLC or (vi) CRL.

**SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS**

**Corporations**

Not applicable for this jurisdiction.

**Limited Liability Companies**

Not applicable for this jurisdiction.

**APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

**Corporations**

If the corporation has capital stock, its board of directors shall adopt a resolution setting forth the proposed amendment, declaring its advisability and either calling a special meeting of the shareholders entitled to vote for the consideration of such amendment or directing the proposed amendment be considered at the next annual meeting of the shareholders.

If the corporation has no capital stock, the governing body shall adopt a resolution setting forth the proposed amendment and declaring its advisability. If a majority of all the members of the governing body votes in favor of such amendment, a certificate thereof shall be executed, acknowledged and filed.

**Limited Liability Companies**

Generally, any approval requirements are set forth in the LLC’s operating agreement.
LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

Corporations and Limited Liability Companies

Federal Employer Identification Number

Entities in Puerto Rico are identified through a taxpayer ID known as the Employer Identification Number (EIN), which is issued by the US Internal Revenue Service (IRS). Unlike other jurisdictions, the local Treasury does not issue a separate identification number. The EIN may be obtained by applying online through the IRS website or by mailing in or faxing Form SS-4 to the IRS. If requested online, the unique number is assigned immediately upon request.

SURI Platform

In October 2016, the Puerto Rico Treasury Department implemented an integrated online platform to facilitate matters related to the collection and payment of sales and use tax, excise taxes, and income tax, compliance and information reporting and withholding, among others. Registration with the SURI platform is mandatory for entities that are operating in Puerto Rico. Once the EIN is assigned, entities operating in Puerto Rico are required to register with SURI. Registration requires uploading a copy of the EIN confirmation letter.

Classification Election for Tax Treatment

Unlike other entities, LLCs may elect to be classified as corporations or partnerships under Puerto Rico tax laws. This election is accomplished through the filing of Form SC 6045, with the Puerto Rico Treasury Department on or before the due date, including extensions, of the Puerto Rico income tax return for the taxable year with respect to which the election is to become effective. Although a Puerto Rico LLC is automatically treated as a foreign corporation for US federal income tax purposes, it may elect to be treated as a partnership or disregarded entity for US federal income tax purposes, as applicable. This election is accomplished through the filing of Form 8832 with the IRS.

Virtual Collection Center

The Virtual Collection Center is an online platform established by the Puerto Rico Treasury Department which allows for the payment of service charges imposed by the Puerto Rico Treasury Department on taxpayers seeking administrative determinations (e.g., private letter rulings) and similar transactions. Registration with the Virtual Collection Office is not mandatory and the Virtual Collection Center is expected to be fully phased out by the SURI platform in the coming years.

Merchant's Registry Certificate

A business that intends to operate in Puerto Rico will be considered a “merchant” (subject to certain exceptions) and will be required to register with the Puerto Rico Treasury Department as a merchant through the SURI platform. Upon registration of a sales and use tax account, the Puerto Rico Treasury Department will issue a Merchant’s Registry Certificate which will designate the merchant as one required to withhold sales and use tax, or one exempt from making such withholding. The Merchant’s Registry Certificate may also designate the business as an exhibitor, or temporary business, as applicable. When opening bank accounts and in the ordinary course of business, the Merchant's Registry Certificate will often be required. In fact, it should be visibly displayed at the premises in Puerto Rico and failure to do so could result in fines.
Sales and Use Tax

The sale of taxable items and services in Puerto Rico is subject to an 11.5 percent sales and use tax (SUT). In addition, since October 2015, most transactions between merchants (business-to-business transactions) ceased to be tax exempt and became subject to a 4 percent SUT. Moreover, there is a 10.5 percent use tax upon importation of taxable items in Puerto Rico, payable by the importer of record. Effective August 1, 2017, merchants that import tangible property into Puerto Rico are required to report and remit the 1 percent municipal SUT to the Puerto Rico Treasury Department. No additional import declaration will be required for purposes of the municipal SUT.

There are certain transactions which continue to be exempt from sales and use tax, the most common being sales to Puerto Rico government entities. However, all exempt transactions must be documented by a Certificate of Exempt Purchases, which is a form filled out by the seller and the purchaser of the taxable items, identifying the applicable exemption.

Waiver Certificate for Entities Rendering Services

Generally, payments made in the conduct of a trade or business or for the production of income in excess of USD 500 to another person (natural or judicial) for services performed within Puerto Rico are subject to a 10 percent withholding tax payable to the Puerto Rico Treasury Department, unless the service provider potentially subject to the withholding has a waiver in place. As a general rule, legal entities that have been in operation for less than 3 years may obtain a waiver from this withholding. The waiver is obtained through SURI and is generally issued immediately.

Municipal License Tax

Each of the 78 municipalities in Puerto Rico is entitled to levy and collect up to a 0.5 percent tax on the gross receipts of a company carrying business within the municipality. Financial businesses are instead subject up to a 1.5 percent tax on gross receipts. The tax is known as the municipal license tax (or patente municipal in Spanish). As a result, companies are required to register when commencing operations within the applicable municipality. Registration with the municipality usually requires occupying physical space and obtaining the Single Use Permit (described below), but this requirement can be waived in certain circumstances. As technology advances and allows companies to conduct business remotely, municipalities are still enforcing registration in order to collect the municipal license tax. There are various tax incentives which eliminate or significantly reduce the impact of the municipal license tax.

Single Use Permit

Businesses that will occupy physical space are required to obtain a Single Use Permit (Permiso Único in Spanish) authorizing the occupancy of the premises. The Single Use Permit consolidates environmental, health and fire department authorizations, among others, depending on the nature of the business. The Single Use Permit requires inspection of the premises by an authorized government inspector.

Real and Personal Property Taxes

Both real and personal property in Puerto Rico are subject to taxation, unless there is an exception or special amnesty in place. Although registration with the Municipal Revenue Collection Center (CRIM, for its Spanish...
acronym) is not mandatory in order to commence operations, it will often be required when registering with the municipality in order to demonstrate that the company does not owe any personal or real property taxes.

**PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY**

**Corporations**

Not applicable for this jurisdiction.

**Limited Liability Companies**

Not applicable for this jurisdiction.

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FORM OF ENTITY

Several types of companies may be used as corporate vehicles in Romania. Joint stock companies (societate pe actiuni or JSC) and limited liability companies (societate cu raspundere limitata or LLC) are the most commonly used given their flexible incorporation procedure and limitation of the shareholders’ liability.

Joint stock company (JSC)

It is a separate and distinct legal entity. A JSC may be managed by:

- 1 or more directors (forming a board of directors), with the possibility of management delegation, in the 1-tier system; directors are appointed by the general meeting of shareholders while managers are appointed by the board of directors or

- An executive board and a supervisory board in the 2-tier system; members of the executive board are appointed by the supervisory board; members of the supervisory board are appointed by the general meeting of shareholders.

Generally, if a JSC is managed in a 1-tier system, a sole director/board of directors represent(s) the company through its president. Under the 2-tier system, representation power is exercised by members of the executive board.

Special provisions apply in case of public listed companies.

Limited liability company (LLC)

It is a separate and distinct legal entity.

An LLC may be managed by 1 or more directors, appointed by the general meeting of shareholders.

A company is represented by its directors.
Joint stock company (JSC)

- Unlimited number of shareholders; minimum number of shareholders is two

- Personal liability of shareholders is limited to their contribution to the share capital; however, in certain situations, their liability may be extended (eg, piercing the corporate veil)

- A JSC is registered by default by the Trade Registry as a micro-enterprise and will automatically switch to the corporate income tax regime (ie, taxing the profits) after the level of taxable revenues reaches the threshold of EUR1 million

- A JSC may opt to apply the corporate income tax regime since incorporation provided that it fulfills certain conditions in terms of value of the share capital and number of employees

- A fiscal registration number is allocated by the Trade Registry at the moment JSC is incorporated; other types of fiscal registrations (eg, for VAT purposes, for social security contributions) should be considered depending on the economic activity to be performed

- The fiscal year is generally a calendar year with the possibility to change it with another period, but only if the JSC is subject to corporate income tax regime

- Typical charter documents:
  - Articles of association
  - Resolutions of the general meeting of shareholders
  - Resolutions of the board of directors
  - Shareholders’ register

- Shares can be either common or preferred

Limited liability company (LLC)

- Up to 50 shareholders; may be incorporated/owned by a sole shareholder

- Personal liability of shareholders is limited to their contribution to the share capital; however, in certain situations, their liability may be extended (eg, piercing the corporate veil)

- An LLC is registered by default by the Trade Register as micro enterprise and will automatically switch to the corporate income tax regime (ie, taxing the profits) after the level of taxable revenues reaches the threshold of EUR1 million

- An LLC may opt to apply the corporate income tax regime since incorporation provided that it fulfills certain conditions in terms of value of share capital and number of employees

- A fiscal registration number is allocated by the Trade Registry at the moment LLC is incorporated; other
• types of fiscal registrations (eg, for VAT purposes, social security contributions) should be considered depending on the economic activity to be performed

• The fiscal year is generally the calendar year with the possibility to change it with another period, but only if the LLC is subject to the corporate income tax regime

• Typical charter documents include:
  ○ Articles of association
  ○ Resolutions of the general meeting of shareholders
  ○ Resolutions of the board of directors
  ○ Shareholders’ register

• Only one class of shares is allowed

MINIMUM CAPITAL REQUIREMENT

Joint stock company (JSC)

• Minimum share capital of RON90,000

• Minimum nominal value per share of RON0.1

Limited liability company (LLC)

• Minimum share capital – no minimum value

• Minimum nominal value per share – no minimum value

LEGAL LIABILITY

Shareholders of a JSC or an LLC are generally not liable for the debts of the company; their liability is limited to their contribution to the share capital of the company; however, in certain situations, their liability may be extended (eg, piercing the corporate veil).

TAX PRESENCE

Similar tax and accounting reporting requirements are applicable for both JSCs and LLCs established in Romania. Further to the incorporation, both JSCs and LLCs are in principle subject to the following taxes:

• The micro-companies tax: JSCs and LLCs will be liable to pay a micro-companies tax of 1 percent (if the company has at least one employee) or 3 percent (if the company has no employees), applied to the specific
categories of revenues mentioned in the legislation, provided that the cumulated value of such revenues is below EUR 1 million

- Profit tax: if the cumulated value of the taxable revenues is higher than EUR 1 million, JSCs and LLCs are subject to 16 percent profit tax, applied on the fiscal result determined starting from the accounting profits adjusted with fiscal items

- Value added tax (VAT): the standard VAT rate in Romania is currently 19 percent. The reduced VAT rates are of 9 percent (eg, for medicines, food and beverages - except alcohol, among others) or 5 percent (eg, for school manuals, books, newspapers and magazines, hotel accommodation and similar accommodation, restaurant and catering services, supplies of social housing including related land, in certain conditions). Registration for VAT purposes is required if the turnover resulting from the operations to be performed exceed the threshold of EUR 88,500 (ie, RON 300,000)

- Local tax: due by companies for assets in their patrimony (ie, for buildings, land and vehicles owned) or taxes on publicity and advertising and outdoor advertising

- Withholding tax (WHT): WHT is due on cross-border payment of dividends, interest, royalties, commissions and services. As per the domestic tax legislation, income derived by non-residents from Romania is, as a general rule, subject to 16-percent WHT in Romania. However, such rates can be reduced (even to nil) under the provisions of the EU Directives or double tax treaties entered into by Romania with different countries

- Salary and mandatory social security charges: the existence of employees at the level of the JSC and LLC trigger salary tax and related social security contributions. A flat income tax rate of 10 percent applies to the income obtained by employees. Moreover, both the employer and the employee are required to contribute to the social security system (ie, 35 percent cumulated contribution to pension and health funds due by employees working in normal conditions and labor insurance contribution of 2.25 percent for the employer)

- Customs duties: applicable if JSC or LLC performs imports of goods from outside the EU to Romania (certain exemptions may apply though)

- Accounting requirements: both JSCs and LLCs are required to organize and manage its own accounts based on the Romanian accounting rules

**INCORPORATION PROCESS**

Certain documents, such as articles of association, incorporation resolution, statements of shareholder(s) and director(s), must be submitted with the competent Trade Registry.

**BUSINESS RECOGNITION**

JSCs and LLCs are well regarded and widely used, as opposed to other types of companies.
SHAREHOLDER MEETING REQUIREMENTS

JSCs and LLCs are required to hold annual meetings of shareholders to vote on certain items, such as approval of financial statements. In the case of a JSC, general meeting of shareholders can either be ordinary or extraordinary depending on the matter on the agenda.

BOARD OF DIRECTOR MEETING REQUIREMENTS

Joint stock company (JSC)

The board of directors or supervisory board is required to meet every 3 months.

Limited liability company (LLC)

Not specified by law. Directors are not required by law to form a board of directors.

ANNUAL COMPANY TAX RETURNS

The following tax returns are to be submitted both by JSC and LLC:

- If the company is subject to corporate income tax regime: (i) quarterly profit tax returns (ie, for the quarters I, II and III) by the 25th of the first month following the quarter for which the profit tax liability is computed and (ii) annual profit tax return no later than March 25 of the year following the one for which the profits tax is computed if the company is liable for profit tax, provided that the fiscal year coincides with the calendar year. Other corporate income tax compliance regimes apply for companies activating in certain domains (e.g. financial industry)

- If the company is subject to micro-enterprise tax regime: quarterly micro-company returns by the 25th of the first month following the quarter for which the micro-company liability is computed

- VAT returns (ie, form 300, EC-Sales and Acquisitions List – form 390, Local acquisition/supply of goods/services statement – form 394) by the 25th day of the month following the end of the fiscal period

- Intrastate statements on a monthly basis for intra-community movements of goods, starting with the month in which the aggregate value of goods acquired/sold from/to other EU member states reaches the thresholds provided by the Romanian legislation (RON900,000 for both acquisitions and supplies)

- Payroll statements on a monthly basis, no later than 25th of the month following the one to which the liabilities are computed. Tax returns for salary tax and related social security contributions (form 112) should be submitted by electronic means

- Financial statements: within 150 days from the end of the financial year; on a bi-annual basis (if specific conditions are fulfilled) and on a quarterly basis (if and when interim distribution of dividends is performed during the year)

- Other tax statements (eg, for local taxes, environmental fund contributions), depending on the specificity of
BUSINESS REGISTRATION FILING REQUIREMENTS

Joint stock company (JSC)
Initial registration is required, as well as annual filings. All resolutions of the general meetings of shareholders are required to be filed with the Trade Registry.

Limited liability company (LLC)
Initial registration is required, as well as annual filings. Only certain resolutions of the general meetings of shareholders are required to be filed with the Trade Registry.

BUSINESS EXPANSION

Joint stock company (JSC)
No need to change as business expands. However, secondary offices may need to be opened.

Limited liability company (LLC)
No need to change as business expands. However, secondary offices may need to be opened. If the number of shareholders becomes higher than 50, the LLC must convert to a JSC.

EXIT STRATEGY

File dissolution documents with the appropriate Trade Registry.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

The annual financial statements of the company must be approved by the general meeting of shareholders.

DIRECTOR / OFFICER REQUIREMENTS

Joint stock company (JSC)
Directors may be either legal entities or individuals. Managers must be individuals.

Limited liability company (LLC)
Directors may be either legal entities or individuals.

For more information on directors’ duties, see our Global Guide to Directors’ Duties.
LOCAL CORPORATE SECRETARY REQUIREMENT

Not applicable for this jurisdiction.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Not applicable for this jurisdiction.

LOCAL OFFICE LEASE REQUIREMENT

The company must have registered headquarters. Relevant documents attesting the right to use the headquarters are required to be submitted with the Trade Registry.

OTHER PHYSICAL PRESENCE REQUIREMENTS

Not applicable for this jurisdiction.

SUFFICIENCY OF VIRTUAL OFFICE

Not applicable for this jurisdiction.

PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

In certain circumstances, company can use a third-party service provider for headquarters.

PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Not applicable for this jurisdiction.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

Not applicable for this jurisdiction.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Not applicable for this jurisdiction.
Nominee shareholders or directors are not used.

**SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF**

Directors: Directors’ rights (eg, to manage the company, to represent the company towards third parties, to draft the annual report accompanying the annual/quarterly financial statements of the company and business plan) are designed in a broad manner in order to allow for flexible management of the company. All such rights must be exercised within the limits set forth by the applicable legislation, the articles of association and the shareholders’ resolutions.

Directors’ rights (eg, to manage the company, to represent the company towards third parties and to draft the annual report accompanying the annual/quarterly financial statements of the company and business plan) are designed in a broad manner in order to allow for flexible management of the company. All such rights must be exercised within the limits set forth by the applicable legislation, the articles of association and the shareholders’ resolutions.

**PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS**

**Joint stock company (JSC)**

Identities of shareholders and directors are publicly disclosed at the Trade Registry. Since there is no obligation for documents regarding transfer of shares to be submitted with the Trade Registry, the information available at the Trade Registry may not be entirely accurate with regards to the company’s shareholding structure.

**Limited liability company (LLC)**

Identities of shareholders and directors are publicly disclosed at the Trade Registry.

**MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS**

**Joint stock company (JSC)**

Shareholders:

- Minimum 2; no maximum limit

Directors:

- If the company is managed in 1-tier system: minimum 1; no maximum limit, but it should always be an odd number
  - If the company is managed in 2-tier system:
- Executive board: minimum 1; no maximum limit, but it should always be an odd number
- Supervisory board: minimum 3; maximum 11

Limited liability company (LLC)

Shareholders:

- Minimum 1; maximum 50

Directors:

- Minimum 1; no maximum limit

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

Joint stock company (JSC)

- Minimum 2

Limited liability company (LLC)

- Minimum 1

REMOVAL OF DIRECTORS OR OFFICERS

Joint stock company (JSC)

Members of the board of directors/supervisory board may be revoked by the general meeting of shareholders; members of executive board may be revoked by the supervisory board.

Limited liability company (LLC)

Directors may be revoked by the general meeting of shareholders.

REQUIRED AND OPTIONAL OFFICERS

Joint stock company (JSC)

Three censors and an alternate, unless a higher number is provided by the articles of association (odd number required).

Upon the fulfillment of certain conditions, appointment of financial auditors becomes mandatory.

Limited liability company (LLC)

Over 15 shareholders, appointment of 1 or more censors is mandatory.
Upon the fulfillment of certain conditions, appointment of financial auditors becomes mandatory.

**BOARD MEETING REQUIREMENTS**

Joint stock company (JSC)

Board of directors/supervisory board shall meet every 3 months.

Limited liability company (LLC)

Directors are not required by law to form a board of directors.

**QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

Joint stock company (JSC)

*Quorum requirements for shareholders’ meeting*

- Ordinary general meeting of shareholders:
  - At least 1/4 of the total number of voting rights at the 1st convening
  - No quorum requirements at 2nd convening

- Extraordinary general meeting of shareholders:
  - At least 1/4 of the total number of voting rights at 1st convening
  - At least 1/5 of the total number of the voting rights at 2nd convening

*Voting requirements of shareholders’ meeting*

- Ordinary general meeting of shareholders:
  - Majority of the expressed votes at both 1st and 2nd convening

- Extraordinary general meeting of shareholders:
  - Majority of votes of present/represented shareholders at both 1st and 2nd convening
  - Certain decisions require a higher voting threshold (eg, at least 2/3 of the voting rights in case of change of the main business object or the increase/decrease of the share capital)

In certain cases, articles of association may deviate from quorum and voting legal requirements.

- Quorum requirements for the board of directors meeting:
○ At least 1/2 of the total number of members, unless the articles of association provide for a higher number

● Voting requirements of board of directors meeting:

○ Vote of majority of the present members

Limited liability company (LLC)

Quorum requirements of shareholders’ meeting

Depend on the voting requirements.

Voting requirements of shareholders’ meeting

As a rule, a double majority is required by law (ie, absolute majority of shareholders and shares), unless otherwise provided by the articles of association, at 1st convening; simple majority applies at 2nd convening. Unless otherwise provided, unanimity is required for amending the articles of association.

MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?

From a practical perspective, yes.

AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?

Joint stock company (JSC)

A JSC managed in the 2-tier system is under the obligation of financial audit. Subject to meeting certain thresholds, financial audit may become mandatory to a JSC managed in the 1-tier system.

Limited liability company (LLC)

Subject to meeting certain thresholds, financial audit may become mandatory.

REQUIREMENT REGARDING PAR VALUE OF STOCK

Joint stock company (JSC)

● Minimum nominal value per share amounts to RON0.1

Limited liability company (LLC)

● Minimum nominal value per share – no minimum value
INCREASING OF CAPITALIZATION IF NEEDED

The share capital may be increased by issue of new shares or increase of the share's nominal value. New shares may be issued in exchange for contribution in cash or in kind by incorporating the company’s reserves (if possible) or by offsetting certain receivables.

SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)

Depending on the sector of the company activities, specific requirements may apply.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

Joint stock company (JSC)

Nominal shares are generally transferred through a statement made in the shareholders’ registry signed by the assignor and the assignee.

Limited liability company (LLC)

Shares may be transferred to third parties subject to approval by the shareholders representing at least 75 per cent of the share capital, unless the articles of association provide otherwise.

OBTAINING A NAME AND NAMING REQUIREMENTS

Name reservation is required.

To the extent the name include attributes such as "national," "Romanian" or derivatives thereof and/or words specific to central or local public authorities and institutions, prior approval of competent authorities is required.

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

Depending on the sector of the company activities, specific requirements may apply.

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

Joint stock company (JSC)

Amendment of the articles of association is subject to approval by the extraordinary shareholders' meeting.

Limited liability company (LLC)

Amendment of the articles of association is subject to approval by the shareholders’ meeting.
LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

Various permits may be required depending on the specificities of activities to be performed by the company.

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

Not frequently used in practice. Same rules apply to transfer of shares.

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RUSSIA

FORM OF ENTITY

Joint-stock company (public and non-public)

A commercial organization the charter capital of which is divided into a definite number of shares. Shares qualify as securities under Russian law. The shareholders of the company are not liable for the obligations of the company and bear the risk of losses in connection with the company’s activity within the cost of shares in their possession.

Managed by the general shareholders’ meeting, the highest governing body of the company, which is responsible for major decisions regarding the company (eg, amending the charter, reorganization and liquidation, distribution of profit, approving annual reports and some deals); by the executive body (ie, managing director or managing director and directorate) which is responsible for day-to-day activities of the company; and by the board of directors, which is responsible for overseeing the general affairs of the company.

The company may also opt to have 2 or more managing directors who may act separately or jointly.

In a company with less than 50 shareholders, the charter of the company may provide that the functions of the board of directors of the company shall be carried out by the general shareholders’ meeting.

Limited liability company

A commercial organization, the charter capital of which is divided into participatory interests. Participatory interests do not qualify as securities under Russian law. The company members are not liable for the obligations of the company and bear the risk of losses in connection with the company’s activity within the cost of the contributions they have made.

Managed by the general members’ meeting, the highest management body of the company, which is responsible for major decisions regarding the company (eg, amending the charter, reorganization and liquidation, approving annual reports) by the executive body (ie, the managing director or managing director and directorate), which is responsible for day-to-day activities of the company and, in some cases, by the board of directors, which is responsible for overseeing the general affairs of the company.

The company may also opt to have 2 or more managing directors who may act separately or jointly.
ENTITY SET UP

Public joint-stock company

- Unlimited number of shareholders
- Generally no personal liability of the shareholders
- Typical documents include the charter, regulations, board resolutions and resolutions of the general shareholders’ meetings
- General shareholders’ meeting is the highest management body; board of directors (obligatory in the case of 50-plus shareholders) exercises overall management of the company; sole executive body (ie, the management board) responsible for day-to-day management
- The shares are freely transferable. It is prohibited to establish the company’s or its shareholders’ pre-emptive right (or, more correctly, the right of first refusal) to acquire shares alienated by the shareholders of the company

Non-public joint-stock company

- Generally no personal liability of the shareholders
- Typical documents include the charter, board resolutions (if any) and resolutions of the general shareholders’ meetings
- General shareholders’ meeting is the highest management body; board of directors (if any) exercises overall management of the company; sole executive body (ie, management board) responsible for day-to-day management
- Non-public joint-stock company may not conduct open subscription for shares or otherwise offer them for acquisition to an unlimited number of people, and
- The company’s shareholders enjoy the pre-emptive right to purchase shares offered to be sold by other shareholders in the company at a price offered to a third party and in proportion to the number of the shares held by each of them unless another procedure is provided for by the company’s charter.

Limited liability company (LLC)

- Up to 50 members
- Generally no personal liability of the members
- Typical documents include the charter, board resolutions (if any) and resolutions of the general shareholders’ meetings
- Members have the right to sell its participatory interest in the charter capital or a part thereof to 1 or several members of the company. No consent shall be required from the company or other members of
the company to do so unless otherwise stipulated by the company’s charter. The company’s members have the pre-emptive right to acquire participatory interest(s) from other participants; waiver from the pre-emptive right is allowed.

**MINIMUM CAPITAL REQUIREMENT**

Joint-stock company (public and non-public)

For a public joint-stock company: RUB100,000

For a non-public joint-stock company: RUB10,000

Limited liability company

There is a minimum of RUB10,000.

**LEGAL LIABILITY**

Joint-stock company (public and non-public)

Shareholders of a company are generally not liable for the debts of a company aside from their financial contribution to the company.

Limited liability company

The members in a company are generally not liable for the debts of a company aside from their financial contribution to the company.

**TAX PRESENCE**

Joint-stock company (public and non-public)

A company is taxed at 2 levels. First, the company pays profits tax on its corporate income; then, the company distributes dividends to shareholders and withholds the income tax on those dividends (where paid in cash), acting as a tax agent. Certain tax exemptions are available.

Limited liability company

A company is taxed at 2 levels. First, the company pays profits tax on its corporate income; then, the company distributes profits to members and withholds the income tax on those profits (where paid in cash), acting as a tax agent. Certain tax exemptions are available.

**INCORPORATION PROCESS**

Joint-stock company (public and non-public)
Filing of a set of documents, including the application for the state registration, resolution on incorporation and the charter with an appropriate registration authority (i.e., the local tax inspectorate). Registration of the issue of shares with the Central Bank of Russia and payment of the charter capital.

**Limited liability company**

Filing a set of documents including the application for the state registration, resolution on incorporation and the charter with the appropriate registration authority (i.e., the local tax inspectorate).

Payment of the charter capital.

**BUSINESS RECOGNITION**

**Joint-stock company (public and non-public)**

Public joint-stock company – mainly used for large companies.

Non-public joint-stock company – not as widely used as limited liability companies, as the procedure for incorporation is more complicated.

**Limited liability company**

Well regarded and widely used.

**SHAREHOLDER MEETING REQUIREMENTS**

**Joint-stock company (public and non-public)**

It is required to hold an annual shareholders' meeting.

**Limited liability company**

It is required to hold an annual members' meeting.

**BOARD OF DIRECTOR MEETING REQUIREMENTS**

**Joint-stock company (public and non-public)**

The procedure for convening and conducting of board meetings is determined by the charter of the company and internal regulations of the company.

**Limited liability company**

The procedure for the convocation and conducting of board meetings is determined by the charter of the company.
ANNUAL COMPANY TAX RETURNS

Joint-stock company (public and non-public)

Must file quarterly and annually tax returns with tax authorities.

Limited liability company

Must file quarterly and annually tax returns with tax authorities.

BUSINESS REGISTRATION FILING REQUIREMENTS

Joint-stock company (public and non-public)

State registration of incorporation of a company and registration of the share issuance are required.

Limited liability company

State registration of the company is required.

BUSINESS EXPANSION

Joint-stock company (public and non-public)

Public joint-stock company and non-public joint-stock companies – no need to change as business expands.

Limited liability company

If the company intends to enter the stock market or when the number of members exceeds 50, the company should be converted to a joint-stock company.

EXIT STRATEGY

Joint-stock company (public and non-public)

Complicated, bureaucratic and usually a lengthy procedure (from 4 months up to a few years), requiring filing of a set of documents with the appropriate registration authority, publication of the information on liquidation in the media, settlements with creditors and the tax authorities (formal reconciliation now is not mandatory, but in practice separate formalization of settlement with the tax authorities will be required). In addition, an on-site tax audit may be appointed.

Limited liability company

Complicated, bureaucratic and usually a lengthy procedure (from 4 months up to a few years), requiring filing of a set of documents with the appropriate registration authority, publication of the information on liquidation in the media, settlements with creditors and reconciliation with the tax authorities.
ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

Joint-stock company (public and non-public)
Annual general shareholders’ meeting.

Limited liability company
Annual general members’ meeting.

DIRECTOR / OFFICER REQUIREMENTS

Joint-stock company (public and non-public)
Board of directors is required (the charter of a company with less than 50 shareholders may provide that the functions of the board of directors shall be carried out by the general shareholders’ meeting); executive body (sole or sole and collective) is required; internal auditor (or auditing commission) is required.

Limited liability company
Executive body (sole or sole and collective) is required; internal auditor/audit commission is required in a company with more than 15 members. The company’s charter may provide for the formation of a board of directors.

For more information on directors’ duties, see our Global Guide to Directors’ Duties.

LOCAL CORPORATE SECRETARY REQUIREMENT

Joint-stock company (public and non-public)
Not applicable.

Limited liability company
Not applicable.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Joint-stock company (public and non-public)
None beyond the officers required for conducting business.

Limited liability company
None beyond the officers required for conducting business.
LOCAL OFFICE LEASE REQUIREMENT

Joint-stock company (public and non-public)

Premises are required to be used as a registered legal address of the company, where a sole executive body is supposed to sit.

Limited liability company

Premises are required to be used as a registered legal address of the company, where a sole executive body is supposed to sit.

OTHER PHYSICAL PRESENCE REQUIREMENTS

Joint-stock company (public and non-public)

None beyond the officers required for conducting business.

Limited liability company

None beyond the officers required for conducting business.

SUFFICIENCY OF VIRTUAL OFFICE

Joint-stock company (public and non-public)

Not sufficient.

Limited liability company

Not sufficient.

PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Joint-stock company (public and non-public)

Leased or owned premises are required. May be provided by a third-party service provider.

Limited liability company

Leased or owned premises are required. May be provided by a third-party service provider.

PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM
OR THIRD-PARTY SERVICE PROVIDER

Joint-stock company (public and non-public)

A commonly used practice applied by multinationals is to avoid outsourcing.

However, local director or corporate secretary outsourcing is not restricted by Russian law and is at times practiced in relation to small and medium-sized businesses.

Limited liability company

A commonly used practice applied by multinationals is to avoid outsourcing.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

Joint-stock company (public and non-public)

None. Though a work permit is required for foreign employees (ie, officers or sole executive bodies). Special requirements for foreign participation in certain types of businesses to be considered (eg, banking, insurance or strategically important sectors).

Limited liability company

None, though a work permit is required for foreign employees (ie, officers or sole executive bodies). Special requirements for foreign participation in certain types of businesses to be considered (eg, banking, insurance or strategically important sectors).

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Joint-stock company (public and non-public)

Not applicable.

Russian law does not recognize the concept of a nominee shareholder or nominee directors.

Limited liability company

Not applicable.

Russian law does not recognize the concept of a nominee shareholder or nominee directors.

SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF

Joint-stock company (public and non-public)
The general shareholders’ meeting, the highest management body of the company, is responsible for major decisions regarding the company (e.g., amending the charter, reorganization and liquidation, approving annual reports and some deals, and other decisions provided for by the charter).

Members of the board of directors are elected by the shareholders. The competence of the board of directors is determined by the law and the charter of the company (responsible for overseeing the general affairs of the company).

In a company with less than 50 shareholders, the charter of the company may provide that the functions of the board of directors of the company shall be carried out by the general shareholders’ meeting.

The sole executive body (i.e., managing director or managing director and directorate) is responsible for day-to-day activities of the company.

**Limited liability company**

The general members’ meeting, the highest management body of the company, is responsible for major decisions regarding the company (e.g., amending the charter, reorganization and liquidation, increasing and decreasing the charter capital, approving annual reports and some deals, and other decisions provided for by the charter).

The charter of the company may provide for the formation of the board of directors whose members are elected by the members. The competence of the board of directors is determined by the law and the charter of the company (responsible for overseeing the general affairs of the company).

The sole executive body (i.e., managing director or managing director and directorate) is responsible for day-to-day activities of the company.

**PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS**

**Joint-stock company (public and non-public)**

The identity of the sole executive body (i.e., managing director) is publicly disclosed; generally, the identity of shareholders is not publicly disclosed.

A public joint-stock company should disclose a list of its affiliated persons among other information which may contain information on the company’s shareholders.

**Limited liability company**

The identity of the sole executive body (i.e., managing director) and the identity of members are publicly disclosed.

**MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS**

**Joint-stock company (public and non-public)**

Public and non-public joint-stock companies: minimum 1 shareholder, and no maximum number.
The board of directors: minimum 5 members.

For a company with more than 1,000 shareholders: minimum 7 members.

For a company with more than 10,000 shareholders: minimum 9 members.

The law does not establish a maximum number of directors.

**Limited liability company**

Minimum 1 member, maximum 50 members.

No special requirements regarding the directors.

**MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

**Joint-stock company (public and non-public)**

One shareholder is sufficient.

A company cannot have another company with 1 shareholder or participant as a sole founder (ie, shareholder) unless otherwise provided for by the federal law.

**Limited liability company**

One member is sufficient.

A company cannot have another company with 1 shareholder or member as a sole founder (ie, shareholder).

**REMOVAL OF DIRECTORS OR OFFICERS**

**Joint-stock company (public and non-public)**

Removal of the sole executive body – anytime by a resolution of the general shareholders’ meeting or board of directors, if such resolutions are within the competence of the board of directors.

**Limited liability company**

Removal of the sole executive body – anytime by a resolution of the general members’ meeting or a resolution of the board of directors if this falls within the competence of the board of directors according to the company’s charter.

**REQUIRED AND OPTIONAL OFFICERS**

**Joint-stock company (public and non-public)**

Typically, an executive body (sole or sole and collective) and internal auditor (or audit commission) are required.
Limited liability company

Typically, an executive body (sole or collective) is required. An internal auditor (or audit commission) is required in a company with more than 15 members.

**BOARD MEETING REQUIREMENTS**

Joint-stock company (public and non-public)

The procedure for convening and conducting of board meetings is determined by the charter of the company and internal regulations of the company (if adopted).

Limited liability company

The procedure for convening and conducting of board meetings is determined by the charter of the company and internal regulations of the company (if adopted).

**QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

Joint-stock company (public and non-public)

Normally, general shareholders’ meeting: more than 50 percent of votes.

Board of directors: not less than 50 percent of elected members.

Limited liability company

General members’ meeting: no direct requirements. However, decisions shall be taken by a majority of votes of the company’s members. Some decisions shall be taken by a 2/3 majority of votes of the company’s members or by all members of a company unanimously.

Board of directors: not less than 50 percent of elected members.

**MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?**

Joint-stock company (public and non-public)

Not necessary in order to incorporate a company, but usually recommended. A local bank account must be opened immediately post-incorporation in order for shares to be paid up, to pay taxes and carry on business activities (eg, to pay salaries or a lease).

Limited liability company

Not necessary in order to incorporate a company, but usually recommended. A local bank account must be opened immediately post-incorporation in order to pay taxes and carry on business activities (eg, to pay salaries or a lease).
AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?

Joint-stock company (public and non-public)

An external audit is obligatory in cases provided for by the Federal Law "On auditing activities." The requirements to the auditor are stipulated by the federal law.

The company’s books must be always kept – or made immediately available to the tax authorities – at the registered address of the company.

Limited liability company

An external audit is obligatory in cases provided for by the Federal Law “On auditing activities.” The requirements to the auditor are stipulated by the federal law.

The company’s books must be kept – or made immediately available to the taxing authorities – at the registered address of the company.

REQUIREMENT REGARDING PAR VALUE OF STOCK

Joint-stock company (public and non-public)

The par value of all common shares of the company must be equal. The par value of the preferred shares must not exceed 25 percent of the charter capital of the company.

Limited liability company

Not applicable.

INCREASING OF CAPITALIZATION IF NEEDED

Joint-stock company (public and non-public)

The charter capital of a company may be increased by increasing the nominal value of its shares or by issuing additional shares.

The decision to increase the charter capital of a company by increasing the nominal value of shares must be taken by a general shareholders’ meeting.

The decision to increase the charter capital of a company by issuing additional shares must be taken by a general shareholders' meeting or the board of directors of a company if such resolutions are within its competence in accordance with the charter of the company.

Limited liability company
The charter capital of a company may be increased by means of the company’s assets and/or by means of additional contributions by its members, unless it is prohibited by the company’s charter, through the contributions of third entities/persons to be accepted into the company. The resolution on increase of the charter capital shall be made by a general members’ meeting.

**SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)**

**Joint-stock company (public and non-public)**

Funds can be repatriated abroad from Russia via dividends, buyback of shares or decrease of the charter capital.

**Limited liability company**

Funds can be repatriated abroad from Russia via distribution of profits or decrease of the charter capital; in the latter case, the charter should provide for the return of cash in the event of redemption.

On February 28, 2022, the Russian President issued a decree implementing special economic measures (available here). The decree introduces the following key restrictions:

- Residents exporting goods, works and services abroad under the foreign trade contracts with nonresidents shall sell 80 percent of foreign currency they receive under such contracts. The requirement applies to the foreign currency received starting from January 1, 2022 and shall be complied with within 3 business days from the latest of the date of the decree or the date of the currency receipt. The procedure for the currency sale shall be established by the Central Bank (not available yet)

- Residents shall be prohibited from providing loans to nonresidents in foreign currency (starting March 1)

- Residents shall be prohibited from depositing foreign currency into their accounts outside Russia (starting March 1)

- Residents shall be prohibited from transferring funds without opening a bank account with the use of electronic means of payment provided by the foreign payment service providers (starting from March 1).

In addition, until December 31, 2022, the public joint stock companies may buy out their own shares only if certain conditions are met, including that (i) the shares shall be publicly traded and (ii) the average weighted price of such shares for 3 months starting from February 1 has decreased by more than 20 percent compared to such price starting from January 1. The full list of conditions is set out in clause 6 of the decree.

**RESTRICTIONS ON TRANSFERABILITY OF SHARES**

**Joint-stock company (public and non-public)**

Shares in a public joint-stock company are freely transferable; it is prohibited to establish the company’s or its shareholders’ pre-emptive right to acquire shares alienated by shareholders of the company.
A non-public joint-stock company may not conduct open subscription for shares or otherwise offer them for acquisition to an unlimited number of people. The company’s shareholders enjoy the pre-emptive right to purchase shares offered to be sold by the other shareholders in the company at a price offered to a third party and in proportion to the number of the shares held by each of them unless another procedure is provided in the company’s charter. The charter may provide for the company’s pre-emptive right to purchase shares sold by its shareholders if the shareholders did not use their pre-emptive right.

**Limited liability company**

The company’s members shall have the right to sell or alienate in any other way its participatory interest or a part thereof to 1 or several members of the company. No consent shall be required from the company or other members of the company for making such a transaction unless otherwise stipulated by the company’s charter.

The company’s members enjoy the pre-emptive right to buy the participatory interest or a part of the share of the company’s member at the price offered to a third person or at the price other than the one offered to a third person and fixed in advance by the company’s charter in proportion to the size of their participatory interest, unless the company’s charter stipulates a different procedure for the exercise of this right.

The Russian Central Bank issued Circular No. 018-34-3/1202 of 28 February 2022 (promulgated only on 1 March), whereby:

- All operations pertaining to transfer of Russian securities from broker accounts and depo accounts opened by foreign legal entities and individuals are prohibited from February 28, 2022 and until further cancellation of this Circular, save for:
  - Forced operations performed against the will of the person – holder of the account carried out in accordance with the laws of the Russian Federation;
  - Operations under depo trade accounts (sub-accounts to depo accounts opened in respect of clearing accounts) under instruction or report of a relevant clearing organization in relation to transactions made as part of the open trade;

This is effectively a ban on sale of shares in Russian joint stock companies by foreign residents.

- Transfer of payments under Russian securities of Russian issuers to foreign individuals or legal entities are banned from February 28, 2022 until further cancellation this Circular.

This is effectively a ban on dividend distributions out of Russia in relation to shares and other securities by joint stock companies.

**OBTAINING A NAME AND NAMING REQUIREMENTS**

**Joint-stock company (public and non-public)**

The company must have a full company name and may have a short company name.

In the event of public joint-stock company, the full company name must contain an indication that the company is public.
It is not allowed to include the words “Russia” or “Russian Federation” and derivate words (including "Russian") in the company name without obtaining special approval by the Russian government (such approval may only be granted if the company meets certain criteria).

**Limited liability company**

The company must have a full company name and may have a short company name.

The company name shall include the words “limited liability company.”

It is not allowed to include the words “Russia” or “Russian Federation” and derivate words (including "Russian") in the company name without obtaining special approval by the Russian government (such approval may only be granted if the company meets certain criteria).

**SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS**

**Joint-stock company (public and non-public)**

Typically not required, though legal service providers may have their own KYC documents to be completed.

**Limited liability company**

Typically not required, though legal service providers may have their own KYC documents to be completed.

**APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

**Joint-stock company (public and non-public)**

Generally, a decision must be taken by the general shareholders' meeting (3/4 majority vote), except in the cases provided for in the law and in the charter.

