



# **GUIDE TO GOING GLOBAL CORPORATE**

2015



## CONTENTS

INTRODUCTION .....	03
AUSTRALIA .....	04
AUSTRIA .....	18
BELGIUM .....	28
BRAZIL .....	44
CANADA .....	55
CHINA .....	60
FRANCE .....	66
GERMANY .....	80
HONG KONG .....	86
INDIA .....	91
INDONESIA .....	97
IRELAND .....	103
ISRAEL .....	116
ITALY .....	124
JAPAN .....	130
LUXEMBOURG .....	141
MEXICO .....	145
NETHERLANDS .....	158
RUSSIA .....	178
SAUDI ARABIA .....	189
SINGAPORE .....	194
SOUTH KOREA .....	199
SPAIN .....	209
SWEDEN .....	221
SWITZERLAND .....	228
TAIWAN .....	233
TURKEY .....	244
UNITED ARAB EMIRATES .....	252
UNITED KINGDOM .....	260
UNITED STATES .....	270
COUNTRY CONTACTS .....	274

# INTRODUCTION

Welcome to the inaugural edition of DLA Piper's *Guide to Going Global – Corporate*.

## 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 30 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 intellectual property and technology law is dynamic, and the legal regime in the countries surveyed could change.

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## AUSTRALIA

### FORM OF ENTITY

#### Branch

- (i) To establish a branch, the foreign company must be registered with the Australian Securities and Investments Commission (ASIC) and assigned an Australian Registered Body Number (ARBN);
- (ii) A branch is not a separate legal entity. The foreign company has full legal responsibility for the action of the Australian branch;
- (iii) Must appoint at least one local agent;
- (iv) Local agent has responsibility for ensuring the foreign company's compliance with the *Corporations Act 2001* (Cth) (Corporations Act)';
- (v) Must maintain a registered office in Australia;
- (vi) Taxed as a separate entity in Australia. Taxed on all income sourced from Australia; and
- (vii) The Foreign Investment Review Board approval may be required before assets/land is acquired.


#### Proprietary company

- (i) Must have at least one shareholder but no more than 50, not including employee shareholders;
- (ii) Generally, no personal liability of the shareholders beyond amount agreed to be subscribed for shares;
- (iii) Taxed on its earnings at the corporate level. Can frank dividends distributed to shareholders;
- (iv) Usually has a constitution setting out operational procedures;
- (v) Board of directors has overall management responsibility;
- (vi) Shareholders purchase shares in the company. May have numerous classes of shares; and
- (vii) Cannot engage in fundraising activities that would require disclosure to investors under the *Corporations Act 2001* (Cth) (Corporations Act) (e.g. requiring a prospectus to be issued).

#### Public company

- (i) Must have at least one shareholder, but can have any number;
- (ii) Generally, no personal liability of the shareholders beyond amount agreed to be subscribed for shares;
- (iii) Taxed on its earnings at the corporate level. Can frank dividends distributed to shareholders;
- (iv) Usually has a constitution setting out operational procedures;



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- (v) Board of directors has overall management responsibility;
  - (vi) Shareholders purchase shares in the company. May have numerous classes of shares; and
  - (vii) 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: Within the above categories, variations occur such as unlimited liability companies, companies limited by guarantee and no liability companies. These are very rarely used for business purposes and are not considered further.

### BRANCH

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#### BRIEF DESCRIPTION

It is possible for foreign companies to conduct business in Australia through a branch office. A foreign company can establish a branch in Australia by registering with 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.

#### MINIMUM CAPITAL REQUIREMENT

No minimum capital requirement.

#### LEGAL LIABILITY

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.

#### TAX PRESENCE

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 GST.

#### INCORPORATION PROCESS

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.

#### BUSINESS RECOGNITION

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

#### SHAREHOLDER MEETING REQUIREMENTS

N/A.

#### BOARD OF DIRECTOR MEETING REQUIREMENTS

N/A.



### **ANNUAL COMPANY TAX RETURNS**

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

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

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

### **BUSINESS EXPANSION**

No need to change as business expands.

### **EXIT STRATEGY**

Cessation – within seven 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.

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

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

- (i) A copy of its balance sheet, profit and loss statement, and cash flow statement;
- (ii) Any other documents it is required by law to lodge in its country of origin;
- (iii) And pay ASIC the prescribed lodgment fee.

Changes to directors need to be notified as they occur.

### **DIRECTOR/OFFICER REQUIREMENTS**

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

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

Not required to have a secretary.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

None beyond the required local agent.

### **LOCAL OFFICE LEASE REQUIREMENT**

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

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

Nil.

### **SUFFICIENCY OF VIRTUAL OFFICE**

Sufficient for registration.



### **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**

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**

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

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

N/A – this is subject to the requirements of the foreign company's place of incorporation.

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

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.

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

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

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

N/A – this is subject to the requirements of the foreign company's place of incorporation.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

N/A – this is subject to the requirements of the foreign company's place of incorporation.

### **REMOVAL OF DIRECTORS OR OFFICERS**

N/A – where a person is a local agent of a foreign company, the foreign company or the person may lodge a written notice stating that the person's appointment as a local agent has terminated, or will terminate, on a specified day.

### **REQUIRED AND OPTIONAL OFFICERS**

Nil.

### **BOARD MEETING REQUIREMENTS**

N/A – this is subject to the requirements of the foreign company's place of incorporation.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

N/A – this is subject to the requirements of the foreign company's place of incorporation.



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

Not necessary in order to register a foreign company.

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

A foreign company must lodge the following financial statements with ASIC once a year:

- (i) Balance sheet;
- (ii) Profit and loss statement;
- (iii) Cash flow statement; and
- (iv) Any other document the company is required to prepare by the law of its place of origin.

Audit is generally not required but ASIC may request audited financial statements if previously lodged statements are insufficient.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

N/A – this is subject to the requirements of the foreign company's place of incorporation.

### **INCREASING OF CAPITALIZATION IF NEEDED**

N/A – this is subject to the requirements of the foreign company's place of incorporation.

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

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.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

N/A – this is subject to the requirements of the foreign company's place of incorporation.

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

A foreign company must determine that the business name it wishes to use in Australia is available and 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.

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

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 may have their own internal KYC requirements.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

N/A – this is subject to the requirements of the foreign company's place of incorporation.



### **LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

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

- (i) An Australian Business Number (ABN);
- (ii) An Australian Tax File Number (TFN); and
- (iii) Goods and Services Tax (GST) registration.

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

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

N/A.

## **PROPRIETARY COMPANY**

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### **BRIEF DESCRIPTION**

A proprietary company is a company designed for a relatively small group of shareholders. It is the most common type of company for smaller businesses and has the advantage of being simpler to manage and less expensive to administer. Managed by a board of directors which is responsible for making business decisions and overseeing the general affairs of the company. Directors are usually appointed and removed by the shareholders.

### **MINIMUM CAPITAL REQUIREMENT**

No minimum capital requirement.

### **LEGAL LIABILITY**

A company's shareholders' liability is generally limited to the extent of their initial investment, and the amount, if any, unpaid on their shares.

### **TAX PRESENCE**

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 recipient shareholders a credit for the tax paid by the company.

### **INCORPORATION PROCESS**

File an Application for Registration as an Australian Company with Australian Securities and Investments Commission (ASIC) and the prescribed fee is paid. 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.

### **BUSINESS RECOGNITION**

Well regarded and widely used.

### **SHAREHOLDER MEETING REQUIREMENTS**

Not required to hold an annual general meeting but actions requiring shareholder approval require a shareholders' meeting or a written resolution.





### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

As required (no prescribed minimum). Usually at least one meeting is held each year (e.g. to approve accounts or confirm solvency).

### **ANNUAL COMPANY TAX RETURNS**

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

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

A company must confirm its corporate details and also pay a review fee to ASIC each year.

### **BUSINESS EXPANSION**

No need to change as business expands (but accounts filing requirements depend on size and ownership).

### **EXIT STRATEGY**

Deregistration – if there are no liabilities and minimal assets (currently AU\$1,000). 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.

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

A company must confirm its corporate details and pay a review fee to ASIC each year. Depending on size and ownership, 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 small or large and whether it is foreign owned. 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 small for a financial year if it satisfies at least two of the following tests:

- (i) Gross operating revenue of less than AU\$10 million for the year;
- (ii) Gross assets of less than AU\$5 million at the end of the year; and
- (iii) Fewer than 50 employees at the end of the year.

### **DIRECTOR/OFFICER REQUIREMENTS**

Must have one director who must ordinarily reside in Australia.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

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

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

None beyond the required director and secretary (optional).



### **LOCAL OFFICE LEASE REQUIREMENT**

Must have a registered office in Australia. This does not have to be owned or leased. Corporate records are generally required to be maintained at the registered office.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

Nil.

### **SUFFICIENCY OF VIRTUAL OFFICE**

Sufficient for registration.

### **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 (but internal rules/insurance limitations may restrict law firm professionals from taking on this role).

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

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

There are no nationality requirements for shareholders.

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

None.

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

Board of directors has overall management responsibility. Shareholders have no direct management rights but to elect directors and may be required to approve significant transactions.

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

Full details of directors and shareholders are publicly available on ASIC's database.

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

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

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

One shareholder is sufficient.

### **REMOVAL OF DIRECTORS OR OFFICERS**

Generally, directors may be removed by shareholders.



### **REQUIRED AND OPTIONAL OFFICERS**

Nil.

### **BOARD MEETING REQUIREMENTS**

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

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

Unless otherwise specified in the company's constitution, at least two 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 two 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.

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

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?**

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.

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

- (i) It is a disclosing entity;
- (ii) 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
- (iii) It is required by 5 percent or more of shareholders or by ASIC to prepare audited financial statements.

All other proprietary companies are required to have their accounts audited. The auditor must be registered in Australia.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

Shares of a company have no par value.

### **INCREASING OF CAPITALIZATION IF NEEDED**

There is no concept of authorized or maximum capital. Increased capitalization can occur at any time.



### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

Funds can be repatriated by dividends or return of capital.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

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

The constitutions of many proprietary 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, 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.

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

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 Ltd” as part of its name.

### **SUMMARY OF “KNOW YOUR CLIENT” REQUIREMENTS**

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 may have their own internal KYC requirements.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

Any changes to a company’s constitution must be made by a special resolution (i.e. passed by at least 75 percent of the shareholders voting).

### **LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

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

- (i) An Australian Business Number (ABN);
- (ii) An Australian Tax File Number (TFN); and
- (iii) Goods and Services Tax (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**

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

## **PUBLIC COMPANY**

### **BRIEF DESCRIPTION**

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 disclosure requirements).



### **MINIMUM CAPITAL REQUIREMENT**

No specified minimum capital requirement.

### **LEGAL LIABILITY**

A company's shareholders' liability is generally limited to the extent of their initial investment, and the amount, if any, unpaid on their shares.

### **TAX PRESENCE**

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 recipient shareholders a credit for the tax paid by the company.

### **INCORPORATION PROCESS**

The company must file an Application for Registration as an Australian Company with ASIC and pay 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**

Well regarded and widely used. All Australian companies listed on the Australian Stock Exchange are public companies.

### **SHAREHOLDER MEETING REQUIREMENTS**

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

Other meetings may be held as required.

### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

As required (no prescribed minimum). Usually at least one meeting is held each year (e.g. to approve accounts or confirm solvency).

### **ANNUAL COMPANY TAX RETURNS**

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

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

A company must confirm its corporate details and also pay a review fee to ASIC each year.

### **BUSINESS EXPANSION**

No need to change as business expands.

### **EXIT STRATEGY**

Deregistration – if there are no liabilities and minimal assets (currently AU\$1,000). 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.





### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

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**

Must have at least three directors, at least two of whom must ordinarily reside in Australia.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

Must have at least one company secretary, one of whom must ordinarily reside in Australia.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

None beyond the required directors and secretary.

### **LOCAL OFFICE LEASE REQUIREMENT**

Must have a registered office in Australia.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

Nil.

### **SUFFICIENCY OF VIRTUAL OFFICE**

No, see above.

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

Allowed, but the registered office of a public company must be open to the public each business day from at least 10:00 am to 12:00 noon and from at least 2:00 pm to 4:00 pm, or at least three hours – chosen by the company between 9:00 am and 5:00 pm each business day.

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

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**

Must have at least three directors, at least two of whom must ordinarily reside in Australia.

Must have at least one company secretary, one of whom must ordinarily reside in Australia.

There are no nationality requirements for shareholders.

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

None.

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

Board of directors has overall management responsibility. Shareholders have no direct management rights but to elect directors and shareholders may be required to approve significant transactions.



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

Full 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**

There must be a minimum of one shareholder, and no maximum number. For directors, there must be at least three directors.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

One shareholder is sufficient.

### **REMOVAL OF DIRECTORS OR OFFICERS**

Generally, directors may be removed by shareholders.

### **REQUIRED AND OPTIONAL OFFICERS**

A public company must have at least one company secretary.

### **BOARD MEETING REQUIREMENTS**

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

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

Unless otherwise specified in the company's constitution, at least two 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 two 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 being held 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?**

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?**

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**

Shares of a company have no par value.



### **INCREASING OF CAPITALIZATION IF NEEDED**

There is no concept of authorized or maximum capital. Increased capitalization can occur at any time.

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

Funds can be repatriated by dividends or return of capital.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

Pre-emptive rights provisions are far less common in public company constitutions and cannot be contained in the constitutions of Australian Securities Exchange (ASX) listed companies.

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**

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**

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 may have their own internal KYC requirements.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

Any changes to a company's constitution must be made by a special resolution (i.e. passed by at least 75 percent of the shareholders voting). 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**

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

- (i) An Australian Business Number (ABN);
- (ii) An Australian Tax File Number (TFN); and
- (iii) Goods and Services Tax (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**

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



## AUSTRIA

### FORM OF ENTITY

#### **Stock Corporation (in German: *ktiengesellschaft* or abbreviated AG)**

- (i) Unlimited number of shareholders;
- (ii) Generally, there is no personal liability of the shareholders;
- (iii) Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends;
- (iv) Minimum stated capital: €70,000; one share must at least correspond to €1.00;
- (v) 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;
- (vi) Typical charter documents include: articles of incorporation; standing orders; organizational resolutions by the management board and the supervisory board; shares must be registered shares (except for listed entities which usually have bearer shares), therefore a share register is required;
- (vii) Shareholders typically purchase stock in the corporation, usually common, hardly preferred; and
- (viii) 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 Austrian commercial registry.

#### **Limited Liability Company (in German: *Gesellschaft mit beschränkter Haftung* or abbreviated GmbH)**

- (i) Unlimited number of shareholders allowed;
- (ii) Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends;
- (iii) Minimum stated capital: €35,000; one share must at least correspond to €70.00;
- (iv) 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;
- (v) Typical charter documents include: articles of incorporation; standing orders; organizational resolutions by the management board and, if applicable, the supervisory board; the shares of each shareholder is registered with the commercial registry; and
- (vi) 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 Austrian commercial registry.

### STOCK CORPORATION (AG)

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#### BRIEF DESCRIPTION

Separate and distinct legal entity. Managed by a management board, which is responsible for making major business decisions and overseeing the general affairs of the corporation as well as the day-to-day operations of the stock corporation. Members of the management board are elected by the supervisory board, members of the supervisory board are elected by the shareholders' meeting.

#### MINIMUM CAPITAL REQUIREMENT

€70,000 is the minimum capital requirement.

#### LEGAL LIABILITY

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 is taxed at two levels: First the stock corporation pays a corporate income tax on its corporate income; then the stock corporation distributes profits to stockholders who then pay income tax on those dividends (to be withheld by the stock corporation upon payment).

#### INCORPORATION PROCESS

Filing an application with the local court (commercial 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 confirmation by tax authorities that capital transfer tax (1 percent of stated capital) has been paid.

#### BUSINESS RECOGNITION

Well regarded and widely used.

#### SHAREHOLDER MEETING REQUIREMENTS

Required to hold annual meeting of shareholders to vote on certain items, such as payment of dividends, discharging the members of the management board and supervisory board from liability, election of auditors, appointment of members of the supervisory board and changes of articles of association.

#### MANAGEMENT BOARD MEETING REQUIREMENTS

Any time a management decision is required.

#### ANNUAL COMPANY TAX RETURNS

Must annually file tax returns with federal tax authorities.

#### BUSINESS REGISTRATION FILING REQUIREMENTS

Initial registration as well as annual filings are required.





### **BUSINESS EXPANSION**

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.

### **EXIT STRATEGY**

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

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

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

### **DIRECTOR/OFFICER REQUIREMENTS**

At least one member of the management board is required and at least three members of the supervisory board.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

N/A (does not exist).

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

Please see above.

### **LOCAL OFFICE LEASE REQUIREMENT**

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**

N/A.

### **SUFFICIENCY OF VIRTUAL OFFICE**

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

### **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**

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

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

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**

No; However, please note that any member of the management board 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**

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, inability to manage or for important reason. Members of the management board must not be given orders by shareholders, and (in case such orders are given) they must be ignored.

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

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.

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

There must be a minimum of one 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 MEMBERS OF THE MANAGEMENT OR THE SUPERVISORY BOARD**

Removal of the members of the supervisory board requires a vote by the shareholders' meeting (usually 75 percent of the votes cast), removal of the members of the management board requires a vote by the supervisory board, limited to important reasons.

### **REQUIRED AND OPTIONAL OFFICERS**

Required is management board and a supervisory board; in addition, a holder of special power of representation (so-called *Prokurist*) may be appointed (by the management board with the approval of the supervisory board).

### **BOARD MEETING REQUIREMENTS**

An annual shareholders' meeting is required and at least four meetings of the supervisory board (at least each calendar quarter).

### **QUORUM REQUIREMENTS FOR SHAREHOLDER MEETINGS AND MEETING OF THE MANAGEMENT BOARD AND THE SUPERVISORY BOARD**

For a shareholder meeting, the presence of one single shareholder is sufficient. Resolutions are passed with the simple majority of the votes cast, except for important decisions, e.g., change of articles (75 percent majority of the votes cast). For management and supervisory board meetings, typically a majority of the respective must be present during such meeting; alternatively, all of the directors must execute written resolutions.

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

Yes, an Austrian bank account is required for incorporation (but afterwards 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?**

Yes.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

The statutory minimum par value of stock is €1.00.

### **INCREASING OF CAPITALIZATION IF NEEDED**

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

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

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

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

Shares can generally be transferred between shareholders via a written agreement. *Vis-à-vis* with the stock corporation, only those are deemed to be shareholders who are registered in the share register.

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

The name must not be misleading or being able of creating a misunderstanding, e.g., Coca-Colo AG would not work. The name must include a reference to the legal entity of a stock corporation in German, therefore either “Aktiengesellschaft” or any abbreviated form like “AG”.

### **SUMMARY OF “KNOW YOUR CLIENT” REQUIREMENTS**

The stock corporation is not subject to any KYC rules.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

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**

It depends on the kind of business to be run.

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

Shelf companies can be purchased from third-party service providers, but aren’t widely used in Austria.

### LIMITED LIABILITY COMPANY (GMBH)

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#### BRIEF DESCRIPTION

Separate and distinct legal entity. Managed by one or more managing director(s), who is (are) responsible for making major business decisions and overseeing the general affairs of the corporation as well as the day-to-day operations of the stock corporation. Members of the management board are elected by the shareholders' meeting. In certain cases, a supervisory board must be established (the members of which are elected by the shareholders' meeting).

#### MINIMUM CAPITAL REQUIREMENT

The minimum capital requirement is €35,000.

#### LEGAL LIABILITY

Shareholders of a limited liability company are generally not liable for the debts of a company aside from their financial contribution to the corporation.

#### TAX PRESENCE

A limited liability company is taxed at two levels: First the limited liability company pays a corporate income tax on its corporate income; then the limited liability company distributes profits to stockholders who then pay income tax on those dividends (to be withheld by the stock limited liability company upon payment).

#### INCORPORATION PROCESS

Filing an application with the local court (commercial 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 tax authorities that the capital transfer tax (1 percent of stated capital) has been paid.

#### BUSINESS RECOGNITION

Well regarded and widely used – the most use form of a corporate entity in Austria.

#### SHAREHOLDER MEETING REQUIREMENTS

Required to hold annual meeting of shareholders to vote on certain items, such as approval of the annual financial statements, payment of dividends, discharging the managing directors (and members of supervisory board, if any) from liability, election of auditors, appointment of members of managing directors and members of the supervisory board (as well as the revocation of any appointment) and changes of articles of association.

#### MANAGEMENT BOARD MEETING REQUIREMENTS

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 federal tax authorities.

#### BUSINESS REGISTRATION FILING REQUIREMENTS

Initial registration as well as annual filings are required.

### **BUSINESS EXPANSION**

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.

### **EXIT STRATEGY**

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

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

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

### **DIRECTOR/OFFICER REQUIREMENTS**

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

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

N/A (does not exist).

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

Please see above.

### **LOCAL OFFICE LEASE REQUIREMENT**

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**

N/A.

### **SUFFICIENCY OF VIRTUAL OFFICE**

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

### **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**

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

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

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**

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**

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 laws).

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

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

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

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

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

One shareholder is sufficient.

### **REMOVAL OF MEMBERS OF THE MANAGEMENT OR THE SUPERVISORY BOARD**

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**

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

### **BOARD MEETING REQUIREMENTS**

Annual shareholders meeting (and, if at all, at least four meetings of the supervisory board (at least each calendar quarter)).

### **QUORUM REQUIREMENTS FOR SHAREHOLDER MEETINGS AND MEETING OF THE MANAGEMENT BOARD AND THE SUPERVISORY BOARD**

For a shareholder meeting, the presence of at least 10 percent of the shareholders (meaning shareholders holding 10 percent of the shares) is required. Resolutions are passed with the simple majority of the votes cast, except for important decisions, e.g. change of articles (75 percent majority of the votes cast).

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

Yes, an Austrian bank account is required for incorporation (but afterwards 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?**

Yes.



### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

The statutory minimum par value per share is EUR 70.00.

### **INCREASING OF CAPITALIZATION IF NEEDED**

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

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

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

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

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

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

The name must not be misleading or being able of creating a misunderstanding e.g., Coca-Colo GmbH would not work. The name must include a reference to the legal entity of a limited liability company in German, therefore either “Gesellschaft mit beschränkter Haftung” or any abbreviated form like “GmbH”.

### **SUMMARY OF “KNOW YOUR CLIENT” REQUIREMENTS**

The company is not subject to any KYC rules.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

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**

It depends on the kind of business to be run.

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

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

## **REGISTRATION OF A BRANCH OFFICE OF A NON-AUSTRIAN LEGAL ENTITY IN AUSTRIA**

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### **BRIEF DESCRIPTION**

No separate legal entity. Managed by a representative who has to provide evidence of being physically in Austria. Cumbersome to establish, in particular by non-European companies.

### **MINIMUM CAPITAL REQUIREMENT**

No capital requirement for a branch office.



### REGISTRATION REQUIREMENTS

The existence of the foreign (non-Austrian) legal entity has to be evidenced, usually by a certificate of good standing in notarized and apostilled form. In addition, a separate management has been evidenced i.e., person who is physically on the ground in Austria and who manages the business. Usually, such evidence is provided with an official document of registration within Austria, issued by the Austrian registration authority. It also has to be evidenced that the branch office has sufficient assets as required to conduct its business. Last but not least, a lease or rent agreement with respect to the lease or rent of office space must be evidenced.

Additional items required for registration: name of the foreign entity and name under which it intends to operate in Austria; stated capital of such foreign entity; scope of business, as provided for in the charter documents of the foreign entity; names of representatives; business address of the foreign entity.

For that reason, any foreign entity intending to establish a branch office in Austria needs to, in addition to the above, provide the following in notarized form and apostilled with an Apostille according to the Convention of the Hague, and translated into German by a court certified translator:

- (i) Articles of association;
- (ii) Specimen signatures of all representatives of the branch office; and
- (iii) Corporate resolutions under the respective law on the establishment of the Austrian branch

In addition, the following documents need to be provided:

- (i) Certificate of the Austrian tax authorities on the payment of all taxes in the case any assets are transferred to the branch office (usually 1 percent capital contribution tax, calculated on the basis of the assets contributed); and
- (ii) Copy of the lease agreement as evidence that business operations have started



## BELGIUM

### FORM OF ENTITY

#### **Limited liability company (*société anonyme/naamloze vennootschap*)**

- (i) At least two incorporators (individuals or corporations);
- (ii) Unlimited number of shareholders;
- (iii) Generally no personal liability of the shareholders (except in certain very specific circumstances);
- (iv) Typical incorporation documents include: financial plan, notarial incorporation deed and Articles of Association and share register;
- (v) Managed by a Board of directors (of at least two or three directors). The daily management may be entrusted to a managing director or a general manager; and
- (vi) Annual accounts will have to be filed with the National Bank of Belgium. In addition, the Board of Directors will have to establish a management report.

#### **Closed limited liability company (*société privée à responsabilité limitée/besloten vennootschap met beperkte aansprakelijkheid*)**

- (i) In principle, two incorporators (individuals or corporations). If there is only one incorporator being a corporation, this corporation will be considered as being joint and several guarantor of any obligation of the new entity. If there is only one incorporator being an individual, this person will be considered as the joint and several guarantor of all obligations of any other closed limited liability company incorporated by him in which he becomes the sole shareholder;
- (ii) Unlimited number of shareholders;
- (iii) Generally no personal liability of the shareholders (except in certain very specific circumstances);
- (iv) Typical incorporation documents include: financial plan, notarial incorporation deed and Articles of Association and share register;
- (v) Managed (including the daily management) by one or more directors;
- (vi) Annual accounts will have to be filed with the National Bank of Belgium. In addition, the Board of Directors will have to establish a management report; and
- (vii) For US tax purposes, a closed limited liability company qualifies as a check the box company.



### **Belgian branch office of a foreign company**

- (i) The competent corporate body of a foreign company can decide to open a Belgian branch office;
- (ii) No separate legal entity, so therefore the foreign company shall be liable for all the obligations entered into;
- (iii) Physical existence in Belgium of a “branch office” in which a foreign company carries out its activities;
- (iv) Presence in Belgium of a legal representative who may bind the foreign company;
- (v) Regular exercise activities in Belgium;
- (vi) Various documents related to the foreign company will in principle have to be translated in one of the official Belgian languages and filed with the Clerk’s Office of the competent Commercial Court, such as the deed of incorporation, the latest version of the Articles of Association;
- (vii) A legal representative will have to represent the foreign company in Belgium; and
- (viii) The (consolidated) annual accounts of the foreign company will on an annual basis have to be filed with the National Bank of Belgium.

Note: there are other legal forms in Belgium but that the limited liability company and the closed limited liability company are the most common used.

### **LIMITED LIABILITY COMPANY (*société anonyme/naamloze vennootschap*)**

#### **BRIEF DESCRIPTION**

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 limited liability company. The directors are appointed by the general shareholders’ meeting of the limited liability company. The Board of Directors may also appoint a managing director or a general manager (who is not a director) entrusted with the daily management of the limited liability company.

#### **MINIMUM CAPITAL REQUIREMENT**

€61,500 fully paid up. Above the minimum each share must be paid in up to 25 percent.

#### **LEGAL LIABILITY**

Shareholders of a limited liability company are generally not liable for the debts of the limited liability company aside from their financial contribution to the limited liability company, unless in very specific circumstances such as incorporators’ liability.

#### **TAX PRESENCE**

A limited liability company will be subject to corporate tax on its profits. In addition, a limited liability company will in principle also be subject to VAT and certain other possible taxes (such as registration taxes on the purchase of real estate or communal taxes).





### **INCORPORATION PROCESS**

The incorporation process, can be summarized as follows: Prior to the incorporation meeting, the capital of the limited liability company will have to be deposited on a Belgian blocked bank account. The incorporation meeting of the incorporators (future shareholders) will have to be held in the presence of a Belgian notary public (the incorporators can be represented on the basis of proxies) at the occasion of which it will be decided to incorporate the limited liability company and adopt the Articles of Association. Following the incorporation meeting, the bank will release the capital on the basis of a certificate issued by the notary public. An excerpt of the incorporation deed and the Articles of Association will have to be filed with the Clerk's Office of the competent Commercial Court and an excerpt of the notarial deed (including the Articles of Association) will be published in the Annexes to the Belgian State Gazette. Finally, the limited liability company will have to be registered with the Crossroads Bank of Enterprises and the VAT-administration.

### **BUSINESS RECOGNITION**

Well regarded and widely used.

### **SHAREHOLDER MEETING REQUIREMENTS**

Required to hold an annual shareholders' meeting to approve the annual accounts.

### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

At least one meeting per year of the Board of Directors is required in order to establish and approve the annual accounts and the management report.

### **ANNUAL COMPANY TAX RETURNS**

Must annually file tax returns.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

A limited liability company will have to be registered with the Crossroads Bank of Enterprises. With respect to certain activities, a license/permit may be required. In addition, an excerpt of the incorporation deed and the Articles of Association will have to be filed with the Clerk's Office of the competent Commercial Court and an excerpt of the notarial deed (including the Articles of Association) will be published in the Annexes to the Belgian State Gazette. Finally, the limited liability company will have to be registered with the Crossroads Bank of Enterprises and the VAT-administration.

### **BUSINESS EXPANSION**

No need to change as business expands, to the extent that the activities remain within the corporate object of the limited liability company.

### **EXIT STRATEGY**

Specific exit strategies for the shareholders' may be included in the Articles of Association or a possible shareholders' agreement between the shareholders. In addition, a limited liability company can also be dissolved and liquidated by following the dissolution and liquidation procedure.

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

An annual shareholders' meeting and meeting of the Board of Directors will have to be held.



### **DIRECTOR/OFFICER REQUIREMENTS**

At least three directors (or in case there are only two incorporators/shareholders, two directors). There are no officers in Belgian companies.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

None.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

The directors do not have to reside in Belgium.

### **LOCAL OFFICE LEASE REQUIREMENT**

A limited liability company has to have a registered office located in Belgium. Third-party service providers can provide a limited liability company with a local registered office.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

From a tax point of view, the majority of the meetings of the Board of Directors and the general shareholders' meetings should be held in Belgium (Belgian adheres the theory of the seat of actual management).

### **SUFFICIENCY OF VIRTUAL OFFICE**

See above with respect to local office lease requirement.

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

As mentioned above, a third-party service provider can provide a local registered office. DLA Piper UK LLP is not allowed by the Bar to provide such services.

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

Certain third-party service providers provide such services in Belgium. Usually they will form a liability perspective only grant this service with respect to holding companies and not operational companies. DLA Piper UK LLP is not allowed by the Bar to provide such services.

### **NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS AND DIRECTORS**

None.

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

In Belgium, it is possible that a shareholder grants a proxy to another shareholder or third party to represent him at the occasion of a general shareholders' meeting. To the extent that the Articles of Association provide so, a director can also grant a proxy to another director (but not to a non-director) to represent him at the occasion of a meeting of the Board of Directors.

### **SUMMARY OF DIRECTOR'S, AND SHAREHOLDER'S AUTHORITY AND LIMITATIONS THEREOF**

The Company Code and the Articles of Association (may) reserve certain powers to the general shareholders' meeting, such as the approving of the annual accounts, the appointment and resignation of the directors and the amending of the Articles of Association. The other powers will be deemed to be attributed to the Board of Directors.



### **PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS AND SHAREHOLDERS**

The identity of directors will be publicly disclosed. The identity of the shareholders will in principle not be publicly disclosed (but may be public via the annual accounts or certain published notarial deeds related to the limited liability company).

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

The Board of Directors is composed of at least three directors. If the company has, however, only two shareholders, the Board of Directors can be composed of only two directors. There is no maximum number of directors.

There should be at least two shareholders. There is no maximum number of shareholders. When all shares in a limited liability company become gathered in the hands of a sole shareholder, this shareholder will after one year become jointly liable for all obligations of the limited liability company. In other words, the sole shareholder in that event loses the benefit of the limited liability. This potential issue can be avoided (or stopped) by transferring one share in the limited liability company to another person or legal entity of the group.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

See above minimum and maximum number of directors and shareholders.

### **REMOVAL OF DIRECTORS OR OFFICERS**

The directors can be removed by the shareholders at any time.

### **REQUIRED AND OPTIONAL OFFICERS**

There are no officers in Belgian companies.

### **BOARD MEETING REQUIREMENTS**

At least one meeting of the Board of Directors is required in order to establish and approve the annual accounts and the management report. A meeting of the Board of Directors cannot be held by means of written resolutions unless in case of exceptional circumstances, and to the extent the Articles of Association provide such possibility, when the urgent necessity and the company's interest so require. This procedure cannot be applied for the establishment of the annual accounts or any other instance excluded in the Articles of Association.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

For a general shareholders' meeting, usually a majority of shareholders must be present or represented during the shareholders' meeting (which may be held by unanimous written resolutions). The general shareholders' meeting will usually decide with a simple majority vote (unless e.g. with respect to the modification of the Articles of Association).

For a meeting of the Board of Directors, usually a majority of directors must be present or represented during the shareholders' meeting. The meeting of the Board of Directors will usually decide with a simple majority vote, unless otherwise specified in the Articles of Association.



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

Yes, see also above.

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

The required appointment of a statutory auditor will depend on certain criteria. However, if the company is part of a larger group, it will most commonly have to appoint a statutory auditor since the criteria are considered on a consolidated basis.

If a statutory auditor has to be appointed, it has to be a Belgian auditor registered with the Institute for auditors. The books do not need to be kept locally.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

Generally, no par value is attributed to the shares of a limited liability company (although it is possible).

### **INCREASING OF CAPITALIZATION IF NEEDED**

The capital of a limited liability company can be increased through a contribution in kind or cash by a decision of an extraordinary shareholders' meeting (held in the presence of a Belgian notary public).

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

Funds can be repatriated from Belgium to the US via dividends, redemption (not commonly used), capital decrease or acquisition of own shares.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

In a limited liability company there are generally no restrictions on the transferability of the shares, unless otherwise provided in the Articles of Association of the limited liability company or a possible shareholders' agreement.

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

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.

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

From a legal point of view not required. It may however be possible that the notary public and the Belgian bank have certain "know your client" requirements (e.g. for the opening of the blocked bank account).

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

Any modification to the Articles of Association requires a decision of the extraordinary shareholders' meeting (held in the presence of a notary public).





### **LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

Depending on the activities of the limited liability company, certain permits or licenses may be required.

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

N/A.

### **CLOSED LIMITED LIABILITY COMPANY (*société privée à responsabilité limitée/besloten vennootschap met beperkte aansprakelijkheid*)**

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#### **BRIEF DESCRIPTION**

Separate and distinct legal entity. Managed by one or more directors. The directors are appointed by the general shareholders' meeting of the limited liability company. The concept of a managing director entrusted with the daily management does not exist with respect to a closed limited liability company.

#### **MINIMUM CAPITAL REQUIREMENT**

€18,550 of which at least €6,200 must be paid up. Above this minimum each share must be paid in up to 20 percent.

#### **LEGAL LIABILITY**

Shareholders of a closed limited liability company are generally not liable for the debts of the closed limited liability company aside from their financial contribution to the closed limited liability company, unless in very specific circumstances such as incorporators liability.

#### **TAX PRESENCE**

A closed limited liability company will be subject to corporate tax on its profits. In addition, a closed limited liability company will in principle also be subject to VAT and certain other possible taxes (such as registration taxes on the purchase of real estate or communal taxes).

#### **INCORPORATION PROCESS**

The incorporation process can be summarized as follows: Prior to the incorporation meeting, the capital of the closed limited liability company will have to be deposited on a Belgian blocked bank account. The incorporation meeting of the incorporators (future shareholders) will have to be held in the presence of a Belgian notary public (the incorporators can be represented on the basis of proxies) at the occasion of which it will be decided to incorporate the closed limited liability company and adopt the Articles of Association. Following the incorporation meeting, the bank will release the capital on the basis of a certificate issued by the notary public. An excerpt of the incorporation deed and the Articles of Association will have to be filed with the Clerk's Office of the competent Commercial Court and an excerpt of the notarial deed (including the Articles of Association) will be published in the Annexes to the Belgian State Gazette. Finally, the closed limited liability company will have to be registered with the Crossroads Bank of Enterprises and the VAT-administration.





### **BUSINESS RECOGNITION**

Well regarded and widely used (however, this legal form is more common for family owned or small businesses, but is also commonly used by US groups for tax reasons (check the box)).

### **SHAREHOLDER MEETING REQUIREMENTS**

Required to hold an annual shareholders' meeting to approve the annual accounts.

### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

At least one meeting per year of the Board of Directors (or a decision of the sole director) is required in order to establish and approve the annual accounts and the management report.

### **ANNUAL COMPANY TAX RETURNS**

Must annually file tax returns.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

A closed limited liability company will have to be registered with the Crossroads Bank of Enterprises. With respect to certain activities, a license/permit may be required. In addition, an excerpt of the incorporation deed and the Articles of Association will have to be filed with the Clerk's Office of the competent Commercial Court and an excerpt of the notarial deed (including the Articles of Association) will be published in the Annexes to the Belgian State Gazette. Finally, the limited liability company will have to be registered with the Crossroads Bank of Enterprises and the VAT-administration.

### **BUSINESS EXPANSION**

No need to change as business expands, to the extent that the activities remain within the corporate object of the closed limited liability company.

### **EXIT STRATEGY**

Specific exit strategies for the shareholders' may be included in the Articles of Association and a possible shareholders' agreement between the shareholders. In addition, a closed limited liability company can also be dissolved and liquidated by following the dissolution and liquidation procedure.

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

An annual shareholders' meeting and meeting of the Board of Directors (or decisions of the sole director) will have to be held (adopted).

### **DIRECTOR/OFFICER REQUIREMENTS**

At least one director. There are no officers in Belgian companies.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

None.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

The directors do not have to reside in Belgium.

### **LOCAL OFFICE LEASE REQUIREMENT**

A closed limited liability company has to have a registered office located in Belgium. Third-party service providers can provide a closed limited liability company with a local registered office.



### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

From a tax point of view, the majority of the meetings of the Board of Directors (if there are more directors appointed) and the general shareholders' meetings should be held in Belgium. If there is only one director appointed, he should adopt the majority of his decisions in Belgium (Belgian adheres the theory of the seat of actual management).

### **SUFFICIENCY OF VIRTUAL OFFICE**

See above with respect to local office lease requirement.

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

As mentioned above, a third-party service provider can provide a local registered office. DLA Piper UK LLP is not allowed by the Bar to provide such services.

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

Certain third-party service providers provide such services in Belgium. Usually they will from a liability perspective only grant this service with respect to holding companies and not operational companies. DLA Piper UK LLP is not allowed by the Bar to provide such services.

### **NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS AND DIRECTORS**

None.

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

In Belgium, it is possible that a shareholder grants a proxy to another shareholder or third party to represent him at the occasion of a general shareholders' meeting. To the extent that the Articles of Association provide so, a director can also grant a proxy to another director (but not to a non-director) to represent him at the occasion of a meeting of the Board of Directors.

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

The Company Code and the Articles of Association (may) reserve certain powers to the general shareholders' meeting, such as the approving of the annual accounts, the appointment and resignation of the directors and the amending of the Articles of Association. The other powers will be deemed to be attributed to the directors.

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

The identity of directors will be publicly disclosed. The identity of the shareholders will in principle not be publicly disclosed (but may be public via the annual accounts or certain published notarial deeds related to the limited liability company).

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

There should be at least one director. There is no maximum number of directors.

One or more shareholders (similar rules as with respect to a limited liability company apply). There is no maximum number of shareholders.



### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

See above minimum and maximum number of directors and shareholders.

### **REMOVAL OF DIRECTORS OR OFFICERS**

The directors can be removed by the shareholders at any time in accordance with the conditions provided in the Articles of Association.

### **REQUIRED AND OPTIONAL OFFICERS**

There are no officers in Belgian companies.

### **BOARD MEETING REQUIREMENTS**

At least one meeting of the Board of Directors (if more than one director is appointed) is required in order to establish and approve the annual accounts and the management report. A meeting of the Board of Directors cannot be held by means of written resolutions.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

For a general shareholders' meeting, usually a majority of shareholders must be present or represented during the shareholders' meeting (which may be held by unanimous written resolutions). The general shareholders' meeting will usually decide with a simple majority vote (unless e.g. with respect to the modification of the Articles of Association).

For a meeting of the Board of Directors (if more than one director is appointed), usually a majority of directors must be present or represented during the shareholders' meeting. The meeting of the Board of Directors will usually decide with a simple majority vote, unless otherwise specified in the Articles of Association.

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

Yes, see also above.

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

The required appointment of a statutory auditor will depend on certain criteria. However, if the company is part of a larger group, it will most commonly have to appoint a statutory auditor since the criteria are considered on a consolidated basis.

If a statutory auditor has to be appointed, it has to be a Belgian auditor registered with the Institute for auditors. The books do not need to be kept locally.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

Generally, no par value is attributed to the shares of a closed limited liability company (although it is possible).

### **INCREASING OF CAPITALIZATION IF NEEDED**

The capital of a closed limited liability company can be increased through a contribution in kind or cash by a decision of an extraordinary shareholders' meeting (held in the presence of a Belgian notary public).



### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

Funds can be repatriated from Belgium to the US via dividends, capital decrease or acquisition of own shares.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

In a closed limited liability company there are certain restrictions on the transferability of the shares. 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  $\frac{3}{4}$  of the capital, not including the shares the transfer of which is being proposed.

In addition, the Articles of Association of the closed limited liability company or the possible shareholders' agreement may provide additional transfer restrictions.

The closed limited liability company is less flexible than the limited liability company as regards the issuance of financial instruments (such as warrants).

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

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.

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

From a legal point not required. It may however be possible that the notary public and the Belgian bank have certain "know your client" requirements.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

Any modification to the Articles of Association, require a decision of the extraordinary shareholders' meeting (held in the presence of a notary public).

### **LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

Depending of the activities of the closed limited liability company, certain permits or licenses may be required.

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

N/A.

## **BELGIAN BRANCH OFFICE OF A FOREIGN COMPANY**

### **BRIEF DESCRIPTION**

No separate and distinct legal entity from the foreign company. The legal representative will have to represent the foreign company as regards the activities of its Belgian branch office.

### **MINIMUM CAPITAL REQUIREMENT**

N/A.





### LEGAL LIABILITY

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

A Belgian branch office of a foreign company will be subject to tax on income generated by the Belgian branch office, thus will be subject to the so called non-residents tax. The tax rate is identical as the tax rate on resident companies.

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).

The Belgian branch office will in principle also be subject to VAT.