**Limited liability company**

By the general members’ meeting, generally with a majority vote, except in the cases provided for in the law and in the charter.

**LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

**Joint-stock company (public and non-public)**

Only certain types of activities require license.

**Limited liability company**

Only certain types of activities require license.
PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

Joint-stock company (public and non-public)

Highly not recommended and is not a widespread practice due to unclear business history (eg, filings, taxation issues and possible “hidden” debts).

Limited liability company

Highly not recommended and is not a widespread practice due to unclear business history (eg, filings, taxation issues and possible “hidden” debts).

KEY CONTACTS
SAUDI ARABIA

FORM OF ENTITY

Limited liability company

A limited liability company is a popular corporate vehicle among foreign investors in Saudi Arabia. The personal liability for each of the partners/shareholders is limited to the individual partner’s contribution to the company’s share capital.

ENTITY SET UP

Limited liability company (LLC)

- LLC is 1 of the most common forms of legal entity chosen by foreign investors in the Kingdom of Saudi Arabia (KSA)

- Establishing an LLC is a multistep process. Incorporating an LLC may take several months from the date of submission of application to the Saudi Arabia General Investment Authority (SAGIA)

- The Ministry of Commerce and Investment (MOCI) subsequently issues a commercial registration certificate before the LLC is considered fully registered in KSA

- After the incorporation, various governmental files and documents must be applied for in order for the LLC to be fully operational. This post-incorporation phase can take a couple to several months

Branch of a foreign company

- Foreign investors may also choose to establish a branch instead of an LLC to do business in the KSA

- A branch operates on behalf of the parent company (foreign registered company) and has no separate legal existence in KSA

- Registration of a branch in relation to issuance of the foreign investment license by SAGIA and the commercial registration certificate by MOCI follows the same general procedure as that of an LLC
Incorporation of a branch may take several months from the date of submission of application to SAGIA (subject to any delays caused by government authorities).

The parent company of the branch has liability for the branch’s activities that it undertakes in KSA.

The paid-up capital for a branch does not confer limitation of liability as compared to an LLC. The capital in a branch simply serves as a security for the Saudi market and

With regard to tax and a number of other matters, a permanent branch is treated in the same manner as a 100 percent foreign-owned LLC.

After the registration, various governmental files and documents must be applied for in order for the branch to be fully operational. This post-registration phase can take a couple to several months.

For future consideration, please note that an LLC can add shareholders if the company intends to expand in KSA. On the other hand, a branch cannot add shareholders as it is an extension of its foreign parent company.

**MINIMUM CAPITAL REQUIREMENT**

*Limited liability company*

Although there is no statutory minimum capital requirement, in practice, SAGIA requires foreign LLCs to have a capital of at least SAR500,000. In certain types of activities, specific minimum capital is prescribed by SAGIA:

- Service/property investment project value SAR30 million
- Service/property financing projects SAR200 million with 40 percent Saudi shareholding
- Service/transport SAR500,000
- Contracting: SAR500,000 (but have revenue/asset value requirements)
- Commercial (with minimum 25 percent Saudi partner): SAR7 million and a minimum contribution from the foreign shareholder of SAR20 million and
- Commercial (100 percent foreign): SAR30 million and commitment to invest at least SAR200 million over the first 5 years.

**LEGAL LIABILITY**

*Limited liability company*

Shareholders of an LLC are generally not liable for the debts of a corporation aside from their financial contribution to the corporation. Certain circumstances may pierce this limitation of liability.
TAX PRESENCE

Limited liability company

As of January 1, 2018, 5 percent value-added tax (VAT) has been introduced on most goods and services.

INCORPORATION PROCESS

Limited liability company

Foreign investors are required to obtain a foreign investment license from SAGIA and then complete the incorporation process at MOCI and other government departments. Incorporation process also includes notarization of the company's articles of association at the local notary public in Saudi Arabia. Specific licenses are required for certain activities.

BUSINESS RECOGNITION

Limited liability company

Well regarded and widely used.

SHAREHOLDER MEETING REQUIREMENTS

Limited liability company

Required to hold at least 1 annual meeting for LLCs within 4 months after the closing date of the financial year of the LLC.

BOARD OF DIRECTOR MEETING REQUIREMENTS

Limited liability company

There is no requirement for a board of directors or with regard to the nationality of directors. The company may be managed by a General Manager or by a Board of Directors. If a board of directors is formed, there is no requirement for frequency of meetings.

ANNUAL COMPANY TAX RETURNS

Limited liability company

Required to annually file tax returns at the General Authority of Taxes and Zakat.

BUSINESS REGISTRATION FILING REQUIREMENTS

Limited liability company
LLCs have to renew their foreign investment license issued by SAGIA and their commercial registration certificate issued by MOCI upon expiry, and renew subscription to chamber of commerce annually.

**BUSINESS EXPANSION**

Limited liability company

An LLC cannot have more than 50 shareholders, in which case it will have to be converted into a joint-stock company.

**EXIT STRATEGY**

Limited liability company

Appointment of a liquidator either from shareholders or third parties to carry out dissolution.

**ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Limited liability company

A shareholder meeting shall be convened at least once a year. Managers of the company shall prepare company’s financial statements, a report on its operations and financial position, and their proposal for appropriation of net profits within 3 months from the end of the financial year (Report). The managers shall also be prepared to submit a copy of their report to MOCI within 1 month of the date of preparation of the Report.

**DIRECTOR / OFFICER REQUIREMENTS**

Limited liability company

Shareholders may appoint a manager, executive managers and/or a board of directors.

For more information on directors’ duties, see our Global Guide to Directors’ Duties.

**LOCAL CORPORATE SECRETARY REQUIREMENT**

Limited liability company

No local corporate secretary requirement.

**LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT**
Limited liability company

None beyond the required managers or directors.

LOCAL OFFICE LEASE REQUIREMENT

Limited liability company

A local office lease and local address is required.

OTHER PHYSICAL PRESENCE REQUIREMENTS

Limited liability company

Not applicable for this jurisdiction.

SUFFICIENCY OF VIRTUAL OFFICE

Limited liability company

A virtual office is not sufficient.

PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Limited liability company

Registered address must be an address where the office is leased by the company.

PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Limited liability company

Use of local law firm for incorporation is common. Companies usually conduct their own secretarial functions once established.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

Limited liability company

The general manager needs to be a resident in the KSA. Directors are not required to be nationals or residents. There are specific requirements regarding the nationality of shareholders in certain activities such as:
• Trading activities: Saudi partner to own at least 25 percent of shareholding (unless the foreign investor meets the qualification to set up a 100 percent foreign owned trading company)

• Services/transport Saudi shareholding requirements – bus 30 percent / metro 25 percent

• Property financing projects 40 percent

• Communications value added – 30 percent Saudi shareholding requirement

• Insurance and reinsurance – 40 percent Saudi shareholding requirement

• Engineering design and professional consultancy: Saudi partner to own at least 25 percent of shareholding

There are certain types of activities that are reserved for Saudi nationals only. The list is issued by SAGIA and amended from time to time.

REstrictions regarding appointment of nominee shareholders or directors

Limited liability company

Restrictions apply as described in Nationality or residency requirements.

summary of director's, officer's and shareholder's authority and limitations thereof

Limited liability company

Directors are appointed by shareholders, either in the company's Articles of Association or a separate contract. Directors have the required authority to run day-to-day operations to the extent granted to them by the shareholders in a shareholders resolution or the Articles of Association.

Public disclosure of identity of directors, officers and shareholders

Limited liability company

There is no requirement to publicly disclose the identity of directors and shareholders.

Minimum and maximum number of directors and shareholders

Limited liability company

At least 1 shareholder is required in an LLC pursuant to the new Companies Law (effective as on May 2, 2016). Previously, a minimum of 2 shareholders were required to set up an LLC.
MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

Limited liability company

Directors: There is no minimum or maximum requirement.

REMOVAL OF DIRECTORS OR OFFICERS

Limited liability company

Company may remove directors appointed in the Articles of Association or a separate contract without prejudice to the officers’ right to compensation if required.

REQUIRED AND OPTIONAL OFFICERS

Limited liability company

Not applicable for this jurisdiction.

BOARD MEETING REQUIREMENTS

Limited liability company

If a board of directors was formed, requirements will be as provided in the Articles of Association of the company.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

Limited liability company

Quorum requirements will be as provided in the Articles of Association of the company.

MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?

Limited liability company

Opening a local bank account to deposit the capital is a requirement for incorporation.

AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?

Limited liability company
Company’s accounts must be audited by an auditor licensed to operate in KSA.

**REQUIREMENT REGARDING PAR VALUE OF STOCK**

Limited liability company

Shares have to be equal in value.

**INCREASING OF CAPITALIZATION IF NEEDED**

Limited liability company

Effectuated by amending the Articles of Association and the SAGIA license. A unanimous consent of shareholders is required.

**SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)**

Limited liability company

Funds to be taken as dividends, subject to statutory requirements to maintain a reserve, and local tax.

**RESTRICTIONS ON TRANSFERABILITY OF SHARES**

Limited liability company

There is a statutory right of first refusal on the transfer of shares to parties other than the shareholders.

**OBTAINING A NAME AND NAMING REQUIREMENTS**

Limited liability company

LLC should have “limited liability” at the end of its name, which shall be derived from its purpose. The proposed name must be approved by MOCI.

**SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS**

Limited liability company

Not required by law.

**APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**
Limited liability company

Amendments have to be approved by a majority of shareholders representing at least 3/4 of the capital. However, amending the company’s nationality and increasing shareholders financial obligations need a unanimous vote from all shareholders.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

Limited liability company

Foreign companies or companies with foreign shareholders must obtain a license from SAGIA. Certain types of activities require specific licensing from the relevant government departments. For example, pharmaceutical companies require a license from the Saudi Food and Drug Association.

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

Limited liability company

Shelf companies are not common in Saudi Arabia due to the difficulty and time consuming purchasing process.

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FORM OF ENTITY

Limited liability company

Separate and distinct legal entity with limited liability for its members. The business of a company shall be managed by, or under the direction or supervision of, a board of directors, which is responsible for making major business decisions and overseeing the general affairs of the company. Appointment of directors is generally left to the company’s constitution as the Companies Act 1967 of Singapore (CA) does not prescribe the manner in which directors are to be appointed and they are typically nominated by the shareholders of the company. The favorable 1-tier corporate taxation regime proves to be advantageous to shareholders.

ENTITY SET UP

Limited liability company

- Separate legal entity
- A company with a share capital may be incorporated as a private company if its constitution contains a limitation on the number of shareholders to not more than 50 members and provides for restrictions on the right to transfer its shares whereas a public company (i.e., a company which is not a private company) can have more than 50 members and its Constitution need not provide for similar share transfer restrictions
- Limited liability for the shareholders, although in exceptional circumstances a court may lift the corporate veil and look up to the members of the company which may result in personal liability
- 1-tier tax system; taxed on its profits at a corporate level and dividends are distributed to shareholders tax free
- Typical charter document is company’s constitution
- The business of the company is managed by and under the board of directors who may exercise all powers of the company except any powers reserved for the members in general meeting by the CA or its
Ownership and management of a private company can be separated although we note that in some cases, a member of a private company may also be a director in the same company.

- Shareholders subscribe and/or purchase shares in the company. Shares can come in the form of different classes such as ordinary or preference shares.

**MINIMUM CAPITAL REQUIREMENT**

Limited liability company

The minimum paid-up capital requirement is 1 dollar in the currency of the shareholder’s choice unless a higher capital requirement is prescribed in a required license.

**LEGAL LIABILITY**

Limited liability company

The liability of the members to contribute to the debts of the company is limited to the amount that they contributed to the company’s capital. However, in certain special circumstances, Singapore courts may lift the corporate veil to find personal liability on the part of the member.

**TAX PRESENCE**

Limited liability company

A company is resident for Singapore tax purposes if it is managed and controlled in Singapore. In practice, the Inland Revenue Authority of Singapore (IRAS) considers a company managed and controlled in Singapore if the board of directors meetings where strategic decisions are made are held in Singapore.

**INCORPORATION PROCESS**

Limited liability company

Incorporating a company involves:

- First obtaining approval for the name of the company (and reserving the name) by way of online application to the Accounting and Corporate Regulatory Authority (ACRA) via BizFile where the details of the director(s), shareholder(s) and the SSIC code for the scope of business activities are required. Once the name application/reservation has been approved, an online application must be submitted via Bizfile setting out details of inter alia, the registered address, share capital, shareholders, directors and company secretary (if applicable) of the company alongside a copy of the company’s constitution, and together with the payment of prescribed fees. Each director and company secretary is required to execute a Form 45 and a Form 45B, respectively, prior to being appointed.

- Applying for approvals and licenses from other governmental agencies, if necessary.
It is highlighted that there are stringent "know your client" requirements that must be complied with prior to incorporation.

**BUSINESS RECOGNITION**

Limited liability company

Well regarded and widely used.

**SHAREHOLDER MEETING REQUIREMENTS**

Limited liability company

A public listed company can hold its annual general meeting within 4 months after its financial year end and file the annual return within 5 months after its financial year end.

A private listed company can hold its annual general meeting within 6 months after its financial year end and file the annual return within 7 months after its financial year end.

**BOARD OF DIRECTOR MEETING REQUIREMENTS**

Limited liability company

No requirements unless stated under the company's constitution, but generally a minimum of once a year.

**ANNUAL COMPANY TAX RETURNS**

Limited liability company

All companies need to submit corporate income tax forms to Inland Revenue Authority of Singapore (IRAS) every year:

- Estimated Chargeable Income (ECI) within 3 months from the company's financial year end except for companies that qualify for the administrative concession and entities that are specifically not required to file ECI.

- Corporate Income Tax Returns, commonly known as Form C-S or Form C, by November 30 (for paper filing) and December 15 (for e-filing) of each year. A dormant company must still submit its income tax return unless it has been granted a waiver by the IRAS.

For filing of Form C, a company must also submit a complete set of audited accounts (unless the corporation is exempt from the audit requirement) which are accompanied by the directors' report and statement by directors, a tax computation with supporting schedules and relevant claim forms, if applicable, and any other documents to be retained and submitted to IRAS upon request.
BUSINESS REGISTRATION FILING REQUIREMENTS

Limited liability company

Required to submit an annual return and their annual accounts to the ACRA and annual corporate tax return to the IRAS.

However, if a company is an exempt private company that is solvent or a dormant company, they can make the appropriate declarations online instead of submitting their annual accounts. In addition, a dormant company may be exempted by IRAS from the need to submit its Income Tax Return (Form C) if it has been granted such a waiver.

BUSINESS EXPANSION

Limited liability company

No need to change as business expands, although we recommend that the company updates the Singapore Standard Industrial Classification (SSIC) code of the company with the ACRA if there is a change in the company’s business activities. This will ensure that the business activities of the company are updated accordingly with the ACRA.

EXIT STRATEGY

Limited liability company

A Singapore company may be dissolved by striking off, winding up compulsorily by the courts or voluntarily by its members or creditors.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

Limited liability company

Appointment of auditor and auditing of financial statements (if no exemption is available); maintaining accounting records and accounts, holding annual general meetings; filing annual returns with ACRA and tax returns with IRAS. Maintenance of statutory registers as required under the CA.

DIRECTOR / OFFICER REQUIREMENTS

Limited liability company

At least 1 director who is ordinarily resident in Singapore, which means that the director’s usual place of residence is in Singapore and a local residential address is required. Persons who may fulfill such criteria may include a Singapore citizen, Singapore permanent resident, an EntrePass holder or an Employment Pass holder. An Employment Pass holder is however typically required to obtain approval to act as a director of a Singapore
company that does not sponsor their employment pass. Any person above the age of 18 years old can be a director of a company. There is no maximum age limit for a director. However, certain individuals (e.g., bankrupts and/or persons convicted of offences involving fraud or dishonesty) are disqualified from holding director positions.

**LOCAL CORPORATE SECRETARY REQUIREMENT**

Limited liability company

Every company must appoint a company secretary within 6 months from its incorporation. The company secretary must be residing locally in Singapore, and they must not be the sole director of the company. For public companies, the secretary will need to fulfill certain eligibility criteria under the CA. The office of company secretary may not be left vacant for more than 6 months at any time.

**LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT**

Limited liability company

None required for incorporation.

**LOCAL OFFICE LEASE REQUIREMENT**

Limited liability company

A company incorporated in Singapore must have a registered office in Singapore. DLA Piper Singapore can arrange for a local registered address of a corporate secretarial agent that communications may be sent to for an annual fee.

**OTHER PHYSICAL PRESENCE REQUIREMENTS**

Limited liability company

Foreigners who do not have a SingPass or CorpPass must engage a registered filing agent (e.g., law firm, accounting firm or corporate secretarial firm) to submit the online application on his or her behalf. Local residents can choose to self-register the company.

**SUFFICIENCY OF VIRTUAL OFFICE**

Limited liability company

Sufficient for incorporation so long as the company has a registered office as set out in Local office lease requirement.

**PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY**
SERVICE PROVIDER

Limited liability company

May be obtained from law firms or third-party service providers subject to certain criteria.

PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Limited liability company

May be obtained from law firms or third-party service providers subject to certain criteria.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

Limited liability company

Shareholders: none.

Directors: minimum requirement of 1 director who is ordinarily resident in Singapore.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Limited liability company

Please see Director requirements.

SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF

Limited liability company

Directors are typically nominated by the shareholders and are the highest authority in the management of the Corporation. They govern the organization by establishing broad policies and objectives unless otherwise required by the CA or the constitution of the company.

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

Limited liability company

Identity of directors, shareholders and company secretary are publicly disclosed.
MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

Limited liability company

There is a minimum number of 1 shareholder. For private companies, the number of shareholders should not be more than 50 (counting joint holders of shares as 1 person and not counting any person in the employment of the company or of its subsidiary or any person who while previously in the employment of the company or of its subsidiary was and thereafter has continued to be a member of the company).

For directors, the minimum number of directors required is 1 person, who is locally resident and there is no maximum unless otherwise stated in the constitution.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

Limited liability company

1 shareholder is sufficient.

REMOVAL OF DIRECTORS OR OFFICERS

Limited liability company

Depends on the company’s constitution. Typically for private companies and subject to the company’s constitution, directors can be removed by the passing of an ordinary resolution of the shareholders at a general meeting. For public companies, the CA provides that shareholders may by ordinary resolution remove a director before the expiration of his or her period of office, notwithstanding anything in its constitution or in any agreement between it and the director but, where any director so removed was appointed to represent the interests of any particular class of shareholders or debenture holders, the resolution to remove them shall not take effect until their successor has been appointed.

REQUIRED AND OPTIONAL OFFICERS

Limited liability company

Required: 1 local resident director or nominee director, auditor (unless exempted) and secretary.

Optional: managing director and chief executive officer.

BOARD MEETING REQUIREMENTS

Limited liability company

None under the CA and is typically set out under the constitution.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS
Limited liability company

At any general meeting, the company's constitution may specify a quorum. If the quorum is not stated, any 2 members personally present at the meeting are enough to form the quorum, unless the company has only 1 member, in which case such member is sufficient. In addition, shareholders may also pass circular resolutions if permitted under the constitution.

**MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?**

Limited liability company

Not necessary for incorporation. Upon successful registration, a corporate account can be opened with any major Singapore bank.

**AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY'S BOOKS BE KEPT LOCALLY?**

Limited liability company

Companies which are dormant or companies which are considered small companies (as defined under the CA) are exempt from appointing auditors. In all other cases, the audited accounts of the company must be presented at the company's Annual General Meeting and the auditor must be one that is approved under the Accountants Act 2004 of Singapore. The small company audit exemption is applicable if a Singapore company (which is a private company throughout the financial year in question) is able to satisfy 2 of the following 3 criteria for each of the 2 financial years immediately preceding the financial year:

- Total revenue for each financial year is less than or equal to SGD10 million;
- Total assets for each financial year is less than or equal to SGD10 million; and
- Total employees as at the end of each financial year are fewer than or equal to 50

The above criteria must be fulfilled in respect of the entire group (including the parent company) on a consolidated basis for the immediate 2 consecutive financial years if the Singapore company is part of a group.

Usually the accounts are kept at the registered office of the company, but the directors can decide to keep them at a different place as they see fit by way of a resolution of the board of directors, and shall at all times be open to inspection by the directors.

**REQUIREMENT REGARDING PAR VALUE OF STOCK**

Limited liability company
In Singapore, shares of a company have no par value or nominal value.

**INCREASING OF CAPITALIZATION IF NEEDED**

Limited liability company

Share capital can be increased any time after incorporation.

**SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)**

Limited liability company

No restriction on the free entry and repatriation of funds, subject to any anti-money laundering laws.

**RESTRICTIONS ON TRANSFERABILITY OF SHARES**

Limited liability company

Subject to any restrictions of share transfers in the constitution, a shareholder of the company may sell or transfer their shares to others. Such transfer is completed after a directors’ resolution of the company, transferor and transferee (if applicable) is passed, the share transfer form is executed, any applicable stamp duty is paid, notice of transfer of shares/list of shareholders is filed with ACRA and the electronic register of members (for private companies) is updated.

**OBTAINING A NAME AND NAMING REQUIREMENTS**

Limited liability company

An application for approval of name change has to be obtained from ACRA and a special resolution has to be passed in favor of the name change at an Extraordinary General Meeting or by circular resolution of the shareholders. The name change is effective upon the receipt of the notice of incorporation of company under the new name evidencing the filing of this resolution with ACRA. The new name should not be identical to another, undesirable or contain restricted words.

**SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS**

Limited liability company

Legal service providers are required to complete stringent KYC procedures which includes identifying ultimate beneficial individual owners of shares and verifying the residential addresses of directors.

**APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**
Limited liability company

A special resolution is required to be passed (being a resolution passed with not less than 75 percent of members present and voting and entitled to vote) for amending the constitution of the company.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

Limited liability company

Licenses are required for certain specified groups, which include banking, insurance, financial services, consumer credit related services and employment and maid agencies.

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

Limited liability company

Shelf companies may be purchased from 3rd party service providers, though this is uncommon in Singapore.

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FORM OF ENTITY

In addition to doing business as a sole proprietor (where an individual conducts business in their personal capacity), there are different types of for-profit entities used to conduct business in South Africa:

- Private company
- Public company
- Personal liability company
- External company (these entities are branches of foreign companies and not South African incorporated entities as discussed below)
- Trust (unique legal arrangements where property is transferred to and held or administered by one or more trustees on behalf of the trust beneficiaries for their benefit or for the achievement of a specified purpose other than the trustees’ own benefit)
- Partnership (which may either be incorporated or unincorporated and regulated by a consensual contract between 2 or more persons to place their assets, labor and skill, or some or all of them, in lawful commerce or business, and to divide the profit and bear the loss in certain proportions)

This guide will focus on private and public companies as the most commonly used entities in South Africa.

ENTITY SET UP

The South African companies registrar is the Companies and Intellectual Property Commission (CIPC), whose functions include the registration and maintenance of companies and co-operatives. Upon making an application to register a company with the CIPC, the applicant will be required to submit the company’s adopted constitutional document which may either take the form of the standard Memorandum of Incorporation (MOI) as provided by law or a customised MOI which has been tailored to include the company’s powers and impose specific protocols to be complied with by the shareholders and directors in respect of their rights and obligations in and to the company, particularly, when dealing with or on behalf of the company.
We point out that a company is governed, firstly, by the South African Companies Act 71 of 2008, as amended (Companies Act) and, secondly, by its MOI. The MOI’s provisions must be consistent with the provisions of the Companies Act. Any provision of a MOI is void to the extent that it contravenes or is inconsistent with the Companies Act. Shareholders of a company may, although not mandatory, enter into a shareholders’ agreement with one another relating to their rights and obligations in and to the company. Importantly, such agreement must be consistent with the Companies Act and the company’s MOI and any provisions that are inconsistent with either, will be void to the extent of the inconsistency.

As it stands the CIPC does not require a specified minimum number of South African directors to be appointed when registering a company. However, any foreign shareholder of a South African company will need to have its share certificate endorsed "non-resident" as part of the South African exchange control regulations. All companies incorporated in South Africa must have a registered physical address in South Africa and it is the responsibility of each company to ensure that it keeps and maintains an accurate of its shareholders by way of a share registry.

Private company

A private company is a non-state owned company with an MOI prohibiting any share-offering to the public and restricting transfer of its shares.

A private company is a separate legal entity which is owned by shareholders with limited liability. There must be at least 1 shareholder. The relationship between shareholders and the company is regulated by the company's MOI and may be further regulated by a shareholders’ agreement.

A private company is required to have at least 1 director.

A director of a private company can be held liable in the following instances:

- In terms of principles of common law relating to delicts for any loss, damage or costs sustained by the company as a consequence of any breach by a director of their fiduciary duties or duty of care, skill and diligence;

- In terms of those sections of the Companies Act which provide for director’s liability; or

- In terms of any provision of the company’s MOI which provides for director's liability.

Primarily, directors are required to act in the best interest of the company at all times. Accordingly, section 76 of the Companies Act makes provision for the partial codification of the South African common law duties of directors, as well as the standards of conduct required to be performed and exercised by a director. These include:

- To not use their position or any information obtained while acting in the capacity of a director to gain a personal advantage or for someone else, other than the company;

- To not gain a personal advantage, or for another person other than the company; or

- To knowingly cause harm to the company or a subsidiary of the company; and
• To communicate to the board any non-public, material information that comes to the director’s attention.

When compared to a public company a private company is subject to limited accountability and transparency requirements. For example, a private company is not necessarily required to prepare audited financial statements.

A private company must every year lodge its annual returns with the Companies and Intellectual Property Commission (CIPC) and must have a registered physical address in South Africa.

Public company

A public company is a company that is not a state owned company, private company or personal liability company. It is a requirement for a public company to be audited and the audited financial statements must be lodged with the CIPC. Depending on the size of the company, it might also be required to have an audit committee and a social and ethics committee.

A public company’s shares may be freely transferred or traded. The shares of a public company may or may not be listed on a stock exchange such as the Johannesburg Stock Exchange.

A public company must have at least 3 directors.

The circumstances under which a director of a public company could be held liable are the same as that of a private company.

A public company must lodge its annual returns with the CIPC every year and must have a registered physical address in South Africa.

Personal liability company

A company is a personal liability company if it satisfies the criteria for a private company and its MOI states that it is a personal liability company. The effect of a company being a personal liability company is that its directors, including its past directors, are jointly and severally liable, together with the company, for any debts and liabilities of the company that are, or were, incurred during their respective periods of office.

Personal liability companies are primarily used by associations of professional persons, like attorneys, accountants, auditors and quantity surveyors who are required under their professional codes, laws or regulations, to practice their profession in entities that permit personal liability.

External company (branch office)

A foreign company that does not want to incorporate a subsidiary in South Africa may set up a branch office or an external company in terms of the Companies Act.

A foreign company which conducts business in South Africa must register as an external company with the CIPC within 20 business days after it 1st begins to conduct business, or non-profit activities in South Africa. A foreign company will be regarded as conducting business in South Africa if it is either:

• A party to 1 or more employment contracts in South Africa or

• Engaging in conduct or a pattern of activities in South Africa over a period of at least 6 months, that would
lead a person to reasonably conclude that the company intended to continually engage in business activities in South Africa.

To effect registration with the CIPC, the company will need to submit its foreign constitution and certificate of registration.

It is not required for a company to set up a local board of directors but there must be at least 1 person present in South Africa.

An external company must lodge its annual returns with the CIPC every year, and must also have a registered physical address in South Africa.

**MINIMUM CAPITAL REQUIREMENT**

There are generally no minimum share capital requirements in South Africa, however the laws of certain industries such as insurance and banking do impose minimum capital requirements. Companies can be formed with nominal share capital and funding can be provided by way of cash, assets or services subject to exchange control requirements in case of foreign investment.

**LEGAL LIABILITY**

**Private company**

A private company is recognized as a separate legal entity from its shareholders. Claims which arise out of any activities conducted by the company are the liability of that company.

Shareholders and directors are not liable for any liabilities or obligations of the private company solely by reason of being an incorporator, shareholder or director, except to the extent that the Companies Act or the company’s MOI provides otherwise. Claims which arise out of any activities conducted by the private company are the liabilities of that company. Generally the shareholders cannot be held accountable for such liabilities, unless otherwise provided in the MOI or otherwise agreed in, for instance, a shareholders’ agreement.

There are various reporting protocols which need to be complied with by the directors that offer protection to shareholders, such as requirements which relate to access to annual financial statements, the establishment of statutory committees, and provision for oversight or approval of transactions by the Takeover Regulation Panel, a regulator established under the Companies Act to regulate fundamental transactions.

**Public company**

A public company is recognized as a separate legal entity from its shareholders. Claims which arise out of any activities conducted by the company are the liability of that company.

Legal liability rules are similar to that of a private company as set out above.

**Personal liability company**

As explained above, the distinguishing feature of a personal liability company compared to a private company is
that its directors, including its past directors, are jointly and severally liable, together with the company, for any debts and liabilities of the company that are, or were, incurred during their respective periods of office. Shareholders cannot be held accountable.

External company

An external company is seen as the same legal entity as the foreign company, therefore any debts of an external company will be the debts of a foreign company.

Sole Proprietorship

The sole proprietor in whose name the business is conducted will incur business debts or liabilities in their own name.

Trusts

Trustees are not personally liable for the debts and liabilities of a trust nor do the trust assets form part of the trustees estate. The beneficiaries of a trust do have a personal right against the trustees for compliance with their duties and acquire rights through the trust deed in respect of the trust assets.

Partnerships

Each partner is taxed on their share of the partnership profits and are held jointly and severally liable for the partnership’s debts and liabilities unless otherwise agreed.

TAX PRESENCE

Private companies and public companies

A company incorporated in South Africa (SA) or which has its place of effective management in SA will be treated as a tax resident, subject to an applicable treaty.

Private and public companies must register as taxpayers with the South African Revenue Service.

All South African resident companies are expected to pay Corporate Income Tax (CIT) on the income generated worldwide at a rate of 28 percent. A SA corporate resident is generally not subject to SA tax on the income of its foreign subsidiaries until it is repatriated, unless the Controlled Foreign Company (CFC) rules apply.

Non-resident companies are generally not subject to SA tax except on:

- Their income which is sourced in SA
- Income derived from a trade carried on through a permanent establishment in SA
- Capital gains from the disposal of:
  - SA assets attributable to a permanent establishment in SA; or
○ Immovable property or an interest in immovable property situated in SA.

Tax treaties can reduce or eliminate taxes payable by non-residents.

**Tax compliance**

Resident and foreign companies are generally required to submit income tax returns within 12 months from the date on which the relevant financial year ends.

All companies (including foreign companies with a South African branch) are required to make provisional tax payments in respect to their SA tax liability. Provisional tax payments are advance tax payments in respect of income tax payable for the tax year and reflect as a credit against the income tax finally assessed.

**Tax rulings**

Taxpayers can approach the South Africa Revenue Service (SARS) for advance tax rulings. However, SARS will not give an advanced ruling on certain issues (e.g., transfer pricing, general anti-avoidance, matters of a factual nature, etc.).

**Distributions**

Distributions paid by a company are generally treated as a dividend to shareholders, unless the board of a corporate entity determines that the distribution results in a reduction of contributed tax capital. A return in capital in excess of a shareholder’s tax base will normally be treated as a capital gain.

Generally, dividend distributions by SA resident companies are exempt from income tax. In certain instances SA companies can rely on participation exemptions for dividends received from or capital gains realised on the shares in foreign companies.

Dividend, royalties, interest and foreign entertainment withholding taxes apply.

A 20 percent withholding tax applies to dividends whereas the other withholding taxes are imposed at a rate of 15 percent. Withholding taxes may be reduced in terms of tax treaties.

**Capital Gain**

Capital gains tax (CGT) applies to a resident’s worldwide assets and in the case of a non-resident, to their immovable property, shares in a land rich company or assets of a permanent establishment in SA.

CGT is triggered on the disposal or deemed disposal of an asset and is calculated as being the difference between the proceeds and the base cost of the asset. Assessed capital losses are carried-forward and may be set-off against capital gains in the following year of assessment. Provision is made for exclusions and rebates, as well as rollover relief, where the gain made from a disposal is disregarded until ultimate disposal of the assets. The effective capital gains tax rate for corporates is 22.4 percent.

**Transfer Taxes**

The transfer of securities of a private or public company incorporated in SA is subject to securities transfer tax (STT) at a rate of 0.25 percent.
STT is charged on the greater of the market value of the security or the amount of consideration given. Provision is made for exclusions in the case of certain inter-company transfers, lending arrangement and transfers between non-taxable organisations.

**Employment Taxes**

Employers are required to deduct employees tax (PAYE) on all remuneration paid to employees, including directors, unless a tax deduction directive is issued by SARS. Fringe benefits are included in remuneration.

Employers may also be required to deduct and pay unemployment fund contributions and skills development levies.

**Value Added Tax**

South Africa imposes Value-Added Tax (VAT) at the standard rate of 15 percent on the supply of goods or services on a destination basis, i.e. VAT is borne by the final consumer of goods or services. The primary mechanism to ensure that only local consumption is taxed in South Africa is through the 0 rating (0 percent) of certain goods and services exported and the levying of VAT on the importation of goods and certain services.

It is mandatory for any business to register for VAT with SARS if its taxable supplies in any twelve month period exceeds R1 million or when it has a contractual obligation in writing to make supplies of R1 million in a 12 month period. A business may also choose to voluntarily register for VAT if the value of taxable supplies made or to be made is less than R1 million, but has exceeded R50 000 in the past 12 months.

Subject to certain exclusions in the recently revised regulations on electronic services for VAT purposes issued by the South African National Treasury, the provision of electronic services (as defined in the Value Added Tax Act) by foreign entities to South African customers (including businesses) is generally subject to VAT in South Africa and at least two of the following circumstances are present:

- The customer is a South African resident;
- The payment of the services originates from a South African bank account; or
- The customer has a business, residential or postal address in South Africa.

**External companies**

If an external company retains its effective management offshore, it will be considered a non-resident and therefore will only be charged CIT on South African sourced income.

Dividends’ tax is not imposed on any profits remitted offshore. The same VAT requirements for private and public companies apply to an external company.

**INCORPORATION PROCESS**

A South African company can be set up in 2 ways:

- Incorporating a new company; or
Purchasing and customising a shelf company (i.e. a company previously incorporated and held for sale without any trading or other activities).

In circumstances where time is of the essence a shelf company can be acquired and customised in a more efficient manner in comparison to the CIPC incorporation process, as the new shareholders and directors will immediately take control of the company. This is because if you incorporate a new company, you will have to wait for the process with the CIPC to be completed before the company can start operating.

Private companies and public companies

Private and public companies are incorporated by completing and signing a MOI and filing it, together with certain prescribed company registration (CoR) forms and a nominal registration fee with CIPC. This process can take up to 25 working days after the documents have been filed with the CIPC. As discussed above the company can opt to have a standard form MOI or choose to adopt its own version. A MOI may be amended at a later point in time, therefore should the company wish to adopt the standard form MOI for purposes of registering the company they may do so and later effect amendments to or replace the MOI.

The time period to complete customisation and updating of the company’s records with the CIPC may take approximately 3 to 4 weeks. However, the shares in the company can be acquired by the new shareholder/s, and the new directors appointed, immediately upon completion and signing of certain documents (without requiring any filing with the CIPC to be effective).

External company

Registration of an external company must be done manually with the CIPC, and a certified copy of the company’s founding documents as well as a certificate of incorporation must be submitted along with other relevant supporting documents.

BUSINESS RECOGNITION

Private company

Well regarded and most widely used.

Personal liability company

Use is generally limited to associations of professional persons, like attorneys or auditors, who are required under their professional codes, laws or regulations, to practice their profession in entities that permit personal liability.

Public company

Well regarded and widely used.

External company

Well regarded and widely used. This is the most appropriate structure for foreign companies wishing to expand their business into South Africa.
SHAREHOLDER MEETING REQUIREMENTS

Private company (requirements apply uniformly to personal liability companies)

A private company is not required to hold an annual general meeting (AGM), although it may choose to do so in terms of the MOI.

- A private company must hold a shareholders meeting whenever the Companies Act or the company’s MOI requires it to do so (for example, to appoint or remove directors or to approve a fundamental transaction).

- A private company must call a shareholders meeting when 1 or more shareholders deliver written and signed demands to the company, which must:
  - Describe the specific purpose for which the meeting is proposed and
  - In aggregate, demands for substantially same purpose are made and signed by the holders, as of the earliest time specified in any of those demands, of at least 10 percent (or a lower percentage specified in the company’s MOI) of the voting rights entitled to be exercised in relation to the matter proposed, to be considered at the meeting.

Public company

A public company must call a shareholders meeting whenever the Companies Act or the company’s MOI requires it to do so and if it receives demands from shareholders as described above.

A public company must convene an AGM initially no more than 18 months after its date of incorporation and thereafter once in every calendar year, but not more than 15 months after the date of previous AGM.

The AGM agenda must at a minimum provide for the following business of the company to be transacted:

- The presentation of the directors and audit committee reports;
- The presentation of the audited financial statements for the immediately preceding financial year;
- The election of directors, as required by law and the MOI;
- The appointment of the auditors and the audit committee; and
- Any matters raised by shareholders, regardless of whether advance notice of the topic has been given.

External company

- Shareholder meetings and an AGM are not a requirement for external companies.

BOARD OF DIRECTOR MEETING REQUIREMENTS
Private and public companies (including personal liability companies)

A director authorized by the board of a company can call a meeting of the board at any time.

A board meeting must be called if required to do so by at least 25 percent of directors when the board has 12 members or more. In any other case, 2 directors would suffice.

A company’s MOI can specify a higher or lower percentage or number as a requirement for calling a board meeting.

A company must keep minutes of the board meetings and include any declaration given by notice or made by a director and every resolution adopted by the board.

External company

If there are no directors who are locally appointed, then an external company is not required to have directors’ meetings.

ANNUAL COMPANY TAX RETURNS

Corporate income tax

South African tax resident companies are taxed on their worldwide income, whilst non-resident companies are taxed on income derived from a source in South Africa. In either instance, the applicable corporate tax rate is 28 percent.

Under the Income Tax Act, 1962 every taxable business is required to register with SARS as a taxpayer.

Every registered taxpayer is required to submit an income tax return in a prescribed form 12 months after the end of its financial year. Returns can be submitted electronically via e-filing or manually at a SARS branch where the taxpayer is registered.

Tax on assessment

Payment of tax upon an assessment notice issued by SARS must be done within the period specified in such notice.

BUSINESS REGISTRATION FILING REQUIREMENTS

Private company

Private companies need to be registered with the CIPC.

This application is done online and must be accompanied by:

- Certified identity document or passport if the person is not a South African) of the applicant
- Certified copies of the identity documents or passports (if the person not a South African) of the directors and incorporators
The name confirmation certificate (COR9.4) if the applicant has reserved a name which is not mandatory.

MOI: Standard or customized (CIPC’s CoR 15.1A and CoR15.1B forms provide standard MOIs. Customized MOI's cannot be done online, and would have to be done manually). It is advisable to retain the services of a legal professional to assist with drafting a customised MOI.

CoR14.1 (Notice of Incorporation);

CoR14.1 Annexure A (Initial Directors of the Company);

A power of attorney (if applicable).

The applicant may impose restrictions on the management and ownership of the company in respect of any of the alterable provisions of the MOI. In order to ring-fence provisions, a CoR14.1 Annexure C (Notice of Ring Fencing Provisions) must be submitted.

For trust or company/juristic person as an incorporator, the resolution and certified copy of an identity document or passport copy (only if the representative is not South African) of the duly authorized representative must be attached.

**Public company**

Public companies must be registered with the CIPC, following the same process outlined above.

Registration must be accompanied by the following additional form which is available on the CIPC website:

- CoR14.1 Annexure D (Notice of Company Appointments - it is mandatory to appoint an auditor, audit committee members and a company secretary).

**External company**

The following documents must be filed with the CIPC (together with a minimal registration fee) to register as an external company:

- A notarial certified copy of the company’s constitutional documents, and if the documents are not in English they must be translated;

- A CoR 20.1 form - the registration form advising CIPC that the foreign company wishes to carry on business within South Africa;

- Annexure A to CoR 20.1 form - a list of the Directors of External Company;

- A CoR 21.2 form - registration of the South African representative (a person authorised to accept services on behalf of the company);

- A CoR 44 form - appointment of an auditor for the branch; and

- A certified copy of the identity document or passport (only if not a South African citizen) of the person
who is applying for the establishment of the branch (most commonly a director of the foreign company).

All documents that are to be filed with the CIPC must be clear and legible. With CIPC making provision for documents to filed electronically the original documents are not required with the exception of certain documents which the CIPC may require a certified copied thereof. The process takes approximately 10 to 15 working days to complete. However, delays at the CIPC are a possibility. An external company must lodge its annual returns with the CIPC every year. As the board of directors of the foreign company will constitute the board for the branch, the branch does not need to appoint a local board. However, a public officer must be appointed for South African tax purposes.

**BUSINESS EXPANSION**

Entities are able to pursue their own business expansion strategies.

**EXIT STRATEGY**

Private and public companies (including personal liability companies)

Private and public companies can be deregistered by the CIPC either by way of its own application, or through the request from a 3rd party when a company has:

a. Ceased to carry on business; and
b. Has no assets or, because of the inadequacy of its assets, there is no reasonable probability of the company being liquidated.