### INCORPORATION/ REGISTRATION PROCESS

The competent corporate body of the foreign company has to decide 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, the appointment of a legal representative, etc. 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 the so-called 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 will have to 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, will then have to be filed with the Clerk's office of the competent Commercial 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, have to be filed with the National Bank of Belgium. Finally, the Belgian branch office will have to be registered with the Crossroads Bank of Enterprises and the VAT-administration.

### BUSINESS RECOGNITION

Regularly used.

### SHAREHOLDER MEETING REQUIREMENTS

N/A, as this will be arranged at the level of the foreign company.

### BOARD OF DIRECTOR MEETING REQUIREMENTS

N/A.

### ANNUAL COMPANY TAX RETURNS

Must annually file tax returns.





### **BUSINESS REGISTRATION FILING REQUIREMENTS**

A Belgian branch office of a foreign company will have to be registered with the Crossroads Bank of Enterprises. With respect to certain activities, a license/permit may be required. In addition, the original resolution of the competent corporate body of the foreign company and, as the case may be, its sworn translation, together with certain other documents related to the foreign company, will have to be filed with the Clerk's office of the competent Commercial 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, have to be filed with the National Bank of Belgium. Finally, the Belgian branch office will have to be registered with the Crossroads Bank of Enterprises and the VAT-administration.

### **BUSINESS EXPANSION**

No need to change as business expands, to the extent that the activities remain within the scope of activities mentioned in the resolution of the competent corporate body of the foreign company deciding on the opening of the Belgian branch office.

### **EXIT STRATEGY**

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

### **ANNUAL/RECURRENT CORPORATE MAINTENANCE REQUIREMENTS**

The following documents and information have to be filed with the Clerk's Office of the competent Commercial Court within thirty (30) days and, as the case may be, published in the Annexes to the Belgian State Gazette:

- (i) Changes to the foreign company's Articles of Association;
- (ii) Changes to the foreign company's name or legal form;
- (iii) Changes to the foreign company's registration with the Commercial Register;
- (iv) Changes to the address, name and activities of the Belgian branch office;
- (v) Appointments and resignations of persons authorized to represent the foreign company;
- (vi) Appointments and resignations of the legal representative(s) of the Belgian branch office;
- (vii) The dissolution of the foreign company, the appointment of liquidators and the scope of their powers and the closing of the liquidation;
- (viii) The bankruptcy, judicial composition or similar procedure affecting the foreign company; and
- (ix) The closing of the Belgian branch office.

Annually, within one month as of the annual shareholders' meeting and at the latest within seven 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 have to be filed with the National Bank of Belgium.



### **DIRECTOR/OFFICER REQUIREMENTS**

No directors or officers have to be appointed in the Belgian branch office. However, one or more legal representatives will have to be appointed.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

None.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

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

### **LOCAL OFFICE LEASE REQUIREMENT**

A Belgian branch office has to 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**

None.

### **SUFFICIENCY OF VIRTUAL OFFICE**

See above with respect to local office lease requirement.

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

As mentioned above, a third-party service provider can provide a local registered office. DLA Piper UK LLP is not allowed by the Bar to provide such services.

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

There are no directors or a corporate secretary appointed in a Belgian branch office. Since the legal representative of the Belgian branch office will have to 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. DLA Piper UK LLP is not allowed by the Bar to provide such services.

### **NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS AND DIRECTORS**

None.

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

N/A.

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

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, his authority may be limited.



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

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**

A Belgian branch office has no directors. At least one legal representative should be appointed.

There are no shareholders of a Belgian branch office.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

See above 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**

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**

There are no officers in Belgian branch offices.

### **BOARD MEETING REQUIREMENTS**

N/A, since there are no directors in a Belgian branch office.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

N/A, since 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?**

Yes, once the decision to open a Belgian branch office is published in the Annexes to the Belgian State Gazette, a Belgian bank account in name of the Belgian branch office will have to be opened with a Belgian bank.

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

The Belgian branch office will have to keep its own separate books in view of its tax filings. No auditor will have to be appointed.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

N/A, since a Belgian branch office has no issued shares.

### **INCREASING OF CAPITALIZATION IF NEEDED**

N/A, since a Belgian branch office has no capital.



### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

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**

N/A, since a Belgian branch office has no issued shares.

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

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**

From a legal point not required. It may however be possible that the Belgian bank has certain "know your client" requirements in view of opening the Belgian bank account.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

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

### **LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

Depending of the activities of the Belgian branch office, certain permits or licenses may be required.

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

N/A.



## BRAZIL



### FORM OF ENTITY

Although the Brazilian Law sets forth other types of companies, the Brazilian companies usually adopt the form of a limited liability company, called as “*Sociedade Empresária Limitada*” or of a corporation, called as “*Sociedade Anônima*.”

#### **Limited Liability Company (*Sociedade Limitada*)**

- (i) A *Sociedade Limitada* shall have, at least, two quotaholders.
- (ii) Capital divided into quotas. The ownership of quotas and any burden over such quotas are reflected in the articles of organization.
- (iii) In principle, the liability of the quotaholders is limited to the total subscribed capital which has not been paid in by them.
- (iv) 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.
- (v) An annual meeting shall be held by the quotaholders in the first four months after the end of the previous fiscal year in order to approve the management’s accounts, and the company’s balance sheet and economical results.
- (vi) No public subscription or participation in the capital is allowed and a *Sociedade Limitada* cannot publically trade its quotas or list on a stock exchange.
- (vii) Taxed on its profits and gross revenues at a corporate level and quotaholders are exempt from income tax on dividend distribution.

#### **Corporation (*Sociedade Anônima*)**

- (i) Minimum of two shareholders.
- (ii) Capital divided into shares. Different classes of shares allowed.
- (iii) Generally, the ownership of shares and any burden over such shares are reflected in the corporate books.
- (iv) The liability of the shareholders is limited to the total subscribed capital which has not been paid in by them.
- (v) Typical charter documents include: bylaws; minutes of shareholders’ general meetings; resolutions of the board of officers and board of directors; corporate books.
- (vi) Board of directors, if existing, has overall management responsibility; officers have day-to-day responsibility.
- (vii) Shareholders typically purchase stock in the corporation, either common or preferred.



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

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

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

### LIMITED LIABILITY COMPANY (*SOCIEDADE LIMITADA*)

#### BRIEF DESCRIPTION

*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, since very few formalities are required for its organization and management.

#### MINIMUM CAPITAL REQUIREMENT

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 R\$150,000 (approximately US\$75,000) plus the commitment to create ten job positions or a paid-in foreign capital amounting to, at least, R\$600,000 (approximately US\$300,000) is required for visa purposes).

#### LEGAL LIABILITY

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 him/her. 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 can be disregarded ("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.

#### TAX PRESENCE

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

#### INCORPORATION PROCESS

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



### **BUSINESS RECOGNITION**

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

### **SHAREHOLDER MEETING REQUIREMENTS**

The quotaholders of a *Sociedade Limitada* must hold an annual Quotaholders' Meeting in the first four 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*.

### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

The rules for the managers meeting, if applicable, shall be established in the articles of organization. A *Sociedade Limitada* cannot have a Board of Directors.

### **ANNUAL COMPANY TAX RETURNS**

Legal entities must file several tax returns in federal, state and local levels depending of their activities. Some of these returns must be presented on a monthly basis.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

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

### **BUSINESS EXPANSION**

No need to change as business expands.

### **EXIT STRATEGY**

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.

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

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

### **DIRECTOR/OFFICER REQUIREMENTS**

A *Sociedade Limitada* shall have at least one manager. It cannot have a Board of Directors.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

N/A.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

N/A.



### **LOCAL OFFICE LEASE REQUIREMENT**

The address of the company's headquarters or branch must be adequate to the activities it will perform in such site.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

A foreign quotaholder (legal entity or an individual) 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.

### **SUFFICIENCY OF VIRTUAL OFFICE**

Not possible.

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

Allowed for incorporation. The address of the company's headquarters or branch must be adequate to the activities it will perform in such site.

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

Allowed for incorporation.

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

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 its behalf. Also, the quotaholders must be registered with the Corporate Taxpayer Roll (CNPJ/MF).

As regards the managers of a *Sociedade Limitada*, they must be resident in Brazil.

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

Foreign quotaholders (legal entities or individuals) must constitute an attorney-in-fact resident in Brazil with powers to receive service of process on its behalf.

The managers of a *Sociedade Limitada* must be resident in Brazil. Legal entities cannot be appointed as manager.

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

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.



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

Identity of quotaholders and managers is publicly disclosed.

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

There must be a minimum of two quotaholders, and no maximum number. For managers, the minimum number is one.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

There must be a minimum of two quotaholders.

### **REMOVAL OF DIRECTORS OR OFFICERS**

Removal of managers depend on the approval of quotaholders (simple majority, in case of a non-quotaholder manager; and quotaholders representing  $\frac{2}{3}$  of the company's capital in case of a managing quotaholder, unless if otherwise provided in the articles of organization).

### **REQUIRED AND OPTIONAL OFFICERS**

The quotaholders may set forth in the articles of organization different functions to be attributed to each manager.

### **BOARD MEETING REQUIREMENTS**

The rules for managers' meetings, if applicable, shall be set forth in the articles of organization.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

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.

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

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.

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

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 open corporate books). In case they are opened, they shall be kept at the company's headquarters.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

The quotas of a *Sociedade Limitada* must have a determined par value established in the articles of organization.





### **INCREASING OF CAPITALIZATION IF NEEDED**

The company's capital can only be increased once it is fully paid in, and upon the amendment to the articles of organization. According to the Brazilian Civil Code, each quotaholder has the preemptive 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.

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

Dividends, capital reduction, redemption of shares, purchase and sale of quotas.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

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  $\frac{1}{4}$  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).

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

A Brazilian company may have any name which is not 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.

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

During the procedure of opening the company's bank account, the documents required may vary from bank to bank.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

Any amendment to the articles of organization depend on the approval of quotaholders representing, at least,  $\frac{3}{4}$  of the company's capital.

### **LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

After the registration of the articles of organization with the commercial registry, 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.

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

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



### CORPORATION (SOCIEDADE ANÔNIMA)

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#### BRIEF DESCRIPTION

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.

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.

#### MINIMUM CAPITAL REQUIREMENT

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 R\$150,000 (app. US\$75,000) plus the commitment to create ten job positions or a paid-in foreign capital amounting to, at least, R\$600,000 (app. US\$300,000) 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

#### LEGAL LIABILITY

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 ("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

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

#### INCORPORATION PROCESS

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.

#### BUSINESS RECOGNITION

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



### **SHAREHOLDER MEETING REQUIREMENTS**

Required to hold annual meeting of shareholders 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.

### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

Requirements, if any, shall be established in the bylaws.

### **ANNUAL COMPANY TAX RETURNS**

Legal entities must file several tax returns in federal, state and local levels depending of their activities. Some of these returns must be presented on a monthly basis.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

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

### **BUSINESS EXPANSION**

No need to change as business expands.

### **EXIT STRATEGY**

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**

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

### **DIRECTOR/OFFICER REQUIREMENTS**

At least two officers are required. Officers shall be individuals resident in Brazil.

The board of directors shall have at least three members. In general, Directors are only mandatory in case of listed corporations and corporations with authorized capital.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

N/A.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

N/A.

### **LOCAL OFFICE LEASE REQUIREMENT**

The address of the corporation's headquarters or branch must be adequate to the activities it will perform in such site.



### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

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

The officers shall be resident in Brazil.

The corporation shall have an accountant responsible for its accounting.

### **SUFFICIENCY OF VIRTUAL OFFICE**

Not possible.

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

Allowed for incorporation. The address of the corporation's headquarters shall be adequate to the activities it will perform.

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

Allowed for incorporation.

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

Shareholders and Directors not resident in Brazil shall constitute an attorney-in-fact resident in Brazil with powers to receive service of process on their behalf. Officers shall be resident in Brazil.

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

Foreign shareholders and directors must constitute an attorney-in-fact resident in Brazil with powers to receive service of process on their behalf.

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

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**

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**

There must be a minimum of two shareholders, and no maximum number. For directors, the minimum number is three, while there is no maximum number.



### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

As least two shareholders are required, except in case of a specific type of corporation expressly set forth in the Brazilian Law named as “*subsidiária integral*,” in which case, the corporation may have one shareholder which shall be a Brazilian company.

### **REMOVAL OF DIRECTORS OR OFFICERS**

Removal of directors is allowed by a vote of shareholders. Officers are removed by means of a resolution of the board of directors or the shareholders (the latter in case the corporation does not have a board of directors).

### **REQUIRED AND OPTIONAL OFFICERS**

At least two officers, with no specific designation, are required. The functions to be attributed to each officer may be established in the bylaws.

### **BOARD MEETING REQUIREMENTS**

To be established in the bylaws, if applicable.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

For a shareholder meeting, shareholders representing  $\frac{1}{4}$  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?**

Not necessary in order to incorporate. The corporation's bank account shall be opened in Brazil after its incorporation.

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

An audit is not generally required for private, non-listed companies. Corporate books shall be kept at the corporation's headquarters.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

Par value is not required.

### **INCREASING OF CAPITALIZATION IF NEEDED**

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,  $\frac{3}{4}$  of the company's capital is fully paid in.



### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

Dividends, capital reduction, redemption of shares, purchase and sale of shares.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

As a general rule, shareholders may freely transfer its 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**

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**

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**

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**

After the registration of the incorporation document with the commercial registry, the enrollment with the federal tax authorities, and the Central Bank of Brazil (in case of non-resident shareholders), 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.

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

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





## CANADA



### FORM OF ENTITY

#### **Corporate Subsidiary**

Corporation Form

- (i) Incorporate under either federal or provincial law.
- (ii) Most foreign businesses choose this form rather than branch office.
- (iii) Certain industries are subject to specific legislation and must incorporate under these laws, e.g. banking or insurance companies.
- (iv) For corporations under federal law, 25 percent of directors must be residents of Canada.
- (v) Provinces have different residency requirements for directors (some have no residency requirements).
- (vi) Cannot consolidate income and loss with operations in other corporate entities for Canadian tax purposes.

Flow-through Form

- (i) Unlimited liability companies (ULCs) may be created in the provinces of Nova Scotia, British Columbia and Alberta.
- (ii) 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 are treated either as partnerships or “check the box” flow-through entities, possibly offering cross-border opportunities.