At least 50 percent of the directors of a company requesting its own deregistration must sign the request letter.

If the company’s annual returns are outstanding for more than 2 successive years or if the CIPC believes that the company has been inactive for 7 years deregistration it would, upon request of a 3rd party or a company which did not meet the 50 percent directors support threshold deregister the company.

The company would also have to provide a tax certificate to prove that it does not have any outstanding tax liabilities.

External company

An external company is not considered to be a company under the Companies Act and therefore cannot apply to CIPC for deregistration. To deregister an external company an application may be made to the Companies Tribunal. Upon receipt of an application, a member of the Tribunal is empowered to make an “administrative order that is appropriate and reasonable in the circumstances.”

**ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

All companies are required to maintain their company records. A company must at all times have a copy of its MOI and any amendments or alterations to it, as well as any rules that apply to the company in terms of its MOI.
The company is also required to keep a register of its shares and its company secretary and auditor.

All companies are required to keep accurate and complete accounting records, which must be kept and be accessible at the company’s registered office.

All companies are required to lodge their annual returns with CIPC every year.

Public companies must file audited financial statements every year.

External companies must continuously maintain at least 1 office in South Africa which must be registered as its address (or principal office if it has more than 1 office) and file an annual return with CIPC every year.

**DIRECTOR / OFFICER REQUIREMENTS**

**Private company and personal liability company**

It is required that a private company have at least 1 director.

**Public company**

It is required that a public company have at least 3 directors in addition to those required for mandatory committees.

**External company**

Not applicable for this jurisdiction.

**LOCAL CORPORATE SECRETARY REQUIREMENT**

**Private company and personal liability company**

Not applicable for this jurisdiction.

**Public company**

Public companies are required to appoint a company secretary who must be a permanent resident of South Africa and must remain a resident while serving as company secretary.

**External company**

Not applicable for this jurisdiction.

**LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT**

Every company carrying on business or having an office in South Africa must at all times be represented by an individual residing in South Africa. This individual is called the public officer of the company. The public officer must be approved by the South African Revenue Service and must be a person who is a senior official of the
company or if no senior official resides in South Africa, may be another suitable person residing in South Africa. The public officer must be appointed within 1 month after the company begins to carry on business or acquires an office in South Africa. A local director can be appointed as both director and public officer.

**LOCAL OFFICE LEASE REQUIREMENT**

Not applicable for this jurisdiction.

**OTHER PHYSICAL PRESENCE REQUIREMENTS**

Every company must continuously maintain a registered office in South Africa.

**SUFFICIENCY OF VIRTUAL OFFICE**

Sufficient for all companies provided that they maintain a registered physical address in South Africa.

**PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

These services are provided by some law firms and there are 3rd party service providers who offer company secretarial services.

**PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

These services are provided by some law firms and there are 3rd party service providers who offer company secretarial services.

**NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS**

There are no nationality or residency requirements; however, the fact that the directors or shareholders of the company are not residents of South Africa must be declared.

**RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS**

Not applicable for this jurisdiction.

**SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY**
AND LIMITATIONS THEREOF

The Companies Act gives the board of directors the authority to exercise all of the powers and to perform any of the companies of the company, except to the extent the Companies Act, or the company’s MOI provides otherwise.

Directors owe fiduciary duties, as well as a duty of care and skill, to the companies on whose boards they serve (as opposed to the shareholders who elected them). This is governed by the Companies Act as well as the common law.

A board of directors of a private or public company will only require shareholder approval for proposed actions in limited circumstances set out in the Companies Act or a company’s MOI.

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

The identity of directors and officers of a public or private company are publicly available on the CIPC website provided that the company has updated CIPC with any changes. Shareholder registers for private companies are not public documents and are therefore not publicly available.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

Private company and personal liability company

Directors: Minimum of 1, no maximum.
Shareholders: Minimum of 1, no maximum.

Public company

Directors: Minimum of 3, no maximum.
Shareholders: Minimum of 1, no maximum.

External company

Not applicable for this jurisdiction.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

Not applicable for this jurisdiction.

REMOVAL OF DIRECTORS OR OFFICERS

Private and public companies (including personal liability companies)
A director may be removed by an ordinary resolution adopted at a shareholders meeting after giving the relevant director notice of such meeting and affording the director an opportunity to make representation.

External Company

Not applicable for this jurisdiction.

REQUIRED AND OPTIONAL OFFICERS

Limited company (Yuhan Hoesa)

A limited company may have 1 or more statutory auditors.

BOARD MEETING REQUIREMENTS

Private and public companies (including personal liability companies)

A director who is authorized by the board of the company may call a meeting of the board at any time and must call such a meeting if required to do so by at least 25 percent of the directors if there are more than 12 directors or, if required, to do so by 2 directors in any other case.

A majority of directors must be present at the meeting before a vote may be called.

A company must keep minutes of all board meetings.

External company

Not applicable for this jurisdiction.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

To commence a shareholders’ meeting, there must be a sufficient number of shareholders present to exercise at least 25 percent of the voting rights entitled to be exercised in respect to at least 1 matter to be decided at the meeting.

A matter to be decided at the shareholders’ meeting cannot be considered unless a sufficient number of shareholders is present at the meeting. At least 25 percent of all voting rights that are entitled to exercise on a matter that is called on the agenda must be present.

A company’s MOI may specify a lower or higher quorum requirement for a shareholders’ meeting. Subject to a different threshold having been set in the company’s MOI, a shareholders’ meeting of a company with more than 2 shareholders cannot commence until at least 3 shareholders attend.

For an ordinary resolution to be approved by shareholders, it must be supported by more than 50 percent of the voting rights exercised. For a special resolution to be approved by shareholders, it must be supported by at least 75 percent of the voting rights exercised.
If the attendance requirement for the meeting is not met within 1 hour after the meeting is scheduled to begin, the meeting must be postponed for 1 week. At the postponed meeting, the shareholders present at the meeting in person or by proxy are deemed to be a quorum.

The quorum requirement for a Board meeting is the majority of directors, unless the company’s MOI states otherwise.

**MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?**

No requirement to open a bank account when registering a company in South Africa.

**AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?**

Private company

A private company is only required to appoint an auditor if this is a requirement in terms of the company’s MOI.

Public company

A public company is obliged to appoint an auditor.

External company

An external company is obliged to appoint an auditor only in relation to the income statement of a branch in South Africa.

**REQUIREMENT REGARDING PAR VALUE OF STOCK**

Not applicable for this jurisdiction.

**INCREASING OF CAPITALIZATION IF NEEDED**

Not applicable for this jurisdiction.

**SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)**

Private and Public companies

*Exchange control*

South African resident companies, and to a limited extent non-residents, are required to comply with South
Africa’s Exchange Control regulations, imposed by the South African Reserve Bank (SARB). These regulations also apply to the transfer of profits to non-residents.

Where a private/public company is required to be audited (in terms of the South African Companies legislation), funds can be repatriated freely from South Africa on presentation of copies of the relevant documentation to the company’s Authorized Dealer (being the commercial bankers) – for example, an auditor’s certificate confirming distribution is made from earned profits.

Where a private/public company is not required to be audited, profits may be remitted on presentation of \textit{inter alia} copies of the Annual Financial Statements as prepared by the accounting officer.

A resolution of the board may also be required and should state that profits have been declared remitted from earned profits as a dividend distribution or redemption.

Before funds can be repatriated, a company must liaise with its commercial bank to ensure all formal requirements for remittance are met.

If the company’s balance sheet reflects a “loan” owed to the holding company, then the relevant Exchange Control principles are applied.

\textbf{External Company}  
\textit{Exchange control}

A branch is also defined as South African “resident” for Exchange Control purposes and is therefore required to comply with South Africa’s Exchange Control regulations imposed by the South African Reserve Bank (SARB).

Where a branch is required to be audited (in terms of the South African Companies legislation), profits may be remitted freely from South Africa on presentation of copies of the relevant documentation to the branch’s Authorized Dealer (being the commercial bankers) – for example, an auditor’s certificate confirming distribution is made from earned profits.

Where a branch is not required to be audited, profits may be remitted on presentation of \textit{inter alia} copies of the Annual Financial Statements as prepared by the accounting officer.

A resolution of the board may also be required and should state that profits have been declared remitted from earned profits.

Before profits are remitted, a branch must liaise with its commercial bank to ensure all formal requirements for remittance are met.

If the company’s balance sheet reflects a “loan” owed to the holding company, then the relevant Exchange Control principles are applied.

\textbf{REstrictions on transferability of shares}

\textbf{Private company}

A private company’s MOI may place limitations on the transferability of shares.
Private company shares may not be offered to the public.

**Public company**

Public company shares are freely transferrable.

**External company**

Not applicable for this jurisdiction.

### OBTAINING A NAME AND NAMING REQUIREMENTS

All companies in South Africa, if they wish to reserve a name, may do so by submitting proposed names to the CIPC. The name may not be the same as that of another company, be considered propaganda for war, incite violence nor advocate hatred.

### SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

A bank’s KYC requirements are guided by the Financial Intelligence Centre Act 38 of 2001 and other applicable anti-money laundering and counter-terrorism legislation. These requirements differ amongst the banks as the information required by the bank is subject to the bank’s internal policy. At minimum, the bank will request the proof of identity of a company’s directors, confirmation of its incorporation details, proof of its registered address, details of its trading name, proof of its operating address (if different from the registered address), the contact details of the company as well as the company’s tax and value-added-tax registration numbers (if applicable). In all cases, originals or certified copies of the original documents must be submitted.

### APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

**Private and public companies**

A company’s MOI may be amended in compliance with a court order or if a special resolution to amend the MOI has been proposed by the board or shareholders. This will also depend on what is prescribed by the company’s MOI regarding amendments.

**External company**

Not applicable for this jurisdiction.

### LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

Most licenses are industry specific rather than company structure specific.

A company conducting certain business activities in South Africa (for example, construction, electronic communications, energy, financial services, mining, real estate and activities impacting environment) may require licenses or other forms of authorization.
Industry specific laws and regulations apply to companies operating within certain industries (eg, the Banks Act and Financial Advisory and Intermediary Services Act).

**PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY**

Shelf companies are available for purchase in South Africa.

**KEY CONTACTS**

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SOUTH KOREA

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FORM OF ENTITY

Joint-stock company (Jusik Hoesa)

- Separate and distinct entity

- General meeting of shareholders is the ultimate decision-making body and determines the fundamental matters regarding the company’s structure and management specified under the Korean Commercial Code (KCC) or the company’s articles of incorporation (AOI)

- Board of directors, which is comprised of directors who are elected at the general meeting of shareholders, decides important matters related to daily operations of the company not specially reserved for determination by the general meeting of shareholders under the KCC or the AOI

- Representative director or executive officer, who is elected by the board of directors, is the administrative arm responsible for implementing the decisions of the general meeting of shareholders and board of directors with the authority to bind the company, and

- Statutory auditor(s) supervise(s) the management of the company’s business and audits the company’s accounts.

Limited company (Yuhan Hoesa)

- Separate and distinct entity

- General meeting of members is the ultimate decision-making body and determines fundamental matters regarding the company’s structure and management

- Directors elected at the general meeting of members decide important matters related to daily operations of the company not specially reserved for determination by the general meeting of members by a majority vote.

- Director (in case a limited company has only 1 director) or representative director elected at the general meeting of members (in case a limited company has two or more directors) is the administrative arm
responsible for implementing the decisions of the general members and directors with the authority to bind the company, and

- Statutory auditor(s) (if any) supervise(s) the management of the company’s business and audits the company’s accounts.

**ENTITY SET UP**

**Joint-stock company (Jusik Hoesa)**

- Unlimited number of shareholders
- Generally no personal liability of the shareholders outside of their financial contribution in the form of purchased shares
- Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends
- Typical charter documents include: AOI; share certificates; and shareholders’ registry
- Board of directors decides important matters related to daily operations and the representative director or executive officer has authority to make decisions binding the company
- Shareholders purchase shares in the company, either common or preferred, and
- An external audit is required for:
  - Publicly listed companies, or companies that will be publicly listed within that fiscal year or the following fiscal year
  - Joint-stock companies with total assets or annual sales revenue of at least KRW50 billion, or
  - Joint-stock companies that meet two or more of the following thresholds:
    - Total assets of at least KRW12 billion
    - Total debt of at least KRW7 billion
    - Total annual sales revenue of at least KRW10 billion
    - At least 100 employees

**Limited company (Yuhan Hoesa)**

- Unlimited number of members allowed
- Generally no personal liability of the members outside of their financial contribution in the form of purchased units
• Taxed on its earnings at a corporate level and members are taxed on any distributed dividends

• Typical charter documents include: AOI, and members’ registry

• Directors decide important matters related to daily operations and director (in case a limited company has 1 director) or representative director who is elected at the general meeting of members (in case a limited company has two or more directors) has authority to bind the company

• Members purchase units in the company, but only 1 class of units is allowed

• An external audit is required for limited companies with total assets or annual sales revenue of at least KRW50 billion, or limited companies that meet three or more of the following thresholds
  ○ Total assets of at least KRW12 billion
  ○ Total debt of at least KRW7 billion
  ○ Total annual sales revenue of at least KRW10 billion
  ○ At least 100 employees
  ○ At least 50 members

• Companies that changed their corporate structure from a joint-stock company to a limited company after November 1, 2019 are subject to the external audit conditions that are applicable to joint-stock companies for five years after registering their change of corporate structure.

**Branch**

A foreign company intending to directly engage in business in Korea may appoint a representative in Korea and establish a branch in Korea with the following conditions:

• Not a separate and distinct entity; unlike other separate and distinct entities, legal liabilities extend to the foreign company (head office)

• Taxed on its domestic source income in Korea at a branch level; must file tax returns with tax office within three months after the end of each fiscal year

• Establishment process: report to foreign exchange bank; court registration; business registration is required

• Representative in Korea has authority to bind the branch; identity of the representative in Korea is publicly disclosed, and

• Net income can be remitted abroad from Korea after closing of accounts for each fiscal year; however, funds remitted to a branch as operating funds cannot be repatriated abroad from Korea until liquidation of the branch is completed.
MINIMUM CAPITAL REQUIREMENT

Joint-stock company (Jusik Hoesa)

Except for certain businesses that require additional licenses, there is no minimum capital requirement; however, in case of a foreign investor, at least KRW100 million is required for each foreign investor to be qualified for benefits under the Foreign Investment Promotion Law (the FIPL).

Limited company (Yuhan Hoesa)

Except for certain businesses that require additional licenses, there is no minimum capital requirement; however, in the case of a foreign investor, at least KRW100 million required for each foreign investor to be qualified for benefits under the FIPL.

LEGAL LIABILITY

Joint-stock company (Jusik Hoesa)

Shareholders of a company are generally not liable for the debts of a company aside from their financial contribution to the company in the form of purchased shares.

Limited company (Yuhan Hoesa)

Members of a company are generally not liable for the debts of a company aside from their financial contribution to the company in the form of purchased units.

TAX PRESENCE

Joint-stock company (Jusik Hoesa)

A joint-stock company pays corporate tax on its corporate income and distributes profits to shareholders who then pay income tax on those dividends.

Limited company (Yuhan Hoesa)

A limited company pays corporate tax on its corporate income and distributes profits to members who then pay income tax on those dividends.

INCORPORATION PROCESS

Joint-stock company (Jusik Hoesa)

Obtain foreign investment authorization under the FIPL (in case of a foreign investor); comply with certain statutorily required incorporation procedures; court registration; business registration with tax office; registration as a “foreign invested enterprise" under the FIPL (in case of a foreign investor).

Limited company (Yuhan Hoesa)
Obtain foreign investment authorization under the FIPL (in case of foreign investor); comply with certain statutorily required incorporation procedures; court registration; business registration with tax office; registration as a "foreign invested enterprise" under the FIPL (in case of foreign investor).

**BUSINESS RECOGNITION**

Joint-stock company (*Jusik Hoesa*)

Generally used by large-sized companies.

Limited company (*Yuhan Hoesa*)

Generally used by small and medium-sized companies; often used by individuals operating small family-owned business.

**SHAREHOLDER MEETING REQUIREMENTS**

Joint-stock company (*Jusik Hoesa*)

Required to hold a general meeting of shareholders for each fiscal year.

Limited company (*Yuhan Hoesa*)

Required to hold a general meeting of members for each fiscal year.

**BOARD OF DIRECTOR MEETING REQUIREMENTS**

Joint-stock company (*Jusik Hoesa*)

Each director is obligated to report the performance of business at the board of directors' meeting that must occur at least once in March.

However, the foregoing obligation does not apply to the directors of a joint-stock company with a paid-in capital of less than KRW 1 billion because such companies are not obligated to establish a board of directors.

A resolution of the board of directors is required to hold a general meeting of shareholders.

Limited company (*Yuhan Hoesa*)

Board of directors is not a required organization, but may be established.

**ANNUAL COMPANY TAX RETURNS**

Joint-stock company (*Jusik Hoesa*)

Must file annual tax returns with tax office within 3 months after the end of each fiscal year.
Limited company (Yuhan Hoesa)

Must file annual tax returns with tax office within 3 months after the end of each fiscal year.

**BUSINESS REGISTRATION FILING REQUIREMENTS**

Joint-stock company (Jusik Hoesa)

Business registration with tax office is required within 20 days after the commencement of business.

Limited company (Yuhan Hoesa)

Business registration with tax office is required within 20 days after commencement of business.

**BUSINESS EXPANSION**

Joint-stock company (Jusik Hoesa)

Required to amend AOI (addition of new business objectives) and make court registration thereof.

Limited company (Yuhan Hoesa)

Required to amend AOI (addition of new business objectives) and make court registration thereof.

**EXIT STRATEGY**

Joint-stock company (Jusik Hoesa)

Comply with certain statutorily required dissolution and liquidation procedures; file dissolution and liquidation documents with the court.

Limited company (Yuhan Hoesa)

Comply with certain statutorily required dissolution and liquidation procedures; file dissolution and liquidation documents with the court.

**ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Joint-stock company (Jusik Hoesa)

General meeting of shareholders for each fiscal year.

Limited company (Yuhan Hoesa)

General meeting of members for each fiscal year.
DIRECTOR / OFFICER REQUIREMENTS

Joint-stock company (Jusik Hoesa)

Representative director, directors and statutory auditor are required (a joint stock company with a paid-in capital of less than KRW1 billion is not required to have a board of directors or a statutory auditor).

Limited company (Yuhan Hoesa)

1 or more directors are required; in case a limited company has 2 or more directors, representative director is required.

For more information on directors’ duties, see our Global Guide to Directors’ Duties.

LOCAL CORPORATE SECRETARY REQUIREMENT

Joint-stock company (Jusik Hoesa)

None.

Limited company (Yuhan Hoesa)

None.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Joint-stock company (Jusik Hoesa)

None beyond the required directors and officers.

Limited company (Yuhan Hoesa)

None beyond the required directors and officers.

LOCAL OFFICE LEASE REQUIREMENT

Joint-stock company (Jusik Hoesa)

Required for business registration.

Limited company (Yuhan Hoesa)

Required for business registration.
OTHER PHYSICAL PRESENCE REQUIREMENTS

Joint-stock company (Jusik Hoesa)
Actual premises is necessary for business registration.

Limited company (Yuhan Hoesa)
Actual premises is necessary for business registration.

SUFFICIENCY OF VIRTUAL OFFICE

Joint-stock company (Jusik Hoesa)
Not sufficient for business registration.

Limited company (Yuhan Hoesa)
Not sufficient for business registration.

PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Joint-stock company (Jusik Hoesa)
None.

Limited company (Yuhan Hoesa)
None.

PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Joint-stock company (Jusik Hoesa)
None.

Limited company (Yuhan Hoesa)
None.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

Joint-stock company (Jusik Hoesa)
None.

Limited company (Yuhan Hoesa)

None.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Joint-stock company (Jusik Hoesa)

None.

It should be noted that if a shareholder appoints a nominee shareholder to be the formal shareholder listed on the shareholder registry, only the nominee shareholder, and not the actual shareholder, have the right to exercise the rights as a shareholder.

Limited company (Yuhan Hoesa)

None.

SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF

Joint-stock company (Jusik Hoesa)

- General meeting of shareholders is the ultimate decision-making body that determines fundamental matters regarding the company’s structure and management, pursuant to the KCC or the company's AOI

- Board of directors, which is comprised of directors who are elected at the general meeting of shareholders, determines important matters related to daily operations of the company not specially reserved to be determined by the general meeting of shareholders, pursuant to the KCC or the company's AOI

- Representative director or executive officer, who is elected by board of directors, is the administrative arm responsible for implementing the decisions of the general meeting of shareholders and board of directors with the authority to bind the company

- Statutory auditor(s) supervise(s) the management of the company's business and audits the company' accounts

Limited company (Yuhan Hoesa)

- General meeting of members is the ultimate decision-making body which determines fundamental matters

- Directors, who are elected at the general meeting of members, decide important matters related to daily
operations of the company not specially reserved for determination by the general meeting of members by a majority vote

- Director (in case a limited company has 1 director) or representative director who is elected at the general meeting of members (in case a limited company has two or more directors) is the administrative arm responsible for implementing the decisions of the general meeting of members and directors with authority to bind the company

- Statutory auditor(s) (if any) supervise(s) the management of the company’ business and audits the company’s accounts

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

Joint-stock company (Jusik Hoesa)

Identity of representative director (or executive officer), directors and statutory auditors is publicly disclosed; identity of shareholders of private, non-listed companies is not publicly disclosed to non-shareholders.

Limited company (Yuhan Hoesa)

Identity of representative director (if any), directors and statutory auditors (if any) is publicly disclosed; identity of members is not publicly disclosed to non-members.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

Joint-stock company (Jusik Hoesa)

There must be a minimum of 1 shareholder, and there is no maximum number. For directors, there must be a minimum of 3 directors, and there is no maximum number; companies whose total paid-in capital is less than KRW1 billion may elect only 1 or 2 directors.

Limited company (Yuhan Hoesa)

There must be a minimum of 1 member, and there is no maximum number. For directors, there must be a minimum of 1 director, and there is no maximum number.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

Joint-stock company (Jusik Hoesa)

1 shareholder is sufficient.

Limited company (Yuhan Hoesa)

1 member is sufficient.
REMOVAL OF DIRECTORS OR OFFICERS

Joint-stock company (Jusik Hoesa)

Removal of a director or statutory auditor requires a special resolution of the general meeting of shareholders (see Quorum requirements for shareholder and board meetings for quorum requirements for a special resolution).

Removal of the representative director requires a resolution of the board of directors. However, if the company intends to dismiss the representative director from the director position as well, it would require a special resolution of the general meeting of shareholders.

Limited company (Yuhan Hoesa)

Removal of director and statutory auditor (if any) requires a special resolution of the general meeting of members (see Quorum requirements for shareholder and board meetings for quorum requirements for a special resolution).

REQUIRED AND OPTIONAL OFFICERS

Joint-stock company (Jusik Hoesa)

A joint-stock company is required to appoint a statutory auditor (or compose an auditing committee), unless the paid-in capital of the company is less than KRW1 billion.

Limited company (Yuhan Hoesa)

A limited company is not required, but may appoint 1 or more statutory auditor(s).

BOARD MEETING REQUIREMENTS

Joint-stock company (Jusik Hoesa)

No board of directors meeting requirements; however, a resolution of board of directors is required to hold the general meeting of shareholders. Written resolutions in lieu of a board of directors meeting are prohibited.

Limited company (Yuhan Hoesa)

Board of directors is not a required organization.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

Joint-stock company (Jusik Hoesa)

For a general meeting of shareholders, an ordinary resolution must be adopted by a majority of the votes of the shareholders present at the meeting and 1/4 or more of the total number of the shares issued and outstanding;
special resolution (required for certain decisions specified in the KCC, such as the transfer of all or an important part of the company’s business) must be adopted by 3/4 or more of the votes of the shareholders present at the meeting and 1/3 or more of the total number of shares issued and outstanding.

For board of directors meeting, resolutions must be adopted by the presence of a majority of the directors in office and the affirmative votes of a majority of directors present at the meeting.

Limited company (Yuhan Hoesa)

For a general meeting of members, an ordinary resolution must be adopted by presence of members holding a majority of votes and by majority of the votes present at the meeting; a special resolution (required for decisions specified in the KCC, such as the transfer of all or an important part of the company’s business) must be adopted by majority of all the members and 3/4 or more of the total votes held by all the members.

If a limited company has 2 or more directors, directors shall make their decisions by a majority vote of the directors.

MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?

Joint-stock company (Jusik Hoesa)

Opening a bank account is not permitted prior to incorporation.

Limited company (Yuhan Hoesa)

Opening a bank account is not permitted prior to incorporation.

AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?

Joint-stock company (Jusik Hoesa)

An external audit is required for:

- Publicly listed companies, or companies that will be publicly listed within that fiscal year or the following fiscal year
- Joint-stock companies with total assets or annual sales revenue of at least KRW50 billion or
- Joint-stock companies that meet 2 or more of the following thresholds
  - Total assets of at least KRW12 billion
  - Total debt of at least KRW7 billion
- Total annual sales revenue of at least KRW10 billion
- At least 100 employees

An external auditor should be licensed in local jurisdiction.

Company's books should be kept with the company.

**Limited company (Yuhan Hoesa)**

An external audit is required for:

- Limited companies with total assets or annual sales revenue of at least KRW50 billion, or
- Limited companies that meet three or more of the following thresholds:
  - Total assets of at least KRW12 billion
  - Total debt of at least KRW7 billion
  - Total annual sales revenue of at least KRW10 billion
  - At least 100 employees
  - At least 50 members
- Companies that changed their corporate structure from a joint-stock company to a limited company after November 1, 2019 are subject to the external audit conditions that are applicable to joint-stock companies for 5 years after registering their change of corporate structure.

**REQUIREMENT REGARDING PAR VALUE OF STOCK**

**Joint-stock company (Jusik Hoesa)**

Minimum capital per share is KRW100; shares without par value may be issued, in which case shares with par value cannot be issued.

**Limited company (Yuhan Hoesa)**

Minimum capital per unit is KRW100.

**INCREASING OF CAPITALIZATION IF NEEDED**

**Joint-stock company (Jusik Hoesa)**

Permitted without amendment of AOI if increase is within the amount of authorized capital stipulated in the AOI; if in excess of authorized capital, amendment of AOI is required which requires a special resolution of the general
meeting of shareholders (see Quorum Requirements for Shareholder and Board Meetings for quorum requirements for a special resolution). In both cases, unless the company’s AOI designate the general meeting of shareholders as having the authority of authorization, authorization of board of directors and court registration is required.

**Limited company (Yuhan Hoesa)**

Effectuated by amending AOI which requires special resolution of the general meeting of members (see Quorum Requirements for Shareholder and Board Meetings for quorum requirements for a special resolution); court registration is required.

**SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)**

**Joint-stock company (Jusik Hoesa)**

Funds can be repatriated abroad from Korea via dividends or redemption; however, in case of a foreign investor, maintaining an investment of at least KRW100 million for each foreign investor is required to be qualified for benefits under the FIPL.

**Limited company (Yuhan Hoesa)**

Funds can be repatriated abroad from Korea via dividends or redemption; however, in case of a foreign investor, maintaining an investment of at least KRW100 million within Korea for each foreign investor is required to be qualified for benefits under the FIPL.

**RESTRICTIONS ON TRANSFERABILITY OF SHARES**

**Joint-stock company (Jusik Hoesa)**

Shares are freely transferrable; however, AOI may provide that transfer of shares is subject to approval from the board of directors.

**Limited company (Yuhan Hoesa)**

Units are freely transferrable unless otherwise provided in AOI.

**OBTAINING A NAME AND NAMING REQUIREMENTS**

**Joint-stock company (Jusik Hoesa)**

Registration of a trade name may be restricted within a given district if a corporation with the same trade name (in Korean) is already registered within such district.

**Limited company (Yuhan Hoesa)**

Registration of a trade name may be restricted within a given district if a corporation with the same trade name (in
Korean) is already registered within such district.

**SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS**

**Joint-stock company (Jusik Hoesa)**

The bank may require information regarding the member or the shareholder information of the shareholder and supporting documents for its KYC process and Korean banking law compliance purposes (eg, shareholders registry of the shareholder). The information required by the bank is subject to the bank's internal policy and may differ among banks.

**Limited company (Yuhan Hoesa)**

The bank may require information regarding the member or the shareholder information of the member and supporting documents for its KYC process and Korean banking law compliance purposes (eg, shareholders registry of the member). The information required by the bank is subject to the bank's internal policy and may differ among banks.

**APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

**Joint-stock company (Jusik Hoesa)**

Amendment of AOI requires a special resolution of the general meeting of shareholders (see Quorum requirements for shareholder and board meetings for quorum requirements for a special resolution).

**Limited company (Yuhan Hoesa)**

Amendment of AOI requires a special resolution of the general meeting of members (see Quorum requirements for shareholder and board meetings for quorum requirements for a special resolution).

**LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

**Joint-stock company (Jusik Hoesa)**

No license is required for incorporation; however, specific license or registration may be required to conduct business in particular business sectors. The types of business license or required registration will depend on the nature and actual features of the intended businesses.

**Limited company (Yuhan Hoesa)**

No license is required for incorporation; however, specific license or registration may be required to conduct business in particular business sectors. The types of business license or required registration will depend on the nature and actual features of the intended businesses.

**PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY**
Joint-stock company *(Jusik Hoesa)*

Shelf companies can be purchased from a third party by purchasing shares in such shelf companies.

Limited company *(Yuhan Hoesa)*

Shelf companies can be purchased from a third party by purchasing units in such shelf companies.

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FORM OF ENTITY

Branch (Sucursal)

Secondary establishment, subordinated to a headquarters, with permanent representation and certain degree of autonomy, through which the principal company’s business is totally or partially carried out. The board of directors of the headquarters will be competent to determine the creation of a branch as well as its cancelation or change of location.

Limited liability company (Sociedad Limitada)

Separate and distinct legal entity. Managed by a board of directors, a sole director, joint directors or joint and several directors. Board of directors (or the relevant directors if there is no board) is responsible for making business decisions and overseeing the affairs of a company. Directors are appointed by shareholders of a company. Executive committee and managing directors are only appointed if there is a board of directors that requires delegation of board powers.

Joint-stock company (Sociedad Anónima)

Separate and distinct legal entity. Managed by a board of directors, a sole director, joint directors or joint and several directors. Board of directors (or relevant directors if there is no board) is responsible for making business decisions and overseeing the affairs of a company. Directors are elected by shareholders of a company. Executive committee and managing directors are only appointed if there is a board by its directors and require delegation of board powers.

ENTITY SET UP

Branch (Sucursal)

- Secondary establishment that is subordinated to the principal, economically and legally
- Autonomy to operate with its own organization different from the principal establishment Without legal personality (ie, branches are not a separate legal entity)
• Permanent activity

• Total or partial conduction of the principal establishment's activity

• Branches are taxed under the general provisions of the Corporate Income Tax. Moreover, if the branch is also a permanent establishment for VAT purposes, quarterly VAT tax returns will need to be filed (as a general rule)

• The organizational documents are the principal company’s bylaws (estatutos sociales)

**Limited liability company (Sociedad Limitada)**

• Unlimited number of members is allowed

• Generally no personal liability of members

• Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends, although double taxation relief may apply

• The organizational documents are the company’s own bylaws (estatutos sociales)

• Management body has management responsibility. Sole directors, joint directors (if they all sign, administradores mancomunados) and joint and several directors (administradores solidarios) have authority to bind the company. If the company has a board, directors do not have authority to bind the company unless powers are delegated to them. Powers can be delegated to attorneys

• Ordinary shares and preferred shares are possible. Shares are transferable but typically have some restrictions (i.e., preferential acquisition rights)

• Annual accounts are registered at the Commercial Registry, reporting the economic status of the company

**Joint-stock company (Sociedad Anónima)**

• Unlimited number of shareholders

• Generally no personal liability of the shareholders

• Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends, although double taxation relief may apply

• The organizational documents are the company’s own bylaws (estatutos sociales)

• Management body has management responsibility. Sole directors, several directors (if they all sign, administradores mancomunados) and joint and several directors (administradores solidarios) have authority to bind the company. If the company has a board, directors do not have authority to bind the company unless powers are delegated to them. Powers can be delegated to attorneys

• Ordinary shares and preferred shares are possible. Shares are generally freely transferable. Can be listed in
a stock market and

- Annual accounts are registered at the Commercial Registry, reporting the economic status of the company.

**MINIMUM CAPITAL REQUIREMENT**

Branch (Sucursal)

There are no minimum capital (fund allocation) requirements.

Limited liability company (Sociedad Limitada)

Minimum of EUR3,000.

Joint-stock company (Sociedad Anónima)

Minimum of EUR60,000.

**LEGAL LIABILITY**

Branch (Sucursal)

The liability derived from the branch is part of the headquarters' (principal entity's) legal liability.

Limited liability company (Sociedad Limitada)

Shareholders of a limited liability company are generally not liable for the debts of a company aside from their financial contribution to the company.

Joint-stock company (Sociedad Anónima)

Shareholders of a joint-stock company are generally not liable for the debts of a company aside from their financial contribution to the company.

**TAX PRESENCE**

Branch (Sucursal)

Branches are taxed on the profits allocated to the permanent establishment.

Limited liability company (Sociedad Limitada)

Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends, although double taxation relief may apply.

Joint-stock company (Sociedad Anónima)
Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends, although double taxation relief may apply.

**INCORPORATION PROCESS**

**Branch (Sucursal)**

The opening of a branch must be resolved by the principal company, notarized and registered in the Commercial Registry. Finally, the registration will be published in the Official Gazette of the Commercial Registry.

**Limited liability company (Sociedad Limitada)**

Company name clearance. Setting up a bank account. Incorporation deed and bylaws. Notarization and registration of the notarial deed in the Commercial Registry.

**Joint-stock company (Sociedad Anónima)**

Company name clearance. Setting up a bank account. Incorporation deed and bylaws. Notarization and registration of the notarial deed in the Commercial Registry.

**BUSINESS RECOGNITION**

**Branch (Sucursal)**

Well regarded and widely used.

**Limited liability company (Sociedad Limitada)**

Well regarded and widely used.

**Joint-stock company (Sociedad Anónima)**

Well regarded and widely used.

**SHAREHOLDER MEETING REQUIREMENTS**

**Branch (Sucursal)**

There are no shareholder meetings in branches.

**Limited liability company (Sociedad Limitada)**

Required to hold annual meeting of shareholders within the first 6 months of the financial year to vote on certain items, such as approval of the annual accounts and allocation of results / distribution of earnings.

**Joint-stock company (Sociedad Anónima)**


Required to hold annual meeting of shareholders within the first 6 months of the financial year to vote on certain items, such as approval of the annual accounts and allocation of results / distribution of earnings.

**BOARD OF DIRECTOR MEETING REQUIREMENTS**

**Branch (Sucursal)**

There are no board meetings in branches.

**Limited liability company (Sociedad Limitada)**

If there is a board, its meetings must be held at least quarterly and otherwise when necessary and duly called.

**Joint-stock company (Sociedad Anónima)**

If there is a board, its meetings must be held at least quarterly and otherwise when necessary and duly called.

**ANNUAL COMPANY TAX RETURNS**

**Branch (Sucursal)**

Branches are taxed under the general provisions of the corporate income tax and therefore, must file an annual income tax return with the tax authorities. Moreover, if the branch is also a permanent establishment for VAT purposes, the relevant VAT tax returns will need to be filed.

**Limited liability company (Sociedad Limitada)**

Companies must annually file a company income tax return with tax authorities. Other periodic returns may be of mandatory filing, including VAT and payroll withholding, among others.

**Joint-stock company (Sociedad Anónima)**

Companies must annually file a company income tax return with tax authorities. Other periodic returns may be of mandatory filing, including VAT and payroll withholding, among others.

**BUSINESS REGISTRATION FILING REQUIREMENTS**

**Branch (Sucursal)**

Branches in Spain need to be registered in the Commercial Registry and with the Spanish Tax Authorities. A branch will also need a tax identification number (NIF) to be identified as a taxpayer and for VAT purposes. In addition, certain activities or businesses may require specific licenses or registrations in special public registers.

**Limited liability company (Sociedad Limitada)**

- Needs to be registered in the Commercial Registry and with the Spanish Tax Authorities
• Will need to obtain a tax identification number (NIF) to be identified as a taxpayer and for VAT purposes

• May require specific licenses or registrations in special public registers, if it performs certain activities or businesses

Joint-stock company (Sociedad Anónima)

• Needs to be registered in the Commercial Registry and with the Spanish Tax Authorities

• Will need to obtain a tax identification number (NIF) to be identified as a taxpayer and for VAT purposes

• May require specific licenses or registrations in special public registers, if it performs certain activities or businesses

BUSINESS EXPANSION

Branch (Sucursal)

No need to change as business expands, except for certain special cases such as listing on a stock market.

Limited liability company (Sociedad Limitada)

No need to change as business expands, except for certain special cases, such as listing on a stock market or banking activities.

Joint-stock company (Sociedad Anónima)

No need to change as business expands.

EXIT STRATEGY

Branch (Sucursal)

File liquidation documents in the Commercial Registry.

Limited liability company (Sociedad Limitada)

File liquidation documents in the Commercial Registry.

Joint-stock company (Sociedad Anónima)

File liquidation documents in the Commercial Registry.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

Branch (Sucursal)
The branch must either file its own accounts in the Commercial Registry (if its accounting is separate from the principal company) or file documents evidencing that the principal company has filed its annual accounts in the relevant jurisdiction (in case of a foreign company).

**Limited liability company (Sociedad Limitada)**

Annual shareholders' general meeting.

**Joint-stock company (Sociedad Anónima)**

Annual shareholders' general meeting.

### DIRECTOR / OFFICER REQUIREMENTS

**Branch (Sucursal)**

A representative for the branch must be appointed from incorporation with a specific delegation of powers.

**Limited liability company (Sociedad Limitada)**

Directors of limited liability companies (sociedad limitada) may be individuals or corporate bodies and are required. If there is a board, the board must appoint a chairman and a secretary.

**Joint-stock company (Sociedad Anónima)**

Directors of joint-stock companies may be individuals or corporate bodies and are required. If there is a board, the board must appoint a chairman and a secretary.

For more information on directors’ duties, see our [Global Guide to Directors’ Duties](#).

### LOCAL CORPORATE SECRETARY REQUIREMENT

**Branch (Sucursal)**

Not required for branches.

**Limited liability company (Sociedad Limitada)**

A secretary is mandatory in case of a board of directors but does not need to be a Spanish resident.

**Joint-stock company (Sociedad Anónima)**

A secretary is mandatory in case of a board of directors but does not need to be a Spanish resident.
LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Not applicable except for branches, which need to have a tax representative in Spain. Said representative will be joint and severally liable for the branch’s tax obligations.

LOCAL OFFICE LEASE REQUIREMENT

Not applicable for this jurisdiction.

OTHER PHYSICAL PRESENCE REQUIREMENTS

None. Tax efficiency considerations to be borne in mind.

SUFFICIENCY OF VIRTUAL OFFICE

Registered offices are needed for incorporation.

PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Allowed.

PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Allowed except for branches (which do not have directors). Provision of local director is possible but uncommon. Provision of local secretary is standard and widely used.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

None. Tax efficiency considerations to be borne in mind for directors and officers.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Branch (Sucursal)

Not applicable for this jurisdiction.

Limited liability company (Sociedad Limitada)
There are some restrictions for a person to be appointed as director (eg, minors, insolvent persons or entities and persons with a criminal record).

Joint-stock company (Sociedad Anónima)

There are some restrictions for a person to be appointed as director (eg, minors, insolvent persons or entities and persons with a criminal record).

**SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF**

Branch (Sucursal)

A branch does not have directors or shareholders. However, a natural person must be designated as a branch representative (equivalent to a proxy of the principal company) and needs to have a specific delegation of power.

Limited liability company (Sociedad Limitada)

Directors are elected by shareholders, are the highest authority in the management of the company, and manage and run the company. In contrast, empowered attorneys are appointed by the directors, who delegate powers to them.

Joint-stock company (Sociedad Anónima)

Directors are elected by shareholders, are the highest authority in the management of the company, and manage and run the company. In contrast, empowered attorneys are appointed by the directors, who delegate powers to them.

**PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS**

Branch (Sucursal)

A branch does not have directors or shareholders. However, its representative must be registered in the Commercial Registry.

Limited liability company (Sociedad Limitada)

Identity of directors and empowered attorneys with general powers is publicly disclosed.

Joint-stock company (Sociedad Anónima)

Identity of directors and empowered attorneys with general powers is publicly disclosed.

**MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS**

Branch (Sucursal)
The branch does not have directors or shareholders.

**Limited liability company (Sociedad Limitada)**

There must be a minimum of 1 shareholder, and no maximum number. The board of directors shall not have less than 3 and no more than 12 members. The bylaws may establish the extract or a minimum and maximum number of members for the board of directors. In the latter case the general meeting shall determine the exact number.

**Joint-stock company (Sociedad Anónima)**

There must be a minimum of 1 shareholder, and no maximum number. The board of directors shall have no less than 3 members. The bylaws may establish the extract or a minimum and maximum number of members for the board of directors. In the latter case the general meeting shall determine the exact number.

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**MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

**Branch (Sucursal)**

A branch does not have shareholders.

**Limited liability company (Sociedad Limitada)**

1 shareholder is sufficient.

**Joint-stock company (Sociedad Anónima)**

1 shareholder is sufficient.

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**REMOVAL OF DIRECTORS OR OFFICERS**

**Branch (Sucursal)**

Removal of branch representatives is allowed at the principal company’s will.

**Limited liability company (Sociedad Limitada)**

Removal of directors is allowed by a vote of shareholders at a shareholder general meeting.

**Joint-stock company (Sociedad Anónima)**

Removal of directors is allowed by a vote of shareholders at a shareholder general meeting.

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**REQUIRED AND OPTIONAL OFFICERS**

**Branch (Sucursal)**

A branch does not have officers.
Limited liability company (Sociedad Limitada)

Spanish companies do not have an equivalent of officers, though powers may be delegated to attorneys. Chairman and secretary are required if there is a board; vice-chairman and vice-secretary are allowed and typically used.

Joint-stock company (Sociedad Anónima)

Spanish companies do not have an equivalent of officers, though powers may be delegated to attorneys. Chairman and secretary are required if there is a board; vice-chairman and vice-secretary are allowed and typically used.

BOARD MEETING REQUIREMENTS

Branch (Sucursal)

A branch does not have board meetings.

Limited liability company (Sociedad Limitada)

Bylaws usually govern most of this. Meetings can be in physical attendance, via written resolutions or others (eg, conference call) if legal requirements are met.

Joint-stock company (Sociedad Anónima)

Bylaws usually govern most of this. Meetings can be in physical attendance, via written resolutions or others (eg, conference call) if legal requirements are met.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

Branch

A branch does not have shareholder or board meetings.

Limited liability company

There is no minimum quorum for shareholders meetings, although it can be modified in bylaws of the company and there is a minimum quorum to pass resolutions. For directors, typically a majority of directors must be present during a board meeting; alternatively, all of directors can execute written resolutions.

Joint-stock company

For shareholders meetings, 25 percent of shareholders must attend or be represented on first call. Bylaws can establish different quorums. For directors, typically a majority of directors must be present during a board meeting; alternatively, all of directors can execute written resolutions.

MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?
Branch (Sucursal)

According to common practice a Spanish bank account is opened, albeit not strictly necessary. Dealing with foreign bank accounts is difficult and often delays things.

Limited liability company (Sociedad Limitada)

According to common practice, a Spanish bank account should be opened, but there are no strict requirements. Dealing with foreign bank accounts is difficult and often delays business operations.

Joint-stock company (Sociedad Anónima)

According to common practice, a Spanish bank account should be opened, but there are no strict requirements. Dealing with foreign bank accounts is difficult and often delays business operations.

AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?

Branch (Sucursal)

The accountancy of the branch is not different from its principal company but a branch may have its separate accounting and file separate accounts.

Limited liability company (Sociedad Limitada)

Financial statements and, if appropriate, management reports must be reviewed by an auditor qualified to practice in Spain unless the company may issue an abridged balance sheet. The books do not need to be kept locally.

Joint-stock company (Sociedad Anónima)

Financial statements and, if appropriate, management reports must be reviewed by an auditor qualified to practice in Spain unless the company may issue an abridged balance sheet. The books do not need to be kept locally.

REQUIREMENT REGARDING PAR VALUE OF STOCK

Branch (Sucursal)

Not applicable (branches do not have stock).

Limited liability company (Sociedad Limitada)

There is no statutory minimum par value.

Joint-stock company (Sociedad Anónima)

There is no statutory minimum par value.
INCREASING OF CAPITALIZATION IF NEEDED

Branch (Sucursal)

Not applicable (branches do not have capital, albeit funds can be allocated to a branch). Further funds may, however, be allocated to a branch.

Limited liability company (Sociedad Limitada)

Requires a resolution from shareholders general meeting.

Joint-stock company (Sociedad Anónima)

Requires a resolution from shareholders general meeting.

SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)

Branch (Sucursal)

Not applicable. Branch funds are funds of a principal company.

Limited liability company (Sociedad Limitada)

Funds can be repatriated abroad from Spain via dividends or redemption.

Joint-stock company (Sociedad Anónima)

Funds can be repatriated abroad from Spain via dividends or redemption.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

Branch (Sucursal)

There are no shares/stock in a branch.

Limited liability company (Sociedad Limitada)

Typically have share transfer restrictions. Clauses in bylaws that render shares freely transferable are void in practice.

Joint-stock company (Sociedad Anónima)

Generally have no share transfer restrictions aside from those set out, for example, in the bylaws or shareholder agreements. Clauses in the bylaws that render shares non-transferable are null and void in practice.

OBTAINING A NAME AND NAMING REQUIREMENTS
Branch (Sucursal)

There are no requirements for a branch in Spain.

Limited liability company (Sociedad Limitada)

A certificate declaring that nobody has used the name chosen for a company is required.

Joint-stock company (Sociedad Anónima)

A certificate declaring that nobody has used the name chosen for a company is required.

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

Branch (Sucursal)

An ultimate beneficial ownership declaration, in which any ultimate beneficiary owning (directly or indirectly) more than 25 percent of the company must be identified, is required.

Limited liability company (Sociedad Limitada)

An ultimate beneficial ownership declaration, in which any ultimate beneficiary owning (directly or indirectly) more than 25 percent of the company must be identified, is required.

Joint-stock company (Sociedad Anónima)

An ultimate beneficial ownership declaration, in which any ultimate beneficiary owning (directly or indirectly) more than 25 percent of the company must be identified, is required.

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

Branch (Sucursal)

Generally shareholders of a principal company must formally approve any amendment to bylaws. A branch does not have separate bylaws.

Limited liability company (Sociedad Limitada)

Generally the shareholders must formally approve any amendment to bylaws.

Joint-stock company (Sociedad Anónima)

Generally the shareholders must formally approve any amendment to bylaws.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

This will depend on the type of business carried out. Typically, there will be an activity license in addition to
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regional and local licenses.

**PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY**

Branch (*Sucursal*)

Not applicable for this jurisdiction.

Limited liability company (*Sociedad Limitada*)

Shelf companies can be purchased from third-party service providers.

Joint-stock company (*Sociedad Anónima*)

Shelf companies can be purchased from third-party service providers.

**KEY CONTACTS**

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SWEDEN

FORM OF ENTITY

Limited company (aktiebolag or AB)

A limited company (Aktiebolag or AB) is a separate and distinct legal entity. Managed by a board of directors, which is responsible for making major business decisions and overseeing general affairs of a company. Directors are elected by shareholders of an AB. The managing director (optional in private ABs and required in public ABs), who runs the day-to-day operations of an AB, is appointed by the board of directors. Other officers are appointed by the board of directors or by the managing director.

Trading partnership (handelsbolag, HB)

Under the Partnership and Non-registered Partnership Act (Handelsbolagslagen), a trading partnership (Handelsbolag or HB) is constituted by an agreement between 2 or more individuals and/or legal entities to conduct business in association. The HB’s most frequently cited advantage is its flexibility. Partners are free to organize their relations as they see fit without the restraints of a corporate form. Within the framework of an HB, complex structures can be set up to allow for many different characteristics and circumstances. The partners in an HB are personally liable for the partnership’s agreements and debts.

Limited partnership (kommanditbolag or KB)

A limited partnership (Kommanditbolag or KB) is a form of a trading partnership in which 1 or more partners has reserved the right not to be liable for the obligations of a KB in excess of the sum he they have contributed or undertaken to contribute to a KB. Such a partner is referred to as a limited partner (Kommanditdelägare).

Other partners in a KB are referred to as general partners (Komplementär). A KB must have 2 or more partners, at least 1 general partner and 1 limited partner.

The partnership’s most frequently cited advantage is its flexibility. Partners are free to organize their relations as they see fit without the restraints of a corporate form. Within the framework of a partnership, complex structures can be set up to allow for many different characteristics and circumstances.

Branch office (filial, Branch)

A branch (Filial) is the branch office of a foreign company with a separate management in Sweden. A branch is
not a separate legal entity. A foreign company may only have 1 branch in Sweden. A branch has no independent capital, and its assets and liabilities are a part of the total assets of the foreign company.

**ENTITY SET UP**

**Limited company (aktiebolag or AB)**

- Minimum of 1 shareholder
- Generally no personal liability of shareholders
- An AB is taxed on its earnings at a corporate level, and shareholders are taxed on salary withdrawn and distributed profits from the AB. The AB is subject to a Swedish corporate income tax rate which currently amounts to 20.6 percent
- Typical charter documents include:
  - Articles of association
  - Minutes of shareholder meetings
  - Organizational board resolutions
  - Share certificates
  - Share ledger
- Board of directors has overall management responsibility; managing director and other officers have day-to-day responsibility
- Shareholders typically purchase shares in an AB. Separate classes of shares with different rights (eg, voting, dividends) are commonly used
- Annual report shall be filed annually with the Swedish Companies Registration Office (Bolagsverket or SCRO)
- There are 2 types of ABs: private and public

**Trading partnership (handelsbolag or HB)**

- 2 or more partners (natural persons or legal entities) are required
- No startup capital requirement
- HBs are tax transparent. Partners are taxed for their part of the HB’s surplus (ie, income tax and social security contributions)
Incorporated by registration with the Swedish Companies Registration Office (Bolagsverket or SCRO)

Partners are personally responsible for the HB’s debts, including debts that already exist when becoming a partner

Business name must contain the word "handelsbolag"

An authorized or approved auditor and filing of annual accounts are required where an HB meets certain criteria regarding the partners, number of employees, balance sheet total and net turnover

**Limited partnership (kommanditbolag, KB)**

2 or more partners (natural persons or legal entities) are required of which 1 shall be a general partner and 1 a limited partner

General partners have unlimited personal responsibility (jointly and severally) for the agreements and debts of a KB. Limited partners are only responsible for the amount contributed. The responsibility includes debts that already exist when becoming a partner

No startup capital requirement for general partners; capital requirement for each limited partner is at least SEK1

KB is tax transparent. Partners are taxed for their part of the KB's surplus (ie, income tax and social security contributions)

Incorporated by registration with the Swedish Companies Registration Office (Bolagsverket or SCRO)

Business name must contain the word "kommanditbolag"

An authorized or approved auditor and filing of annual accounts are required if a KB meets certain criteria regarding partners, number of employees, balance sheet total and net turnover

**Branch office (filial, Branch)**

A foreign-based company that engages in business activities in Sweden can register a branch office, with separate management in Sweden

A branch is not a separate legal entity but is a part of a foreign-based company

Does not have independent capital and assets, and liabilities are a part of total assets of a foreign-based company

1 managing director is appointed to run the business activities in Sweden. The managing director and any deputy managing directors are normally required to be resident within the EEA

A branch is subject to a Swedish corporate tax rate which currently amounts to 20.6 percent Incorporated by registration with the Swedish Companies Registration Office (Bolagsverket or SCRO)
• A business name must contain the word "filial"

• A branch is to keep its own accounting records, and these are to be kept separate from the foreign-based company. Annual report of a branch office and a foreign company are normally required to be filed with the SCRO

• An authorized or approved auditor is required where the branch office meets certain criteria regarding the number of employees, balance sheet total and net turnover

**MINIMUM CAPITAL REQUIREMENT**

**Limited company (aktiebolag or AB)**

SEK25,000 for private AB and SEK500,000 for public AB

**Trading partnership (handelsbolag or HB)**

No minimum capital requirement.

**Limited partnership (kommanditbolag or KB)**

No minimum capital requirement.

**Branch office (filial)**

Not applicable for this jurisdiction.

**LEGAL LIABILITY**

**Limited company (aktiebolag or AB)**

Shareholders of an AB are generally not liable for the debts of an AB.

**Trading partnership (handelsbolag, HB)**

Partners are personally responsible for keeping the agreements of the HB and for paying its debts. Partners are jointly and separately responsible. This means that a creditor can claim payment of the entire amount of a debt from any of the partners. Partners are responsible for the debts of an HB up to the full amount of their assets.

**Limited partnership (kommanditbolag, KB)**

The general partner has the same rights and liabilities as a partner in a partnership, including unlimited liability for all debts and obligations of a KB. Liability of a limited partner is limited to its contribution to a KB. A limited company may be a general partner of a KB.

**Branch office (filial, Branch)**

A branch is subject to Swedish law and decisions of Swedish authorities regarding legal matters in connection with
its business activities in Sweden.

**TAX PRESENCE**

**Limited company (aktiebolag, AB)**

Profits of an AB are taxed at 2 levels (commonly referred to as double taxation). First, an AB pays a corporate tax on its corporate income; then, shareholders pay tax on profits distributed from an AB. An AB is subject to a Swedish corporate income tax rate which currently amounts to 20.6 percent.

**Trading partnership (handelsbolag, HB)**

Partners are taxed based on their part of the HB’s surplus which includes income tax and social security contribution.

**Limited partnership (kommanditbolag, KB)**

Partners are taxed based on their part of the KB’s surplus which includes income tax and social security contribution.

**Branch office (filial, Branch)**

A foreign company starting a branch in Sweden must pay income tax on its business operations. Branch accounts must be kept separate from those of a foreign company in order to calculate the accrued profit. Profit of a branch is then subject to Swedish corporate income tax rate which currently amounts to 20.6 percent.

**INCORPORATION PROCESS**

**Limited company (aktiebolag, AB)**

Subscription for shares and payment of share capital, signing of memorandum of association and registration of memorandum of association with the SCRO. An alternative to formation of a subsidiary would be to buy a so-called shelf company. Such company can be bought from a third-party provider.

**Trading partnership (handelsbolag, HB)**

Written or oral HB agreement to jointly carry on business activities and then incorporated by registration with the Swedish Companies Registration Office (Bolagsverket or SCRO).

**Limited partnership (kommanditbolag, KB)**

Written or oral partnership agreement to jointly carry on business activities and then incorporated by registration with the Swedish Companies Registration Office (Bolagsverket or SCRO).

**Branch office (filial, Branch)**

Resolution by the relevant corporate body of a foreign company to:
• Set up a branch

• Appoint a managing director and issue a special power of attorney and, if applicable,

• Appoint:
  
  ○ deputy managing director(s)
  
  ○ an auditor
  
  ○ a person resident in Sweden to receive service of process on behalf of a branch. When a branch has been registered with the Swedish Companies Registration Office (Bolagsverket or SCRO), it receives a Swedish registration number.

BUSINESS RECOGNITION

Limited company (aktiebolag, AB)

Well regarded and widely used.

Trading partnership (handelsbolag, HB)

Well recognized but not as widely used as limited companies (Aktiebolag or AB).

Limited partnership (kommanditbolag, KB)

Well recognized but not as widely used as limited companies (Aktiebolag or AB).

Branch office (filial, Branch)

Well regarded but not as widely used as a limited company (Aktiebolag or AB).

SHAREHOLDER MEETING REQUIREMENTS

Limited company (aktiebolag, AB)

Required to hold annual meeting of shareholders to vote on certain items, such as adoption of annual accounts, election of directors and resolution on discharge from liability for members of the board of directors and the managing director.

Trading partnership (handelsbolag, HB)

Not applicable for this jurisdiction.

Limited partnership (kommanditbolag, KB)

Not applicable for this jurisdiction.
Branch office (filial, Branch)

Not applicable for this jurisdiction.

**BOARD OF DIRECTOR MEETING REQUIREMENTS**

**Limited company (aktiebolag, AB)**

No statutory minimum number requirement. In practice, at least 1 inaugural meeting is held in connection with the annual meeting of shareholders.

**Trading partnership (handelsbolag, HB)**

Not applicable for this jurisdiction.

**Limited partnership (kommanditbolag, KB)**

Not applicable for this jurisdiction.

**Branch office (filial, Branch)**

Not applicable for this jurisdiction.

**ANNUAL COMPANY TAX RETURNS**

**Limited company (aktiebolag, AB)**

Must file annual tax returns with the Swedish Tax Agency.

**Trading partnership (handelsbolag, HB)**

Both a registered entity and individual partners must file annual tax returns with the Swedish Tax Agency.

**Limited partnership (kommanditbolag, KB)**

Both a registered entity and individual partners must file annual tax returns with the Swedish Tax Agency.

**Branch office (filial, Branch)**

Must file annual tax returns with the Swedish Tax Agency.

**BUSINESS REGISTRATION FILING REQUIREMENTS**

**Limited company (aktiebolag, AB)**

Initial registration, annual filings of annual reports.

**Trading partnership (handelsbolag, HB)**
Initial registration. If an HB has a legal entity of a certain size as a co-owner, it must appoint an accountant and submit an annual report to the Swedish Companies Registration Office.

Limited partnership (kommanditbolag, KB)

Initial registration. If a KB has a legal entity of a certain size as a co-owner, a KB must appoint an accountant and submit an annual report to the Swedish Companies Registration Office.

Branch office (filial, Branch)

Initial registration, annual filing of the annual report of the foreign based company with the SCRO.

BUSINESS EXPANSION

Limited company (aktiebolag, AB)

No need to change as business expands. An AB can change category from private to public.

Trading partnership (handelsbolag, HB)

No need to change as business expands. Additional filing requirements increase if an HB has a legal entity of a certain size.

Limited partnership (kommanditbolag, KB)

No need to change as business expands. Additional filing requirements increase if a KB has a legal entity of a certain size.

Branch office (filial, Branch)

In general, no need to change as business expands.

EXIT STRATEGY

Limited company (aktiebolag, AB)

File dissolution documents with the SCRO.

Trading partnership (handelsbolag, HB)

File dissolution documents with the SCRO and the Swedish Tax Agency. Filing of dissolution documents must be conducted by all partners. In addition, all partners must agree to end an HB in order to effectuate the dissolution.

Limited partnership (kommanditbolag, KB)
File dissolution documents with the SCRO and the Swedish Tax Agency. Filing of dissolution documents must be conducted by all partners. In addition, all partners must agree to end a KB in order to effectuate the dissolution.

Branch office (filial, Branch)

A deregistration of a branch must be reported to the SCRO. A deregistration is free of charge and can be filed by the managing director or an authorized representative of a foreign company.

**ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

**Limited company (aktiebolag, AB)**

Annual shareholders' meeting which can be completed *per capuslam* (ie, by written consent by all shareholders and annual filings of annual reports).

**Trading partnership (handelsbolag, HB)**

Not applicable for this jurisdiction.

**Limited partnership (kommanditbolag, KB)**

Not applicable for this jurisdiction.

**Branch office (filial, Branch)**

If a foreign company has a legal form comparable with a limited company and is incorporated within the European Economic Area (EEA), the accounting records of a branch are to be prepared by annual accounts (*årsbokslut*). Annual accounts must be prepared in accordance with the Swedish Book-keeping Act (*bokföringslagen*). Annual accounts are to be signed by a managing director of a branch. Annual accounts of a branch do not need to be filed with the SCRO.

If a foreign company:

- has a legal form which is not comparable with a limited company, or
- is incorporated outside of the EEA, accounting records of a branch are to be prepared by an annual report (*årsredovisning*). Annual report must be prepared in accordance with the Annual Reports Act (*årsredovisningslagen*). Annual report is to be signed by the managing director of a branch. Annual report of a branch is to be filed with the SCRO.

Furthermore, a certified copy of the foreign company’s annual report and any auditor’s report must always be filed with the SCRO.

**DIRECTOR / OFFICER REQUIREMENTS**

**Limited company (aktiebolag, AB)**

Director(s) and, where applicable, deputy director(s) and employee representatives. Managing director is required
in public ABs and is optional in private ABs.

A legal person may not serve as a director. A director or officer must be over 18 years of age. They must not be declared bankrupt, be prohibited to carry on business or have a guardian.

Trading partnership (handelsbolag, HB)

There is no requirement to appoint specific directors. Partners represent an HB individually unless otherwise agreed. One or more partners must always be authorized as a signatory or signatories.

A branch cannot be registered as a partner. Natural persons must not be declared bankrupt, have a guardian, or in any other way be prohibited to carry on business in order to be registered in a HB.

Limited partnership (kommanditbolag, KB)

There is no requirement to appoint specific directors. General partners represent a KB individually unless otherwise agreed. One or more partners must always be authorized as a signatory or signatories. However, limited partners cannot be authorized to represent or sign on behalf of a KB.

A branch cannot be registered as a partner. Natural persons must not be declared bankrupt, have a guardian, or in any other way be prohibited to carry on business in order to be registered in a KB.

Branch office (filial, Branch)

A branch must appoint a managing director but does not have a board of directors. A managing director is to have a special power of attorney which empowers them to sign and act on behalf of a foreign company in all matters relating to the company's business in Sweden. One or more deputy managing directors for the branch can be appointed, and these persons must also have their own powers of attorney. Managing director and any deputy managing directors of a branch should be resident within the EEA.

For more information on directors’ duties, see our Global Guide to Directors’ Duties.

LOCAL CORPORATE SECRETARY REQUIREMENT

Not applicable for this jurisdiction.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Limited company (aktiebolag, AB)

None beyond the required directors and, where applicable, managing director.

Trading partnership (handelsbolag, HB)

One or more partners must always be authorized as a signatory or signatories.
Limited partnership (kommanditbolag, KB)

One or more partners must always be authorized as a signatory or signatories.

Branch office (filial, Branch)

None beyond the required managing director and, where applicable, person to receive process.

LOCAL OFFICE LEASE REQUIREMENT

None required for incorporation.

OTHER PHYSICAL PRESENCE REQUIREMENTS

Limited company (aktiebolag, AB)

In the event an AB has no authorized representative (ie, board member, managing director or special company signatory) who is resident in Sweden, the board of directors shall authorize a person who is resident in Sweden to act as the person authorized to receive service of process on behalf of a company.

Trading partnership (handelsbolag, HB)

An HB must have its registered address in Sweden.

Limited partnership (kommanditbolag, KB)

A KB must have its registered address in Sweden.

Branch office (filial, Branch)

If a managing director of a branch is not resident within the EEA, a foreign company must appoint a person resident in Sweden to receive service of process on behalf of a branch.

SUFFICIENCY OF VIRTUAL OFFICE

Sufficient for incorporation.

PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Allowed for incorporation.

PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER
Local directors for an AB can be provided by a third-party service provider.

**NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS**

**Limited company (aktiebolag, AB)**

- Founder (unless granted an exemption by the SCRO):
  - A natural person domiciled within the European Economic Area
  - A Swedish legal entity or
  - A legal entity which has been formed pursuant to the laws of a state within the European Economic Area and which has its registered office, its head office or its principal place of business within the Area.

- Shareholders:
  - None,

- Directors (unless granted an exemption by the SCRO):
  - Not less than 1/2 of directors and, where applicable, deputy directors, respectively, must be resident within the European Economic Area.

- Managing director (unless granted an exemption by the SCRO):
  - Required to be resident within the European Economic Area.

**Trading partnership (handelsbolag, HB)**

There are no nationality or residency requirements in relation to partners.

However, a partner who is not registered in the Swedish population register must submit a certified copy of their passport or other official identity document with the application.

If the partner is a foreign legal entity, a certified copy of a certificate of registration must be submitted with the application.

**Limited partnership (kommanditbolag, KB)**

- There are no nationality or residency requirements in relation to partners.

- However, a partner who is not registered in Swedish population register must submit a certified copy of their passport or other official identity document with the application.
• If the partner is a foreign legal entity, a certified copy of a certificate of registration must be submitted with the application.

Branch office (filial, Branch)

• A managing director and, if applicable, any deputy managing directors must be resident within the EEA unless granted an exemption by the SCRO.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Not applicable for this jurisdiction.

SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF

Limited company (aktiebolag, AB)

Directors of the board are elected by shareholders, are the highest authority in management of an AB and govern the organization by establishing broad policies and objectives. A managing director is appointed by directors to manage the day-to-day operations of an AB. Board of directors shall issue instructions regarding allocation of work between the board of directors and a managing director. A managing director is always authorized to represent the company and sign on its behalf in matters related to the day-to-day management of a company.

Trading partnership (handelsbolag, HB)

In general, the management of the HB is less regulated than a limited company. The authority and limitations of partners authority is instead decided in accordance with the partnership agreement.

Limited partnership (kommanditbolag, KB)

In general, management of a KB is less regulated than a limited company. Authority and limitations of partners authority is instead decided in accordance with the partnership agreement.

Branch office (filial, Branch)

A managing director is appointed by a foreign company to manage all business operations of a branch. The managing director is always authorized to represent the branch and sign on its behalf in all matters.

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

Limited company (aktiebolag, AB)

The identity of directors and managing director is publicly disclosed; the identity of shareholders of private, non-listed companies is not publicly registered. ABs that are not CSD-registered are, however, required to
disclose the share ledger (which contains identity of shareholders) to anyone upon request. In addition, beneficial
owner information must be registered with the SCRO and be disclosed in a public register. Beneficial owners are
individuals who ultimately own or control a company. An individual can control a company in various ways, such as
by holding more than 25 percent of the votes through shares in a company.

Trading partnership (handelsbolag, HB)

Identity of partners is publicly disclosed. In addition, all HBs must register information regarding the beneficial
owner with the SCRO. Information about the beneficial owner is also publicly disclosed. Beneficial owners are
individuals who ultimately own or control an entity. An individual can control an entity in various ways, such as
holding more than 25 percent of votes through shares, voting rights or ownership interest.

Limited partnership (kommanditbolag, KB)

Identity of partners is publicly disclosed. In addition, all KBs must register information regarding beneficial owner
with the SCRO. Information about beneficial owner is also publicly disclosed. Beneficial owners are individuals
who ultimately own or control an entity. An individual can control an entity in various ways, such as holding more
than 25 percent of votes through shares, voting rights or ownership interest.

Branch office (filial, Branch)

Identity of a managing director is publicly disclosed. Since a branch is not a legal entity it is not required to register
beneficial ownership information with the SCRO. However, a foreign-based company which owns the branch may
need to register beneficial ownership information if it can be classified as a foreign legal entity with activities in
Sweden, but foreign-based companies domiciled within the EEA do not need to register such information under
certain conditions.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

Limited company (aktiebolag, AB)

There must be a minimum of 1 shareholder. Minimum director requirements private AB:

- 1 director and 1 deputy director

Minimum director requirements public AB:

- 3 directors and
- Managing director (may, but is not required to, be a director of the board of directors).

Where the board consists of 1 or 2 directors, at least 1 deputy director shall be appointed. There is no maximum
number of directors on the board of directors.

Trading partnership (handelsbolag, HB)

Not applicable for this jurisdiction.
Limited partnership (kommanditbolag, KB)
Not applicable for this jurisdiction.

Branch office (filial, Branch)
Not applicable for this jurisdiction.

**MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

Limited company (aktiebolag, AB)
One shareholder is sufficient.

Trading partnership (handelsbolag, HB)
Not applicable for this jurisdiction.

Limited partnership (kommanditbolag, KB)
Not applicable for this jurisdiction.

Branch office (filial, Branch)
Not applicable for this jurisdiction.

**REMOVAL OF DIRECTORS OR OFFICERS**

Limited company (aktiebolag, AB)
The shareholders’ meeting resolves upon removal of directors. Removal of managing director requires a board resolution. Directors and managing director may furthermore resign by notifying the SCRO.

Trading partnership (handelsbolag, HB)
In accordance with the partnership agreement or otherwise agreed upon among the partners.

The SCRO has to be notified of the change.

Limited partnership (kommanditbolag, KB)
In accordance with the partnership agreement or otherwise agreed upon among the partners.

The SCRO has to be notified of the change.

Branch office (filial, Branch)
A foreign company resolves upon removal of a managing director by notifying the SCRO. A document verifying the authorization to sign the power of attorney for the managing director and the deputy managing directors of
the branch (e.g., a registration certificate or certification from the notary public). The document must include information on the registered board of directors of the foreign-based company and their signatory power. A managing director may furthermore resign by notifying the SCRO.

**REQUIRED AND OPTIONAL OFFICERS**

**Limited company (aktiebolag, AB)**

Where the board consists of 2 or more directors, a chairman shall be appointed by the board.

A managing director is required in public ABs and is optional in private ABs.

A person authorized to receive service of process shall be appointed by the board of directors, where none of the AB’s authorized representatives is a resident in Sweden. Such person is not granted any other authority or decision-making powers.

The board of directors may appoint 1 or more special company signatories with authority to represent and sign on behalf of the company (no decision-making powers).

**Trading partnership (handelsbolag, HB)**

HB must have 2 or more partners.

Partners may appoint 1 or more special company signatories with authority to represent and sign on behalf of a company (no decision-making powers). In addition, a power of procuration (Prokura) can be issued to give a natural or legal person a right to represent a HB in all matters related to the business activities and before authorities and courts.

**Limited partnership (kommanditbolag, KB)**

A KB must have 2 or more partners.

Partners may appoint 1 or more special company signatories with authority to represent and sign on behalf of a company (no decision-making powers). In addition, a power of procuration (Prokura) may be issued to give a natural or legal person the right to represent a KB in all matters related to the business activities and before authorities and courts.

**Branch office (filial, Branch)**

A foreign company may choose to appoint deputy managing director(s).

**BOARD MEETING REQUIREMENTS**

**Limited company (aktiebolag, AB)**

No statutory minimum number requirement. In practice, at least 1 inaugural meeting in connection with the annual meeting of shareholders. Can be held by telephone or completed via written consent by all directors.
Trading partnership (handelsbolag, HB)
Not applicable for this jurisdiction.

Limited partnership (kommanditbolag, KB)
Not applicable for this jurisdiction.

Branch office (filial, Branch)
Not applicable for this jurisdiction.

**QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

Limited company (aktiebolag, AB)

No specific quorum requirements apply for a shareholders’ meeting. Resolutions are passed with the simple majority of the votes cast, except for important decisions (eg, change of articles – 2/3 of the votes cast is required). Shareholders’ meetings may be held by written consent by all shareholders. For directors, typically a majority of directors must be participating during a board meeting; alternatively, all of directors must execute written resolutions.

Trading partnership (handelsbolag, HB)
Not applicable for this jurisdiction.

Limited partnership (kommanditbolag, KB)
Not applicable for this jurisdiction.

Branch office (filial, Branch)
Not applicable for this jurisdiction.

**MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?**

Limited company (aktiebolag, AB)

Where the share capital shall be paid in cash, opening a bank account with a bank within the EEA is required.

Trading partnership (handelsbolag, HB)
Not applicable for this jurisdiction.

Limited partnership (kommanditbolag, KB)
Not applicable for this jurisdiction.
Branch office (filial, Branch)

Not applicable for this jurisdiction.

AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?

Limited company (aktiebolag, AB)

An AB must have at least 1 auditor where the company fulfills more than 1 of the following conditions:

- The average number of employees during each of the 2 most recent financial years has exceeded 3
- The company's reported balance sheet total for each of the 2 most recent financial years has exceeded SEK1.5 million
- The company's reported net turnover for each of the 2 most recent financial years has exceeded SEK3 million

Only an authorized public accountant or approved public accountant. Such person must be a resident of Sweden, the EEA or Switzerland. Furthermore, a registered accounting firm may serve as auditor.

Generally, corporate books, such as the minute book, should be kept with the company; however, the corporate books could also be kept with a third-party service provider upon instructions by the company.

The SCRO must appoint a minority shareholders’ auditor if owners of at least one-tenth of all shares in a company make such an application. Such an audit is permitted in order to prevent fraud on the minority.

Trading partnership (handelsbolag, HB)

A HB must have an authorized or approved auditor if at least 1 of the partners is a legal entity. The auditor must be reported for registration with the SCRO.

If such an HB does not meet at least two of the following criteria during each of the two most recent financial years, it may choose not to have an auditor:

- more than 3 employees (as an average)
- a balance sheet total of more than SEK1.5 million or
- a net turnover of more than SEK3 million

In a HB with only natural persons as co-owners, an auditor is required if the HB is considered as a major HB.

Only an authorized public accountant or approved public accountant. Such person must be a resident of Sweden,
the EEA or Switzerland. Furthermore, a registered accounting firm may serve as auditor.

Generally, corporate books, such as the minute book, should be kept with the HB; however, the corporate books could also be kept with a third-party service provider upon instructions by the HB.

**Limited partnership (kommanditbolag, KB)**

A KB must have an authorized or approved auditor if at least 1 of the partners is a legal entity. The auditor must be reported for registration with the SCRO.

However, if such a KB does not meet at least 2 of the following criteria during each of the 2 most recent financial years, it may choose not to have an auditor:

- More than 3 employees (as an average)
- A balance sheet total of more than SEK1.5 million or
- A net turnover of more than SEK3 million

In a KB with only natural persons as co-owners, an auditor is required if the KB is considered as a major KB.

Only an authorized public accountant or approved public accountant. Such person must be a resident of Sweden, the EEA or Switzerland. Furthermore, a registered accounting firm may serve as auditor.

Generally, corporate books, such as the minute book, should be kept with the KB; however, the corporate books could also be kept with a third-party service provider upon instructions by the KB.

**Branch office (filial, Branch)**

If a branch has met at least 2 of the following criteria in the last 2 financial years, it must appoint an auditor:

- More than 3 employees (as an average)
- A balance sheet total of more than SEK1.5 million or
- A net turnover of more than SEK3 million

If the operations of a branch are subject to special banking or financial regulation, an auditor must be appointed to examine annual accounts and the managing director’s administration regardless of the criteria above. In such cases, the auditor must meet the qualifications as required by law, which apply to a Swedish company of the same description.

**REQUIREMENT REGARDING PAR VALUE OF STOCK**

None.

**INCREASING OF CAPITALIZATION IF NEEDED**
Limited company (aktiebolag, AB)

Generally, through issuance of new shares, warrants or convertibles or bonus issue with or without issuance of new shares, which requires a shareholders’ resolution and registration with the SCRO. A board of directors may also resolve to issue new shares with the authorization granted by a shareholders’ meeting.

Trading partnership (handelsbolag, HB)

A partner is not obliged to increase their contribution to the HB unless otherwise agreed upon in the partnership agreement.

Limited partnership (kommanditbolag, KB)

A partner is not obliged to increase their contribution to the KB unless otherwise agreed upon in the partnership agreement.

Branch office (filial, Branch)

Not applicable for this jurisdiction.

SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)

Limited company (aktiebolag, AB)

Funds can be repatriated abroad from Sweden via dividends or redemption.

Trading partnership (handelsbolag, HB)

During the year, partners can withdraw funds out of the business as own drawings. Such funds can be repatriated abroad from Sweden.

Limited partnership (kommanditbolag, KB)

During the year, partners can withdraw funds out of the business as own drawings. Such funds can be repatriated abroad from Sweden.

Branch office (filial, Branch)

Not applicable for this jurisdiction.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

Limited company (aktiebolag, AB)

The general rule under Swedish law is that shares may be freely transferred and acquired. Transferability may in general be restricted by provisions in the articles of association such as pre-emption clause, consent clause or right of first refusal clause, or by provisions in a shareholders’ agreement.
Trading partnership (handelsbolag, HB)

Not applicable for this jurisdiction.

Limited partnership (kommanditbolag, KB)

Not applicable for this jurisdiction.

Branch office (filial, Branch)

Not applicable for this jurisdiction.

**OBTAINING A NAME AND NAMING REQUIREMENTS**

**Limited company (aktiebolag, AB)**

Company name is indicated in the articles of association. The SCRO decides whether the name can be registered. The company name must include the word "aktiebolag" or "AB." Public AB's company name must be followed by the wording "(publ)" in the articles of association, unless it is already clear from the company name that the AB is public. It is optional if the public AB also registers "(publ)" in the company name itself. A private AB may not have the word "publikt" in the company name.

Trading partnership (handelsbolag, HB)

Name of a HB is registered with the SCRO. The SCRO decides whether the name can be registered. The name must include the word "Handelsbolag" and may not contain the abbreviation "HB". Protection for the name is granted within the county (Län) where the HB has its registered address.

**Limited partnership (kommanditbolag, KB)**

Name of a KB is registered with the SCRO. The SCRO decides whether the name can be registered. The name must include the word "Kommanditbolag" and may not contain the abbreviation "KB". Protection for the name is granted within the county (Län) where the KB has its registered address.

**Branch office (filial, Branch)**

A branch name must be approved by the SCRO. The SCRO assesses the suggested branch name and investigates if there are any registered trademarks which may prevent registration of a branch name. The business name of a branch must contain the word "filial." If the foreign-based company is a bank, the branch's name must contain the word "bank".

**SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS**

In case the client plans to make transactions, investments or similar, certain KYC requirements apply.

**APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**
Limited company (aktiebolag, AB)

Typically, a majority of 2/3 of the votes cast as well as represented at the shareholders’ meeting must formally approve any amendment of the articles of association. Some amendments require approval by all shareholders present at the general meeting where they together represent not less than 9/10 of all shares in the company.

Trading partnership (handelsbolag, HB)

Typically, all partners must agree to change the written agreement.

Limited partnership (kommanditbolag, KB)

Typically, all partners must agree to change the written agreement.

Branch office (filial, Branch)

Not applicable for this jurisdiction.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

Typically none. Specific licenses may be required for certain types of business.

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

Limited company (aktiebolag, AB)

Shelf companies can be purchased from third-party service providers and are ready to be operated the same day as the purchase is finalized.

Trading partnership (handelsbolag, HB)

Pre-registered HBs can be purchased from third-party service providers and are ready to be operated the same day as the purchase is finalized.

Limited partnership (kommanditbolag, KB)

Pre-registered KBs can be purchased from third-party service providers and are ready to be operated the same day as the purchase is finalized.

Branch office (filial, Branch)

Not applicable for this jurisdiction.
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SWITZERLAND

FORM OF ENTITY

Stock corporation

Legal form intended for large-sized companies with high capital requirements, but also popular among smaller companies. The identities of shareholders are not published in the commercial register. Managed by a board of directors, which is elected by the general meeting of shareholders. The articles of incorporation can limit the transferability of a company’s shares.

ENTITY SET UP

This is an overview of certain aspects of Swiss corporate law as of the date hereof which does not purport to be comprehensive, and may not be relied upon as legal or other advice or in any other way.

Stock corporation (Aktiengesellschaft, AG / Société Anonyme, SA)

- Unlimited number of shareholders allowed but at least 1 founder (individual or legal entity)
- Shareholder’s liability is limited to the amount subscribed
- Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends
- Board of directors is the managing body and has the authority to represent the stock corporation with respect to third parties. The day-to-day management can be delegated to third persons by respective board resolution and enacting of organizational by-laws and
- Annual audit report required (waiver possible for small companies).

Limited liability company (Gesellschaft mit beschränkter Haftung, GmbH / Société à Responsabilité Limitée, SARL)

- Unlimited number of quota-holders allowed but at least 1 founder (individual or legal entity)
- The limited liability company has sole liability of debts, although articles of incorporation can impose
obligation to pay in additional capital

- Taxed on its earnings at a corporate level and quota-holders are taxed on any distributed dividends
- In absence of any rules to the contrary, the management is delegated to all partners
- Generally, annual audit report required (waiver possible for small companies) and
- Legal form intended for small and medium-sized companies.

**MINIMUM CAPITAL REQUIREMENT**

Stock corporation

Minimum stated capital of CHF100,000. When issuing registered shares, 20 percent of the share capital, but minimum of CHF50,000, has to be paid-in at the time of incorporation.

**LEGAL LIABILITY**

Stock corporation

Shareholders of a stock corporation are generally not liable for any debt or liability of a corporation, except for the payment of share price.

**TAX PRESENCE**

Stock corporation

A stock corporation is taxed at 2 levels (so-called economic double taxation). First, the stock corporation pays a corporate tax on its corporate income; when the stock corporation distributes profits to shareholders, they pay income tax on those dividends. Capital tax is only levied on a cantonal and communal level.

**INCORPORATION PROCESS**

Stock corporation

Incorporation meeting with the notary public; filing of the incorporation documents with the commercial register; registration of the stock corporation in the commercial register.

**BUSINESS RECOGNITION**

Stock corporation

Well regarded and widely used; more than 47 percent of the companies in Switzerland are organized as stock corporations.
SHAREHOLDER MEETING REQUIREMENTS

Stock corporation

Required to hold annual general meeting of shareholders to vote on certain items, such as election of directors.

BOARD OF DIRECTOR MEETING REQUIREMENTS

Stock corporation

Annual meeting of the board of directors is required.

ANNUAL COMPANY TAX RETURNS

Stock corporation

Must annually file tax returns with federal and cantonal tax authorities.

BUSINESS REGISTRATION FILING REQUIREMENTS

Stock corporation

Registration in commercial registry is required.

BUSINESS EXPANSION

Stock corporation

No need to change as business expands.

EXIT STRATEGY

Stock corporation

Where the corporation is dissolved for reasons other than insolvency or a court judgment, the general meeting of shareholders passes a resolution; the board of directors subsequently notifies the dissolution for entry in the commercial register.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

Stock corporation

Annual board of directors and general meeting of shareholders; annual report generally consisting of annual accounts and management report.
DIRECTOR / OFFICER REQUIREMENTS

Stock corporation

If there are several directors, 1 director has to be appointed as chairman. The board of directors appoints a secretary (responsible for protocol of board of directors meeting and other administrative duties; not required to be member of the board or management). No requirement to delegate day-to-day management to officers, but articles of incorporation may authorize the board of directors to do so.

For more information on directors’ duties, see our Global Guide to Directors’ Duties.