#### **Branch (Permanent Establishment)**

- (i) Parent corporation must register and obtain a license from each province where it plans to conduct business.
- (ii) Must have a Canadian place of business where corporate records are kept.
- (iii) Canadian branch operations of foreign corporations are subject to Canadian federal and provincial tax on income and gains sourced in Canada (primarily income from a business carried on in Canada). The branch will be 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.
- (iv) A 25 percent branch tax levied on after-tax Canadian earnings carried on in Canada less amounts that are reinvested 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.

- (v) The parent company remains liable for debts and obligations of the branch.
- (vi) 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: the mechanics and operation of corporations are governed by the federal or provincial law of incorporation

### **CORPORATE SUBSIDIARY (CORPORATION FORM RATHER THAN FLOW-THROUGH FORM)**

#### **BRIEF DESCRIPTION**

Separate and distinct legal entity. May incorporate federally (under the Canada Business Corporations Act) or provincially (for example, under the Business Corporations Act (Ontario)). 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.

#### **MINIMUM CAPITAL REQUIREMENT**

No minimum capital requirement (but there are thin-capitalization rules that could deny deductions for interest payments to specified non-residents).

#### **LEGAL LIABILITY**

Shareholders of a corporation are generally not liable for the debts of the corporation.

#### **TAX PRESENCE**

Corporations are subject to federal and provincial corporate tax on worldwide income as a Canadian resident. 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 country of residence of the shareholder. This “dual layer of tax,” i.e. 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**

File Articles of Incorporation with Industry Canada or the appropriate provincial government department.

#### **BUSINESS RECOGNITION**

Well regarded and widely used.

#### **SHAREHOLDER MEETING REQUIREMENTS**

Required to hold annual meeting of shareholders to vote on certain items, such as election of directors. A resolution signed by all shareholders is valid in lieu of a meeting.

### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

Annual meeting of the directors is required. A resolution signed by all directors is valid in lieu of a meeting.

### **ANNUAL COMPANY TAX RETURNS**

Must annually file tax returns with federal and provincial tax authorities.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

Most provinces require initial registration, as well as annual filings to the extent the corporation carries on business in the province.

### **BUSINESS EXPANSION**

No need to change as business expands.

### **EXIT STRATEGY**

File dissolution documents with the appropriate government department.

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Annual director and shareholder meeting, or resolution signed by all directors or shareholders, as the case may be.

### **DIRECTOR/OFFICER REQUIREMENTS**

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.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

Not generally required.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

None beyond the required directors.

### **LOCAL OFFICE LEASE REQUIREMENT**

None required for incorporation.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

Registered agent for service must be appointed in provinces where carrying on business.

### **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**

Allowed for incorporation, though not common.



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

Only for directors under some corporate statutes.

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

None.

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

Directors are elected by the shareholders 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**

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**

There must be a minimum of one shareholder. There is no maximum number. For directors, generally the minimum number is one for non-public companies, while there is no maximum number.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

One shareholder is sufficient.

### **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 and Secretary is appointed; any other officer is allowed, but not required.

### **BOARD MEETING REQUIREMENTS**

Typically at least one 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 by-law 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?**

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?**

An audit is not generally required for private, non-listed companies provided shareholder approval is obtained.

### **MUST THE COMPANY'S BOOKS BE KEPT LOCALLY?**

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**

For federal and most provincial statutes, shares do not have any nominal or par value.

### **INCREASING OF CAPITALIZATION IF NEEDED**

An increase in authorized capital may be effectuated by amending the articles of incorporation, which requires authorization from generally two-thirds of the shareholders.

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

Funds can be repatriated abroad from Canada via dividends, return of capital or redemption.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

Shares can generally be transferred between shareholders via a written agreement, with company consent typically needed for private companies.

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

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**

Typically required by law societies in various Canadian provinces.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

Generally two-thirds of shareholders must formally approve any amendment to the articles of incorporation.

### **LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

Typically the only license required would be an extra-provincial license imposed by each province in which the corporation carries on business. 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.







# CHINA

## FORM OF ENTITY

### **Limited Liability Company (LLC)**

- (i) Up to 50 shareholders. Depending on the foreign shareholding in the LLC, a particular LLC may be classified as a wholly foreign owned enterprise (WFOE), or a Sino-foreign joint venture enterprise (either an equity joint venture enterprise or a contractual joint venture enterprise as applicable).
- (ii) Generally no personal liability of the shareholders.
- (iii) Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends.
- (iv) Typical charter documents include: articles of association, and business license; for foreign-invested LLCs, also include additional documents such as joint venture contract (for Sino-foreign joint venture enterprises), approval letter and certificate of approval.
- (v) Board of directors has overall management responsibility; General Manager has day-to-day responsibility.
- (vi) Shareholders typically subscribe the registered capital of the company.
- (vii) An annual report should be filed with the Administration for Industry and Commerce (AIC).

### **Company Limited by Shares**

- (i) There shall be 2 to 200 promoters, of whom more than half shall have domiciles in China.
- (ii) Generally no personal liability of the shareholders.
- (iii) Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends.
- (iv) Typical charter documents include: promoters' agreement, articles of association, and business license.
- (v) Board of directors has overall management responsibility; General Manager has day-to-day responsibility.
- (vi) Shareholders typically purchase stock in the corporation, but generally only one 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.



### **Partnership Enterprise**

- (i) At least two partners; up to 50 partners for limited partnership unless otherwise provided by law.
- (ii) 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.
- (iii) Not taxed; profits and losses are passed through to the partners.
- (iv) Typical charter documents include: partnership agreement and business license.
- (v) Partnership Agreement sets forth how the business is to be managed; one or several general partners can be designated to manage the business.
- (vi) 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.

Because LLC is the most common investment vehicle used by foreign investors, we only introduce LLC in detail in the following sections and can provide information on other forms of entities upon request.

### **LIMITED LIABILITY COMPANY (LLC)**

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#### **BRIEF DESCRIPTION**

Separate and distinct legal entity. Managed by a board of directors or an executive director (for companies with relatively few shareholders or with relatively small size of operation), which is responsible for making major business decisions and overseeing the general affairs of the company. Director or the executive director is appointed by the shareholders of the company. General Manager, who runs the day-to-day operations of the company, is appointed by the board of directors or the executive director.

#### **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 a company 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 two 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 income tax on those dividends.



### **INCORPORATION PROCESS**

The incorporation of a foreign-invested LLC normally consists of the following steps:

- (i) File application to register the name with the AIC;
- (ii) File application for establishment of the LLC with the commerce authority;
- (iii) File application for registration of the LLC with the AIC, which issues the business license; and
- (iv) File post-registration applications with various authorities such as tax, foreign exchange, customs, etc.

### **BUSINESS RECOGNITION**

Well regarded and widely used.

### **SHAREHOLDER MEETING REQUIREMENTS**

Not required to hold annual meeting of shareholders for foreign-invested LLCs.

### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

Annual meeting of the directors is not required for the WFOEs, though it is quite common. Annual meeting of the directors is required for Sino-foreign joint ventures.

### **ANNUAL COMPANY TAX RETURNS**

Must annually file enterprise income tax returns with tax authorities. Other taxes such as VAT and business tax require filings on monthly basis in general.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

Approval and registration are required for establishment of foreign-invested LLCs and annual reports are required.

### **BUSINESS EXPANSION**

No need to change as business expands.

### **EXIT STRATEGY**

File application for liquidation/early termination with the commerce authority and then deregistration application with various government authorities.

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Annual reports are required to be filed with the registration authority. Annual director meeting.

### **DIRECTOR/OFFICER REQUIREMENTS**

Director (or the executive director) and the General Manager are required.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

Not required.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

Legal representative is required, which in most cases is the Chairman of the Board or the Executive Director.

### **LOCAL OFFICE LEASE REQUIREMENT**

Required for incorporation.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

None.

### **SUFFICIENCY OF VIRTUAL OFFICE**

Varying with different cities. Business center address is allowed for incorporation in some cities.

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

Not allowed for incorporation.

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

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 or directors generally not allowed.

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

Directors are appointed by the shareholders and are responsible for the management of the company, and govern the organization by establishing broad policies and objectives. In contrast, General Manager is appointed by the directors to oversee day-to-day operations of the company.

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

Identity of shareholders is publicly available for search through online credit check system. The identity of directors and General Manager may also be available for search if the company discloses such information.

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

There must be a minimum of one shareholder, and a maximum of 50 shareholders. For directors of a board, the minimum number is 3, and the maximum number is 13. Or, if the company has an executive director instead of the board of directors, only one executive director is allowed.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

One shareholder is sufficient.



### **REMOVAL OF DIRECTORS OR OFFICERS**

The directors (or the executive director) may be removed by the shareholders. The 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 one annual director 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, shareholder meeting is only applicable when there are two or more shareholders. Usually a majority of shareholders must be present during the shareholder meeting, or a majority of shareholders must 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. For directors, typically more than two thirds of the directors must be present during a board meeting; certain matters must be approved by all the directors.

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

Not necessary in order to incorporate, however, the bank account must be opened after the incorporation. The bank account must 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?**

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**

N/A.

### **INCREASING OF CAPITALIZATION IF NEEDED**

Effectuated by amending the articles of association and joint venture contract (if applicable), which requires both approval from the commerce authority and registration with the AIC. Among other application documents, the shareholder resolutions for WFOEs or the board resolutions for Sino-foreign joint venture enterprises are required for application with the commerce authority and the AIC.

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

Funds can be repatriated abroad via dividends or liquidation of the company.





### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

For foreign-invested LLCs, any transfer of shares is subject to the approval by the commerce authority and registration with AIC. The proposed transfer of shares by a shareholder to a third party should be subject to the consent of more than half of the other shareholders and such other shareholders have the first right of refusal.

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

Proposed name must be reserved before the incorporation.

### **SUMMARY OF “KNOW YOUR CLIENT” REQUIREMENTS**

Required by banks and legal service providers.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

For foreign-invested LLCs, amending charter document is subject to the approval by the commerce authority and registration with AIC. Shareholder resolutions or board 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 industry, special license may be required.

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

Not common.



## FRANCE

### FORM OF ENTITY

#### ***Société par actions simplifiée (SAS)***

- (i) Unlimited number of shareholders.
- (ii) Generally no personal liability of the shareholders.
- (iii) Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends.
- (iv) Typical charter documents include: by-laws; organizational shareholders' meeting resolutions; stock certificates; and stock ledger.
- (v) The president is the only required officer by law who gets the broadest powers to act in the name and on behalf the company and to represent the company towards third parties.
- (vi) Shareholders typically purchase stock in the SAS, either common or preferred.
- (vii) SAS does not have access to the capital markets and its shares cannot be listed on a stock exchange.

#### ***Société à responsabilité limitée (SARL)***

- (i) Up to 100 shareholders; only one class of stock allowed.
- (ii) Generally no personal liability of the shareholders.
- (iii) Typical charter documents include: bylaws and organizational shareholders' meeting resolutions.
- (iv) Managing director(s) get(s) the broadest powers to act in the name and on behalf the company and to represent the company towards third parties.
- (v) Shareholders typically purchase stock in the SARL, but only one class of stock is allowed.

#### ***Société anonyme (SA)***

- (i) SA enables public offering of shares.
- (ii) Unlimited number of members allowed.
- (iii) Generally no personal liability of the members.
- (iv) Typical charter documents include: by-laws; organizational shareholders' meeting resolutions; stock certificates; and stock ledger.
- (v) Shareholders typically purchase stock in the SA, either common or preferred.

### **SIMPLIFIED JOINT-STOCK COMPANY (SOCIÉTÉ PAR ACTIONS SIMPLIFIÉE OR SAS)**

#### **BRIEF DESCRIPTION**

SAS is an increasingly used type of company, mainly because of its great flexibility and low capital requirements. 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:

- (i) The law does not impose a particular management structure for the SAS; and
- (ii) There is greater freedom for organizing the management and operating structures of an SAS.

SAS does not have access to the capital markets and its shares cannot be listed on a stock exchange.

#### **MINIMUM CAPITAL REQUIREMENT**

The minimum is €1.

#### **LEGAL LIABILITY**

Shareholders of a SAS are generally not liable for the debts of a corporation aside from their financial contribution to the SAS.

#### **TAX PRESENCE**

Are subject to French taxes, including corporate income tax (33⅓ percent), withholding tax on profits and business tax as well as VAT.

#### **INCORPORATION PROCESS**

Must apply for registration with the Registry of Commerce and Companies (RCS) with filing of the by-laws. Process can take from two weeks to four weeks following the receipt of the required information and depending on the reactivity of the Registry of Commerce and Companies where the document shall be filed.

#### **BUSINESS RECOGNITION**

Highly regarded and widely used.

#### **SHAREHOLDER MEETING REQUIREMENTS**

According to the by-laws. Obligation to hold an annual meeting each year to approve the accounts.

#### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

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 by-laws.

#### **ANNUAL COMPANY TAX RETURNS**

Must annually file tax returns with French tax authority.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

Require initial registration, as well as annual filings. There are additional, on-going filing requirements including, in particular, an obligation to file its by-laws whenever they are amended and its yearly financial statements.

### **BUSINESS EXPANSION**

No need to change as business expands.

### **EXIT STRATEGY**

File dissolution and liquidation documents with the Registry of Commerce and Companies (RCS).

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Annual shareholders' meeting to approve once a year the financial statements within six months from the closing of the last financial year.

### **DIRECTOR/OFFICER REQUIREMENTS**

Shareholders enjoy total freedom to set in the by-laws the composition of the management structure of the SAS. The only obligation is to have the SAS represented by a president.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

N/A.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

None beyond the required president.

### **LOCAL OFFICE LEASE REQUIREMENT**

Must justify the regular occupation of the registered office for incorporation.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

N/A. Management decisions to be taken in France.

### **SUFFICIENCY OF VIRTUAL OFFICE**

SAS shall 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**

N/A.

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

N/A.

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

None.

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

N/A.

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

The president is the highest authority in the management of the SAS, and govern the organization by establishing broad policies, objectives and oversee day-to-day operations of the SAS.

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

Identity of the president is publicly disclosed. Identity of shareholders is not publicly disclosed.

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

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.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

One shareholder is sufficient.

### **REMOVAL OF DIRECTORS OR OFFICERS**

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.

### **REQUIRED AND OPTIONAL OFFICERS**

Only one president is required by law. Possibility to appoint (if it is provided in the by-laws) managing directors or a collegial governing body.

### **BOARD MEETING REQUIREMENTS**

None.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

According to the by-laws.

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

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.