LOCAL CORPORATE SECRETARY REQUIREMENT

Stock corporation

None required.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Stock corporation

At least 1 director or officer needs to have single signatory power and residence in Switzerland or 2 directors or officers need to have joint signatory power by 2 and Swiss residence.

LOCAL OFFICE LEASE REQUIREMENT

Stock corporation

None required, but in absence of local offices, a c/o address is required.

OTHER PHYSICAL PRESENCE REQUIREMENTS

Stock corporation

Requirement to choose a domicile.

SUFFICIENCY OF VIRTUAL OFFICE

Stock corporation

Sufficient for incorporation; however, a written declaration by the holder of the domicile needs to be supplied
confirming that they allow the stock corporation to have its domicile at the address stated.

**PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

Stock corporation

Possible.

**PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

Stock corporation

No restrictions regarding the provision of local director or corporate secretary by law firm or third-party service provider.

**NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS**

Stock corporation

At least 1 director or officer with single signatory power or 2 directors or officers with joint signatory power by 2 have to be resident in Switzerland.

**RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS**

Stock corporation

Generally none for nominee directors. In contrast, the stock corporation may (in case of registered shares with restriction of transferability) refuse entry in the share register where the acquirer fails to declare expressly that they have acquired the shares in their own name and for their own account.

**SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF**

Stock corporation

The board of directors is elected by the general meeting of shareholders and is the managing body. It has the authority to represent the stock corporation with respect to third parties and has certain non-transferrable duties that cannot be delegated to officers (e.g., overall management, determination of the organization, organization of...
the accounting, financial control and financial planning systems, appointment, supervision and dismissal of officers and compilation of the annual report). Officers may be appointed by the board of directors to oversee day-to-day operations of the corporation.

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

Stock corporation

Identity of directors and officers is publicly disclosed; identity of shareholders is generally not publicly disclosed, except of disclosure obligations pursuant to the Financial Market Infrastructure Act (FMIA) with regard to shares listed on the stock exchange.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

Stock corporation

There must be at least 1 shareholder. No maximum number exists. For directors, the minimum number is 1, while there is no maximum number.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

Stock corporation

1 shareholder is sufficient.

REMOVAL OF DIRECTORS OR OFFICERS

Stock corporation

The general meeting of shareholders is entitled to dismiss the members of the board of directors.

REQUIRED AND OPTIONAL OFFICERS

Stock corporation

None required; any optional officer is allowed, if the board of directors is authorized to delegate powers in the articles of incorporation.

BOARD MEETING REQUIREMENTS

Stock corporation

At least 1 annual board of directors meeting is required; circular resolutions are possible. Minutes need to be kept.
of the board’s discussions and resolutions and signed by the chairman and the secretary.

**QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

Stock corporation

For shareholders’ meetings, subject to certain decisions that require a qualified majority of 2/3 of the represented voting rights and an absolute majority of the nominal value of represented shares, no attendance quorum applies and resolutions may be taken with simple majority of represented shares. Further, a stock corporation’s articles of incorporation may stipulate additional quorum requirements.

For board meetings, subject to a stock corporation’s articles of incorporation and/or organizational regulations, no attendance quorum applies and decisions may be taken by simple majority of the cast votes.

**MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?**

Stock corporation

In case of incorporation by cash, it is required to pay in the share capital in cash to a special blocked account to be opened with a Swiss bank before the incorporation meeting.

**AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?**

Stock corporation

Auditors have to audit the stock corporation’s books annually and submit a report thereon to the board of directors and the shareholders. Waiver of audit is possible for small companies. Generally, the auditor must be located in Switzerland. The stock corporation’s books must be kept locally.

**REQUIREMENT REGARDING PAR VALUE OF STOCK**

Stock corporation

The nominal value of a share must be at least CHF0.01.

**INCREASING OF CAPITALIZATION IF NEEDED**

Stock corporation

Effectuated by share capital increase (ordinary, authorized or conditional) to be reflected in articles of association, which requires a resolution or authorization from the general meeting of shareholders.
SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)

Stock corporation

Free equity can be repatriated abroad from Switzerland via dividend or redemption. Withholding tax (35 percent) may arise.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

Stock corporation

Shares can generally be transferred freely. Board of director’s consent is only needed in case of registered shares and a corresponding provision in the articles of incorporation.

OBTAINING A NAME AND NAMING REQUIREMENTS

Stock corporation

The business name must indicate the legal form and must be clearly distinct from every other business name of businesses already registered in Switzerland. A reservation of a business name is not possible.

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

Stock corporation

No general KYC requirements except for financial intermediaries and dealers, as defined in the Swiss Anti-Money Laundering Act.

However, reporting requirements regarding the identity of the owner of bearer shares and regarding the ultimate beneficial owner of shareholders holding more than 25 percent of the voting rights or capital in a stock corporation may apply to unlisted stock corporations.

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

Stock corporation

Generally, the shareholders’ meeting must formally approve a resolution to any amendment to the articles of incorporation.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

Stock corporation

In general, no license requirements except for specific sectors such as, for example, banking and insurance.
PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

Stock corporation

Although not uncommon in practice, purchase of a shelf stock corporation and its subsequent reactivation may be held void and involves various and substantial legal and financial risks. It is therefore not advisable under Swiss law.

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FORM OF ENTITY

Company limited by shares

A company limited by shares must carry on a profit-seeking business and is a separate and distinct legal entity whereby its capital is divided into shares. A foreign investor must file a foreign investment application (FIA) with the Investment Commission and upon approval incorporate an FIA company in Taiwan.

Closely-held company limited by shares

On June 15, 2015, a special section entitled "Closely-Held Company" (CHC) was added to Chapter 5 (Company Limited by Shares) as a result of the amendments to the Company Act. Its purpose is to encourage the growth of startups and small and medium enterprises and to accommodate the unique needs of tech startups. The amendments aim to create more autonomy for those small or medium companies and to increase the flexibility in share ownership arrangement and business operations of CHC.

Limited company

A limited company is owned by members whose respective ownerships are stated in terms of the amount of the members' capital contributions. A foreign investor must file an FIA with the Investment Commission and upon approval incorporate a limited company in Taiwan. A limited company has fewer corporate formalities than a company limited by shares. For example, a limited company does not have shareholders' meetings.

Branch office of a foreign company

A foreign company may register a branch office to carry on profit-seeking activities in Taiwan. A branch office is exempt from almost all of the corporate formality requirements of a company limited by shares.

ENTITY SET UP

- Company limited by shares
- Closely-held company limited by shares
• Limited company

• Branch office of a foreign company

**MINIMUM CAPITAL REQUIREMENT**

Company limited by shares

None, unless the company is engaged in a business/industry that is required by the competent authority to have a minimum amount of capital or if it employs a foreigner to work in Taiwan.

Closely-held company limited by shares

None, unless the CHC is engaged in a business/industry that is required by the competent authority to have a minimum amount of capital or if it employs a foreigner to work in Taiwan.

Limited company

None, unless the company is engaged in a business/industry that is required by the competent authority to have a minimum amount of capital or if it employs a foreigner to work in Taiwan.

Branch office of a foreign company

None, unless the branch office is engaged in a business/industry that is required by the competent authority to have a minimum amount of working capital or if it employs a foreigner to work in Taiwan.

**LEGAL LIABILITY**

Limited company

Members are not liable for the debts of the company aside from their capital contributions to the company.

Branch office of a foreign company

A branch office is considered as a part of its foreign head office, which will be liable for any activities or debts of the branch office.

**TAX PRESENCE**

Company limited by shares

A company (including an FIA company) is taxed on its worldwide net income.
Closely-held company limited by shares

A CHC (including an FIA company) is taxed on its worldwide net income.

Limited company

A company (including an FIA company) is taxed on its worldwide net income.

Branch office of a foreign company

A branch office is taxed on its own (exclusive of its foreign head office’s) net income.

INCORPORATION PROCESS

Company limited by shares

File for company registration (and FIA if any shareholder is a foreign national/entity) with the Ministry of Economic Affairs (MOEA).

Closely-held company limited by shares

File for company registration (and FIA if any shareholder is a foreign national/entity) with the MOEA.

Limited company

File for company registration (and FIA, if any member is a foreign national/entity) with the MOEA.

Branch office of a foreign company

File for registration of the branch office with the MOEA.

BUSINESS RECOGNITION

Company limited by shares

Well regarded and widely used.

Closely-held company limited by shares

Well regarded.

Limited company

Typically an individual or family-owned company.

Branch office of a foreign company

Widely used by foreign companies because of certain tax advantages.
SHAREHOLDER MEETING REQUIREMENTS

Company limited by shares

If there is more than 1 shareholder, shareholders’ meetings must be held physically to approve certain important corporate matters, such as the company’s annual financial statements. For a non-public status company, its shareholders’ meeting may be conducted through video conferencing if its articles of incorporation so permit. Where there is only 1 shareholder, then all functions of the shareholders’ meeting are exercised by the board meetings.

Closely-held company limited by shares

If there is more than 1 shareholder, shareholders’ meetings must be held to approve certain important corporate matters, such as the CHC’s annual financial statements. If there is only 1 shareholder, then all functions of the shareholders’ meeting are exercised by the board meetings. The shareholders’ meeting of a CHC may be conducted through video conferencing, and a resolution can be approved by all shareholders in writing without convening a meeting.

Limited company

Not applicable for this jurisdiction. Members are not required to meet annually. Rather, important corporate matters must be approved by all members in writing.

Branch office of a foreign company

Not applicable for this jurisdiction.

BOARD OF DIRECTOR MEETING REQUIREMENTS

Company limited by shares

An annual board meeting is required to convene the annual shareholders’ meeting.

Closely-held company limited by shares

An annual board meeting is required.

Limited company

Not applicable for this jurisdiction.

Branch office of a foreign company

Not applicable for this jurisdiction.

ANNUAL COMPANY TAX RETURNS
Company limited by shares

The company must file annual tax returns.

Closely-held company limited by shares

The CHC must file annual tax returns.

Limited company

The company must file annual tax returns.

Branch office of a foreign company

The branch office must file annual tax returns.

**BUSINESS REGISTRATION FILING REQUIREMENTS**

Company limited by shares

The company must apply for business registration with the tax authority after incorporation.

Closely-held company limited by shares

The CHC must apply for business registration with the tax authority after incorporation.

Limited company

The company must apply for business registration with the tax authority after establishment.

Branch office of a foreign company

The branch office must apply for business registration with the tax authority after registration with the MOEA.

**BUSINESS EXPANSION**

Company limited by shares

Generally, an application to the MOEA for amending its company registration to expand its scope of business is required.

Closely-held company limited by shares

Generally, an application to the MOEA for amending its company registration to expand its scope of business is required.

Limited company
Generally, an application to the MOEA for amending its company registration to expand its scope of business is required.

Branch office of a foreign company

Generally, an application to the MOEA for amending the branch registration to expand its scope of business is required.

**EXIT STRATEGY**

File dissolution documents with the MOEA and complete the liquidation process.

**ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Company limited by shares

Annual board meeting and shareholders’ meeting.

Closely-held company limited by shares

Annual board meeting and shareholders’ meeting.

Limited company

None.

Branch office of a foreign company

None.

**DIRECTOR / OFFICER REQUIREMENTS**

Company limited by shares

At least 3 directors, 1 supervisor and a chairman of the board are required. If its articles of incorporation so permit, a non-public status company may have only 1 director (acting as the chairman of the company and exercising all functions of the board of directors) and 1 supervisor. Furthermore, if there is only 1 corporate shareholder and its articles of incorporation so permit, then the company is exempt from the requirement to appoint a supervisor.

Closely-held company limited by shares

At least 3 directors, 1 supervisor and a chairman of the board are required. If its articles of incorporation so permit, a CHC may have only 1 director acting as the chairman of the company and exercising all functions of the board of directors. Furthermore, if there is only 1 corporate shareholder and its articles of incorporation so permit, then the CHC is exempt from the requirement to appoint a supervisor.
Limited company

The company must have at least 1 director, who must be a member or a representative designated by a corporate member.

Branch office of a foreign company

Not applicable for this jurisdiction.

LOCAL CORPORATE SECRETARY REQUIREMENT

None.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Company limited by shares

Not applicable for this jurisdiction.

Closely-held company limited by shares

Not applicable for this jurisdiction.

Limited company

Not applicable for this jurisdiction.

Branch office of a foreign company

The foreign head office of the Taiwan branch office must designate a representative who can concurrently act as the branch manager.

LOCAL OFFICE LEASE REQUIREMENT

A local registered office address is required.

OTHER PHYSICAL PRESENCE REQUIREMENTS

None for incorporation.

SUFFICIENCY OF VIRTUAL OFFICE

No.
PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Permitted but subject to certain restrictions.

PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Permitted but seldom used – there is no need to have a corporate secretary.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

Company limited by shares

The nationality and residency requirements of an FIA company are exempt, provided that a Mainland Chinese (PRC) national is not permitted to act as the director or supervisor.

Closely-held company limited by shares

The nationality and residency requirements of an FIA company are exempt; provided that a PRC national is not permitted to act as the director or supervisor.

Limited company

The nationality and residency requirements of an FIA company are exempt, provided that a PRC national is not permitted to act as the director.

Branch office of a foreign company

The nationality and residency requirements are exempt, provided that a PRC national is not permitted to act as the designated representative of the foreign head office or branch manager.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Company limited by shares

None, except that, for FIA purposes, it is necessary to disclose the ultimate beneficiaries of a foreign corporate shareholder.

Closely-held company limited by shares

None, except that, for FIA purposes, it is necessary to disclose the ultimate beneficiaries of a foreign corporate shareholder.
Limited company

None, except that, for FIA purposes, it is necessary to disclose the ultimate beneficiaries of a foreign corporate shareholder.

Branch office of a foreign company

None.

SUMMARY OF DIRECTOR'S, OFFICER'S AND SHAREHOLDER'S AUTHORITY AND LIMITATIONS THEREOF

Company limited by shares

The chairman, directors and supervisor are the "responsible persons" of the company and required to conduct the business of the company in good faith and exercise the due care of a good administrator. Officers are appointed by the board to oversee the day-to-day operations of the company.

Closely-held company limited by shares

The chairman, directors and supervisor are the "responsible persons" of the CHC and required to conduct the business of the CHC in good faith and exercise the due care of a good administrator. Officers are appointed by the board to oversee the day-to-day operations of the company.

Limited company

The director(s) is the "responsible person" of the company and is required to conduct the business of the company in good faith and exercise the due care of a good administrator.

Branch office of a foreign company

The branch manager is the "responsible person" of the branch office and is required to conduct the business of the branch office in good faith and exercise the due care of a good administrator.

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

Company limited by shares

The identities of the directors and supervisor are publicly disclosed. The identities of the shareholders are not publicly disclosed, except that the public would know the identity of a shareholder who acts as a director or supervisor or of a corporate shareholder who appoints a director or supervisor.

Closely-held company limited by shares

The identities of the directors and supervisor of the CHC are publicly disclosed. The identities of the shareholders are not publicly disclosed, except that the public would know the identity of a shareholder who acts as a director
or supervisor or of a corporate shareholder who appoints a director or supervisor.

**Limited company**

The identity(ies) of the director(s) is publicly disclosed. The identity(ies) of the member(s) is not publicly disclosed, except that the public would know the identity of a member who acts as the director or of a corporate member who appoints the director.

**Branch office of a foreign company**

The identity of the branch manager is publicly disclosed. The name of the foreign company is also publicly disclosed.

**MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS**

**Company limited by shares**

Must have at least 3 directors, provided that a non-public status company which has only 1 corporate shareholder may have only 1 director if its articles of incorporation so permit. There is no maximum number of directors.

**Closely-held company limited by shares**

Must have at least 3 directors, provided that a CHC which has only 1 corporate shareholder may have only 1 director if its articles of incorporation so permit. There is no maximum number of directors.

**Limited company**

Must have at least 1, but not more than 3 directors.

**Branch office of a foreign company**

Not applicable for this jurisdiction.

**MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

**Company limited by shares**

Must have at least 2 shareholders but may have a sole shareholder if such sole shareholder is a company. There is no maximum number of shareholders.

**Closely-held company limited by shares**

1 shareholder is sufficient. The maximum number of shareholders is 50.

**Limited company**

1 member is sufficient.
Branch office of a foreign company

Not applicable for this jurisdiction.

REMOVAL OF DIRECTORS OR OFFICERS

Company limited by shares

Removal of directors can be effectuated by the shareholders’ meeting or the shareholder designating such director (without a shareholders’ meeting). Officers can be removed by the board.

Closely-held company limited by shares

Removal of directors can be effectuated by the shareholders’ meeting or the shareholder designating such director (without a shareholders’ meeting). Officers can be removed by the board.

Limited company

All members must consent to remove or replace the director(s).

Branch office of a foreign company

Manager of the branch office can be removed by the board of the foreign company.

REQUIRED AND OPTIONAL OFFICERS

No required officers.

BOARD MEETING REQUIREMENTS

Company limited by shares

Generally, 1 regular board meeting is required, which can either be a physical meeting or held through video conferencing. For a non-public status company, a unanimous written resolution in lieu of a board meeting is allowed if its articles of incorporation so permit. A board meeting held by telephone conference is not permitted.

Closely-held company limited by shares

Generally, 1 regular board meeting is required, which can either be a physical meeting or held through video conferencing. A unanimous written resolution in lieu of a board meeting is allowed if its articles of incorporation permit. A board meeting held by telephone conference is not permitted.

Limited company

Not applicable for this jurisdiction.
Branch office of a foreign company
Not applicable for this jurisdiction.

**QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

*Company limited by shares*

Other than for certain important matters stated in the Company Act and/or its articles of incorporation, a simple majority must be present for both board (directors) and shareholders’ (voting shares) meetings.

*Closely-held company limited by shares*

Other than for certain important matters stated in the Company Act and/or its articles of incorporation, a simple majority must be present for both board (directors) and shareholders’ (voting shares) meetings.

*Limited company*

Not applicable for this jurisdiction.

*Branch office of a foreign company*

Not applicable for this jurisdiction.

**MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?**

Before incorporation of the entity, a preparatory bank account must be opened at a local bank to receive the paid-in capital/working capital of such entity. After the company/branch office registration and business registration are completed, the entity may opt to open a permanent account at a local bank.

**AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?**

*Company limited by shares*

A company with capital over NTD30 million (approximately USD1 million) or a company with capital less than NTD30 million but with (1) annual sales revenue exceeding NTD100 million (approximately USD3.3 million), or (2) more than 100 local employees, must have its annual financial statements audited by a local CPA. Except for the annual financial statements approved by the board/shareholders’ meeting (in respect of which the company must keep at least a copy thereof at the company’s place of business), other company’s books and records need not be kept locally.

*Closely-held company limited by shares*
A CHC with capital over NTD30 million (approximately USD1 million) or a company with capital less than NTD30 million but with (1) annual sales revenue exceeding NTD100 million (approximately USD3.3 million), or (2) more than 100 local employees, must have its annual financial statements audited by a local CPA. Except for the annual financial statements approved by the board/shareholders’ meeting (in respect of which the CHC must keep at least a copy thereof at the CHC’s place of business), other CHC’s books and records need not be kept locally.

Limited company

A company with capital contributions over NTD30 million (approximately USD1 million) or a company with capital contributions less than NTD30 million but with (1) annual sales revenue exceeding NTD100 million (approximately USD3.3 million), or (2) more than 100 local employees, must have its annual financial statements audited by a local CPA. The company’s books and records need not be kept locally.

Branch office of a foreign company

A branch office must keep separate accounting books. A branch office with working capital over NTD30 million (approximately USD1 million) or a branch office with working capital less than NTD30 million but with (1) annual sales revenue exceeding NTD100 million (approximately USD3.3 million), or (2) more than 100 local employees, must have its annual financial statements audited by a local CPA. The branch office’s books and records need not be kept locally.

**REQUIREMENT REGARDING PAR VALUE OF STOCK**

**Company limited by shares**

A company may issue either par value shares or no-par value shares.

**Closely-held company limited by shares**

A CHC may issue either par value shares or no-par value shares.

**Limited company**

Not applicable for this jurisdiction.

**Branch office of a foreign company**

Not applicable for this jurisdiction.

**INCREASING OF CAPITALIZATION IF NEEDED**

**Company limited by shares**

An increase in the company’s authorized capital will result in a Capital Tax of NTD1 for every NTD4,000 increase.

**Closely-held company limited by shares**


An increase in the company’s authorized capital will result in a Capital Tax of NTD1 for every NTD4,000 increase.

**Limited company**

An increase in the company’s capital contributions will result in a Capital Tax of NTD1 for every NTD4,000 increase.

**Branch office of a foreign company**

Not applicable for this jurisdiction.

**SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)**

**Company limited by shares**

The company may repatriate all its after-tax profits (minus 10-percent legal reserve) as dividends after the annual shareholders’ meeting has accepted the annual financial statements. In addition, the company may distribute dividends after the end of each quarter or half fiscal year after its board meeting has accepted the quarterly/semi-annual financial statements if its articles of incorporation so permit. In order to repatriate the company's invested capital, the company would have to either reduce its capital or liquidate.

**Closely-held company limited by shares**

A CHC may repatriate all its after-tax profits (minus 10-percent legal reserve) as dividends after the annual shareholders' meeting has accepted the annual financial statements and, if its articles of incorporation so permit, may also distribute dividends after the end of each quarter or half fiscal year after its board meeting has accepted the quarterly/semi-annual financial statements. In order to repatriate the CHC’s invested capital, the CHC would have to either reduce its capital or liquidate.

**Limited company**

The company may repatriate all its after-tax profits (minus 10-percent legal reserve) after the members have accepted the annual financial statements and, if its articles of incorporation so permit, may also distribute profits after the end of each quarter or half fiscal year after its members have accepted the quarterly/semi-annual financial statements. In order to repatriate the company's capital contributions, the company would have to either reduce its capital or liquidate.

**Branch office of a foreign company**

After-tax profits of a branch office can be repatriated to its foreign company free from dividend tax. In order to repatriate the branch office’s working capital, the foreign company would have to pass resolutions to reduce the branch office’s working capital or liquidate the branch office.

**RESTRICTIONS ON TRANSFERABILITY OF SHARES**

**Company limited by shares**
Except to the extent the articles of incorporation of the company prohibit or restrict the transfer of preferred shares, the transfer of shares may not be prohibited or restricted by a company's articles of incorporation. Transfers by or to foreign investors require FIA approval.

Closely-held company limited by shares

In order to maintain the "closely-held" feature of a CHC, restrictions on share transfer shall be specified in the articles of incorporation and the share certificates of the CHC (and, if the CHC does not issue share certificates, the private agreements among the shareholders).

Limited company

Transfer of a member’s capital contribution requires the approval of 51 percent of the other members. Transfer of a director’s capital contribution requires the consent of all other members.

Branch office of a foreign company

Not applicable for this jurisdiction.

OBTAINING A NAME AND NAMING REQUIREMENTS

A Chinese name reservation must be made before filing for incorporation of a company or registration of a branch office by a foreign company.

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

Generally not required. Entities in the financial sector will typically impose their own KYC requirements in accordance with Taiwan Anti-Money Laundering Act (AMLA).

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

Company limited by shares

Any amendment to the company's articles of incorporation generally requires shareholders' meeting approvals.

Closely-held company limited by shares

Any amendment to the CHC's articles of incorporation generally requires shareholders' meeting approvals.

Limited company

Any amendment to the company's articles of incorporation requires approval of all members.

Branch office of a foreign company

Not applicable for this jurisdiction.
LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

Company limited by shares

Special licenses/permits are required for certain business activities (e.g., banking, securities, telecommunications or manufacturing). Aside from this, the company may carry on its business after completion of the incorporation process and business registration.

Closely-held company limited by shares

Special licenses/permits are required for certain business activities.

Limited company

Special licenses/permits are required for certain business activities.

Branch office of a foreign company

Special licenses/permits are required for certain business activities.

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

Shelf companies are not available in Taiwan.

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FORM OF ENTITY

Private limited company

Separate and distinct legal entity. Managed by a board of directors, which is responsible for making major business decisions and overseeing the general affairs of a company. Directors are elected by the shareholders of a company.

Public limited company

Separate and distinct legal entity. Managed by a board of directors, which is responsible for making major business decisions and overseeing the general affairs of a company. Directors are elected by the shareholders of a company. Public limited company can be newly incorporated or converted from, or amalgamated with, an existing private limited company. Usually a purpose of using a public limited company is to obtain investment from the public at large, for example, by making a public offering of its shares.

Partnerships

There are 3 types of partnerships:

- Unregistered ordinary partnership (all partners are jointly and severally liable).

- Registered ordinary partnership (a partnership becomes a legal entity, separate and distinct from individual partners; all partners are jointly and severally liable for all obligations of a partnership).

- Limited partnership (partnership becomes a legal entity, separate and distinct from individual partners). Limited partnerships are comprised of 2 types of partners:
  - Partner(s) whose liability is limited to the amount of their capital contribution and
  - Partners who are jointly and unlimitedly liable for all obligations of a partnership.

ENTITY SET UP

Private limited company
• At least 3 shareholders are
• Unlimited number of shareholders.
• No personal liability of
• Taxed on its earnings at a corporate level, and shareholders are taxed on any distributed
• Typical charter documents include:
  ◦ Certificate of incorporation
  ◦ Memorandum of association and articles of association
  ◦ Company’s affidavit
  ◦ List of shareholders and share certificates and
  ◦ Share register book.
• Board of directors has overall management responsibility.
• No invitation to subscribe for shares can be made to the public.
• 2 classes of shares may be issued concurrently (ie, common shares and preference shares).
• Private limited company may not own its own shares (ie, treasury shares are not allowed).
• A share is indivisible, but a share par value could be amended.
• A shareholder cannot avail himself or herself of a set-off against the company as to payments on shares (ie, debt to equity conversions in a private limited company are generally not permissible).

Public limited company
• At least 15 shareholders are required.
• Unlimited number of shareholders.
• No personal liability of shareholders.
• Taxed on its earnings at a corporate level, and shareholders are taxed on any distributed dividends.
• Typical charter documents include:
  ◦ Certificate of incorporation
- Memorandum of associations and articles of association;
- Company's affidavit
- List of shareholders and share certificates and
- Share register

- Board of directors has overall management responsibility.

- Stock offerings can be categorized into 2 types: public offering and private placement. Public limited company may make a private placement of its shares without prior If a public limited company intends to make a public offering, it must obtain prior approval from the Securities and Exchange Commission of Thailand. Shares of public limited company may or may not be traded on the Stock Exchange of Thailand.

**Partnerships**

*Unregistered ordinary partnership*

- 2 or more partners join together for a common undertaking to share profits by virtue of a contractual relationship between member partners.

- Not legally recognized as a legal person which exists separately from the partners.

- All partners are jointly and unlimitedly liable for acts made by any partner in the ordinary course of business of a partnership. Even if partners agree to restrict the powers of certain partners, such restriction will not have effect on third persons. Creditors can directly seek performance from any individual partner without first claiming against the assets of a

*Registered ordinary partnership*

- 2 or more partners join together for a common undertaking to share profits by virtue of a contractual relationship between member partners.

- A legal entity separate from the partners themselves.

- Personal liabilities of each partner are generally Creditors may demand performance under an obligation from the partnership itself or any of its partners.

*Limited partnership*

- 2 or more partners join together for a common undertaking to share profits by virtue of a contractual relationship between member partners.

- A legal entity separate from the partners themselves.

- There are 1 or more partners who are limited in their liability to the extent of their contributions; there must be at least 1 partner who is unlimitedly liable for all obligations of a partnership and eligible to act as
MINIMUM CAPITAL REQUIREMENT

Private limited company

As the amount of a share must not be less than THB5 and the minimum number of shareholders is 3, theoretically, the minimum registered capital amount required to incorporate a private limited company is THB15. However, this is generally not the case in practice, as private limited companies usually have a minimum registered capital in the amount sufficient to operate its business (ie, more than THB15).

Public limited company

No minimum capital requirement.

Partnerships

No minimum capital requirement.

LEGAL LIABILITY

Private limited company

Risk borne by shareholders is generally limited to shares they subscribed to or acquired. In other words, liability of shareholders is limited to unpaid amount (if any) on the shares respectively held by them.

Public limited company

Risk borne by shareholders is generally limited to shares they subscribed to or acquired. In other words, liability of shareholders is limited to unpaid amount (if any) on the shares respectively held by them.

Partnerships

Unregistered ordinary partnership

The personal liabilities of each partner are generally unlimited.

Registered ordinary partnership

The personal liabilities of each partner are generally unlimited.

Limited partnership

A limited partner is liable in the amount of their own contribution to the capital; an unlimited partner is liable for all obligations of a partnership.
TAX PRESENCE

Private limited company

A private limited company is subject to corporate income tax. The shareholders are subject to income tax on the dividends paid to them.

Public limited company

A public limited company is subject to corporate income tax. The shareholders are subject to income tax on the dividends paid to them.

Partnerships

Unregistered ordinary partnership

Partners of an unregistered ordinary partnership must pay personal income tax at a progressive rate.

Registered ordinary partnership

A registered ordinary partnership is subject to corporate income tax. The partners are subject to income tax on the profit distributions from the registered ordinary partnership.

Limited partnership

A limited partnership is subject to corporate income tax. The partners are subject to income tax on the profit distributions from the registered limited partnership.

INCORPORATION PROCESS

Private limited company

Reserve the company’s name and file the application form with its supporting documents to the Department of Business Development (DBD).

Public limited company

Reserve the company’s name and file the application form with its supporting documents to the DBD.

Partnerships

Unregistered ordinary partnership

No registration is required.

Registered ordinary partnership

Reserve the name and file the application form with its supporting documents to the DBD.
Limited partnership

Reserve the name and file the application form with its supporting documents to the DBD.

BUSINESS RECOGNITION

Private limited company

Well regarded and widely used.

Public limited company

Well regarded and widely used.

Partnerships

Unregistered ordinary partnership

Well regarded and widely used, in particular for local business operators.

Registered ordinary partnership

Well regarded, but not widely used.

Limited partnership

Well regarded and widely used, in particular for local business operators.

SHAREHOLDER MEETING REQUIREMENTS

Private limited company

At least once a year to vote on certain matters, such as approval of financial statements or election of directors in place of those retired by rotation.

Public limited company

At least once a year to vote on certain matters, such as approval of financial statements or election of directors in place of those retired by rotation.

Partnerships

Annual meeting of partners is not required.

BOARD OF DIRECTOR MEETING REQUIREMENTS

Private limited company
No requirements for board of directors’ meetings. However, the board of directors must at least hold a meeting to call an annual general meeting of shareholders.

Public limited company

Board of directors must hold a meeting at least once every 3 months.

Partnerships

Not applicable for this jurisdiction.

**ANNUAL COMPANY TAX RETURNS**

An entity (ie, a registered ordinary partnership, a limited partnership, a private limited company or a public limited company) is obliged to file corporate income tax returns twice a year:

- Mid-year tax return – calculated from an estimated income and expense of the full year but the tax is paid at 50 percent of estimated

- Year-end tax

Entities must file mid-year tax return within 2 months after the end of the first 6 months of any accounting year and file year-end tax return within 150 days after the end of accounting period.

**BUSINESS REGISTRATION FILING REQUIREMENTS**

Any registration related to an entity must be filed with the DBD. Financial statements must also be filed annually.

**BUSINESS EXPANSION**

Not applicable for this jurisdiction.

**EXIT STRATEGY**

File dissolution documents with the DBD.

**ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Not applicable for this jurisdiction.

**DIRECTOR / OFFICER REQUIREMENTS**

Private limited
No minimum number requirement; therefore, a sole director is allowed.

Public limited company

A board of directors must consist of at least 5 directors of which not less than 1/2 shall reside in Thailand.

**LOCAL CORPORATE SECRETARY REQUIREMENT**

There is no legal requirements for private companies, public companies or partnerships (registered or unregistered) to appoint a corporate secretary. However, companies listed on the Stock Exchange of Thailand are encouraged to appoint a company secretary to oversee the activities of the board of directors pursuant to the Policy Statement on Code of Best Practices of Directors of Listed Companies prescribed by the Stock Exchange of Thailand.

**LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT**

Not applicable for this jurisdiction.

**LOCAL OFFICE LEASE REQUIREMENT**

Not applicable for this jurisdiction.

**OTHER PHYSICAL PRESENCE REQUIREMENTS**

According to interpretation of relevant law by the companies registrar, circular resolutions and proxies/powers of attorney are not acceptable for board meetings, and directors must attend the meetings in person or via electronic meeting.

Electronic meetings are allowed, and teleconferences or video calls are acceptable platforms. Provided that, the conditions specified in the Emergency Decree for Electronic Meetings are complied with. For example, attendees must be able to identify themselves before the start of the meeting, the minutes of the meetings must be documented in writing and all electronic data (of every attendee) must be collected.

**SUFFICIENCY OF VIRTUAL OFFICE**

Applicable to certain extent (ie, not applicable for the entity's value-added tax registration).

**PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

Applicable subject to internal policy of such law firm or third-party service provider.
PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Director
Applicable subject to internal policy of such law firm or third-party service provider.

Corporate secretary
Applicable and widely used.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

Private limited company
Unless the company's business is subject to certain specific laws, no nationality or residency requirements for shareholders or directors of the company.

Public limited company
Unless the company's business is subject to certain specific laws, no nationality or residency requirements for shareholders of the company. Board of directors must consist of at least 5 directors to conduct business of a company, not less than 1/2 of directors must reside within Thailand.

Partnerships
No nationality or residency requirements for shareholders or directors of the partnership.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS
Nominee arrangement for avoiding the requirements under the Foreign Business Act is prohibited.

SUMMARY OF DIRECTOR'S, OFFICER'S AND SHAREHOLDER'S AUTHORITY AND LIMITATIONS THEREOF
Not applicable for this jurisdiction.

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS
Not applicable for this jurisdiction.
MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

Private limited company

No minimum and maximum number of directors is required; therefore, a sole director is allowed. Maximum number of shareholders is unlimited, but minimum number of shareholders required by law is 3.

Public limited company

Minimum number of directors required by law is 5. Maximum number of shareholders is unlimited, but minimum number required by law is 15.

Partnerships

Not applicable for this jurisdiction.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

Private limited company

Minimum number of shareholders required by law is 3.

Public limited company

Minimum number of shareholders required by law is 15.

Partnerships

Not applicable for this jurisdiction.

REMOVAL OF DIRECTORS OR OFFICERS

Private limited company

A resolution of shareholders’ meeting for the removal of a director, and the change of authorized signatory power, if any, as well as the registration with the DBD for change of directors and the authorized signatory power is required.

Public limited company

A resolution of shareholders’ meeting for the removal of a director, and the change of authorized signatory power, if any, as well as the registration with the DBD for change of directors and the authorized signatory power is required.

Partnerships

Not applicable for this jurisdiction.
REQUIRED AND OPTIONAL OFFICERS

Not applicable for this jurisdiction.

BOARD MEETING REQUIREMENTS

Private limited company

No requirements for board of directors’ meetings. However, the board of directors must at least hold a meeting to call an annual general meeting of shareholders.

Public limited company

The board of directors must hold a meeting at least once every 3 months.

Partnerships

Not applicable for this jurisdiction.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

Private limited company

Unless otherwise specified by the company’s articles of association, quorum for a board of directors’ meeting is 3 members (when total number of directors exceeds 3). A quorum for a shareholders’ meeting is at least 1/4 of the company’s capital.

Public limited company

For a board of directors’ meeting, at least half of the total number of directors is required to constitute a quorum. For a shareholders’ meeting, amount of shareholders and proxies (if any) attending the meeting must not be fewer than 25 persons or no fewer than 1/2 of the total number of shareholders and, in either case, such shareholders must hold shares in the amount no fewer than 1/3 of the total number of shares needed to constitute a quorum.

Partnerships

Not applicable for this jurisdiction.

MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?

Private limited company

If a registered capital of a company exceeds THB5 million, a bank certificate issued under the company’s name showing the amount not less than the amount of capital to be registered from a bank is required to be filed with the DBD within 15 days after the incorporation date of the company. A local bank account can be opened after an incorporation of a company.
Public limited company

Not applicable for this jurisdiction.

Partnerships

If a registered capital of a registered ordinary partnership or limited partnership exceeds THB5 million, a bank certificate issued under the name of the registered ordinary partnership or limited partnership showing the amount not less than the amount of capital to be registered from a bank is required to be filed with the DBD within 15 days after the incorporation date of the registered ordinary partnership or the limited partnership. A local bank account can be opened after an incorporation of a registered ordinary partnership or limited partnership.

AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?

Financial statements must be audited by qualified Certified Public Accountants of Thailand. Generally, a company’s account must be kept at the place of business.

REQUIREMENT REGARDING PAR VALUE OF STOCK

Private limited company

Minimum par value of each share is THB5.

Public limited company

Minimum par value of each share is not specified. However, each share must be equal in value.

INCREASING OF CAPITALIZATION IF NEEDED

Not applicable for this jurisdiction.

SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)

Dividends or capital returns can be repatriated from Thailand via wire transfer through a commercial bank.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

Private limited company

Transfer of shares under a name certificate is void unless made in writing and signed by the transferor and the
transferee whose signatures shall be certified by at least by 1 witness.

Such transfer is invalid as against the company and third persons until the name and address of the transferee are recorded in the share register book.

Public limited company

Promoters cannot transfer shares purchased during the incorporation process prior to the lapse of 2 years from the date of incorporation, unless approval is obtained at the meeting of shareholders. A transfer of shares is only valid upon the transferor’s endorsement of the share certificate by way of indicating the name of the transferee and having it signed by both the transferor and the transferee upon delivery of share certificates to the transferee.

The transfer of shares can be claimed against the company only when the company has received a request to register the transfer of the shares, but it may be set up against a third person only after the company has recorded the transfer of the shares in the share register book.

Partnerships

Not applicable for this jurisdiction.

**OBTAINING A NAME AND NAMING REQUIREMENTS**

Entity’s name must comply with regulation of, and be approved by, the DBD.

**SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS**

May be required if a company operates a regulated business such as commercial banks or other types of financial institutions.

**APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

Private limited company

A shareholders’ resolution to amend the charter document and filing of application with supporting documents for such amendment to the DBD are required.

Public limited company

A shareholders’ resolution to amend the charter document and filing of application with supporting documents for such amendment to the DBD are required.

Partnerships

Not applicable for this jurisdiction.

**LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**
May be required if the entity is wholly/majority owned by foreigners or its business is restricted and governed by certain specific laws.

Unless a foreign business license or a foreign business certificate is obtained, a foreigner is prohibited from conducting restricted businesses prescribed under the Foreign Business Act.

**PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY**

Not applicable for this jurisdiction.

**KEY CONTACTS**

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**FORM OF ENTITY**

**Joint-stock company (JSC)**

Capital company with a legal personality. General assembly of shareholders is the highest decision-making body in a JSC. Power to manage business and affairs of a JSC is vested in its board members. Board members act as a corporate body and may have 1 or more members. Board members are not required to have a share in the company. Board members can transfer their duties and authorities to 1 or more director or a third party.

**Limited liability company (LLC)**

Capital company with a legal personality. General assembly of partners is the ultimate decision-making body in LLC. Management rights and duties of LLC are conferred to the managers. At least 1 partner must have management rights and representation power of an LLC as a manager. It is also possible to appoint third-party individuals, who are not partners of the LLC, as managers.

**Other business forms**

**Branch offices (BO)**

BOs may carry out the business their principal company is conducting and freely enjoy the right to pursue commercial activities. A foreign principal company remains liable for all debts of the BO. BOs have autonomous capital and accounting to carry out commercial transactions with third parties, although they are closely associated with the principal company in respect of internal management. This means that rights, debts, profits and losses of the BOs are assumed by the principal company. A BO can only engage in activities of its principal company. Although there is no legal capital requirement for BOs, it is required that the principal company maintains capital that is sufficient to run the BO in practice.

**Liaison Offices (LO)**

LO can only provide "representation" and "relationship management" with respect to the overseas principal company’s Turkish customers and suppliers, but it cannot engage in any commercial or trading activity.

**ENTITY SET UP**
Incorporation procedures for a JSC and an LLC are very similar and include:

- Preparation of a company’s articles of association
- Registration of a company with the relevant Trade Registry
- Announcement of a company in the Trade Register
- Registration with the relevant tax office

**MINIMUM CAPITAL REQUIREMENT**

**Joint-stock company (JSC)**

Minimum capital requirement is TL50,000, while this amount is TL100,000 for the non-public JSCs, which accept the registered capital system.

**Limited liability company (LLC)**

Minimum capital requirement is TL10,000.

**LEGAL LIABILITY**

**Joint-stock company (JSC)**

Shareholders of a JSC are generally not liable for the debts of a company aside from their financial contribution to the company. Board members are jointly and severally liable for public debts which cannot be paid by the company. Liability is joint and several, with a right to recourse against other board members.

**Limited liability company (LLC)**

Partners of an LLC are generally not liable for the debts of an LLC aside from their contribution to an LLC. However, both Partners and Managers are liable for public debts which cannot be paid by a company. Managers’ liability is joint and several, with a right to recourse against other managers. On the other hand, Partners’ liability is in pro rata to their shareholding in the company. Recent court precedents suggest that public debts may be collected from the Partners without the need to make any prior claims against the Managers.

**TAX PRESENCE**

**Joint-stock company (JSC)**

A JSC’s profit is subject to 23 percent corporation income tax for 2022.