### **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 SAS is under the control of another company, it is mandatory to have statutory auditors. The SAS must also have statutory auditors when it meets two of the three following thresholds:

- (i) A balance sheet amounting at least to €1,000,000;
- (ii) A turnover of at least €2,000,000 (taxes excluded); and
- (iii) An average of 20 employees.

Company's books are kept locally.



### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

There is no statutory minimum par value of stock.

### **INCREASING OF CAPITALIZATION IF NEEDED**

Effectuated by amending the by-laws, which requires a majority of the shareholders according to the provisions of the by-laws.

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

Funds can be repatriated abroad via dividends.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

Shares are freely transferable, unless otherwise provided in the by-laws.

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

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*).

### **SUMMARY OF “KNOW YOUR CLIENT” REQUIREMENTS**

Not required.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

A meeting of shareholders is required. Unanimity of vote is normally required but the quorum and the unanimity for this meeting may be freely determined by the by-laws.

### **LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

The exercise of certain businesses is subject to administrative authorization or prior approval (e.g. chartered accountant, removal firm, goods traffic, etc...).

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

N/A.

## **SOCIÉTÉ À RESPONSABILITÉ LIMITÉE (SARL)**

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### **BRIEF DESCRIPTION**

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 but has the benefit of not requiring a statutory auditor if certain thresholds are not passed. 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 company: share of profits and participation in collective decisions).

SARL does not have access to the capital markets and its shares cannot be listed on a stock exchange.

### **MINIMUM CAPITAL REQUIREMENT**

There is a minimum of €1.

### **LEGAL LIABILITY**

Shareholders of a SARL are generally not liable for the debts of a corporation aside from their financial contribution to the SARL.

### **TAX PRESENCE**

Are subject to French taxes, including corporate income tax (33⅓ percent), withholding tax on profits and business tax as well as VAT.

### **INCORPORATION PROCESS**

Must apply for registration with the Registry of Commerce and Companies (RCS) with filing of the by-laws. Process can take from two weeks to four weeks following the receipt of the required information and depending on the reactivity of the Registry of Commerce and Companies where the document shall be filed.

### **BUSINESS RECOGNITION**

Highly regarded and widely used.

### **SHAREHOLDER MEETING REQUIREMENTS**

Obligation to hold an annual meeting each year to approve the accounts.

### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

There is no board of directors in SARL.

### **ANNUAL COMPANY TAX RETURNS**

Must annually file tax returns with French tax authority.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

Require initial registration, as well as annual filings. There are additional, on-going filing requirements including, in particular, an obligation to file its by-laws whenever they are amended and its yearly financial statements.

### **BUSINESS EXPANSION**

Number of shareholders limited to 100 people.

### **EXIT STRATEGY**

File dissolution and liquidation documents with the Registry of Commerce and Companies (RCS).

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Annual shareholders' meeting to approve once a year the financial statements within six months from the closing of the last financial year.

### **DIRECTOR/OFFICER REQUIREMENTS**

One or more managing director(s) (*Gérant(s)*) appointed by the shareholders is/are required. The number of managing directors is freely determined by the by-laws. The managing directors must not be corporate entities, but do not need to be shareholders.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

N/A.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

None beyond the required managing director(s).



### **LOCAL OFFICE LEASE REQUIREMENT**

Must justify the regular occupation of the registered office for incorporation.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

N/A. Management decisions to be taken in France.

### **SUFFICIENCY OF VIRTUAL OFFICE**

SARL shall 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**

N/A.

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

N/A.

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

None.

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

Nominee shareholders do not apply. The managing director cannot be a corporate entity.

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

Managing director is appointed by the vote of shareholders holding more than half of the shares. He has the broadest powers to act in the SARL's interests, subject to powers that may be expressly attributed to the shareholders.

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

Identity of the managing director and of the shareholders is publicly disclosed.

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

Between 1 and 100 shareholders, either individuals or corporate entities. The number of managing directors is freely determined by the by-laws.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

One shareholder is sufficient.

### **REMOVAL OF DIRECTORS OR OFFICERS**

Removal of the managing director allowed by a vote of the shareholders. Removal shall nevertheless be motivated, shall not intervene within vexatious circumstances and the managing director shall be able to defend his position with the shareholders prior to his removal.

### **REQUIRED AND OPTIONAL OFFICERS**

Typically one or more managing director(s) is/are required; any other optional officer is not allowed.

### **BOARD MEETING REQUIREMENTS**

None.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

For an Ordinary General Meeting, no quorum is required.

For an Extraordinary General Meeting (mainly for any decisions which imply a change of the by-laws), 25 percent of voting rights on first call and 20 percent on second call.

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

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.

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

Statutory Auditor necessary if SARL exceeds two of the following three thresholds:

- (i) Pre-tax turnover over €3,100,000;
- (ii) Total balance sheet over €1,550,000; or
- (iii) More than 50 employees.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

There is no statutory minimum par value of stock.

### **INCREASING OF CAPITALIZATION IF NEEDED**

Effectuated by amending the by-laws, which requires a majority of the shareholders.

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

Funds can be repatriated abroad via dividends.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

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. The transfer of shares must be notified to the SARL to be enforceable against the SARL and third parties.

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

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*).

### **SUMMARY OF “KNOW YOUR CLIENT” REQUIREMENTS**

Not required.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

Modifications of the by-laws of the SARL required an Extraordinary General Meeting, 25 percent of voting rights on first call and 20 percent on second call and a majority of  $\frac{2}{3}$  of the shares held by the shareholders.

### **LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

The exercise of certain businesses is subject to administrative authorization or prior approval (e.g. chartered accountant, removal firm, goods traffic, etc...).

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

N/A.

## **JOINT-STOCK COMPANY (SOCIÉTÉ ANONYME OR SA)**

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### **BRIEF DESCRIPTION**

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.

### **MINIMUM CAPITAL REQUIREMENT**

€37,000 to €225,000 in case of public offerings.

### **LEGAL LIABILITY**

Shareholders of a SA are generally not liable for the debts of a corporation aside from their financial contribution to the SA.

### **TAX PRESENCE**

Are subject to French taxes, including corporate income tax ( $33\frac{1}{3}$  percent), withholding tax on profits and business tax as well as VAT.

### **INCORPORATION PROCESS**

Must apply for registration with the Registry of Commerce and Companies (RCS) with filing of the by-laws. Process can take from two weeks to four weeks following the receipt of the required information and depending on the reactivity of the Registry of Commerce and Companies where the document shall be filed.



### **BUSINESS RECOGNITION**

Highly regarded for large companies but considered as a very complex form. Not appropriate for a first incorporation in France.

### **SHAREHOLDER MEETING REQUIREMENTS**

Obligation to hold an annual meeting each year to approve the accounts.

### **MANAGEMENT STRUCTURE**

SA can be incorporated in accordance with two different management structures: either (a) with a board of directors (*Conseil d'Administration*), or (b) with an executive board (*Directoire*) and a supervisory board (*Conseil de Surveillance*).

### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

No legal rule applicable. Meetings shall occur at least when required by law and the by-laws for the statement of the annual accounts, interim accounts (when applicable).

### **ANNUAL COMPANY TAX RETURNS**

Must annually file tax returns with French tax authority.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

Require initial registration, as well as annual filings. There are additional, on-going filing requirements including, in particular, an obligation to file its by-laws whenever they are amended and its yearly financial statements.

### **BUSINESS EXPANSION**

No need to change as business expands.

### **EXIT STRATEGY**

File dissolution and liquidation documents with the Registry of Commerce and Companies (RCS).

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Annual shareholders' meeting to approve once a year the financial statements within six months from the closing of the last financial year.

### **DIRECTOR/OFFICER REQUIREMENTS**

One of the following management structures is required: either (i) a board of directors with 3 to 18 members (*Conseil d'Administration*); or (ii) an executive board (*Directoire*) with a supervisory board (*Conseil de Surveillance*).

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

N/A.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

None.

### **LOCAL OFFICE LEASE REQUIREMENT**

Must justify the regular occupation of the registered office for incorporation.



### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

N/A. Management decisions to be taken in France.

### **SUFFICIENCY OF VIRTUAL OFFICE**

SA shall 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**

N/A.

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

N/A.

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

None.

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

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**

Board of directors: The managing director (i.e., 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.

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

Identity of (i) members of the board of directors and managing director; or (ii) members of the executive board and members of the supervisory board is disclosed. Identity of shareholders is not publicly disclosed.

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

Board of directors: from 3 to 18 members.

Executive board: from two to five (and up to seven members in listed companies) (note that if stated capital is under €150,000, 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.

Shareholders: at least seven (with at least one individual). The number of shareholders is not limited.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

At least seven (with at least one individual).

### **REMOVAL OF DIRECTORS OR OFFICERS**

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**

Board of directors: one individual to be the chairman of the board and CEO or two individuals to be chairman and CEO respectively is/are required. The CEO may appoint one or more persons to act as executive managing directors (*Directeurs Généraux Délégués*).

Executive board and supervisory board: an executive board comprises generally two to five 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 by-laws so provide. If stated capital is under €150,000, executive board may be composed of only one person referred to as sole managing director (*Directeur Général Unique*).

### **BOARD MEETING REQUIREMENTS**

According to the by-laws.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

For an Ordinary General Meeting, 20 percent on first call and no quorum on second call.

For an Extraordinary General Meeting (mainly for any decisions which imply a change of the by-laws), 25 percent of voting rights on first call and 20 percent on second call.

A quorum of at least a half of all of the board members is required for the board to deliberate validly.

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

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?**

SA is required to have a designated statutory auditor and an alternate statutory auditor.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

There is no statutory minimum par value of stock.

### **INCREASING OF CAPITALIZATION IF NEEDED**

Effectuated by amending the by-laws, which requires a majority of the shareholders.

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

Funds can be repatriated abroad via dividends.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

Shares are freely transferable, unless otherwise provided in the by-laws.

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

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*).

### **SUMMARY OF “KNOW YOUR CLIENT” REQUIREMENTS**

Not required.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

Modifications of the by-laws of the SA required an Extraordinary General Meeting, 25 percent of voting rights on first notice and 20 percent on second notice and a majority of  $\frac{2}{3}$  of the shares held by the shareholders.

### **LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

The exercise of certain businesses is subject to administrative authorization or prior approval (e.g. chartered accountant, removal firm and goods traffic).

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

N/A.

## **BRANCH OF A FOREIGN COMPANY**

### **BRIEF DESCRIPTION**

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.

A branch has no legal personality. The French branch will have to be exactly the same as the corporate name of the foreign entity.



### **DOCUMENTS REQUIRED TO INCORPORATE A BRANCH IN FRANCE**

- (a) Name of the legal representative in France of the branch, together with a copy of his/her valid passport.
- (b) 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 (i) above. Consequently, the French branch would have only one legal representative, acting in France and in the US).
- (c) Four copies of the articles of association and of the by-laws of the US company, to be certified to conform the original by the legal representative in France of the branch, together with four copies of a French translation, to be certified to conform the original by the legal representative in France of the branch.
- (d) Original of the certificate of incorporation of the US company issued by the relevant US authorities (dated less than three months) (to be certified as being original by the legal representative in France of the branch), together with a French translation, certified to conform the original by the legal representative in France of the branch.
- (e) 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.
- (f) 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.






# GERMANY

## FORM OF ENTITY

### Partnerships



GbR (*Gesellschaft bürgerlichen Rechts*), oHG (*Offene Handelsgesellschaft*), KG (*Kommanditgesellschaft*), GmbH & Co. KG

- (i) Require no minimum share capital; and
- (ii) At least one partner is personally unlimited liable.

### Corporations

GmbH (*Gesellschaft mit beschränkter Haftung*) – Limited Liability Company:

- (i) One or more partner;
- (i) €25,000 minimum share capital;
- (iii) Liability limited to share capital;
- (iv) Most popular legal form in Germany; and
- (v) Individual formation possible due to very few mandatory provisions.

Mini-GmbH – Limited Liability Entrepreneurial Company:

- (i) One or more partner;
- (ii) €1.00 minimum share capital;
- (iii) Liability limited to share capital; and
- (iv) Strict requirements to accumulate yearly earnings until €25,000.

AG (*Aktiengesellschaft*) – Stock Corporation:

- (i) One or more partner;
- (ii) €50,000 minimum share capital;
- (iii) Liability limited to stock capital;
- (iv) Generally addresses a larger number shareholders; and
- (v) Stocks fungible and can be traded at the stock markets.

KGaA (*Kommanditgesellschaft auf Aktien*) – Partnership limited by Share:

- (i) Two partners or more: one as general partner and one as limited partner;
- (ii) €50,000 minimum share capital;
- (iii) General partner is personally unlimited liable; and
- (iv) Limited partner is liable limited to his share.

### **GMBH – LIMITED LIABILITY COMPANY**

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#### **BRIEF DESCRIPTION**

The GmbH is a trade company 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.

#### **MINIMUM CAPITAL REQUIREMENT**

There is a minimum of €25,000.

#### **LEGAL LIABILITY**

Shareholders are not liable to creditors if the share contribution has been paid in.

#### **TAX PRESENCE**

A GmbH is usually taxed on two levels:

- (i) Firstly, it is subject to corporate income tax (*Körperschaftsteuer*), whereas partnerships are subject to personal income tax (*Einkommensteuer*); and
- (ii) On the second level, all business operations – corporations and partnerships alike – are subject to the 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 (VAT – *Mehrwertsteuer*) to the prices of their goods or services and to invoice their customers accordingly.

### **INCORPORATION PROCESS**

Notarial certification for the articles of association to be filed with the register of commerce (*Handelsregister*).

### **BUSINESS RECOGNITION**

Most popular legal form in Germany. However, some people might feel more secure contracting with bigger companies, especially stock companies (AG) or smaller companies with personally liable partners.

### **SHAREHOLDER MEETING REQUIREMENTS**

Generally a written invitation by the managing directors, including the necessary information, is used. Requirements depend on the respective articles of association and the shareholders' agreement.

### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

Requirements depend on the respective articles of association and the shareholders' agreement.

### **ANNUAL COMPANY TAX RETURNS**

Must annually file tax returns with federal and state tax authorities.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

Both initial registration, as well as annual filings can be necessary.

### **BUSINESS EXPANSION**

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 two groups: autonomous branch office (*selbständige Zweigniederlassung*) and dependent branch office (*unselbständige Zweigniederlassung*).

The main distinctive feature is the dependency on the head office company. Whereas the autonomous branch office engages in business activities independently, the dependent branch office can make out invoices only in the name of the head office company. As a consequence, while the 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 (*Gewerbe-/Ordnungsamt*).