**Limited liability company (LLC)**

An LLC’s profit is subject to 23 percent corporation income tax for 2022.
INCORPORATION PROCESS

Articles of association and other necessary documentation must be submitted to register with the relevant Trade Registry. Following the establishment, the company must also register with the relevant tax office where the company’s headquarters is located in order to be able to operate.

BUSINESS RECOGNITION

Well regarded, but not widely used.

SHAREHOLDER MEETING REQUIREMENTS

It is mandatory to hold ordinary general assembly meetings with a certain agenda within 3 months from the end of the accounting period. Additionally, when necessary, general assembly is called for an extraordinary meeting.

BOARD OF DIRECTOR MEETING REQUIREMENTS

As often as internal operations of the company require.

ANNUAL COMPANY TAX RETURNS

Must file tax returns annually, quarterly and monthly with relevant tax authorities.

BUSINESS REGISTRATION FILING REQUIREMENTS

Initial registration and annual filings are required, as well as certain actions, such as amendment of articles of association.

BUSINESS EXPANSION

Joint-stock company (JSC)

No need to change as business expands.

Limited liability company (LLC)

If the number of shareholders exceeds 50, either the shareholder number must be decreased back to 50 or the company must be converted to a JSC.

EXIT STRATEGY

Must start a liquidation process and register it with the relevant Trade Registry.
ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

Company books such as a share ledger, minutes book for resolutions of board members and minutes book for general assembly meetings must be maintained.

DIRECTOR / OFFICER REQUIREMENTS

No specific requirements, apart from the sector-specific requirements in the relevant sector-specific laws.

For more information on directors’ duties, see our Global Guide to Directors’ Duties.

LOCAL CORPORATE SECRETARY REQUIREMENT

Not mandatory.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Not mandatory.

LOCAL OFFICE LEASE REQUIREMENT

If the company is not the owner of real estate in Turkey to be used for registered address, the company’s office must be leased for registration purposes.

OTHER PHYSICAL PRESENCE REQUIREMENTS

Under Turkish law, a company needs a physical office in Turkey in order to exist and operate.

SUFFICIENCY OF VIRTUAL OFFICE

Not applicable for this jurisdiction.

PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

The company must have a registered address in Turkey which will be registered with the relevant Trade Registry and tax office. The law firms cannot provide a registered address due to their code of conduct.
PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Not applicable, apart from the sector-specific requirements.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

Not applicable, except for the BOs and sector-specific requirements.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Not applicable for this jurisdiction.

SUMMARY OF DIRECTOR'S, OFFICER'S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF

Authority of directors

The non-delegable and indispensable duties and powers of the board members are as follows:

- Top-level management of the company and giving instructions in this regard
- Determination of company's management organization
- Establishment of a necessary system for financial planning to the extent required, and for accounting, finance audits and managing the company
- Appointment and dismissal of managers and persons performing same function and authorized signatories
- High-level supervision of whether the persons in charge of management act in accordance with the law, articles of association, internal regulations and written instructions of the board of directors
- Keeping the share book, resolution book of the board and the general assembly meeting and discussion register, preparation of the annual report and corporate governance disclosure and submission thereof to the general assembly, organization of general assembly meetings and enforcement of General assembly resolutions
- Notifying the court regarding the company's state of excess of liabilities over assets

Authority of shareholders

The non-delegable and indispensable duties and powers of the general assembly of shareholders are as follows:
• Amendment of articles of association

• Nomination, dismissal and acquittal of the board of directors and determination of their term of office, powers, salaries and attendance fee, premium and bonus,

• Nomination and dismissal of auditor with the excluding situations mentioned in the Turkish Commercial Code

• Obtaining resolutions regarding financial statements, annual report of board of directors, how to use annual profit, determination of profit and earning shares, reserve funds to be added to capital or profit to be distributed, and usage

• Termination of company in the situations mentioned in the Turkish Commercial Code

• Wholesale of company assets

Authority of managers

The non-delegable and indispensable duties and powers of the managers are as follows:

• To execute ultimate direction and management and to give necessary instructions

• To determine partnership management organization in accordance with law and articles of association

• To develop accounting, financial auditing and financial planning if necessary for the management of a partnership

• To supervise whether persons to whom one or more divisions of partnership management have been entrusted, are acting in accordance with law, articles of association, internal regulations and instructions

• To establish a committee for early risk detection and management, except for small sized partnerships with limited liabilities

• To prepare partnership’s financial statements, annual report and, where necessary, group of companies’ financial statements and annual report

• To organize general assembly meeting and to execute general assembly resolutions

• To notify the court that partnership’s liabilities exceed its assets

Authority of partners

The non-delegable and indispensable duties and powers of the general assembly of partners are as follows:

• Amendment of articles of association

• Nomination and dismissal of managers
• Nomination and dismissal of the community auditor and auditors

• Approval of community annual financial statements and annual activity report

• Approval of year-end financial statements and annual activity report, determination of profit and earning shares

• Determination of principals’ salaries and their discharge

• Approval of transfer of principal capital shares

• Requesting court to remove a partner from a company

• Authorization of a manager to acquire the company’s own shares or approval of such acquisition

• Termination of a company

• Passing resolutions on issues that general assembly is authorized by law or articles of incorporation or that directors present to general assembly

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

The identity of directors, officers and shareholders are disclosed through registration with the Trade Registry and announcement at the Trade Registry Gazette.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

Joint-stock company (JSC)

At least 1 shareholder is required; no limit for maximum number of shareholders.

At least 1 board member is required; no limit for maximum number of board members.

Limited liability company (LLC)

At least 1 partner is required, maximum number of partners is 50.

At least 1 partner must be appointed as a manager and must have representation and binding authority on behalf of the company. No limit for maximum number of managers.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

Private limited company

Not applicable for this jurisdiction.
Public limited company

Not applicable for this jurisdiction.

Ordinary partnerships (adi ortaklık)

Minimum number of partners required by law is 2.

REMOVAL OF DIRECTORS OR OFFICERS

Joint-stock company (JSC)

Members of the board, whether elected or appointed by the articles of association, may be removed at any time by the decision of the general assembly.

Limited liability company (LLC)

Managers, whether elected or appointed by the articles of association, may be removed at any time by the decision of the general assembly.

REQUIRED AND OPTIONAL OFFICERS

Not applicable for this jurisdiction, apart from certain industries (eg, banking, insurance).

BOARD MEETING REQUIREMENTS

Members of the board cannot vote on behalf of each other or participate in the meeting through proxy.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

Joint-stock company (JSC)

Unless a higher quorum is required by law or by the articles of association, general assembly convenes with the presence of shareholders representing 1/4 of the share capital. This quorum must be preserved throughout the meeting. If this quorum is not met at a first meeting, the shareholders are called to a second meeting. At the second meeting, present shareholders can adopt resolutions on any matter, irrespective of share capital they represent. Resolutions are passed by a simple majority of votes. However, Turkish Commercial Code introduces qualified meeting and resolution quorum requirements for certain issues such as change of nationality of the company, change of scope of activities and change of legal form.

In JSCs, unless a higher quorum is required by law and/or the articles of association, board of directors convenes with the majority of members and resolutions are passed by the vote of majority of members present at the meeting.

Limited liability company (LLC)
All general assembly decisions, including election decisions, require the vote of at least 1/2 of partners present at the meeting, unless otherwise provided in the articles of association. The Turkish Commercial Code introduces qualified meeting and resolution quorum requirements in LLCs for certain issues such as change of scope of activities, creating privileged shares and so on. Quorum and voting rights must be proportionate to shareholdings. However, different classes of shares with different voting rights can be issued. It is possible for a company to issue privileged voting shares, although a privilege can only be granted to the share (or a class of shares) and not to the shareholder(s) per se.

In LLCs, a quorum for managers’ convening is not established by law, but the law merely states the quorum required to pass a resolution. If there is more than 1 manager, resolutions are passed by a simple majority of votes. Articles of incorporation may require a higher quorum to pass resolutions and a quorum for convening.

**MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?**

Opening a bank account in a local bank for the company is mandatory, as the company is obliged to deposit the minimum capital of the company to a bank account. Banks generally seek for the signature circular of the company, company registration certificate and tax number while opening an account.

**AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?**

According to the Turkish Commercial Code, the President determines companies that are subject to independent audit. Such independent auditor can either be a certified accountant or an independent financial consultant located in Turkey.

Legal books such as share-ledger, board of directors and general assembly resolutions' ledgers and some other financial ledgers of a company must be notarized by a Turkish public notary after registration certificate is obtained. Legal books must be kept in Turkish.

**REQUIREMENT REGARDING PAR VALUE OF STOCK**

Joint-stock company (JSC)

Nominal value of minimum KR1.

Limited liability company (LLC)

Value of any share cannot be less than TL25.

**INCREASING OF CAPITALIZATION IF NEEDED**

Companies may decide to increase their capital by way of in cash or in kind contributions. The following is
required to increase capital:

- In order to realize capital increase, current committed capital must be paid
- A report prepared by a certified public accountant stating the current committed capital is paid
- Company shareholders resolution for capital increase and
- Registration of capital increase in the relevant Trade Registry.

**SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)**

Financial statements become final with the approval of the majority of shareholders or partners through a general assembly resolution. At the same meeting, distribution of profits (as dividends) can also be approved.

**RESTRICTIONS ON TRANSFERABILITY OF SHARES**

Unrestricted, unless the articles of association restrict.

**OBTAINING A NAME AND NAMING REQUIREMENTS**

Each company form must have a business title that shows the companies type as JSC or LLC (in Turkish) and gives a hint on the business activities of the company (in Turkish), this must also be registered with the Trade Registry. Other than these 2 parts, there are language constraints.

**SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS**

Not applicable for this jurisdiction, apart from certain industries (eg, banking, insurance.)

**APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

No government authority approval requirement, apart from certain industries (eg, banking, insurance).

**LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

All businesses, regardless of the industry, are required to obtain an Establishment and Operation of Workplace License before commencement of their operations. Additional licenses may be required for certain industries (eg, banking, insurance).

**PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY**
Not applicable for this jurisdiction.

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FORM OF ENTITY

The below summary provides an overview of 2 corporate structures that are commonly used in Ukraine. Other alternatives provided by law, such as private enterprise, additional liability company, general partnership and limited partnership, may be used, but are less common due to their legal uncertainty and additional liability for their participants.

It is also possible for a foreign company to establish a representative office which, however, is not a separate company, and the parent company remains liable for all obligations of such representative office.

Limited Liability Company (LLC)

i. Separate and distinct legal entity. Subject to certain exceptions, participants (shareholders) are not liable for debts and obligations of the company

ii. Taxed on its earnings at a corporate level and participants taxed on any distributed dividends

iii. Management and organization governed by charter (articles of association) and internal regulations. Director (board of directors) has overall management responsibility.

iv. Will be obliged to annually file information to the companies register regarding its ownership structure and ultimate beneficial owners as soon as secondary legislation is adopted (anticipated in 2021) and

v. Event-driven filings must be made from time to time, such as in the case of changes of director(s), ultimate beneficial owners or other corporate details; accuracy of information on the ultimate beneficial owners should be confirmed each time when the filing is made.

Joint-Stock Company (JSC)

i. Distinct legal entity separated from its shareholders. Subject to certain exceptions, shareholders are not liable for debts and obligations of the company

ii. The law provides for 2 types of JSCs: public and private. The main differences between the two types of JSCs are:

   i. Shares of public JSCs are publicly traded on stock exchanges, while shares of private JSCs are placed among a limited number of persons

   ii. Shareholders of public JSCs do not have a preemptive right to purchase shares of a shareholder intending to alienate them to a third party. Charter of a private JSC can provide for such right

   iii. When convening the general shareholders’ meeting, in addition to notifications to shareholders, on
own website and in the public database of the National Securities and Stock Market Commission (the Securities Commission), public JSCs shall also notify the stock exchange where its shares are traded.

iv. Establishment of a supervisory board in public JSCs is Members of the supervisory board of a public JSC are elected only through cumulative voting, and the minimum number of members is 5.

v. Mandatory establishment of an (i) audit committee, (ii) remuneration committee and (iii) appointment committee in the supervisory board of a public JSC and

vi. When considering a prior approval for execution of a related party transaction, the supervisory board of a public JSC shall engage an independent auditor, and, if approved, publish the essential terms of such transaction.

iii. JSC is a less common form than LLC as it has more regulated corporate procedures and less flexibility in adopting corporate decisions. In addition, the law provides for more strict and extensive reporting and notification procedures, including to the Securities Commission.

iv. Taxed on its earnings at a corporate level and shareholders taxed on any distributed dividends.

v. Will be obliged to annually file information to the companies register regarding its ownership structure and ultimate beneficial owners as soon as secondary legislation is adopted (anticipated in 2021).

vi. Must file annual report to the securities commission, which is publicly available, and

vii. Event-driven filings must be made from time to time, such as in the case changes of members of executive and supervisory bodies or other corporate details; during all such filings accuracy of information on the ultimate beneficial owners should be confirmed each time when the filing is made.

The regulation of JSC activities is subject to change under the new law which is to be adopted in 2021 (as of the date of this report new draft law on JSCs has been considered by the Ukrainian Parliament in the first reading).

ENTITY SET UP

Limited Liability Company

LLC is a legal entity managed by 1 or more directors who are responsible for making major decisions and overseeing the general affairs of the company. Subject to the charter of the company and the Law of Ukraine “On Limited Liability and Additional Liability Companies” (“LLC Law”), participants or supervisory board (if established) have the power to appoint and remove directors.

Private Joint-Stock Company (PJSC)

PJSC is a legal entity managed by 1 or more directors who are responsible for making major decisions and overseeing the general affairs of the company. Subject to the charter (articles of association) of the company and the Law of Ukraine “On Joint-Stock Companies” (“JSC Law”), the shareholders or the supervisory board generally have the power to appoint and remove executive bodies (i.e., directors).

MINIMUM CAPITAL REQUIREMENT

Limited liability company (LLC)

None, although a low amount of charter capital may sometimes be a trigger for counterparties.

Private Joint-Stock Company
Minimum charter capital for a PJSC constitutes 1,250 of minimum wages as of the date of PJSC incorporation (the amount of minimum wage is stipulated by the law annually). For the year 2021, minimum charter capital of PJSC amounts to UAH 7.5 million (approximately EUR 220,000).

In case of an increase or decrease of charter capital, the changed amount of the charter capital should be no less than 1,250 of minimum wages as of the date of such increase or decrease.

**LEGAL LIABILITY**

**Limited liability company (LLC)**

Participants are not liable for debts of the company. Those participants who did not pay their participation interest (share) in full, bear joint and several liability for LLC’s obligations within the unpaid amount of participation interest (share).

**Private Joint-Stock Company**

Shareholders are generally not liable for debts of the company. Those shareholders who did not pay their share in full remain liable for PJSC obligations within the unpaid share.

PJSC founders are jointly liable for obligations related to PJSC’s incorporation. A PJSC is liable for the obligations of the founders related to establishment of PJSC only if actions of the founders are approved by the general meeting of shareholders, which must be held within 6 months after the state registration of the company.

**TAX PRESENCE**

**Limited liability company (LLC)**

Company’s profits are taxed at 2 levels: corporate profit tax is applied directly on the company’s profits, and income tax is imposed on dividends distributed to participants.

**Private Joint-Stock Company**

Company’s profits taxed at 2 levels: corporate profit tax is applied directly on the company’s profits, and income tax is imposed on any dividends distributed to shareholders.

**INCORPORATION PROCESS**

**Limited Liability Company**

The incorporation process takes 1 business day. The documents to be submitted to the state registrar include an application form signed by all founders (their authorized representatives), a charter and the minutes of the founders’ meeting (in case of a sole founder, a sole founder’s resolution). If the founder acts through a representative, a duly certified document confirming powers of such representative should be provided. In case the founder is a foreign company, a duly legalized extract from the companies/trade/commercial register should be submitted. In case the founder is a foreign individual, a duly certified copy of the passport or another document
certifying the identity of a foreigner should be submitted. In case the company has an UBO, the notarized passport copy of UBO (if UBO is a foreign citizen, passport copy should be notarized and apostilled for Ukraine) should be filed.

The LLC can be registered online (without personal presence of founders/their representatives before the registrar). However, such option is available only for the companies which decide to function based on the model (standard) charter approved by the Ukrainian government. Moreover, founders of such company shall possess electronic signatures issued by the Ukrainian authorities. Such electronic signature can be issued only to Ukrainian and foreign individuals and Ukrainian companies but is not available foreign corporate founders.

Private Joint-Stock Company

The incorporation process includes several stages, namely, (i) registration of shares issue and their private placement, (ii) approval of the placement results and PJSC charter by the shareholders, (iii) state registration of PJSC and (iv) obtaining a certificate for the registration of shares issue from the Securities Commission.

BUSINESS RECOGNITION

Limited Liability Company

Well-regarded and widely used.

Private Joint-Stock Company

Less common due to complexity of administration, but generally well regarded and widely used, as the title to shares is considered more heavily protected as compared to participation interest in LLCs.

SHAREHOLDER MEETING REQUIREMENTS

Limited Liability Company

An annual general meeting of participants must be convened no later than 6 months after the preceding reporting year. The agenda of the annual general meeting of participants should necessarily include issues redistribution of the company’s net profit, payment of dividends and their amount.

Extraordinary general meetings of participants are convened in all cases prescribed under the law and the company’s charter as well as under request of the executive body, supervisory body and/or participant(s) holding at least 10 percent of the company’s charter capital.

Certain key decisions stipulated by law (e.g., increase of charter capital, payment of dividends, corporate reorganizations) require prior participants’ approval.

Private Joint-Stock Company

Annual general meeting must be held no later than April 30 after the preceding reporting year in order to (i) approve annual report, (ii) distribute profits and (iii) adopt decisions on the basis of review of reports of other PJSC bodies.
According to the recent amendments to JSC Law both annual and extraordinary meetings can be held distantly.

Extraordinary general meetings are convened: (i) at the supervisory board discretion, (ii) upon request of the executive body in a limited number of cases, (iii) upon request of the audit commission, (iv) upon request of shareholders holding at least 10 percent of the voting shares or (v) in other cases provided by the JSC Law or charter.

**BOARD OF DIRECTOR MEETING REQUIREMENTS**

**Limited Liability Company**

LLC law does not provide for any procedure of convening and holding a meeting of the board of directors. In case LLC has a collective executive body (i.e. not a sole director), the procedure for convening and holding of the company’s board of directors meeting shall be prescribed under the company’s charter or specific regulation. Articles may specify matters which require board approval. Best practice suggests that regular board meetings should be held.

**Private Joint-Stock Company**

No statutory requirement to hold board meetings. Best practice suggests that regular board meetings should be held.

**ANNUAL COMPANY TAX RETURNS**

**Limited Liability Company**

Must file annual corporate profit tax report with the tax authorities within 60 days after the end of reporting period. For companies whose annual income exceeds UAH 20 million, such filings are made on a quarterly basis, and the respective tax report should be submitted within 40 days after the end of the respective quarter.

**Private Joint-Stock Company**

Must file annual corporate profit tax report with the tax authorities within 60 days after the end of reporting period. For companies whose annual income exceeds UAH 20 million, such filings are made on a quarterly basis, and the respective tax report should be submitted within 40 days after the end of the respective quarter.

**BUSINESS REGISTRATION FILING REQUIREMENTS**

**Limited Liability Company**

No separate business registration requirement except for state registration of the company itself (as outlined in the *Incorporation Process* section). If the company is operating in a regulated sector, special licenses or permits may be required. In addition, if a joint venture is established in Ukraine, this may require an Antimonopoly Committee of Ukraine approval.

**Private Joint-Stock Company**
Registration of share issue is required to launch business activity. No separate business registration requirements except for state registration of the company itself (as outlined in the *Incorporation Process* section). If the company is operating in a regulated sector, special licenses or permits may be necessary. In addition, if a joint venture is established, this may require an Antimonopoly Committee of Ukraine approval.

**BUSINESS EXPANSION**

**Limited Liability Company**

No requirement to change the corporate structure or the company registration as the business expands.

**Private Joint-Stock Company**

No requirement to change the corporate structure or the company registration as the business expands.

**EXIT STRATEGY**

**Limited Liability Company**

Liquidation, share transfer and withdrawal as the company’s participant.

**Private Joint-Stock Company**

Liquidation and share transfer.

**ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

**Limited Liability Company**

The company will be obliged to annually file information to the companies register regarding its ownership structure and ultimate beneficial owners as soon as secondary legislation is adopted (anticipated in 2021).

**Private Joint-Stock Company**

PJSCs shall submit reports to the securities commission until April 30 on an annual basis and disclose information as provided by law. In light of the Covid-19 pandemic PJSCs are allowed to disclose information within 5 business days after holding the remote general meeting of shareholders or after holding the annual general meeting after end of quarantine.

Company will be obliged to annually file information to the companies register regarding its ownership structure and ultimate beneficial owners as soon as secondary legislation is adopted (anticipated in 2021).

In addition, companies are required to make event driven filings (eg, to reflect changes in the share capital, registered office or directors of the company).

**DIRECTOR / OFFICER REQUIREMENTS**
Limited Liability Company

At least 1 director, or any greater number provided for by the charter. Directors should necessarily be natural persons.

Private Joint-Stock Company

At least 1 director, or any greater number provided for by the charter. Directors should necessarily be natural persons.

For more information on directors’ duties, see our Global Guide to Directors’ Duties.

LOCAL CORPORATE SECRETARY REQUIREMENT

Limited Liability Company

Secretarial position is not provided for LLCs.

Private Joint-Stock Company

Secretarial position is optional. Supervisory board is authorized to appoint the corporate secretary.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

None.

LOCAL OFFICE LEASE REQUIREMENT

Limited Liability Company

The company shall have legal grounds for using its legal (registered) address reflected in the companies register – either on the basis of the lease or ownership title.

Private Joint-Stock Company

The company shall have legal grounds for using its legal address reflected in the companies register – either on the basis of the lease or ownership title.

OTHER PHYSICAL PRESENCE REQUIREMENTS

Limited Liability Company

All registration actions with respect to LLC shall be performed with the registrar who is located within the region
of the LLC’s registered address. Company records, such as the statutory books, must also be available for inspection at the registered address.

Private Joint-Stock Company

All registration actions with respect to PJSC shall be performed with the registrar who is located within the region of the registered address. Company records, such as the statutory books, must also be available for inspection at the registered address.

**SUFFICIENCY OF VIRTUAL OFFICE**

Limited Liability Company

Registered office must be a physical location within the territory of Ukraine.

Private Joint-Stock Company

Registered office must be a physical location within the territory of Ukraine.

**PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

It is a common practice, which, however, is not specifically regulated by law.

**PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

Limited Liability Company

It is a common practice, which, however, is not specifically regulated by law.

Private Joint-Stock Company

Not common for JSCs, which usually are operating businesses. May be used by dormant JSCs or with minimal operations.

**NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS**

Limited Liability Company

A person to be appointed as the director of the company should be a Ukrainian national at the stage of company’s incorporation. Once the company is incorporated, the director who is a Ukrainian national can be replaced with a director who is a foreign national subject to prior obtaining of a work permit. Work permit is also required for any other company’s officers or employees who are foreign citizens.
There are no nationality or residency requirements for company’s shareholders.

Foreign legal entities intending to become participants shall submit a legalized extract from the companies/trade/commercial register to the companies register for the confirmation of its status as the participant.

**Private Joint-Stock Company**

A person to be appointed as the director of the company should be a Ukrainian national at the stage of company’s incorporation. Once the company is incorporated, the director who is a Ukrainian national can be replaced with the director who is a foreign national subject to prior obtaining of a work permit. Work permit is also required for any other company’s officers or employees who are foreign citizens.

There are no nationality or residency requirements for company’s shareholders.

Foreign legal entities intending to become shareholders shall submit a legalized extract from the companies/trade/commercial register to the companies register for the confirmation of its status as the shareholder.

### RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

**Limited Liability Company**

The concept of nominal service is not available in Ukraine. However, in practice, such appointments are possible. Any member of the executive body, regardless of its nominee status, is fully liable for LLC activity.

**Private Joint-Stock Company**

The concept of nominal service is not available in Ukraine. However, in practice, such appointments are possible. Any member of the executive body, regardless of its nominee status, is fully liable for PJSC activity.

### SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF

**Limited Liability Company**

They owe fiduciary duties to the company, including a duty to promote the success of the company for the benefit of the participants as a whole. Their authorities are usually limited by company’s charter. There are additionally several cases where director’s powers are limited by law (e.g., with regard to execution of material and related party transactions).

The charter may establish positions of other officials (e.g., members of supervisory board), and their authorities and liabilities in this case will additionally be determined by the charter.

The law establishes exclusive competence of the general meeting of participants which cannot be delegated to other corporate bodies. At the same time, the general meeting of participants is entitled to resolve on any matters related to LLC business activity.
Participants generally exercise an indirect influence over the management of the company through their residual power to appoint and remove directors. Material decisions (such as amending the charter, approval of significant and related-party transactions, and declaration of dividends) require participants' approval. Level of shareholder approval (majority of votes, 75 percent, unanimous voting or other) depends on the decision being made and is established by law and/or charter of the company.

**Private Joint-Stock Company**

Directors’ powers are limited statutory (eg, with regard to execution of material and related party transactions) and can be additionally limited by the charter.

The law establishes exclusive competence of the general meeting of shareholders which cannot be delegated to other corporate bodies. At the same time, the general meeting of shareholders is entitled to resolve on any matters related to PJSC business activity, except for limited cases restricted by law.

Shareholders generally exercise an indirect influence over the management of the company through their residual power to appoint and remove directors. Material decisions require shareholders or supervisory board approval. Level of shareholder approval (50 percent, 75 percent or 95 percent) varies based on the decision being made.

Supervisory board and audit commission are mandatory for private JSCs in limited number of cases. For instance, establishment of the supervisory board is obligatory for banks and private JSCs with 10 and more shareholders.

Supervisory board is mainly responsible for presenting and protecting shareholders' rights and supervising JSC activity. In addition, it is responsible for providing certain approvals for some types of transactions (eg, material and related party transactions up to certain thresholds). Exclusive competence of the supervisory board is provided by JSC Law.

Audit commission, or a single auditor, is responsible for reviewing financial business activity of the company. Requirements to the members of the audit commission and their authorities are provided by company’s charter.

**PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS**

**Limited Liability Company**

Identities of directors and participants, together with the details of their respective participation interest, are publicly available.

**Public disclosure of identity of people with significant control**

Every company is required to submit to the companies register information about ultimate beneficial owners of the company (ie, about natural persons directly/indirectly holding 25 or more percent in an LLC or otherwise controlling the LLC), particularly their (i) name, (ii) date of birth, (iii) nationality, (iv) residential address, (v) passport details, (vi) information about the company where the ultimate beneficial owner has direct shareholding and (vii) type and percentage of control over the LLC. Passport details are not publicly available in the companies register.

If the participants of the company are publicly listed companies and/or none of the participants holds, directly or
indirectly, 25 percent of the company’s shares, information about the reason of absence of ultimate beneficial owners shall be filed with the companies register.

**Private Joint-Stock Company**

Identities of directors are publicly available. Information about shareholders owning 5 percent of shares and more, together with details of their shareholding, is also publicly available. Information about other shareholders is available to the Securities Commission.

**Public disclosure of identity of people with significant control**

Every company is required to submit to the companies register information about ultimate beneficial owners of the company (ie, about natural persons directly/indirectly holding 25 or more percent in an JSC or otherwise controlling the JSC), particularly their (i) name, (ii) date of birth, (iii) nationality, (iv) residential address, (v) passport details, (vi) information about the company where the ultimate beneficial owner has direct shareholding and (vii) type and percentage of control over the JSC. Passport details are not publicly available in the companies register.

If the participants of the company are publicly listed companies and/or none of the participants holds, directly or indirectly, 25 percent in the company, information about the reason of absence of ultimate beneficial owners shall be filed with the companies register.

**MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS**

There is a statutory minimum requirement of 1 shareholder, and there is no maximum number.

For directors, there is a statutory minimum requirement of 1, and there is no maximum number, all of which shall be natural persons.

**MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

At least 1 participant is required.

**REMOVAL OF DIRECTORS OR OFFICERS**

**Limited Liability Company**

Participants always have the power, by a simple majority vote, to remove directors of a company. If the company has a supervisory board, this power may be delegated to supervisory board. The number of votes for the dismissal and appointment of the director in the company may be increased by the charter.

**Private Joint-Stock Company**

Supervisory board has the power, by a simple majority vote, to remove directors of a company, unless otherwise provided by the company’s charter. If the PJSC has no supervisory board, the general shareholders’ meeting is authorized to appoint and dismiss directors.
REQUIRED AND OPTIONAL OFFICERS

At least 1 director is required.

BOARD MEETING REQUIREMENTS

Limited Liability Company

There is no statutory requirement regarding board meetings. However, a company’s charter usually provides a detailed procedure for convening of and voting at such meetings.

Private Joint-Stock Company

There is no statutory requirement regarding executive board meetings. However, a company’s charter usually provides a detailed procedure for convening and voting at such meetings.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

Limited Liability Company

No quorum requirements.

Private Joint-Stock Company

Shareholders’ meeting is eligible to adopt a decision if present registered shareholders hold more than 50 percent of the company’s voting shares.

There is no statutory requirement regarding quorum at executive board meetings, which is usually established by the charter, unless there is a sole director.

MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?

Limited Liability Company

No. However, from an operational perspective, it is necessary to open an account in a local bank (ie, registered in Ukraine) in order to make mandatory payments (eg, taxes, salaries).

Private Joint-Stock Company

No. However, from an operational perspective, an account in a local bank (ie, registered in Ukraine) should be opened in order to make mandatory payments (eg, taxes and salaries).

AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED
IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?

Limited Liability Company

Audit is generally not mandatory. However, it must be conducted upon request of the participants holding at least 10 percent of the company’s charter capital. In this case, auditor (audit firm) should not have property interests with the company and should be unrelated with company officials or its participants.

The law requires (i) companies of public interest (ie, banks, insurance companies, medium and large financial institutions, private pension funds), (ii) companies that are natural monopolists, (iii) companies operating in the mining industry, (iv) financial institutions and (v) large (ie, falling under any 2 of the following criteria: book value exceeding EUR20 million, net income exceeding EUR40 million or number of employees exceeding 250 individuals) and (vi) medium size (ie, falling under any 2 of the following criteria: a book value of EUR4 million to 20 million, net income of EUR 8 million to 40 million or number of employees 50 to 250 individuals) companies to have their financial statements audited on a regular basis.

Foreign auditors or audit companies may conduct audit of Ukrainian companies if they comply with the auditor’s requirements of Ukrainian law and if they are allowed to perform such activities in Ukraine under the law of the state of their registration.

It is common practice to keep a company’s books at the registered address of the LLC.

Private Joint-Stock Company

For PJSCs, audit is not mandatory per se. It must be conducted, though, upon request of the shareholders holding at least 10 percent of shares. Such audit can be performed up to 2 times per year.

The law requires (i) public JSCs, (ii) companies of public interest, (iii) companies that are natural monopolists, (iv) companies operating in the mining industry, (v) financial institutions and (vi) large and medium-sized companies to have their financial statements audited on a regular basis. Foreign auditors or audit companies may conduct audit of Ukrainian companies if they comply with the auditor’s requirements of Ukrainian law and if they are allowed to perform such activities in Ukraine under the law of the state of their registration.

Certified auditor is required to not be (i) affiliated with the company and/or its officials and (ii) dependent in any manner on the company. Foreign auditors or audit companies can conduct audit of Ukrainian companies if they comply with the auditor’s requirements of Ukrainian law and if they are allowed to perform such activities in Ukraine under the law of the state of their registration.

Audit report shall contain confirmation of accuracy and integrity of data in financial statements, and breaches of law in the course of financial business activity, including breach of accounting and reporting requirements.

Company’s books must be kept locally at the registered address of the PJSC.

REQUIREMENT REGARDING PAR VALUE OF STOCK

Limited Liability Company
The participation interest must have a fixed par value. Participation interest must not be allotted at less than par value. There is no statutory established minimum par value.

Private Joint-Stock Company

All shares must have a fixed par value. Shares must not be allotted at less than par value. The minimum par value of the share is UAH 0.01.

**INCREASING OF CAPITALIZATION IF NEEDED**

Limited Liability Company

Generally permitted. Charter capital can be increased in case the current charter capital is paid in full. Increase is possible in 2 ways:

- By means of additional contributions of participants or
- Without additional contributions by means of undistributed profit of the company.

Additional contribution can be either in monetary or non-monetary form.

It is not allowed to increase charter capital if a company owns its own participation interest.

Charter capital may be increased by way of adopting a respective decision by 3/4 of the votes of all participants of the company who have the right to vote on relevant issues unless a different amount of votes is established by the charter itself, but no less than majority of votes.

Private Joint-Stock Company

Generally permitted. Charter capital can be increased in case all existing shares are paid in full. Increase is possible as follows:

- By means of additional issue of shares of the same par value or
- By means of increasing of par value of the existing shares.

Additional contribution can be either in monetary or non-monetary form. It is not allowed to increase charter capital if company owns its own shares.

Charter capital may be increased with the approval of shareholders holding at least 75 percent of the voting rights of the company.

**SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)**

Limited Liability Company
Funds can be repatriated via dividends. Ukraine has no restrictions regarding a maximum amount of dividends allowed for monthly repatriation of dividends abroad.

Funds may be repatriated from LLC by decreasing its charter capital. Such decision is adopted by 3/4 of the votes of all participants of the company who have the right to vote on this issue. Adoption of such decision requires notification of all unsecured creditors. In this case, all unsecured creditors are entitled to claim for either (i) securitization of LLC obligations, (ii) early termination or early fulfilment of LLC obligations or (iii) execution of another agreement with the LLC within 30 days. If such creditors have no requests to the company, the LLC can thereafter decrease its charter capital and pay the participants the respective amounts.

Another way to repatriate funds from an LLC is redemption by such LLC of its participatory shares, which requires unanimous decision of all participants. As a result of redemption, the LLC shall either reduce its charter capital or alienate such participatory share on a paid basis within 1 year after the redemption.

Private Joint-Stock Company

Funds can be repatriated via dividends. Ukraine has recently abolished restrictions regarding a maximum amount of dividends allowed for repatriation per month.

Decrease of share capital of a PJSC provides for a possibility to the shareholder to repatriate the funds from the PJSC. This requires 75 percent of shareholders registered at the meeting to vote for such decision (the quorum for the general meeting of shareholders to be valid is 50 percent plus 1 share). In this case, all unsecured creditors of the PJSC shall be notified of such decrease and, unless such creditors claim for either (i) securitization of PJSC obligations, (ii) early termination or early fulfilment of PJSC obligations, or (iii) execution of another agreement with the PJSC within 45 days, the PJSC can thereafter decrease its charter capital and pay the shareholders the respective amounts.

Redemption by PJSC of its own shares can be conducted in 2 cases:

- Voluntary redemption, when a general meeting of shareholders resolved for such redemption (such decision requires majority of votes of shareholders registered at the meeting) and if shareholders whose shares are being redeemed consented to this, and

- Mandatory redemption, when shareholders voted against 1 of the following decisions:
  - Reorganization of PJSC (for holders of ordinary shares)
  - Providing consent to executing a material and/or related party transaction by PJSC (for holders of ordinary shares)
  - Change of the amount of PJSC charter capital (for holders of ordinary shares)
  - Changes to the charter which provide for the placing of privileged shares of a new class in which holders will have priority regarding obtaining of dividends or payments within the liquidation procedure (for holders of privileged shares)
  - Providing more rights to privileged shareholders with the priority regarding obtaining of dividends or payments within the liquidation procedure (for holders of privileged shares) and
Refusal to use the preemptive right of shareholders for acquisition of shares of additional issue within the process of their placement (for holders of both ordinary and privileged shares).

As a result of redemption, the PJSC shall either annul the redeemed shares and reduce its charter capital respectively or sell such shares within 1 year after the redemption.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

Limited Liability Company

Participation interest is usually freely transferred but may be subject to the preemption right of other participants, which can be, however, directly excluded by the charter. In addition, the charter may contain a requirement to obtain consent from other participants for the transfer of participation interest to a third party.

Additionally, pledged participation interest cannot be alienated by their owner without prior consent of the pledgor. Unpaid participation interest is not allowed to be transferred.

The transfer of participation interest shall be evidenced by the transfer act certified by a notary.

The above does not apply to transfer of participation interest under inheritance or legal succession procedures.

Private Joint-Stock Company

Shares are usually freely transferred. Charter of PJSC with the number of shareholders not exceeding 100 may provide for the preemptive right to purchase shares of other shareholders.

In addition, pledged shares cannot be alienated by the shareholder without prior consent of the pledgor.

The above does not apply to transfer of shares under inheritance/ legal succession procedures.

OBTAINING A NAME AND NAMING REQUIREMENTS

Limited Liability Company

Companies must have a name in Ukrainian and may optionally have a name in English or other languages. Any name can be used in the Ukrainian version as long as it:

- Contains the words "Limited Liability Company" in the expanded version and "LLC" in short version
- Is not equal to a name of another LLC already registered in the companies register
- Does not contain certain words that can be used only by some entities (such as "insurance," "bank," or "corporate investment fund") and
- Contains only those letters, digits and symbols prescribed by law (i.e., Cyrillic letters for a Ukrainian name, Latin letters for an English name, Arabic and Roman figures).
There are no specific requirements for the name of the company in English.

**Private Joint-Stock Company**

Companies must have a name in Ukrainian and may optionally have a name in English or other language. Any name can be used as long as it:

- Contains the words "Joint-Stock Company" in the expanded version and "JSC" in short version
- Is not equal to a name of another PJSC already registered in the companies register
- Does not contain certain words that can be used only by some entities (such as "insurance," "bank," or "corporate investment fund"); and
- Contains only those letters, digits and symbols prescribed by law (ie, Cyrillic letters for a Ukrainian name, Latin letters for an English name, Arabic and Roman figures).

**SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS**

**Limited Liability Company**

Although the law generally imposes such obligation only for certain types of entities (eg, banks, insurance companies, exchanges, legal services providers), it is a common approach to perform a limited KYC procedure in order to protect the company from potential risks.

**Private Joint-Stock Company**

Although the law generally imposes such obligation only for certain types of entities (eg, banks, insurance companies, exchanges and legal services providers), it is a common approach to perform a KYC procedure in order to protect the company from potential risks.

**APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

**Limited Liability Company**

Charter may be amended with the approval of shareholders holding at least 75 percent of the voting rights of the company, unless a different threshold is established by the charter itself, but no less than majority of votes.

**Private Joint-Stock Company**

Charter may be amended with the approval of shareholders holding at least 75 percent of the voting rights of shareholders present at the meeting.

**LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

**Limited Liability Company**
Generally, business activity does not require additional authorizations. Certain activities, however, may be performed only after obtaining respective licenses or permits (e.g., provision of financial services, mining activity and alcohol and tobacco sales).

**Private Joint-Stock Company**

Generally, business activity does not require additional authorizations. Certain activities, however, may be performed only after obtaining respective licenses or permits (e.g., provision of financial services, mining).

**PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY**

Not applicable for this jurisdiction.

**KEY CONTACTS**
FORM OF ENTITY

The most commonly adopted legal structures in mainland UAE are a limited liability companies (LLC) and a branch office (Branches). In addition, it is also possible to establish a representative office (also known as a liaison office) which is a legal structure identical to that of a Branch, however its activities are limited to serving as an administrative and marketing center for the parent company (Rep Office).

It is also possible to establish an entity in 1 of the free zones in the UAE. Entities registered in a free zone can be wholly foreign owned and no UAE participation is required. The free zone entity can take the form of a free zone limited liability company (FZ-LLC) or a free zone branch office (FZ-Branch).

LLC

Separate and distinct legal entity with limited liability.

On November 23, 2020, the UAE government issued a new decree amending the Commercial Companies Law (New Law) to abolish the fundamental requirement of having 51-percent or UAE national ownership of an onshore company. Therefore, subject to the competent licensing authorities’ specific requirements, LLCs may now be a 100-percent owned by foreign shareholders.

A further notice. At the time of writing this guide, information regarding these changes is still limited.

It is mooted that a further Strategic Impact Activities has been issued, which applies at a federal level to all Emirates (Cabinet Decision). The Cabinet Resolution is expected during the 1st quarter.

The strategic list includes the following sectors: security and defense activities and activities of a military nature; banks, money-changing establishments, finance companies and insurance activities; printing cash currency; telecommunications; Hajj and Umrah services; Holy Quran memorization centers; and fishery-related services. Subsequent to the new Cabinet Resolution Decision, it is then at the discretion of the competent licensing authorities of each Emirate to set the conditions for increased foreign ownership for business activities falling outside the negative strategic list. The licensing authorities of each Emirate will therefore determine the permitted foreign ownership threshold of each business activity (not on the negative strategic list) and also set any other applicable requirements, such as minimum share capital or Emiratization thresholds.
Branch

A branch is not regarded as a separate entity but treated as an extension of its parent company. Currently pursuant to the recent changes in the UAE law, a branch no longer requires a UAE national or a company wholly owned by UAE nationals to act as its national agent (colloquially known as a “sponsor” and is not to be confused with a commercial agent), subject to the implementation of the New Law which, amongst other things, has abolished this requirement. The national agent provides licensing and other governmental services for the Branch for a fixed fee to be paid at the date of the licensee issuance but would not have any rights or entitlements to the Entity’s business.