### **EXIT STRATEGY**

The dissolution resolution by the shareholders starts the liquidation proceedings, at the end of which there is the ending and deletion of the company in the commercial register.

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Only the auditing of the annual financial statements is mandatory for large and medium-sized GmbHs in accordance with German Commercial Law.

### **DIRECTOR/OFFICER REQUIREMENTS**

Managing directors are required.

A supervisory board is optional, unless the Company is subject to co-determination (500 employees and above), then, the supervisory board is mandatory.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

None.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

None.

### **LOCAL OFFICE LEASE REQUIREMENT**

Filing for incorporation requires an office in Germany. The actual location of the administrative headquarter can differ and therefore be in a foreign country as well.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

None.

### **SUFFICIENCY OF VIRTUAL OFFICE**

Yes, as long as the articles of association and shareholders' agreement allow such practice.

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

Yes, but should be only an interim solution as this bears the risk of not having enough "substance" from a tax perspective.

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

No local directors required.

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

None as long as they can easily enter Germany (or obtain easily a Visa).

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

None with respect to the shareholders.

Directors must meet certain requirements under the LLC Act (*GmbHG*).

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

On the inside, the shareholders are the predominant organ. They can bindingly instruct the directors to carry out certain actions. The articles of association and the shareholders' agreement defines the authority and the limitations, as long as legally allowed (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 directors run the company.

The managing directors represent the company on the outside. Their power of attorney is unlimited on the outside, however may cause damages on the inside of the company.

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

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**

One shareholder.

One director, who can be the only shareholder (managing shareholder).

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

See above.

### **REMOVAL OF DIRECTORS OR OFFICERS**

The shareholders resolve on the appointment of the managing directors.

The recall of a managing director is possible at any time and without notice by the executive organ stated in the statutes. Recall must be recorded in the commercial register.

### **REQUIRED AND OPTIONAL OFFICERS**

None.

### **BOARD MEETING REQUIREMENTS**

Requirements depend on the respective articles of association and the shareholders' agreement.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

10 percent of the share capital unless stated otherwise in the articles of association and the shareholders' agreement.

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

Technically not necessary in order to incorporate. When necessary, a bank account can be opened anywhere. Having said that, the commercial register usually wants to see that the share capital has been paid in which can be shown the easiest by providing a bank account statement.

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

As a trading company, the GmbH is obliged to keep trading books. 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 LLCs.

Auditing in a foreign country is generally allowed.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

€1,00 per share.

### **INCREASING OF CAPITALIZATION IF NEEDED**

Effectuated by amending the charter document, which requires a shareholders' resolution.



### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

Funds can be repatriated abroad from Germany via profit withdrawal in accordance with the relevant tax provisions.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

Shares are generally transferable. However, the articles of association and the shareholders' agreement can restrict the transfer (i.e. by implementing approval requirements).

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

The name has to be distinct and must show the legal form (*GmbH*).

### **SUMMARY OF “KNOW YOUR CLIENT” REQUIREMENTS**

The German “Know Your Client” requirements are based on the European provisions.

Most applicable law is the Anti-Money Laundering Act (*Geldwäschegesetz*).

Thereunder, transactions are subject to different identification measurements and reporting duties, with penalties resulting from non-compliance:

These vary from simple prove 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.

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**

The shareholders resolve on amendments. Depending on the subject to be amended, certain quorums are required by law or the articles of association and the shareholders' agreement. The articles of association and the shareholders' agreement can also provide approval requirements.

Amended articles of association need to be notarized and filed with the commercial register.

### **LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

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 (e.g. pharmacies, property developers, estate agents, brokers, security firms, pubs and hotels, and banks).

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

The purchase of the company will require an agreement (usually an SPA, by way of share deal). After the purchase of the company and its application for registration with the commercial register, you may take up business. Therefore, there are no risks of asset impairment liability or partner liability as shareholder or managing director compared to the set-up phase of a new *GmbH*.



## HONG KONG

### FORM OF ENTITY

#### *Limited private companies*

- (i) Up to 50 shareholders;
- (ii) Right to transfer shares restricted;
- (iii) Invitation to public to subscribe for any shares or debentures prohibited.
- (iv) Generally no personal liability of the shareholders.
- (v) Taxed on its profits at a corporate level. No tax on capital gains or dividends.
- (vi) Typical corporate documents include: Articles, Certificate of Incorporation, Business Registration Certificate, board resolutions, shareholders' resolutions, share certificates, common seal (optional), registers and etc.
- (vii) Board of directors has overall management responsibility.
- (viii) Annual return, notification of changes such as share capital and directors as well as creation of charges need to be filed with the Companies Registry

#### *Limited public companies*

- (i) No restrictions on number of shareholders, right to transfer and invitation to public to substitute for shares or debentures.
- (ii) 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*

- (i) Same as limited private companies except liability of shareholders limited by the company's articles to the amount that the shareholders undertake.

### LIMITED PRIVATE COMPANY

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#### BRIEF DESCRIPTION

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.

#### MINIMUM CAPITAL REQUIREMENT

No minimum capital requirement.

### **LEGAL LIABILITY**

Shareholders of a corporation are generally not liable for the debts of a corporation aside from their financial contribution to the corporation.

### **TAX PRESENCE**

A limited private company is taxed on their profits at a corporate level. There are no tax on capital gains or dividends.

### **INCORPORATION PROCESS**

File Incorporation Form and Articles of Association with the Companies Registry.

### **BUSINESS RECOGNITION**

Well regarded and widely used.

### **SHAREHOLDER MEETING REQUIREMENTS**

Save for Annual general meeting, regular meeting is not mandatory.

### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

Regular meeting is not mandatory.

### **ANNUAL COMPANY TAX RETURNS**

Must annually file tax returns with Inland Revenue Department.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

Business registration with Inland Revenue Department valid for one or three years required.

### **BUSINESS EXPANSION**

No need to change as business expands.

### **EXIT STRATEGY**

Voluntary winding-up of company by special resolution of shareholders.

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Annual general meeting – Generally required to hold annual general meeting of shareholders 9 months after the end of its accounting reference period. Audited financial statements have to be tabled at the annual general meeting. Annual general meeting can be replaced by written resolutions by all shareholders. This requirement may be waived for certain companies.

Audited financial statements.

### **DIRECTOR/OFFICER REQUIREMENTS**

At least one natural director required.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

Company secretary may be a Hong Kong corporate or an individual who is a Hong Kong resident.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

None beyond the required natural director and company secretary.

### **LOCAL OFFICE LEASE REQUIREMENT**

None required.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

Each Hong Kong company must have a registered office in Hong Kong.

### **SUFFICIENCY OF VIRTUAL OFFICE**

Sufficient.

### **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.

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

None, except for the company secretary (see above).

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

None except one natural director is required.

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

Directors are appointed by the shareholders or the board and board of director is the highest authority in the management of the corporation, and govern 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**

Identity of directors and shareholders is publicly disclosed in filings with the Company Registry.

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

A minimum of one shareholder and a maximum of 50 shareholders (otherwise the company will become a public company). A minimum of one natural director and no maximum number of directors.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

One shareholder is sufficient.

### **REMOVAL OF DIRECTORS OR OFFICERS**

Removal of directors is generally allowed in general meeting (written resolution is not allowed) by an ordinary resolution of shareholders, but not special procedures apply (e.g. director must be given the right to be heard before decision).

### **REQUIRED AND OPTIONAL OFFICERS**

None except director and company secretary.



### **BOARD MEETING REQUIREMENTS**

Notice to all directors, but directors can agree to short notice.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

If a company has only one 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.

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?**

Not necessary.

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

Audit of financial statements by registered Hong Kong auditors is required. 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**

No par value.

### **INCREASING OF CAPITALIZATION IF NEEDED**

The company may (a) increase its share capital by allotting and issuing new shares; (b) 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; (c) capitalize its profits, with or without allotting and issuing new shares; (d) allot and issue bonus shares with or without increasing its share capital.

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

Funds can be repatriated abroad via dividends or redemption.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

Shares can generally be transferred but company may refuse to register the transfer



### **OBTAINING A NAME AND NAMING REQUIREMENTS**

No name reservation system. Name generally has to end with “Limited.”

### **SUMMARY OF “KNOW YOUR CLIENT” REQUIREMENTS**

Professional service providers generally have their own KYC documents to be completed.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

Generally the Articles of Association can be amended by special resolution of shareholder

### **LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

Generally no license required except business registration with the IRD. Certain businesses require special licenses (e.g. telecommunications).

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

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





# INDIA

### FORM OF ENTITY

#### **Private Limited Company**

- (i) Preferred choice of corporate entity by foreign investors because it is simpler to administer;
- (ii) Minimum number of shareholders required is two, with a maximum of 50 non-employee shareholders, share transfers are restricted;
- (iii) Minimum capitalization requirement: INR0.1 million;
- (iv) Must apply and register with the Registrar of Companies (ROC);
- (v) Must have a Board of Directors with a minimum of two Directors (only individuals) and must appoint an auditor;
- (vi) Directors must secure a Directors Identification Number (DIN), prior to incorporation;
- (vii) Typical charter documents include: Certification of incorporation; Articles of Association (AOA); Memorandum of Association (MOA);
- (viii) Board of directors has overall management responsibility; officers have day-to-day responsibility;
- (ix) Shareholders typically purchase shares in the company, either equity (equivalent to common) or preference (equivalent to preferred); and
- (x) Taxed on its earnings at a corporate level and also taxed on any distributed dividends. Shareholders are not taxed on dividends. Sale or redemption of shares in the company is taxed as capital gains.

#### **Limited Liability Partnership**

- (i) The Limited Liability Partnership (LLP) Act which was notified in April 2009 allowed LLPs to be incorporated in India;
- (ii) LLP is a hybrid form of business with the features of both a body corporate as well as traditional partnership; and
- (iii) However not recommended/nor widely used for foreign investors since government approval is required for foreign Investments in LLP.

#### **Branch Office**

- (i) Foreign company needs prior approval of the Reserve Bank of India (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;
- (ii) Must register itself with Registrar of companies and file audited accounts; and
- (iii) Only specified activities permitted, cannot undertake any manufacturing activity in India.

### **Liaison Office**

- (i) Must obtain prior approval from RBI before establishing liaison office;
- (ii) 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;
- (iii) Serves as a communication channel between parent company overseas and its present or prospective customers in India;
- (iv) Must register itself with Registrar of companies and file audited accounts; and
- (v) Limited activity: Can 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**

#### **BRIEF DESCRIPTION**

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 of the company. Officers, who run the day-to-day operations of the company, are appointed by the directors.

#### **MINIMUM CAPITAL REQUIREMENT**

Minimum paid up capital INR100,000; Minimum Authorized capital requirements are based on name of the entity in India.

#### **LEGAL LIABILITY**

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**

A private limited company is taxed at two levels. First the company pays a corporate tax on its corporate income; then the company pays dividend distribution tax on profits distributed to shareholders. The shareholders do not pay tax on dividend distributed.

#### **INCORPORATION PROCESS**

Reserve Name; submit Memorandum of Association and Articles of Association with the appropriate Registrar of Companies (ROC) in state where the incorporation is sought.

#### **BUSINESS RECOGNITION**

Highly regarded.

#### **SHAREHOLDER MEETING REQUIREMENTS**

1st Annual General Meeting (AGM) to be held within 18 months from incorporation subject to other conditions.

Subsequent (AGM) within six months from close of year.

### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

Once in every three months. At least four times in a year.

### **ANNUAL COMPANY TAX RETURNS**

On or before September 30th for companies exceeding a revenue threshold (INR10 Mn) and where no international transactions are involved; on or before November 30th for companies with any international transactions.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

Audit of accounts to be conducted for every financial year within five months from the close of the financial year. Annual returns to be submitted to ROC within 30 days from the date of AGM and audited financial statements to be submitted to ROC within 60 days from the AGM.

### **BUSINESS EXPANSION**

No need to change as business expands. Can be easily converted into a public company at any time if required.

### **EXIT STRATEGY**

Cease operations; file closure documents with ROC.

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Annual shareholder meetings; quarterly board meetings.

### **DIRECTOR/OFFICER REQUIREMENTS**

At least two directors; new company law regulations will mandate the appointment of a local director. Consequently recommend three directors, one from India and two from parent company's location.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

Must appoint a Company Secretary, where the paid up capital of the company exceeds the prescribed limit (INR20 million). Till such threshold can appoint a third-party service provider to manage corporate compliance.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

None except for the forthcoming local director requirement.

### **LOCAL OFFICE LEASE REQUIREMENT**

Local office or a virtual office capable of accepting letters/post is mandatory before incorporation. The local office address acts as the Registered office of the entity in the Incorporation documents.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

None.

### **SUFFICIENCY OF VIRTUAL OFFICE**

No. See next item.

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

Allowed for incorporation; preferable to use it temporarily.

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

Allowed for incorporation.

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

None except for the forthcoming local director requirement.

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

None. However reporting requirements apply.

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

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, officers are appointed by the directors to oversee day-to-day operations of the company. Directors are personally liable for breach of fiduciary duty, Ultra vires acts, negligence, mala fide acts, breach of statutory duties.

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

Identity of directors and officers is publicly disclosed; identity of shareholders of private, non-listed companies is not publicly disclosed. But this can be obtained on payment of certain nominal fees.

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

There must be a minimum of two shareholders and maximum of 50. For directors, the minimum is two and maximum of seven.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

Two shareholders.

### **REMOVAL OF DIRECTORS OR OFFICERS**

Removal of directors is allowed by majority of the shareholders. Size of the Board of Directors cannot fall below two.

### **REQUIRED AND OPTIONAL OFFICERS**

None.

### **BOARD MEETING REQUIREMENTS**

Physical meetings once in every three months. At least four times in a year.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

For a shareholder meeting, usually a majority of shareholders must be present during the shareholder meeting. Corporate shareholders can appoint authorized signatories to attend the meetings on their behalf. For directors, at least two Directors must be present during a board meeting; alternatively, at least two directors must execute written resolutions. Written resolutions (referred to as circular resolutions) cannot be used for all purposes.



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

Bank account can only be opened after Incorporation and the Bank Account should be in India.

### **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 Mandatory. The Auditor can be located in any state in India. The Company's books of accounts should be kept locally either with the company or with a third party service provider.