At the time of writing this guide, there is little information regarding the abolishment of engaging a national agent pursuant to the New Law, however, more detail on how this will be implemented is expected near the end of the 1st quarter of 2021.

FZ-LLC

Separate and distinct legal entity with limited liability. No restriction on the nationality of shareholders. Activities restricted to the free zone in which the company is incorporated and those the company is licensed to carry out.

FZ-Branch

A branch is not regarded as a separate entity but treated as an extension of its parent company. No requirement to appoint a national agent as in the case of a Branch.

Dual License Branch

A Dual Licence Branch is a branch of an FZ-LLC established in mainland UAE. It is not treated as a separate entity but treated as an extension of its parent company. Establishing a dual licensee branch is possible in the case of FZ-LLCs registered in certain free zones only. It may operate from the same office as its parent company without the need for a separate registered address.

ENTITY SET UP

LLC

- Number of shareholders must not exceed 50 and must not be less than 21 (please note, however, that UAE ownership may fall below 51 percent where there is 100-percent GCC ownership. This excludes entities conducting activities included on the strategic list published pursuant to the Cabinet Decision).

- Shareholders' liability limited to their share in the capital

- A UAE national or a company wholly owned by UAE nationals must hold at least 51 percent of the shares.

- May not engage in the business of insurance, banking or investment on behalf of other parties

Branch office

- Used by foreign companies wishing to establish a business presence in mainland UAE
Representative office

- Used by foreign companies wishing to establish a business presence in the UAE
- Activities limited to gathering information and soliciting orders and projects to be performed by the parent company’s head office
- Serves as an administrative and marketing center for the parent company
- Required by law to appoint a national agent, who must be a UAE national or a company wholly owned by UAE national.
- Identical in all respects to a branch office except that it is not permitted to perform contracts or any other activities other than marketing of the parent company’s products and services and not allowed to issue invoices in its name
- Required to be registered with the MOE and to provide a bank guarantee issued by a UAE registered bank in the amount of AED 50,000 that is payable in favour of the MOE

FZ-LLC

- Can be owned by 1 or more foreign shareholders (individuals or corporate bodies)
- No foreign ownership restrictions
- Used by foreign companies wishing to establish a business presence in the UAE
- As the free zone is deemed to be offshore, it allows for 100 percent foreign ownership
- Shareholders’ liability limited to their share in the capital
• No corporate or income tax for a guaranteed 50-year period; 100 percent repatriation of capital possible

• Activities cannot be carried out directly in mainland UAE

• An FZ-LLC wishing to carry out business in mainland UAE should appoint a mainland UAE registered company to act as its distributor. Alternatively, it may set up a branch office in the respective relevant Emirate

• Exemption from customs duty for goods entering the free zone. Customs duties will apply to goods leaving the free zone into the mainland UAE market

FZ-Branch

• Used by foreign companies wishing to establish a business presence in the UAE

• Legally regarded as part of its parent company

• No share capital requirements as it is not a separate legal entity, and

• Can conduct all or some of the operations inherent in the parent company’s business

Dual Licensee Branch

• Used by foreign companies wishing to establish a business presence in the UAE and to operate onshore

• It is only an option in certain free zones (such as Dubai International Financial Centre, Dubai Airport Free Zone, Dubai Multi Commodities Centre and in all of the Abu Dhabi free zones)

• Permitted to perform contracts or conduct activities as specified in its licensee but is prohibited from conducting activities relating to direct trading in tangible goods

• Legally regarded as part of its parent company (no separate legal identity). Activities limited to those of its parents, as stated in its parent’s articles of association/bylaws

• Managed by a sole manager who will operate pursuant to a power of attorney issued by the parent company or the parent company’s shareholder(s)

• Can operate out of the same office as its parent company located in the free zone

• The parent company must not have any other branches in the UAE and cannot itself be a branch

MINIMUM CAPITAL REQUIREMENT

LLC

The UAE Companies Law does not prescribe any minimum share capital but the entity should have adequate capital to achieve the purposes of its incorporation and the capital shall consist of shares equal in value. Until
recently, the generally accepted minimum share capital for an LLC registered in Dubai was AED 100,000 but we have now seen lower capitalization. Presently, there is no requirement to deposit the share capital in a UAE registered bank. It will suffice to include details of its share capital in the LLC's memorandum of association and to have the same duly notarized by the UAE notary public. The New Law may also set further capitalization requirements depending on the nature of the activity being carried and whether foreign investment will exceed 49 percent.

Branch

Not applicable for this jurisdiction.

FZ-LLC

Varies depending on which free zone the company will be registered with and sometimes the proposed activity. For example, in Dubai Media City, the minimum paid-up capital requirement is AED50,000 except for when the proposed activity is within the Broadcasting TV Segment and Radio Segment, which has a minimum capital requirement of AED2.5 million.

FZ-Branch

Not applicable for this jurisdiction.

Dual Licence Branch

Not applicable for this jurisdiction.

LEGAL LIABILITY

LLC

The shareholders are generally not liable for the debts of the LLC aside from their contribution to the LLC.

Branch

A branch office is legally regarded as part of its parent company and does not have a separate corporate personality or legal identity from that of its parent company. Consequently, the parent company of the branch office is fully responsible for any liability of the branch.

FZ-LLC

Same as LLC.

FZ-Branch

Same as Branch.

Dual Licence Branch

Same as Branch.
TAX PRESENCE

LLC

The UAE has long been known as a zero-corporate-tax jurisdiction. This is set to change with the Ministry of Finance’s (MOF) announcement on January 31, 2022 that the UAE will introduce a federal corporate income tax (CIT) effective for financial years starting on or after June 1, 2023. Because the UAE is an Inclusive Framework member of the Organisation for Economic Cooperation and Development’s (OECD) anti-Base Erosion and Profit Shifting initiatives, it has been expected that it would introduce legislation to implement the multinational-focused Global Minimum Corporate Tax (GMCT) of 15 percent. With MOF’s recent announcement, more details have been revealed on the contours of the UAE’s CIT regime.

While the formal CIT legislation has not yet been published, MOF’s announcement states that CIT will be payable on the profits of UAE businesses as reported in their financial statements prepared in accordance with internationally acceptable accounting standards. CIT will apply to all businesses and commercial activities alike, except for the extraction of natural resources, which will remain subject to Emirate-level corporate taxation.

The standard statutory CIT rate will be 9 percent, whereas a 0-percent rate will apply for taxable profits up to AED375,000 to support small businesses and startups. Multinationals earning more than EUR750 million in global revenues will be subject to a 15-percent CIT rate, which constitutes the UAE’s implementation of the GMCT.

No personal income tax or corporate taxes payable, save for companies engaged in oil, gas, hospitality and petrochemical activities, among others. There are some municipality taxes on rent and certain land transfer charges paid when transferring real estate. Effective January 1, 2018, the UAE has implemented a value-added tax (VAT) at a rate of 5 percent, as recommended by the World Bank and the International Monetary Fund.

Branch

Same as LLC.

FZ-LLC

No personal income tax or corporate taxes payable. The UAE contains many free zones in the UAE, where international groups have been exempt from payment of VAT, but, in all other non-designated free zones, VAT is applicable to establish 100-percent owned subsidiaries. Most free zones provide tax incentives to companies and branches established therein, which are typically valid for a number of years. According to the MOF, free zone businesses will be subject to the new CIT; however, the CIT regime will continue to honor the tax incentives offered to free zone businesses that comply with all regulatory requirements and that do not conduct business with mainland UAE (ie, with parties outside of the Free Zone). The designated free zones which are exempt from VAT are set out below:

Abu Dhabi

1. Abu Dhabi Global Market
2. Twofour54
3. Masdar City Free Zone
4. Free Trade Zone of Khalifa Port
5. Abu Dhabi Airport Free Zone
6. Khalifa Industrial Zone

Dubai

1. Dubai International Financial Centre
2. Dubai Development Authority
3. Dubai Multi Commodities Centre
4. Dubai Healthcare City
5. Dubai Silicon Oasis
6. Dubai World Trade Centre
7. Jebel Ali Free Zone (North-South)
8. Dubai Cars and Automotive Zone (DUCAMZ)
9. Dubai Textile City
10. Free Zone Area in Al Quoz
11. Free Zone Area in Al Qusais
12. Dubai Aviation City
13. Dubai Airport Free Zone

Sharjah

1. Hamriyah Free Zone
2. Sharjah Airport International Free Zone

Ajman

1. Ajman Free Zone

Umm Al Quwain

1. Umm Al Quwain Free Trade Zone in Ahmed Bin Rashid Port
2. Umm Al Quwain Free Trade Zone on Sheikh Mohammed Bin Zayed Road

Ras Al Khaimah

1. RAK Economic Zone (RAKEZ)
2. RAK Maritime City Free Zone
3. RAK Airport Free Zone

Fujairah

1. Fujairah Free Zone
2. Fujairah Oil Industry Zone (FOIZ)

FZ-Branch

Same as FZ-LLC.

Dual Licence Branch
Same as Branch.

**INCORPORATION PROCESS**

**LLC**

The licensing procedure involves the following macro steps:

- Reservation with the licensing authority of the trade name of the entity
- Obtaining initial approval from the licensing authority
- In the case of an entity that will be conducting industrial or contracting activities, it will be necessary to obtain special approvals from the relevant Municipality, the MOE and possibly other competent authorities
- Execution of the memorandum of association of the entity before a notary public in the UAE
- Signing of office lease agreement and its registration with the relevant authority and
- Final registration with the licensing authority and issuance of license.

Additional approvals may be required by other government departments depending on the nature of the LLC’s activities.

**Branch**

The registration procedure involves the following macro steps:

- Reservation with the licensing authority of the trade name of the branch
- Obtaining initial approval from the licensing authority
- Execution of the national agent agreement of the branch before a notary public in the UAE
- Obtaining initial approval from the MOE
- Signing of office lease agreement and its registration with the relevant authority
- Final registration with the licensing authority and issuance of license and
- Submission of bank guarantee to the MOE and issuance of the final commercial registration certificate.

Additional approvals may be required by other government departments depending on the nature of the LLC’s activities.

**FZ-LLC**
The licensing procedure involves the following macro steps:

- Submission of initial application to the relevant free zone and obtaining its initial approval
- Execution of the memorandum and articles of association of the entity before the concerned free zone official
- Signing of office lease agreement and its registration with the relevant free zone
- Opening of bank account and depositing relevant share capital (varies from 1 free zone to another) this is not applicable in most free zones, but is applicable in some) and
- Final registration with the registration and licensing authority of the free zone and issuance of license.

Additional approvals may be required by other government departments depending on the nature of the FZ-LLC's activities.

FZ-Branch

The registration procedure involves the following macro steps:

- Submission of initial application to the relevant free zone and obtaining its initial approval
- Signing of office lease agreement and its registration with the relevant free zone and
- Final registration with the registration and licensing authority of the free zone and issuance of license.

Additional approvals may be required by other government departments depending on the nature of the FZ-branch’s activities.

Dual Licensee Branch

The licensing procedure involves the following macro steps:

- Obtaining a no-objection letter from the free zone in which the parent company is registered
- Submission of initial application to the licensing authority
- Signing of office lease agreement and its registration with the relevant authority (optional) and
- Final registration with the licensing authority and issuance of licence.

Additional approvals may be required by other government departments depending on the nature of the FZ-LLC's activities.
Well regarded and widely used.

Branch

Well regarded and widely used.

FZ-LLC

Well regarded and widely used.

FZ-Branch

Well regarded and widely used.

Dual Licensee Branch

Relatively new development and gaining popularity.

SHAREHOLDER MEETING REQUIREMENTS

LLC

General assembly composed of all partners convened once a year during the 4 months following the end of the financial year (unless the company only has 1 shareholder). Decisions of the general assembly shall not be valid unless passed by the majority of the shareholders present in person and those represented at the meeting (unless the company memorandum states a larger majority).

Branch

Not applicable for this jurisdiction.

FZ-LLC

General meeting shall be convened at least once in every calendar year (unless the company only has 1 shareholder). Resolutions require simple majority of votes (or by such majority as prescribed in the memorandum and articles of association of the company).

FZ-Branch

Not applicable for this jurisdiction.

Dual Licensee Branch

Not applicable for this jurisdiction.

BOARD OF DIRECTOR MEETING REQUIREMENTS

LLC
If there is a board of directors/managers appointed, then the meeting requirements should be in accordance with that stated in the company's memorandum of association.

**Branch**

Not applicable for this jurisdiction.

**FZ-LLC**

With the exception of a sole director appointed, the meeting of the board of directors should be in accordance with that stated in the company's articles of association.

**FZ-Branch**

Not applicable for this jurisdiction.

**Dual Licence Branch**

Not applicable for this jurisdiction.

## ANNUAL COMPANY TAX RETURNS

**LLC**

Subject to the conditions to be set out in the CIT regime, and for financial years starting on or before June 1, 2023, an LLC will be subject to CIT and will therefore be required to file CIT returns.

No taxes payable, so no filing of tax returns (except for VAT).

**Branch**

Same as LLC.

**FZ-LLC**

No taxes payable, so no filing of tax returns (except for VAT, if applicable)FZ-LLC will be required to register and file CIT return depending on the conditions and compliance obligations to be announced under the CIT regime.

**FZ-Branch**

Same as FZ-LLC.

**Dual Licensee Branch**
Same as branch.

**BUSINESS REGISTRATION FILING REQUIREMENTS**

**LLC**

Various documents required to be submitted to the DED licensing authority, including the application form for reservation of the trade name of the company and the application form for initial license approval, the board resolutions and corporate documents of the corporate shareholder, passport copies of the individual shareholders and the officers (directors/manager and general manager).

**Branch**

Various documents required to be submitted to the DED licensing authority, including the application form for reservation of the trade name of the branch and the application form for initial license approval, the board resolutions and corporate documents of the parent company, and the passport copies of the general manager together with a copy of their last UAE visa as well as a passport copy and Emirates ID card of the national agent, subject to circumstances where the New Law mitigates the requirement for a national agent.

**FZ-LLC**

Various documents required to be submitted to the relevant free zone authority, including a business plan, applications for registration and license, the board resolutions and corporate documents of the corporate shareholder, passport copies of the individual shareholders and the officers (directors and manager) and the specimen signatures of the officers.

**FZ-Branch**

Various documents required to be submitted to the relevant free zone authority, including a business plan, applications for registration and license, the board resolutions and corporate documents of the parent company, passport copies of the individual shareholders and the general manager and the specimen signatures of the general manager.

**Dual Licensee Branch**

Various documents required to be submitted to the DED, including the no-objection letter obtained from the relevant free zone, the application form for initial license approval, the board resolutions and corporate documents of the parent company, and a passport copy of the general manager together with a copy of their last UAE visa.

**BUSINESS EXPANSION**

**LLC**

License and memorandum of association are required to be updated. For this purpose, approval(s) from the DED licensing authority and possibly other competent authorities will be necessary.
Branch
License is required to be updated. For this purpose, approval(s) from the DED licensing authority and possibly other competent authorities will be necessary.

FZ-LLC
License required to be updated. For this purpose, approval from the relevant free zone authority will be necessary.

FZ-Branch
Same as FZ-LLC.

Dual Licensee Branch
License is required to be updated. For this purpose, approval from the DED and relevant free zone authority will be necessary and also from the relevant free zone authority.

EXIT STRATEGY

LLC
Internal procedures to be followed, such as unanimous shareholder approvals and undertakings that the company has met its debts and obligations. The dissolution must be registered with the commercial register and published in 2 local daily newspapers in the Arabic language. An auditing firm registered in the UAE should be appointed to act as the liquidator of the company and instructed to prepare the liquidation report.

Branch
Internal procedures to be followed, such as passing board resolutions of the parent company and undertakings that the branch has met its debts and obligations. The dissolution must be registered with the commercial register and published in 2 local daily newspapers in the Arabic language.

FZ-LLC
Same as LLC.

FZ-Branch
Same as branch.

Dual Licensee Branch
Same as branch.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS
UAE LLC

- Annual general assembly.
- Annual maintenance of register containing details of ultimate beneficial ownership and filing with competent authorities.

Branch

Annual maintenance of register containing details of ultimate beneficial ownership and filing with competent authorities.

FZ-LLC

- Annual general assembly.
- Annual maintenance of register containing details of ultimate beneficial ownership and filing with competent authorities (only applicable for non-financial free zones).

FZ-Branch

Annual maintenance of register containing details of ultimate beneficial ownership and filing with competent authorities (only applicable for non-financial free zones).

Dual Licensee Branch

Annual maintenance of register containing details of ultimate beneficial ownership and filing with competent authorities.

DIRECTOR / OFFICER REQUIREMENTS

LLC

At least 1 director/manager to be appointed by the shareholders.

Branch

1 general manager to be appointed by the parent company.

FZ-LLC

At least 1 manager, director and secretary to be appointed (1 individual may in certain free zones hold the office of a manager, director and secretary).

FZ-Branch

Same as branch.

Dual Licence Branch
LOCAL CORPORATE SECRETARY REQUIREMENT

LLC
Not required.

Branch
Not required.

FZ-LLC
Required in most free zones (but optional in some), must be an individual secretary and not a body corporate.

FZ-Branch
Not required.

Dual Licence Branch
Not required.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

LLC
None beyond the required director/officer requirements.

Branch
None beyond the required general manager requirement.

FZ-LLC
None beyond the required director/officer requirements.

FZ-Branch
None beyond the required general manager requirement.

Dual Licensee Branch
None beyond the general manager requirement.

LOCAL OFFICE LEASE REQUIREMENT
LLC
Yes, an owned or rented physical office space is required.

Branch
Same as LLC.

FZ-LLC
Generally, a rented physical office (rented/owned) is required in the relevant free zone (possibly including offices from private landlords in the free zone area as approved by the relevant free zone – this depends on the concerned free zone).

FZ-LLC
Same as FZ-LLC

Dual Licence Branch
There is no requirement to lease a separate office and it will be permitted to operate out of the same office space as the parent company. A separate office space is optional.

OTHER PHYSICAL PRESENCE REQUIREMENTS

UAE LLC
No other express provisions.

Branch
Same as LLC.

FZ-LLC
No other express provisions.

FZ-Branch
Same as FZ-LLC.

Dual Licensee Branch
Same as LLC.

SUFFICIENCY OF VIRTUAL OFFICE

LLC
Not sufficient. An owned or rented physical office space is required.

Branch

Same as LLC.

FZ-LLC

Not possible in some free zones but possible in other free zones.

FZ-Branch

Same as FZ-LLC.

Dual Licensee Branch

Sufficient.

**PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

LLC

Not sufficient.

Branch

Same as LLC.

FZ-LLC

Not sufficient.

FZ-Branch

Same as FZ-LLC.

Dual Licensee Branch

Same as Branch.

**PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

LLC

No express provision.
Branch

Not applicable for this jurisdiction.

FZ-LLC

No express provision.

FZ-Branch

Not applicable for this jurisdiction.

Dual Licensee Branch

Not applicable for this jurisdiction.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

LLC

A UAE national or a company wholly owned by UAE nationals must hold at least 51 percent of the shares (with the exception of single-shareholder companies with GCC ownership and exemptions under FDI). No more nationality restrictions are applicable to shareholders except for activities falling within the strategic list. No nationality restrictions when appointing a manager/director/officer. As noted earlier, this requirement is subject to the implementation.

Branch

Not applicable. No nationality restrictions when appointing a general manager.

FZ-LLC

No nationality restrictions. In most free zones, at least the manager (who is named on the license of the company) should have a UAE visa issued through the company (although it is not mandatory that he/she should reside in the UAE but they will need to visit at least once in 6 months to maintain the validity of his visa). In some free zones, there is no requirement for the manager to have a UAE visa.

FZ-Branch

Not applicable. In most free zones, the general manager (who is named on the license of the company) should have a UAE visa issued through the branch (although it is not mandatory that they should reside in the UAE but they will need to visit at least once in 6 months to maintain the validity of his visa). In some free zones, there is no requirement for the manager to have a UAE visa.

Dual Licensee Branch

Same as Branch.
RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

LLC

No express provision. The concepts of "trust" and "beneficial owner" are not recognized as a matter of law under the UAE law. The UAE Concealment Law makes "side" arrangements illegal and imposes penalties that can include jail sentences on the parties involved. Although the said law is in force, the ministerial implementing regulations have not yet been issued. Therefore, the enforcement of such law remains uncertain.

Branch

Not applicable for this jurisdiction.

FZ-LLC

No express provision.

Dual Licence Branch

Same as branch.

FZ-Branch

Not applicable for this jurisdiction.

SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF

LLC

The directors/managers have full authority to manage the business of the LLC and their actions are binding. Note that this does not cover all activities, such as opening bank accounts, signing checks etc., which require explicit mention in any appointment mandate. It is possible to limit the authorities of the general manager by including limited authorities in the memorandum of association or by issuing a limited power of attorney in their favor.

Branch

The general manager has authority to manage the business of the branch and his actions are binding. Note that this does not cover all activities, such as opening bank accounts and signing checks, which require explicit mention in any appointment mandate. The parent company can however limit the authorities of the general manager by issuing a limited power of attorney in their favor.

FZ-LLC

The directors have the full authority to manage the business of the company and their actions are binding. It is possible to limit the authorities of the manager by issuing a limited power of attorney in their favor.
FZ-Branch

The general manager has the authority to manage the business of the company and his actions are binding. It is possible to limit the authorities of the general manager by issuing a limited power of attorney in their favor.

Dual Licensee Branch

The general manager has authority to manage the business of the branch and his actions are binding. Note that this does not cover all activities, such as opening bank accounts and signing checks, which require explicit mention in any appointment mandate. The parent company can, however, limit the authorities of the general manager by issuing a limited power of attorney in their favor.

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

LLC

No.

Branch

No.

FZ-LLC

With the exception of the Dubai International Financial Centre and Abu Dhabi Global Market free zones, there is no public disclosure of this nature.

FZ-Branch

With the exception of the Dubai International Financial Centre and Abu Dhabi Global Market free zones, there is no public disclosure of this nature. Same as FZ-LLC.

Dual Licensee Branch

No. Same as FZ-LLC.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

LLC

Minimum number of directors/managers is 1. No maximum number.

Branch

Not applicable for this jurisdiction.

FZ-LLC
Minimum 1 director is required. The maximum varies from 1 free zone to another.

FZ-Branch
Not applicable for this jurisdiction.

Dual Licensee Branch
Not applicable for this jurisdiction.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

LLC
Maximum 50. Minimum 21. There is an exception for single-shareholder companies with GCC ownership.

Branch
Not applicable for this jurisdiction.

FZ-LLC
Minimum is 1. The maximum varies from 1 free zone to another.

FZ-Branch
Not applicable for this jurisdiction.

Dual Licensee Branch
Not applicable for this jurisdiction.

REMOVAL OF DIRECTORS OR OFFICERS

LLC
If appointed for a limited term in office, the director/manager shall remain for the duration unless the memorandum provides that they may be dismissed, and such dismissal must be by the same majority required for amendment of the company memorandum (unless stated differently in the memorandum). If the memorandum is silent, a unanimous vote of the partners, or a court order where serious causes so justify, can lead to dismissal.

Branch
The parent company can at any time remove the general manager of the branch.

FZ-LLC
The shareholders of a company can remove a director, at a special general meeting called for such purpose, by
ordinary resolution, provided the notice requirements are complied with or by a written unanimous resolution of the shareholders.

FZ-Branch

Same as branch.

Dual Licensee Branch

Same as branch.

REQUIRED AND OPTIONAL OFFICERS

LLC

No other officers strictly required.

Branch

Same as LLC.

FZ-LLC

No other officers strictly required.

FZ-Branch

Same as FZ-LLC.

Dual Licensee Branch

Same as branch.

BOARD MEETING REQUIREMENTS

LLC

As stated in the LLC’s memorandum.

Branch

Not applicable for this jurisdiction.

FZ-LLC

As stated in the FZ-LLC’s articles of association.

FZ-Branch
QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

LLC

The quorum for the general assembly shall not be valid unless 1 or more partners holding at least 75 percent of the share capital are present. If the said quorum is not present at the first general assembly, the partners shall be invited to another meeting to be held within 14 days from the date of the first meeting, provided that partners holding at least 50 percent of the share capital are present. If the required quorum is not present at the second meeting, then the partners shall be invited to a third meeting to be held upon the expiry of 30 days from the date of the second meeting. The quorum at the third meeting shall be valid irrespective of the partners present at the meeting.

Branch

Not applicable for this jurisdiction.

FZ-LLC

As set out in the memorandum and articles of association of the company (aside from the first shareholders' meeting to confirm election of directors, which shall be a majority of the shareholders of the company, present in person or by proxy).

FZ-Branch

Not applicable for this jurisdiction.

Dual Licensee Branch

Not applicable for this jurisdiction.

MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?

LLC

No. A bank account is not required to be opened prior to incorporation but only after the LLC is established, when it becomes a requirement to open a local bank account with a bank registered in the UAE (international or local bank). There is no need to deposit the share capital in the bank account. The UAE's Wage Protection System (WPS) requires salaries of employees to be paid into their bank accounts in the UAE, so in order to comply with the WPS requirements, the LLC should have a bank account.

Branch
Yes, as part of the registration process, it is necessary to submit a bank guarantee to the MOE which should be issued by a local bank. For this purpose, it is necessary to open a bank account in the name of the branch. It is also necessary to have a bank account to comply with WPS.

**FZ-LLC**

Yes, in most free zones (but not all), it is a requirement to open a bank account as part of the formation process of the FZ-LLC. This is because an amount representing the minimum share capital must be deposited for the benefit of the company in a bank account held with a bank in the UAE. WPS is applicable in some free zones and is not applicable in others.

**Dual Licensee Branch**

No, it is not a requirement to open a bank account as part of the formation registration process for a Dual Licensee Branch. It may, however, be required to open a bank account in the event that approval is required by the MOE for conducting the branch’s activities.

**Branch**

No. Please note that WPS is applicable in some free zones.

**AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?**

**LLC**

Auditor(s) shall be selected by the general assembly. Must be accredited in the UAE. Financial statements shall be audited and laid before the general meeting along with the auditor’s report. There is no filing requirement with the DED, but the license of the UAE LLC must be renewed on an annual basis. Company’s books must be kept in the UAE LLC’s office.

**Branch**

Auditor(s) to be selected to audit the financial statements of the branch. It is mandatory to submit audited financial statements and auditor’s report to the MOE for the purposes of renewal of the commercial registration certificate. The branch should have separate accounts which should be prepared by an auditing firm that is registered in the UAE (if based abroad, then its registered office in the UAE will need to be engaged by the branch for that purpose).

**FZ-LLC**

Yes, auditor(s) (accredited in the UAE) shall be appointed by the general meeting. Financial statements shall be audited and laid before the general meeting along with the auditor’s report. In some free zones, audited accounts are required to be submitted for the purpose of renewing the license of the FZ-LLC but this is not a requirement in other free zones. Updated books of the FZ-LLC must be kept its registered office.
FZ-Branch

Yes, audited accounts prepared by an auditor (accredited in the UAE) are required to be submitted for the purpose of renewing the license of the branch. A branch office may choose to submit the consolidated audited financial accounts of its parent or a stand-alone extract of the financials of the branch office operation.

Dual Licensee Branch

There is no requirement to submit audited financial statements for the Dual License Branch. If the dual license branch is registered with the MOE, it may be required to provide financial statements and an auditor’s report to the MOE.

REQUIREMENT REGARDING PAR VALUE OF STOCK

LLC

No express provision.

Branch

Not applicable for this jurisdiction.

FZ-LLC

No express provision.

FZ-Branch

Not applicable for this jurisdiction.

Dual Licensee Branch

Not applicable for this jurisdiction.

INCREASING OF CAPITALIZATION IF NEEDED

LLC

Technically, approval of partners representing 75 percent of the capital is required, unless the LLC’s memorandum provides for an additional numerical majority of partners. In practice, unanimous approval of LLC’s partners is required by the DED licensing authority.

Branch

Not applicable for this jurisdiction.

FZ-LLC
Authorization by an ordinary resolution and by the FZ-LLC’s memorandum and articles of association required.

**FZ-Branch**

Not applicable for this jurisdiction.

**Dual Licensee Branch**

Not applicable for this jurisdiction.

**SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)**

**LLC**

No restrictions. Funds can be repatriated freely subject to complying with the applicable legal reserve (10 percent of the LLC’s net profits).

**Branch**

Not applicable for this jurisdiction.

**FZ-LLC**

No restrictions. Funds can be repatriated freely.

**FZ-Branch**

Not applicable for this jurisdiction.

**Dual Licence Branch**

Not applicable for this jurisdiction.

**RESTRICTIONS ON TRANSFERABILITY OF SHARES**

**LLC**

Must at all times comply with the foreign ownership restrictions. Approval is required from the DED licensing authority and share transfer documents must be signed before a UAE notary and filed with the authorities to obtain an amended licence reflecting the revised shareholding pattern. Additional approvals from other regulators/competent authorities may be required depending on the nature of activities of the LLC.

**Branch**

Not applicable for this jurisdiction.

**FZ-LLC**
Subject to the provisions and restrictions contained in the memorandum and articles of association of the company. Proper instrument of transfer required to be delivered to the company and share transfer must be accepted for registration by the relevant free zone. There is a share transfer restriction applicable in some free zones that will not allow more than 1 share transfer in a year (this may not be applicable in all the free zones).

**FZ-Branch**

Not applicable for this jurisdiction.

**Dual Licensee Branch**

Not applicable for this jurisdiction.

**OBTAINING A NAME AND NAMING REQUIREMENTS**

**LLC**

The trade name reservation is done online, and the relevant payment is made for the DED licensing authority to issue the Trade Name Reservation certificate. Certain restrictions apply when obtaining a name; for example, a name may not contain the word "Dubai," “UAE” or the names of countries or offensive or religious words.

**Branch**

Same as LLC. Please note that the branch should have the same name as its parent, followed by the name of the Emirate in which the branch is established – for example, a branch in Dubai will have the suffix "Dubai Branch."

**FZ-LLC**

Certain restrictions apply when obtaining a name; for example, a name may not contain the word "Dubai" and must contain the word FZ-LLC (or other suffixes as may be applicable in the relevant free zones).

**FZ-Branch**

An FZ-Branch should have the same name as its parent.

**Dual Licensee Branch**

A Dual Licence Branch must have the same name as its parent.

**SUMMARY OF “KNOW YOUR CLIENT” REQUIREMENTS**

**LLC**

Strict requirements for banks, money exchange houses, finance companies and financial institutions operating in the UAE to follow “know your customer” guidelines to prevent money laundering. In accordance with the UAE Central Bank regulations, the banks are required to trace the details of the ultimate beneficial shareholder owning 5 percent or more of the shares in the company. The DED only requires details of the immediate shareholders of the company and will not request for details of the ultimate beneficial shareholders.
Branch
Same as the LLC.

FZ-LLC
Strict requirements for banks, money exchange houses, finance companies and financial institutions operating in the UAE to follow “know your customer” guidelines to prevent money laundering. Most free zones require compliance with this requirement and want to trace details of the ultimate beneficial shareholder owning 5 percent or more of the shares in the FZ-LLC.

FZ-Branch
Same as FZ-LLC.

Dual Licensee Branch
Same as branch.

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

LLC
Technically, approval of partners representing 75 percent of the capital is required to amend the LLC’s memorandum, unless the memorandum provides for an additional numerical majority of partners. In practice, unanimous approval of the partners is required by the DED licensing authority.

Branch
Not applicable for this jurisdiction.

FZ-LLC
Special resolution (majority of not less than 75 percent of the shareholders entitled to vote) required to amend the provisions of the memorandum and articles of association of the FZ-LLC but such amendment shall only take effect when accepted for registration by the relevant free zone.

FZ-Branch
Not applicable for this jurisdiction.

Dual Licensee Branch
Not applicable for this jurisdiction.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION
LLC

Licence required from the DED licensing authority. Additional approvals may be required from other competent authorities depending on the nature of activities.

Branch

Same as LLC.

FZ-LLC

License required to carry on a business in the relevant free zone. Additional approvals may be required from other competent authorities depending on the nature of activities.

FZ-Branch

Same as LLC.

Dual Licensee Branch

Same as branch.

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

LLC

The concept of a shelf company is not recognized in the UAE.

Branch

Not applicable for this jurisdiction.

FZ-LLC

The concept of a shelf company is not recognized in the free zones.

FZ-Branch

Not applicable for this jurisdiction.

Dual Licensee Branch

Not applicable for this jurisdiction.
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FORM OF ENTITY

Private limited company

Separate and distinct legal entity. Managed by directors who are responsible for making major decisions and overseeing the general affairs of the company. Subject to the articles of the company, the shareholders and the board of directors generally have the power to appoint and remove directors.

Public limited company

A further alternative, being a public limited company, which is a company limited by shares or guarantee. This form of entity could be useful in some instances (as, unlike a private limited company, it enables capital to be raised from the public), but as it is a less commonly used type of company it is not covered in this guide.

Limited liability partnership

Distinct legal entity separate from its members. Subject to certain exceptions (such as fraud), members are not liable for debts and obligations of the company.

Flexibility in management and organization. Management and organization are governed by a confidential LLP agreement. Designated members are responsible for certain statutory requirements (such as signing annual accounts). An LLP must have 2 designated members carrying on lawful business with a view of profit.

Registered UK establishment

A registered UK establishment is a UK registration of an overseas company. It has no separate legal personality to the overseas company. The overseas company continues to be managed by the directors and shareholders of the overseas company.

A number of responses in this checklist are "not applicable" on the basis that the UK establishment is merely a registration of an overseas company and therefore any rules, regulations are other requirements are primarily governed by the laws of the country of incorporation.

ENTITY SET UP
The below summary provides an overview of three corporate structures that can be used in the UK. A further alternative, being a public limited company, could be useful in some instances (as it enables capital to be raised from the public), but is less commonly used.

**Private limited company**

- Separate and distinct legal entity. Subject to certain exceptions (such as fraud), shareholders are not liable for debts and obligations of the company
- Taxed on its earnings at a corporate level and shareholders taxed on any distributed dividends
- Management and organization governed by articles of association. Board of directors have overall management responsibility
- Must file a confirmation statement at least every 12 months confirming there have been no changes since the last filing, or otherwise setting out (amongst other things) details of any changes to the company’s share capital, people with significant control and directors*
- Must maintain a register of individuals or legal entities that have control over them (people with significant control) and maintain the public register with details of such individuals or legal entities (as applicable)
- Must file annual accounts (subject to certain exceptions for small and dormant companies). Accounts are publicly available*
- Event-driven filings need to be made from time to time (such as changes to the directors or other corporate details)*

**Limited liability partnership (LLP)**

- Distinct legal entity separate from its members
- Must file a confirmation statement at least every 12 months setting out (amongst other things) details of LLP’s membership*
- Must maintain a register of individuals or legal entities that have control over them (people with significant control) and maintain the public register with details of such individuals or legal entities (as applicable)
- Must file annual accounts (subject to certain exceptions for small and dormant LLPs). Accounts are publicly available*
- Event-driven filings need to be made from time to time (such as changes to the members of the LLP)*

**Registered UK establishment**

- Alternative to establishing a separate UK private limited company. Not a separate legal entity. Represents a local registration of the overseas company
• Registration mandatory if operating an establishment in the UK. Registration must be effected within 1 month of opening the UK establishment. Cost of registration subject to the country of incorporation of the overseas company.

• Generally subject to UK corporation tax on any profits attributable to the establishment.

• Generally subject to similar reporting requirements as a UK private limited company. Requires a UK registered address.

• If the overseas company is required (by the laws of its country of incorporation) to prepare annual accounts, such accounts must also be filed in the UK within a specified timeframe. The accounts must relate to the overseas company as a whole, not just the UK establishment. Other event-driven filings (such as changes to the registered office of the establishment) are required from time to time (in respect of both the establishment and the overseas company).

*Please note that in light of the coronavirus pandemic certain filing deadlines have been temporarily altered.*

**MINIMUM CAPITAL REQUIREMENT**

Private limited company

Companies must have a share capital, which can be any value above 0.

Limited Liability Partnership (LLP)

There is no concept of share capital, and no minimum capital requirement.

Registered UK establishment

Not applicable for this form of entity.

**LEGAL LIABILITY**

Private limited company

Shareholders not liable for debts of the company.

Limited liability partnership (LLP)

Subject to certain exceptions (such as fraud), members are not liable for debts and obligations of the company.

Registered UK establishment

Subject to the requirements of the overseas company.

**TAX PRESENCE**
Private limited company

Company’s profits taxed at 2 levels: Corporation tax is applied directly on the company’s profits. In addition, income tax is imposed on any dividends distributed to shareholders. Company may be under a duty to withhold tax (eg, when paying interest).

Limited liability partnership (LLP)

Generally taxed as a partnership. Individual members liable for income and capital gains tax on their share of LLP’s profits/gains.

Registered UK establishment

An overseas company is subject to corporation tax on its profits only to the extent that those profits are attributable to the UK establishment.

INcorporation process

Private limited company

Delivery of Form IN01 (containing details of company name, registered office, articles of association, directors, people with significant control, share capital and initial shareholdings) and a memorandum of association to the Registrar of Companies.

Limited liability partnership (LLP)

Formed under the Limited Liability Partnerships Act 2000 by 2 or more designated members. Delivery of LL IN01 (containing details of LLP name, registered office, designated members and people with significant control).

Registered UK establishment

Delivery of Form OS IN01 containing details in respect of the overseas company and the UK registered establishment, including, but not limited to:

Overseas company

- The name of the overseas company
- Its legal form, country of incorporation, identity of register in which it is registered and registered number in that register
- Its governing law and accounting requirements
- Details of its accounts and constitutional documents
- Address of principal place of business or registered office of the overseas company
- Objects of the overseas company
- Amount of issued share capital of the overseas company
- Full details of the officers of the overseas company (including their service address)

**UK establishment**

- Name of UK establishment
- Registered office address of the UK establishment
- Date UK establishment opened and type of business carried on UK establishment
- Permanent representative of the UK establishment (including their service address)
- Full details of any person authorized to accept service on behalf of the UK establishment

**BUSINESS RECOGNITION**

**Private limited company**

Well regarded and widely used.

**Limited liability partnership (LLP)**

Not as widely used as a private limited company.

**Registered UK establishment**

Not as well regarded and widely used as a private limited company.

**SHAREHOLDER MEETING REQUIREMENTS**

**Private limited company**

General meeting must be called upon the request of shareholders representing at least 5 percent of the paid-up share capital of the company (carry voting rights). Certain key decisions, such as the issuance of shares or the payment of final dividends, require shareholder approval. Otherwise, no statutory requirement to hold shareholder meetings (subject to any express provision in the company's articles).

**Limited liability partnership (LLP)**

No shareholders. Members meeting requirements governed by LLP Agreement.

**Registered UK establishment**

Not applicable for this jurisdiction.
BOARD OF DIRECTOR MEETING REQUIREMENTS

Private limited company

No statutory requirement to hold board meetings. Articles may specify matters which require board approval. Best practice suggests that regular board meetings should be held.

Limited liability partnership (LLP)

No directors. Members meeting requirements governed by LLP Agreement.

Registered UK establishment

Not applicable for this jurisdiction.

ANNUAL COMPANY TAX RETURNS

Private limited company

Must file annual corporation tax return with HMRC within 12 months of the end of company’s financial year.

Limited liability partnership (LLP)

Generally taxed as a partnership. Individual members liable for income and capital gains tax on their share of LLP’s profits/gains.

Registered UK establishment

May be required to file annual corporation tax return with HMRC within 12 months of the end of the UK establishment’s financial year.

BUSINESS REGISTRATION FILING REQUIREMENTS

Private limited company

No separate business registration requirements. This may vary if the company is operating in a regulated sector.

Limited liability partnership (LLP)

No separate business registration requirements. This may vary if operating in a regulated sector.

Registered UK establishment

No separate business registration requirements.

BUSINESS EXPANSION
Private limited company

No requirement to change the corporate structure or the company registration as the business expands unless it wants to raise finance from the public, in which case it can re-register as a public limited company.

Limited liability partnership (LLP)

Requirements governed by LLP Agreement.

Registered UK establishment

No requirement to change as business expands.

**EXIT STRATEGY**

Private limited company

Voluntary strike-off (commonly used where assets and liabilities are negligible) or liquidation.

Limited liability partnership (LLP)

Requirements governed by LLP Agreement.

Registered UK establishment

A UK establishment can be closed by giving notice to Companies House.

**ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Private limited company

Must file a confirmation statement at least every 12 months confirming there have been no changes since the last filing, or otherwise setting out (amongst other things) details of any changes to the company’s share capital, people with significant control and directors.

Must maintain a register of individuals or legal entities that have control over them (people with significant control) and maintain the public register with details of such individuals or legal entities (as applicable).

Must prepare annual accounts covering the previous financial year and deliver these to Registrar of Companies House within 9 months of the end of financial year.

Requirement to make event-driven filings (e.g., to reflect changes in the share capital, registered office or directors of the company).

Please note that in light of the coronavirus pandemic certain filing deadlines have been temporarily altered.

Limited liability partnership (LLP)
Must file a confirmation statement at least every 12 months setting out (amongst other things) details of LLP’s membership.

Must maintain a register of individuals or legal entities that have control over them (people with significant control) and maintain the public register with details of such individuals or legal entities (as applicable).

Must file annual accounts (subject to certain exceptions for small and dormant LLPs). Accounts are publicly available.

Registered UK establishment

If the overseas company prepares and files annual accounts in its country of incorporation, a full copy of the accounts may need to be filed at Companies House. A fee will also be payable.

**DIRECTOR / OFFICER REQUIREMENTS**

**Private limited company**

Minimum of at least 1 director (or any greater number provided for by articles), at least 1 of whom is a natural person.

**Limited liability partnership (LLP)**

Not applicable.

**Registered UK establishment**

Not applicable for this jurisdiction.

For more information on directors’ duties, see our [Global Guide to Directors’ Duties](#).

**LOCAL CORPORATE SECRETARY REQUIREMENT**

**Private limited company**

Optional (unless required by company’s articles). If no company secretary is appointed, duties must be filled by a director or a person appointed by the director(s).

**Limited liability partnership (LLP)**

No statutory requirement. Requirements governed by LLP Agreement.

**Registered UK establishment**

Not applicable for this jurisdiction.
LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Private limited company
Not applicable for this jurisdiction.

Limited liability partnership (LLP)
No statutory requirement. Requirements governed by LLP Agreement.

Registered UK establishment
Not applicable for this jurisdiction.

LOCAL OFFICE LEASE REQUIREMENT

Private limited company
Not applicable for this jurisdiction.

Limited liability partnership (LLP)
No statutory requirement. Requirements governed by LLP Agreement.

Registered UK establishment
Not applicable for this jurisdiction.

OTHER PHYSICAL PRESENCE REQUIREMENTS

Private limited company
Must nominate a registered office in the UK to which all communications and notices may be addressed. Certain company records, such as the statutory books, must also be kept available for inspection there. Registered office services can be provided by a third-party provider.

Limited liability partnership (LLP)
Must nominate a registered office to which all communications and notices may be addressed.

Registered UK establishment
Must nominate a service address in the UK to which all communications and notices in respect of the UK establishment must be addressed.

SUFFICIENCY OF VIRTUAL OFFICE
Private limited company

Registered office must be a physical location within the UK.

Limited liability partnership (LLP)

Registered office must be a physical location within the UK.

Registered UK establishment

Service address must be a physical location within the UK.

**PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

Private limited company

Permitted.

Limited liability partnership (LLP)

Permitted.

Registered UK establishment

Permitted.

**PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

Private limited company

Permitted. Requirement that at least 1 director is a natural person.

Limited liability partnership (LLP)

Not applicable.

Registered UK establishment

Permitted.

**NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS**

Private limited company
None. Requirement that at least 1 director is a natural person.

Limited liability partnership (LLP)
Not applicable.

Registered UK establishment
Not applicable for this jurisdiction.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Private limited company
None, provided that at least 1 director is a natural person.

Limited liability partnership (LLP)
Not applicable.

Registered UK establishment
Not applicable for this jurisdiction.

SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF

Private limited company
Directors are responsible for the day-to-day management of the company. They owe fiduciary duties to the company, as well as statutory duties as outlined in the Companies Act 2006 including a duty to promote the success of the company for the benefit of the shareholders as a whole.

Shareholders generally exercise only an indirect influence over the management of the company through their residual power to appoint and remove directors. Material decisions (such as a change to the articles of association, the issuance of shares or the declaration of dividends require shareholder approval). Level of shareholder approval (50 percent or 75 percent) dependent on the decision being made.

Limited liability partnership (LLP)
Not applicable.

Registered UK establishment
Not applicable for this jurisdiction.
PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

Private limited company

Identities of directors, company secretary (if required) and shareholders (together with details of their respective shareholdings) are publicly available.

*Public disclosure of identity of people with significant control*

Every company is required to produce, keep and maintain a dedicated register of people with significant control over that company (a PSC register).

Limited liability partnership (LLP)

Produce, keep and maintain a dedicated register of people with significant control over that company (a PSC register).

Registered UK establishment

Identities of directors (and other authorized representatives) are publicly available.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

Private limited company

There is a statutory minimum requirement of 1 shareholder, and no maximum number. For directors, there is a statutory minimum requirement of 1 (who must be a natural person) and no maximum number. The company’s articles may contain additional stipulations.

Limited liability partnership (LLP)

Not applicable.

Registered UK establishment

Not applicable for this jurisdiction.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

Private limited company

At least one shareholder is required.

Limited liability partnership (LLP)

No shareholders. Must have at least 2 members.
Registered UK establishment

Not applicable for this jurisdiction.

REMOVAL OF DIRECTORS OR OFFICERS

Private limited company

Shareholders always have the power, by a majority vote, to remove directors of a company. The articles of association often gives authority to the board of directors to remove and appoint directors.

Limited liability partnership (LLP)

Not applicable.

Registered UK establishment

Not applicable for this jurisdiction.

REQUIRED AND OPTIONAL OFFICERS

Private limited company

At least 1 director required. Appointment of secretary optional.

Limited liability partnership (LLP)

Requirements governed by LLP Agreement.

Registered UK establishment

Not applicable for this jurisdiction.

BOARD MEETING REQUIREMENTS

Private limited company

No statutory requirement as to the conduct of board meetings. However, company’s articles will commonly make provision for quorum and voting requirements.

Limited liability partnership (LLP)

No directors. Requirements governed by LLP Agreement.

Registered UK establishment

Not applicable for this jurisdiction.
QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

Private limited company

In the case of a shareholders’ meeting, the minimum quorum is 2 (or 1 in the case of a company with a single member). There is no statutory requirement concerning quorum at board meetings. However, a company’s articles will normally stipulate a quorum of 2 (unless there is a sole director). Written resolutions of the shareholders can be used.

Written resolutions of the directors can be used and require the unanimous consent of all directors.

Limited liability partnership (LLP)

No shareholders/directors. Requirements governed by LLP Agreement.

Registered UK establishment

Not applicable for this jurisdiction.

MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?

Private limited company

No.

Limited liability partnership (LLP)

No.

Registered UK establishment

No.

AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?

Private limited company

Most companies are required to appoint an independent auditor who is a member of a recognized supervisory body in the UK. There are audit exemptions for dormant and small companies. Adequate accounting records must be kept at the company’s registered office (or other place in the UK designated by the directors) for 3 years. A copy of the accounts and auditor’s report must ordinarily be delivered to the Registrar of Companies House within 9 months of the end of the financial year, upon which they will become publicly available.

Registered UK establishment
Not applicable for this jurisdiction.

**REQUIREMENT REGARDING PAR VALUE OF STOCK**

**Private limited company**

All allotted shares must have a fixed par value. Shares must not be allotted at less than par value but may be issued at a premium. There is no statutory minimum par value.

**Limited liability partnership (LLP)**

No statutory requirements. Requirements governed by LLP Agreement.

**Registered UK establishment**

Not applicable for this jurisdiction.

**INCREASING OF CAPITALIZATION IF NEEDED**

**Private limited company**

Generally permitted. For companies with only 1 class of share, further shares may be allotted by the board of directors (if permitted by the articles). Alternatively, and in any other case, allotment of further shares requires the approval of a majority of the shareholders. Capital contributions are not formally recognized under UK law.

Raising capital from the public is prohibited.

**Limited liability partnership (LLP)**

Requirements governed by LLP Agreement.

**Registered UK establishment**

Not applicable for this jurisdiction.

**SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)**

**Private limited company**

Funds can be repatriated via dividends or redemption of shares. The UK’s capital maintenance rules can restrict a company’s ability to repatriate funds.

**Limited liability partnership (LLP)**

Requirements governed by LLP Agreement.
RESTRICTIONS ON TRANSFERABILITY OF SHARES

Private limited company

Shares are generally capable of being freely transferred subject to any restrictions contained in the company's articles. Such restrictions commonly take the form of pre-emption rights for existing shareholders, a right of the directors to refuse registration and outright prohibitions. There are statutory pre-emption rights as per the Companies Act 2006; these can be disapplied by a company's articles of association.

Limited liability partnership (LLP)

Requirements governed by LLP Agreement.

Registered UK establishment

Not applicable for this jurisdiction.

OBTAINING A NAME AND NAMING REQUIREMENTS

Private limited company

Companies may generally select any name as long as:

- it ends with the word "Limited" or "Ltd"
- it is not the same as or too similar to a name already on the index maintained by Companies House
- it does not contain certain restricted or sensitive words, symbols or expressions (such as "authority," "agency" and "court") and
- it does not give the impression of being connected with the British Government or with a local

Limited liability partnership (LLP)

LLPs may generally select any name as long as:

- it is not the same as or too similar to a name already on the index maintained by Companies House
- it does not contain certain restricted or sensitive words, symbols or expressions (such as "authority," "agency" and "court") and
- it does not give the impression of being connected with the British Government or with a local
 Registered UK establishment

An overseas company can be registered using its corporate name (its name under the law of the country of incorporation), or an alternative name under which it proposes to carry on business in the UK as long as:

- it is not the same as or too similar to a name already on the index maintained by Companies House
- it does not contain certain restricted or sensitive words, symbols or expressions (such as "authority," "agency" and "court") and
- it does not give the impression of being connected with the British Government or with a local

**SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS**

**Private limited company**

Generally not required. Firms in the financial or legal sector will typically impose their own KYC procedures.

**Limited liability partnership (LLP)**

Generally not required. Firms in the financial or legal sector will typically impose their own KYC procedures.

**Registered UK establishment**

Generally not required. Firms in the financial or legal sector will typically impose their own KYC procedures.

**APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

**Private limited company**

Articles of association may be amended with the approval of shareholders holding at least 75 percent of the voting rights of the company.

**Limited liability partnership (LLP)**

Requirements as per LLP Agreement.

**Registered UK establishment**

Not applicable for this jurisdiction.

**LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

**Private limited company**

No general business license required. Particular licenses or permits may be necessary to conduct certain activities in specific industries.
Limited liability partnership (LLP)

No general business license required. Particular licenses or permits may be necessary to conduct certain activities in specific industries.

Registered UK establishment

Not applicable for this jurisdiction.

**PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY**

Private limited company

Shelf companies are no longer widely available. Companies can be incorporated within a few hours and electronically, so shelf companies are no longer commonly used.

Limited liability partnership (LLP)

Not applicable.

Registered UK establishment

Not applicable for this jurisdiction.

**KEY CONTACTS**

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NOTE: Additional forms of entity structures also exist and could be useful in some instances but are not covered in this guide either because they are less commonly used types of entity structures or not as likely to be relevant to the reader.
• Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends

• Typical charter documents include: articles/certificate of incorporation; bylaws; organizational board resolutions; stock certificates; and stock ledger

• Board of directors has overall management responsibility; officers have day-to-day responsibility

• Shareholders typically purchase stock in the corporation, either common or preferred, and

• Most states require an annual report to be filed with the Secretary of State, typically reporting the name identity of the officers and directors of the corporation

**S corporation**

• Up to 100 shareholders; only 1 class of stock allowed

• Generally no personal liability of the shareholders

• With the filing of an IRS Form 2553, a C corporation becomes a S corporation, whereby the profits and losses are passed through to the shareholders

• Typical charter documents include: articles/certificate of incorporation; bylaws; organizational board resolutions; stock certificates; stock ledger; IRS S corporation election form and any applicable state filings

• Board of directors has overall management responsibility; officers have day-to-day responsibility and

• Shareholders typically purchase stock in the corporation, but only 1 class of stock is allowed

**Limited liability company (LLC)**

Unlimited number of members allowed

Generally no personal liability of the members

Not subject to income tax (unless chosen to be taxed); profits and losses are passed through to the members

Typical charter documents include: articles of organization or certificate of formation; operating agreement

Operating Agreement sets forth how the business is to be managed; a member (owner) or Manager can be designated to manage the business and

Members typically contribute money or services to the LLC and receive an interest in profits and losses

**Note:** The mechanics and operation of corporations are governed by individual state corporate laws.
MINIMUM CAPITAL REQUIREMENT

C corporation
No minimum capital requirement.

S corporation
No minimum capital requirement.

Limited liability company (LLC)
No minimum capital requirement.

LEGAL LIABILITY

C corporation
Shareholders of a corporation are generally not liable for the debts of a corporation aside from their financial contribution to the corporation.

S corporation
Shareholders of a corporation are generally not liable for the debts of a corporation aside from their financial contribution to the corporation.

Limited liability company (LLC)
Members are generally not liable for the debts of the LLC aside from their contribution to the LLC.

TAX PRESENCE

C corporation
A C corporation is taxed on its income at 2 levels (commonly referred to as double taxation). First the C corporation pays income taxes on its corporate income; then if C corporation distributes profits to shareholders, such shareholders then pay income tax on those dividends. Many C corporations are set up where the shareholders do not intend to distribute profits by dividends. If a C corporation is part of a consolidated tax group where the C corporation is not viewed as a separate taxable entity, the double taxation effect is mitigated.

S corporation
Pass-through entity taxed like a partnership, as there is only 1 level of income taxation. The corporate profits “pass through” to the owners, who pay income taxes on the profits at their individual tax rates.

Limited liability company (LLC)
Unless the LLC elects to be treated as a corporation, it is a pass-through entity taxed like a partnership, as there is only one level of income taxation. The corporate profits “pass through” to the owners, who pay income taxes on the profits at their individual tax rates.

**INCORPORATION PROCESS**

**C corporation**

File Certificate of Incorporation or Articles of Incorporation with the appropriate Secretary of State.

**S corporation**

File Certificate of Incorporation or Articles of Incorporation with the appropriate Secretary of State, as well as the appropriate S corporation election documents.

**Limited liability company (LLC)**

File Articles of Organization or Certificate of Formation with the appropriate Secretary of State.

The timeline for incorporation varies by state jurisdiction, which can vary from as short as 1 business day (in Delaware) to several weeks, and can often be expedited by paying additional fees.

**BUSINESS RECOGNITION**

**C corporation**

Well regarded and widely used.

**S corporation**

Well regarded and widely used. Many institutional investors will require an S corp to convert to a C corp before investing, though conversion is simply with a single tax form.

**Limited liability company (LLC)**

Well regarded and used regularly in particular industries.

**SHAREHOLDER MEETING REQUIREMENTS**

**C corporation**

Required to hold annual meeting of shareholders to vote on certain items, such as election of directors.

**S corporation**

Required to hold annual meeting of shareholders to vote on certain items, such as election of directors.
Limited liability company (LLC)

Annual meetings of the members or managers are not required. The provisions of the operating agreement will determine any meeting requirements.

**BOARD OF DIRECTOR MEETING REQUIREMENTS**

*C corporation*

Annual meeting of the directors is required.

*S corporation*

Annual meeting of the directors is required.

Limited liability company (LLC)

Annual meeting of the members or managers is not required. Provisions of the operating agreement will determine any meeting requirements.

**ANNUAL COMPANY TAX RETURNS**

*C corporation*

Must annually file tax returns with federal and state tax authorities.

*S corporation*

Profits “pass through” to the shareholders who pay income taxes at their individual tax rates.

Limited liability company (LLC)

Profits “pass through” to the shareholders who pay income taxes at their individual tax rates, unless LLC elects to be treated as a corporation.

**BUSINESS REGISTRATION FILING REQUIREMENTS**

*C corporation*

Most states require initial registration, as well as annual filings.

*S corporation*

Most states require initial registration, as well as annual filings.

Limited liability company (LLC)

Most states require initial registration, as well as annual filings.
BUSINESS EXPANSION

C corporation

No need to change as business expands.

S corporation

If the number of shareholders exceeds 100, must convert to a C corporation. Many institutional investors will require that an S corporation convert into a C corporation before investing, though conversion is simply with a single tax form.

Limited liability company (LLC)

No need to change as business expands. However, many institutional investors will require an LLC to convert to a corporation before investing.

EXIT STRATEGY

C corporation

File dissolution documents with the appropriate Secretary of State.

S corporation

File dissolution documents with the appropriate Secretary of State.

Limited liability company (LLC)

File dissolution documents with the appropriate Secretary of State.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

Corporations typically need to either convene an annual shareholder meeting or execute shareholder written resolutions, as well as the filing of an annual return with the applicable Secretary of State.

For an LLC, typically the filing of an annual return with the applicable Secretary of State is needed.

DIRECTOR / OFFICER REQUIREMENTS

For corporations, at least 1 director is required. Certain states may require a Board chair position and, where the corporation is held by more than 1 shareholder, more than 1 director. Certain states may also require statutory officers such as President, Chief Financial Officer, Treasurer and Secretary. For an LLC, the entity must be managed by the members or managed by a manager appointed in the operating agreement.
LOCAL CORPORATE SECRETARY REQUIREMENT

For corporations, some states require a corporate secretary (eg, California), while other states do not (eg, Delaware).

An LLC does not need to have a corporate secretary.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Corporations will generally need to have a registered agent in the state of incorporation. This does not require the corporation to maintain an office or employee in the state. Third party agents with offices in such state commonly can serve as a registered agent.

LOCAL OFFICE LEASE REQUIREMENT

Not applicable for this jurisdiction.

OTHER PHYSICAL PRESENCE REQUIREMENTS

Not applicable for this jurisdiction.

SUFFICIENCY OF VIRTUAL OFFICE

Yes, sufficient.

PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Yes, this is allowed.

PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Yes, this is allowed.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

Not applicable for this jurisdiction.
RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Not applicable for this jurisdiction.

SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF

Directors are elected by the shareholders, are the highest authority in the management of the corporation and govern the organization by establishing broad policies and objectives. In contrast, officers are appointed by the directors to oversee day-to-day operations of the corporation. Shareholders may adopt restrictions on the powers of directors in the charter.

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

For corporations and LLCs that are not publicly listed, identity of directors, officers and managers is not publicly disclosed in most jurisdictions but may be available through state filings where access can be obtained, such as annual reports required to be filed with the state. Publicly listed companies are required to disclose the identity of their directors and officers as well as any shareholders holding at least 5 percent of such company.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

There is no maximum number of shareholders for a C corporation or for an LLC. For a corporation to be eligible for "S-corp" status, there is a maximum of 100 shareholders. Furthermore, there is no maximum number of directors for a corporation in most jurisdictions, though some states do have a maximum (eg, in California, the stated maximum can't be greater than 2 times the stated minimum minus 1).

There is no maximum number of managers for an LLC.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

Minimum of 1 for each type of entity.

REMOVAL OF DIRECTORS OR OFFICERS

Removal of directors is generally allowed by a vote of shareholders; removal of officers is generally allowed by a vote of directors.

REQUIRED AND OPTIONAL OFFICERS

Typically a President or CEO and a Secretary is appointed; any other officer is allowed, but not required in most
states; certain states may require statutory officers such as President, Chief Financial Officer, Treasurer and Secretary.

**BOARD MEETING REQUIREMENTS**

Typically at least 1 annual director meeting is required, which can be completed by written consent signed by all directors.

**QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

For a shareholder meeting, the quorum set out in the corporate bylaws must be present during the shareholder meeting (typically a majority of those eligible to vote). For directors, typically a majority of directors must be present during a board meeting; alternatively, all of the directors may execute written resolutions.

**MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?**

A bank account is not required for incorporation. If a bank account is opened, it can be located in or outside the US.

**AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?**

Not required.

**REQUIREMENT REGARDING PAR VALUE OF STOCK**

For corporations, this will vary depending on the jurisdiction in which your corporation is organized. Some states, such as Delaware, require a par value. Other states, such as California, do not require any par value. For an LLC, par value is not required.

**INCREASING OF CAPITALIZATION IF NEEDED**

An increase in authorized capital may be effectuated by amending the charter, which generally requires authorization from the Board and at least of a majority of the shareholders.

**SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)**

Funds can be repatriated abroad from the United States by dividend, return of capital or redemption. These may
have varying tax effects that should be considered.

**RESTRICTIONS ON TRANSFERABILITY OF SHARES**

Shares can generally be transferred between shareholders by written agreement. Company consent is not required unless restriction transfers have previously been agreed to, or in some cases, to confirm compliance with applicable securities laws.

**OBTAINING A NAME AND NAMING REQUIREMENTS**

Proposed name can be reserved. Certain name requirements apply. For example, corporations incorporated in the state of Delaware will require a "Corporation," "Corp.," "Incorporated," "Inc." or similar corporate indicator in the name.

**SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS**

US law firms are subject to specific "know your client" requirements that require the firm to apply identity verification rules.

**APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

Generally, a majority of shareholders must approve any amendment to the charter at a meeting or in writing. The threshold for shareholder approval may be set at a higher percentage in the charter.

**LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

Typically a company will need to be registered to conduct business in each state with which it conduct business outside of the state in which the company is organized. Licenses might be required in certain specific regulated industries.

**PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY**

It is possible, but not typical, to purchase a shelf company. A corporation can be created in an expedited time frame in most states, so use of a shelf company for expediency is not needed.
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VIETNAM

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FORM OF ENTITY

Vietnamese corporate laws introduce 5 entity types, being a joint stock company (JSC), a limited liability company with 2 or more members (LLC2), a limited liability company with 1 member (LLC1), a partnership and a private enterprise. The LLC1 is the most popular and widely used type by foreign investors when they intend to set up and wholly own and control a legal entity in Vietnam. Partnerships and private enterprises are more suitable for local and small investors. In addition, the form of partnership may only be designed and appropriate for a limited number of specific professional businesses, such as legal or auditing businesses. Therefore, we will only cover the first 3 entity types: JSC, LLC2 and LLC1.

Joint stock company (JSC)

- At least, 3 shareholders and no restriction to the maximum number.
- Generally, no personal financial liability of shareholders as it is limited to their capital contribution in a JSC.
- Earnings of a company are subject to corporate income tax and shareholders (only individuals) are taxed on any distributed dividends.
- Typical corporate documents generally include an Enterprise Registration Certificate (ERC), the charter (which is usually called the articles of incorporation in certain jurisdictions), organizational resolutions of the general shareholders meeting (GSM) and the board of management (BOM), shareholders’ registration book and share certificates.
- The GSM makes decisions on the most important affairs of the JSC. The BOM has overall responsibility to implement the GSM’s decisions and makes decisions on certain, less important affairs of the JSC. The general director (or CEO) has day-to-day management responsibilities.
- Shareholders typically purchase shares in the JSC, either ordinary shares or preference shares.
- Individual shareholders are required to file tax returns (personal income tax) with local tax authorities upon receiving dividends (where they would like to declare tax by themselves). With respect to corporate shareholders, the distributed dividends would be included in their tax finalization returns (corporate income tax) at the end of the relevant fiscal year.
Limited liability company with 2 or more members (LLC2)

- Must have at least 2 members and no more than 50; can be both individuals and legal entities
- Generally, no personal financial liability of members as it is limited to their capital contributions in an LLC2.
- Earnings of a company are subject to corporate income tax and members (only individuals) are taxed on any distributed profits
- Typical corporate documents generally include:
  - Enterprise Registration Certificate (ERC)
  - Charter (which is usually called articles of incorporation in certain jurisdictions)
  - Organizational resolutions of the Members’ Council (MC)
  - Members registration books and
  - Capital contribution certificates
- The MC makes decisions on the most important affairs of the LLC2 and has overall management responsibility. General Director (or CEO) has day-to-day management responsibilities.
- Members contribute capital to the charter capital of LLC2 or purchase paid capital contributions from former members.
- Individual members are required to file tax returns (personal income tax) with local tax authorities upon receiving profits (where they would like to declare tax by themselves). With respect to corporate members, the distributed profits would be included in their tax finalization returns (corporate income tax) at the end of the relevant fiscal year.

Limited liability company with 1 member (LLC1)

- Only 1 member is required, either an individual or a legal entity
- Generally, no personal financial liability of a member as it is limited to its capital contribution in an LLC1.
- Company’s earnings are subject to corporate income tax, but the sole member (either a corporate or an individual) is not taxed on any distributed profits
- Typical corporate documents generally include:
  - Enterprise Registration Certificate (ERC)
  - Charter (usually called the articles of incorporation in certain jurisdictions) and
Decisions of the sole member, which may be made directly by a member or indirectly through either the member’s council or the company president.

- Either the member’s council or the company president has overall management responsibility. The General Director (or CEO) has day-to-day management responsibility.

- Member contributes capital to the charter capital of the LLC1 or purchase paid capital contribution from the former member.

- Where the company owner is a legal entity, its distributed profits would be included in its tax finalization return (corporate income tax) at the end of the relevant fiscal year.

**Partnership**

- At least 2 unlimited liability partners (only individuals) and no restriction to the maximum number; no restriction to the minimum and maximum number of limited liability partners

- Generally, no personal financial liability of limited liability partners as it is limited in their capital contributions in the partnership. However, unlimited liability partners are liable for the obligations of the partnership to the extent of all of their assets.

- Earnings of a partnership are subject to corporate income tax and partners (only individuals) are taxed on any distributed profits

- Typical corporate documents generally include Enterprise Registration Certificate (ERC), charter (which is usually called articles of incorporation in certain jurisdictions), decisions of the Partners’ Council and capital contribution certificates.

- Partners’ Council has overall management responsibilities; unlimited liability partners have day-to-day management responsibilities

- Partners contribute capital to the charter capital of a Partnership. The limited liability partners can purchase paid capital contribution in the Partnership from former limited liability partners.

- Individual partners are required to file tax returns (personal income tax) with local tax authorities upon receiving profits (where they would like to submit a self-declaration of their tax). With respect to corporate limited liability partners, the distributed profits would be included in their tax finalisation returns (corporate income tax) at the end of the relevant fiscal year.

**Private enterprise**

- Only a sole individual owner

- The owner has personal liability for all activities of the private enterprise to the extent of all of their assets.

- Earnings of an enterprise are subject to corporate income tax, but the sole individual owner is not taxed on any distributed profits
Typical corporate documents generally include an Enterprise Registration Certificate (ERC) and internal rules issued by the owner.

Owner has overall and day-to-day management responsibilities

Owner registers the investment capital of a private enterprise.

**ENTITY SET UP**

**Joint stock company (JSC)**

The JSC is a separate and distinct legal entity. Generally, it is managed by the GSM that makes decisions on the most important affairs of the JSC. The BOM is responsible for implementation of the GSM’s decisions, making decisions on certain less important affairs of the JSC and overseeing the general affairs of the JSC. Members of the BOM are appointed by the GSM which consists of all shareholders with voting rights. The general director (or CEO), who runs the day-to-day operations of the JSC, is appointed by the BOM. When a JSC has 11 or more shareholders, a board of supervisors (BOS) appointed by the GSM assists the GSM to supervise all operational affairs of the JSC.

**Limited liability company with two or more members (LLC2)**

LLC2 is a separate and distinct legal entity. Generally, it is managed by the MC that makes decisions on the most important affairs of the LLC2 and oversees general affairs of the LLC2. The MC consists of all company members (or their authorized representatives) that collectively contribute their capital to the charter capital of the LLC2. The general director (or CEO), who is appointed by the MC, is responsible for running day-to-day operations of the LLC2.

**Limited liability company with one member (LLC1)**

The LLC1 is a separate and distinct legal entity. Company’s president or member’s council, which consists of individual(s) appointed by the sole member of the LLC1, makes decisions on the most important affairs and oversees the general affairs of the LLC1. General director (or CEO), who is appointed by the company’s president or the member’s council, is responsible for running day-to-day operations of the LLC1.

**MINIMUM CAPITAL REQUIREMENT**

Generally, there are no minimum capital requirements, except for some strictly regulated businesses (eg, banking, insurance, securities, education and real estate development).

**LEGAL LIABILITY**

Generally, shareholders (in respect of the JSC), members (in respect of the LLC2) and owner (in respect of LLC1) are not personally financially liable for the debts of the company, aside from their obligation to make full payment for their shares in the charter capital of the company.
TAX PRESENCE

Joint stock company (JSC)

The JSC is liable to pay corporate income tax levied on its earnings, and shareholders (only individuals) are taxed on any distributed dividends.

Limited liability company with two or more members (LLC2)

The LLC2 is liable to pay corporate income tax levied on its earnings, and members (only individuals) are taxed on any distributed profits.

Limited liability company with one member (LLC1)

The LLC1 is liable to pay corporate income tax imposed on its earnings. However, the sole member (either a legal entity or an individual) is not taxed on its distributed profits.

INCORPORATION PROCESS

Generally, the process consists of 3 steps:

- Applying for an Investment Registration Certificate (IRC) from the authority of investment registration where the company has foreign shareholder(s)/member(s).

  It is noted that, where a foreign shareholder/member would like to acquire an equity from an existing shareholder/member of a Vietnamese domiciled company, an approval for acquisition (M&A Approval) is required (instead of the IRC).

- Applying for an Enterprise Registration Certificate (ERC) from the authority of enterprise registration; and

- Conducting some mandatory post-licensing works, such as making a public announcement of the entity establishment, making a corporate seal, registering tax and obtaining a specific license (if necessary) if an entity engages in conditional businesses (e.g. multi-level marketing businesses, labor outsourcing businesses).

BUSINESS RECOGNITION

Joint stock company (JSC)

JSCs are well regarded and widely used, especially if the promoters intend to offer shares to the public and trade them on a stock market.

Limited liability company with two or more members (LLC2)

LLC2s are well regarded and widely used by foreign investors if there is more than one investor intending to do business together.

Limited liability company with one member (LLC1)
LLCs are widely used by foreign investors where they would like to wholly own and control their business in Vietnam.

SHAREHOLDER MEETING REQUIREMENTS

Joint stock company (JSC)

A GSM meeting is required at least annually.

Limited liability company with two or more members (LLC2)

The MC’s meeting is required at least annually.

Limited liability company with one member (LLC1)

Meeting requirements for an LLC1 with a member’s council are stipulated by the owner in the company’s charter.

BOARD OF DIRECTOR MEETING REQUIREMENTS

Joint stock company (JSC)

Assume that the term “Board of Directors” under the laws of jurisdictions outside Vietnam is equivalent to the term “Board of Management in a JSC” under the laws of Vietnam. Meetings of the Board of Management are required at least quarterly.

Limited liability company with two or more members (LLC2)

Not applicable for this jurisdiction.

Limited liability company with one member (LLC1)

Not applicable for this jurisdiction.

ANNUAL COMPANY TAX RETURNS

Tax finalization returns must be filed annually with local tax authorities.

BUSINESS REGISTRATION FILING REQUIREMENTS

With respect to foreign investments, initial investment registration and post-business formation registration are required. Subsequently, any change to any content of the IRC or the ERC must be registered with and/or notified to the local authorities.

Reports on the implementation of investment projects are also required to be submitted to the relevant licensing authority quarterly and annually.
BUSINESS EXPANSION

If business expansion results in changes to any content of the IRC or the ERC, relevant registration with and/or notification to the local authorities must be made.

In the case of the LLC1, if any more members are offered the ability to make their contribution to the charter capital, the company must then be converted into either an LLC2 or a JSC as applicable.

EXIT STRATEGY

With respect to foreign investment, application for termination of an investment project must first be made with the investment registration authority. Then, the dissolution of the company is conducted with the enterprise registration authority. It is noted that tax finalization is the key for obtaining the final decision of dissolution of any enterprise in Vietnam.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

With respect to keeping internal records, the company is required to maintain at its head office meeting minutes of the GSM and the BOM (in respect to JSCs) and the MC/member’s council (in respect to LLCs) and other resolutions or decisions of the company, accounting books, accounting records and annual financial statements, among others. With respect to filing annual reports, a foreign-owned company is required to submit an annual report on status of investment project implementation, an annual report of evaluation and supervision of investment project and an audited annual financial statement, among other documents.

DIRECTOR / OFFICER REQUIREMENTS

Directors (ie, members of the BOM) are only relevant and applicable to JSCs – not LLCs. Under Vietnamese law, a director must satisfy the following conditions:

- Have full capacity for civil acts and not fall into the category of persons not permitted to manage an enterprise as stipulated by law and

- Have professional expertise and experience in business management of the company and not be a shareholder of the company, unless otherwise stipulated in the charter of the company.

Additionally, an independent director might be required to satisfy other special conditions relating to the independence feature.

Regardless of whether a company is JSC, LLC2 or LLC1, an officer (ie, general director or director under Vietnamese law) must satisfy the following requirements:

- Have full capacity for civil acts

- Do not fall into the category of entities not permitted to manage enterprises in accordance with the Law on Enterprises and
• Have professional qualifications and experience in business administration of the company if the charter of the company does not stipulate otherwise.

LOCAL CORPORATE SECRETARY REQUIREMENT

Not applicable for this jurisdiction.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

In Vietnam, all enterprises are required to have at least 1 legal representative who is residing in Vietnam.

The legal representative of an enterprise means an individual representing the enterprise to exercise the rights and perform the obligations arising out of transactions of the enterprise; representing the enterprise to act as the person lodging a petition for resolution of a civil matter, as a plaintiff, defendant or person with related interests and obligations in arbitration proceedings or courts; and to exercise other rights and perform other obligations in accordance with the law.

LOCAL OFFICE LEASE REQUIREMENT

Generally, the company is required to have its head office in Vietnam.

OTHER PHYSICAL PRESENCE REQUIREMENTS

Except for what is provided herein, there are no other physical presence requirements under Vietnamese law.

SUFFICIENCY OF VIRTUAL OFFICE

The use of a virtual office is not officially recognized by Vietnamese law.

PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Such a service is not officially recognized by Vietnamese law.

PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Such a service is not officially recognized by Vietnamese law.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS,
DIRECTORS AND OFFICERS

In general, the company is required to have at least 1 legal representative residing in Vietnam.

Further, if the company is conducting certain conditional business lines (eg, aviation), the nationality or residence of shareholders, directors and officers may be required.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Nominee shareholders or directors are not officially recognized by Vietnamese law.

SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF

Please see the "Entity set up" section.

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

Generally, the identity of directors (ie, members of the BOM in the case of JSC or members of the member’s council in the case of LLC1), officers (ie, the general director or director under Vietnamese law) and non-founding shareholders are not required to be public (subject subject to the requirements for listed companies).

During the establishment of the entity and in regard to certain changes, the information of the members, founding shareholders, officers and legal representatives may be required to be public on the National Business Registration Portal.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

With respect to the number of shareholders of a JSC, please refer to the "Form of entity" section.

With respect to the directors (ie, members of BOM) in a JSC, the number of members ranges from 3 to 11.

With respect to the number of the general director (or director) under Vietnamese law of a company regardless of whether it is a JSC, LLC2 or LLC1, the number is at least 1.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

Please refer to the "Form of entity" section.

REMOVAL OF DIRECTORS OR OFFICERS
Generally, directors in the case of JSC and LLC1 shall be removed by the body that has the right to appoint the director.

The officer shall be removed by the body that has the right to appoint the officer. Additionally, the removal of directors and officers may require notification to the relevant authority.

REQUIRED AND OPTIONAL OFFICERS

Generally, the company is required to have at least 1 general director or director. Any other optional officer, such as the deputy general director or deputy director, is allowed.

BOARD MEETING REQUIREMENTS

Please refer to the "Shareholder meeting requirements" and "Board of directors meeting requirements" sections.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

Joint stock company (JSC)

**Quorum for a GSM to be conducted:**

1. Where the number of attending shareholders represents more than 50 percent of the total number of voting shares (the charter may stipulate a higher percentage).

2. Where a meeting is not able to be conducted for the first time because the condition stipulated above is not satisfied, the meeting may be convened for a second time within 30 days from the date of the intended opening of the first meeting, unless otherwise stipulated in the charter of the company. A meeting of the GSM which is convened for a second time shall be conducted where the number of attending shareholders represents at least 33 percent of the total number of voting shares.

3. Where a meeting convened for a second time is not able to be conducted because the condition stipulated above is not satisfied, it may be convened for a third time within 20 days from the date of the intended opening of the second meeting, unless otherwise stipulated in the charter of the company. In this case, a meeting of the GSM shall be convened irrespective of the total number of voting shares of shareholders attending the meeting.

**Quorum for passing a resolution of GSM**

1. A resolution is approved by a number of shareholders representing more than 50 percent of the total number of voting shares of all attending shareholders, except for the cases in points 2 and 3 below (the charter might stipulate a higher percentage).

2. A resolution on the following important matters shall be passed if it is agreed by a number of shareholders representing at least 65 percent of voting shares of all attending shareholders; the specific percentage shall be stipulated in the charter of the company:
- Classes of shares and the total number of shares of each class
- Change of lines of business and business sectors
- Change of the organizational and managerial structure of the company
- Investment project or sale of assets valued at 35 or more percent of the total value of assets recorded in the most recent financial statements of the company, except where the charter of the company stipulates a different percentage or value
- Re-organization or dissolution of the company and
- Other matters as stipulated in the charter of the company.

3. A resolution of the GSM shall be passed by way of collection of written opinions if it is approved by members representing more than 50 percent of the total number of voting shares; the specific percentage shall be stipulated in the charter of the JSC.

Quorum for the meeting of BOM

A meeting of the BOM shall be conducted where 3/4 or more of the total members are in attendance. If this condition is not satisfied, it shall be convened for a second time within 7 days from the intended date of the first meeting, except where the charter stipulates a shorter time limit. In this case, the meeting shall be conducted if more than half of the number of members of the BOM attends the meeting.

Quorum for passing a resolution of BOM

Except where the charter of the company provides for any other higher percentage, a resolution of the BOM shall be passed when it is agreed by the majority of the members in attendance; in the case of a tied vote, the final decision shall be made in favor of the vote of the chairman of the BOM.

Limited liability company with two or more members (LLC2)

Quorum for a meeting of the MC to be conducted

1. Where the attending members represent at least 65 percent of the charter capital; the specific percentage shall be stipulated in the charter of the LLC2.

2. Where a meeting does not take place because the condition stipulated above is not satisfied, the meeting may be convened for a second time within 15 days from the date on which the first meeting was intended to be opened. A meeting of the MC which is convened for a second time shall be conducted where the attending members represent at least 50 percent of the charter capital.

3. Where a meeting which has been convened for a second time does not take place because the condition stipulated above is not satisfied, it may be convened for a third time within 10 working days from the date on which the second meeting was intended to be opened. In this case, the meeting of the MC shall be conducted irrespective of the number of attending members and of the amount of charter capital represented by attending members.
Quorum for passing a resolution of the MC

Unless otherwise stipulated in the charter of the LLC2, a resolution of the MC will be passed in a meeting in the following cases:

1. It is approved by the number of votes representing at least 65 percent of the aggregate capital of the attending members, except for the cases in points 2 and 3 below.

2. In respect of the following important decisions, the approval by the number of votes representing at least 75 percent of the capital of the attending members is required:
   - sale of assets valued at 50 or more percent of the total value of assets recorded in the most recent financial statement of the company, or a smaller percentage or value as stipulated in the charter of the company;
   - amendment of and/or addition to the charter of the company; and
   - re-organization or dissolution of the company.

3. A resolution of the MC will be passed by way of collection of written opinions if it is approved by members representing at least 65 percent of the charter capital; the specific percentage will be stipulated in the charter of the LLC2.

Limited liability company with one member (LLC1)

Quorum for a meeting of the member’s council (if any) to be conducted

A meeting of the member’s council will be conducted where at least 2/3 of the total number of its members attend.

Quorum for passing a resolution of the member’s council

A resolution of the member’s council will be passed when it is agreed by more than 50 percent of the attending members or when it is agreed by the attending members owning more than 50 percent of the total number of votes. However, important decisions (being any amendment of and/or addition to the charter of the company, any re-organization of the company, or any assignment of a part or all of the charter capital of the company) must be agreed to by at least 75 percent of the attending members or by the attending members owning at least 75 percent of the total number of votes.

MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?

It is not a requirement to open a bank account prior to incorporation. However, after incorporation, the company must open at least a bank account at a local bank, especially for the purpose of the registered capital contribution.

AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED...
IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?

Annual financial statements of a foreign-owned company must be audited by an independent licensed auditor in Vietnam within 90 days from the end of the annual accounting period.

The company must keep its book locally at its head office or other places stipulated by the charter.

REQUIREMENT REGARDING PAR VALUE OF STOCK

Generally, no requirement, except when listing a joint stock company where the par value of the stock offered for first-time sale to the public is VND10,000.

INCREASING OF CAPITALIZATION IF NEEDED

In order to increase the charter capital of a foreign-owned company, the company is required to register the amending of its IRC and ERC to record the new amount of charter capital, together with the internal amending of the charter of the company.

SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)

Funds can be repatriated abroad via dividends or redemption.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

Joint stock company (JSC)

Shares are freely transferable except for:

1. Transferring shares of founding shareholders within the first 3 years of existence and
2. Restrictions stipulated by the charter.

Limited liability company with two or more members (LLC2)

Generally, capital contribution is freely transferable between the members. However, the contributed capital can only be transferred to a non-member party if the other members do not purchase such amount of contributed capital.

Limited liability company with one member (LLC1)

Generally, contributed capital is freely transferable.

OBTAINING A NAME AND NAMING REQUIREMENTS
The company registers a name upon applying for incorporation. The company's name may not be the same as another company's name (which has been registered) or similar enough to another company's name (which has been registered) to cause confusion.

**SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS**

Generally, none, except for some special business activities, such as those taken up by banks.

**APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

Amendment of charter requires approval of the GSM (in the case of a JSC), the MC (in the case of a LLC2) or the member’s council or owner (in the case of an LLC1).

**LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

Specific licenses or registrations may be required to conduct business in particular business sectors. The types of business license or required registration depends on the nature and actual features of the intended businesses.

**PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY**

A shelf company is not common in Vietnam.

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