Corporate books, such as the minute book and other statutory registers, should be kept with the company. The Common Seal should also be kept with the company.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

No Minimum par value for Private Limited companies. Normally used par Value is INR10 per share.

### **INCREASING OF CAPITALIZATION IF NEEDED**

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 will apply.

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

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

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

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 i.e. Shares cannot be offered to public. Shares can generally be transferred between existing shareholders.

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

The name should reflect the main objects/business of the Indian company. In case the Indian Company would use the same name, as used abroad, then, a letter from the Foreign Company would also have to be given. In all states, a corporate ending such as "Private Limited." must be used.

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

Know your Client requirements are mandatory for incorporation as well as for Bank account opening.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

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***

In addition to Incorporation, an entity needs to obtain registration under shops and establishment act, Permanent Account Number (PAN) and Tax Identification Number (TAN) under Income Tax, Profession Tax under Labor law, Service Tax and or Sales Tax/VAT depending on the type of activity performed in India, Importer Exporter Code (IEC) for enabling import and export, Provident Fund if number of employees exceed a threshold, Employees State Insurance (ESI) if salary of employees is below a threshold.

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

Not widely used.



# INDONESIA

## FORM OF ENTITY

**Limited Liability Company (Perseroan Terbatas) (PT) for local investment and Limited Liability Foreign Investment Company (PT PMA) for foreign investment**

- (i) PT PMA must obtain a Principle License and Business License from the Investment Coordinating Board (BKPM);
- (ii) Minimum of two shareholders;
- (iii) Generally no personal liability of the shareholders;
- (iv) Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends;
- (v) Typical charter documents include: deed of establishment (*akta pendirian*); articles of association (*akta anggaran dasar*);
- (vi) Two-tier board structure, comprising the board of directors and the board of commissioners. The board of directors has overall and day-to-day management responsibilities; the board of commissioners has a supervisory role and advises the board of directors;
- (vii) Shareholders typically acquire shares in a PT/PT PMA by means of issuance (subscription) of new shares or by means of purchase (acquisition) of shares. Shares may be designated into classes to which different rights are attached. One class must be common shares; and
- (viii) PT/PT PMA must be registered on the Company Registry (*Daftar Perusahaan*) in accordance with Law and regulation.

## BRIEF DESCRIPTION

Separate and distinct legal entity. Managed by a board of directors, which is responsible for making major business decisions and overseeing the day-to-day affairs of the company. Directors are overseen by a board of commissioners, which supervise and advise the directors on the management policies and general operation of the PT/PT PMA. Directors and commissioners are appointed by the shareholders of the PT/PT PMA.

## MINIMUM CAPITAL REQUIREMENT

A PT must have an authorized capital of at least IDR50 million. Higher minimum capital requirements may be stipulated by law (*undang-undang*) for certain business activities. At least 25 percent of authorized capital must be issued and paid-up in full.

A PT PMA must generally have an authorized capital of at least IDR10 billion. Higher minimum capital requirements may be set by the BKPM. At least IDR2.5 billion must be issued and paid-up in full in cash or kind.

### LEGAL LIABILITY

Generally, shareholders of a PT/PT PMA are not liable for the debts of the company aside from their financial contribution to the capital of the PT/PT PMA. Shareholders may become personally liable for the company's losses if: (i) the PT/PMA does not fulfill the conditions required to be a legal entity, (ii) the shareholder directly or indirectly exploits the company in bad faith and for his/her personal interest, (iii) the shareholder is involved in illegal conduct by the PT/PT PMA; or (iv) the shareholder directly or indirectly uses the company's assets illegally, with the result that the company's assets become insufficient to pay the company's debts.

All directors are personally, jointly and severally liable for any loss suffered by the company if the director acts wrongfully; fails to perform his/her duties in good faith and with full responsibility; or his/her actions do not accord with the articles of association. Exculpation grounds may apply for individual directors.

A commissioner is personally liable for any loss suffered by the company if he/she acts wrongfully; fails to perform his/her duties in good faith, prudently and with full responsibility; or his/her actions do not accord with the articles of association. Exculpation grounds may apply.

### TAX PRESENCE

Yes.

### INCORPORATION PROCESS

For PT: check the proposed name; sign a Deed of Establishment before the local notary; and file for approval by the Ministry of Law and Human Rights (MOLHR).

For PT PMA: check the proposed name; apply for Principle License with the BKPM; sign a Deed of Establishment before the local notary; file for approval by MOLHR; submit Letter of Domicile; obtain a tax and a value added tax (VAT) registration number; obtain a Company Registration Certificate; apply for approval of Mandatory Manpower Report and Foreign Manpower Utilization Plan; publish announcement of the Deed of Establishment in the State Gazette; make payment of required initial capital; and obtain a permanent business license.

### BUSINESS RECOGNITION

Well regarded and widely used.

### SHAREHOLDER MEETING REQUIREMENTS

Required to hold an annual GMS within six months of the closing of the financial year in which all documents from the annual report of the PT/PT PMA are submitted.

### BOARD OF DIRECTOR MEETING REQUIREMENTS

None, but should in practice occur on a regular basis to fulfill directors' duties in good faith.

### ANNUAL COMPANY TAX RETURNS

Yes.

### BUSINESS REGISTRATION FILING REQUIREMENTS

Initial registration to the Company Registry is required. Further notification and amendment of the Company Registry is required for subsequent changes to the board of directors/board of commissioners, transfer of shares, increases of capital and dissolution of a company.

### **BUSINESS EXPANSION**

Increase of capital must be approved by the general meeting of shareholders (GMS) or the board of commissioners in certain circumstances. Shares issued for the increase of capital must first be offered to shareholders in proportions to their share ownership for the same class of shares. Capital increases must be notified to the Minister of Law and Human Rights and recorded on the Company Registry. PT PMA additionally require an Expansion Principle License (*Ijin Prinsip Perluasan*) issued by BKPM.

### **EXIT STRATEGY**

Dissolution of PT/PT PMA may occur based on, inter alia: the resolution of the GMS, expiration of the duration stated in the articles of association, court decision, or bankruptcy. Dissolution must be followed by liquidation.

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

An annual GMS; an annual work plan and budget prepared by the board of directors; and an annual report prepared by the board of directors and signed by members of the board of directors and the board of commissioners.

### **DIRECTOR/COMMISSIONER REQUIREMENTS**

At least one director is required; and at least one commissioner is required. PT/PT PMA collecting or managing funds, or issuing bonds, must have at least two directors. Public companies must have at least two directors.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

Publically listed companies are required to have a company secretary.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

None beyond the required director(s), or the board of commissioners in certain circumstances.

### **LOCAL OFFICE LEASE REQUIREMENT**

A full address in accordance with domicile in Indonesia is required.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

Domicile within the city or regency stated in the articles of association is required. GMS must be held within Indonesian territory.

### **SUFFICIENCY OF VIRTUAL OFFICE**

Insufficient.

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

None.

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

Directors/commissioner can be provided by third party service providers.



### **NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS, AND COMMISSIONERS**

Although not a formal requirement, it is advisable for directors to reside in Indonesia in order to fulfill their duties in good faith. Directors who are foreign nationals must hold a limited stay permit (KITAS) and work permit (IMTA).

All commissioners within a PT must have Indonesian nationality. PT PMA commissioners who are foreign nationals must hold a limited stay permit (KITAS).

Indonesian nationality of shareholders may be a requirement for PT PMA operating in certain business fields determined by Presidential Regulation No. 36 of 2010 regarding List of Business Fields Closed to Investment and Business Fields Open, with Conditions on Investment (the Negative List). The Negative List stipulates business fields that are reserved for domestic investment, business fields that have a cap on foreign investment and business fields to which additional requirements apply.

The position of human resources director is closed to non-Indonesian nationals.

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

Shareholder nominee arrangements are not allowed under Indonesian law.

Nominee directors can be provided by third party service providers.

### **SUMMARY OF DIRECTOR'S, COMMISSIONER'S AND SHAREHOLDER'S AUTHORITY AND LIMITATIONS THEREOF**

The board of directors has the authority and responsibility to manage the PT/PT PMA within the company's interests, and in accordance with its purposes and objectives. To fulfill their duties, directors must inter alia: deliver annual reports; prepare annual business plans; maintain a register of shareholders; archive certain company documents; convene GMS, notify MOLHR and creditors as required; and keep record of company share transfers.

The Board of Directors usually represents the PT/PT PMA inside and outside of court. A director may be barred from representing the PT/PT PMA if: (i) the director has a conflict of interest with the company; or (ii) there are proceedings between the director and the company.

The board of commissioners plays a supervisory role and advises the board of directors.

Shareholders exercise authority through the GMS as the highest governing organ of a PT/PT PMA. The GMS is vested with absolute authority within the limits of the law and the articles of association, which has not otherwise been conferred to the board of directors or the board of commissioners.

### **PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, COMMISSIONERS AND/OR SHAREHOLDERS**

Identity of directors, commissioners and registered shareholders is disclosed only to interested parties that apply to access to the commercial registry.

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

An uncapped minimum of one director is required. An uncapped minimum of two shareholders is required to maintain limited liability status.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

A minimum of two shareholders is required to maintain limited liability status.

### **REMOVAL OR SUSPENSION OF DIRECTORS OR COMMISSIONERS**

Removal of directors or commissioners requires a GMS resolution with the specification of reasons. Members of the board of directors may be temporarily suspended by the board of commissioners with the specification of reasons.

### **REQUIRED AND OPTIONAL OFFICERS**

A board of syariah supervisors is required for PT/PT PMA undertaking business on the basis of syariah principles.

### **DIRECTORS' AND COMMISSIONERS' BOARD MEETING REQUIREMENTS**

The board of directors and the board of commissioners must record minutes of their respective board meetings.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

None for board of directors' or board of commissioners' meetings.

A quorum requirement of more than half of all shareholders with voting rights is stipulated for GMS, unless a higher quorum is stated by law or in the articles of association.

A higher quorum of shareholders with voting rights is required for GMS on: (i) the dissolution of the company (75 percent); (ii) amendments to the articles of association (66.67 percent); (iii) an assets transaction relating to more than 50 percent of the company's assets (75 percent); and (iv) a merger, consolidation, acquisition, or separation concerning the company (75 percent).

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

In practice, banks are generally reluctant to open a bank account before PT/PT PMA obtain an approval from MOLHR. However, the notary may accept a statement from the initial shareholders of a PT/PT PMA stating that the required capital has been placed in a PT's/PT PMA's account and will be transferred to a PT's/PT PMA's bank account upon obtaining MOLHR's approval. In practice, a local bank is usually used; however, the use of a local bank is not obligatory.

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

Yes, auditing must be conducted by local financials and must be located in local jurisdiction. The PT's/PT PMA's books must also be kept locally.

### **REQUIREMENT REGARDING NOMINAL OF STOCK**

Shares that do not have a nominal value cannot be issued by a PT/PT PMA.

### **INCREASING OF CAPITALIZATION IF NEEDED**

Increase of capital must be approved by the GMS, or the board of commissioners in certain circumstances. Shares issued for the increase of capital must first be offered to shareholders in proportions to their share ownership for the same class of shares. Capital increases must be notified to the Minister of Law and Human Rights and recorded in the Company Registry.

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

Funds can be repatriated abroad from Indonesia via dividends or redemption. Redemption is not common and is subject to further requirements and procedures.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

Shares can generally be transferred between shareholders via a deed of transfer of rights, preferably executed before a notary. Commonly, there is an obligation to first offer such shares to the existing shareholders in proportion to their shareholding pursuant to the provisions under the articles of association. The deed of transfer (or a copy) must be submitted to the PT/PT PMA. The PT/PT PMA must notify the Minister of Law and Human Rights; and the Company Registry must be amended accordingly. There is an additional obligation for PT PMA to obtain prior approval from the BKPM to transfer shares.

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

Name must be approved by the Minister for Law and Human Rights. Name must be preceded by the phrase '*perseroan terbatas*' or the abbreviation '*PT*.' In the case of a public company, the abbreviation '*tbk*' should follow the name.

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

Only applicable to banks and financial institutions.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

Amendment to articles of association must be approved by a GMS attended by at least  $\frac{2}{3}$  of all shareholders with voting rights. Certain amendments to the articles of association require approval from the Minister of Law and Human Rights.

### **LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

For PT: Approval from the Minister of Law and Human Rights; Company Registration Certificate; Trade Business License; Taxpayer Identification Number; VAT Registration Number; and a Company Domicile Certificate.

For PT PMA: Principle License; Approval from the Minister of Law and Human Rights; Company Registration Certificate; Taxpayer Registration Number; VAT Registration Number (*PKP*); Approval of Mandatory Manpower Report; Foreign Manpower Utilization Plan (if non-Indonesian workers are employed); and a Business License.

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

Possible; however not done in practice.



## IRELAND

### FORM OF ENTITY

Private Limited Company (limited by shares) Private Unlimited Company Branch (registered under the European Communities (Branch Disclosure) Regulations 1993)

### PRIVATE LIMITED COMPANY (LIMITED BY SHARES)

#### BRIEF DESCRIPTION

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 articles of association, directors can be appointed by resolution of the board or the shareholders. Private limited companies cannot offer their shares to the public and the right to transfer shares must be restricted by the company's articles of association. Shareholders have limited liability protection.

#### MINIMUM CAPITAL REQUIREMENT

No minimum capital requirement.

#### LEGAL LIABILITY

The liability of shareholders is limited to the amount, if any, unpaid on the shares issued by the company.

#### TAX PRESENCE

If Irish tax resident, a private limited company is subject to Irish corporation tax on its worldwide income at 12.5 percent on its trading income and 25 percent for non-trading (passive) income.

If non-resident for Irish tax purposes, a private limited company 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 (for example, income from the rental of Irish properties).

#### INCORPORATION PROCESS

For purposes of incorporation the following documentation must be submitted to the Companies Registration Office (CRO): (i) Form A1 (application for incorporation); and (ii) memorandum and articles of association.

#### BUSINESS RECOGNITION

Very well recognized. The private limited liability company is the most common form of corporate entity used in Ireland.

#### SHAREHOLDER MEETING REQUIREMENTS

Generally required to hold an annual general meeting (AGM) once in each calendar year. A single shareholder company can dispense with the requirement to hold an AGM.



### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

Subject to the articles of association, the directors may meet as they think fit and no minimum number of board meetings is required annually.

### **ANNUAL COMPANY TAX RETURNS**

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 one or two installments within their current accounting period.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

No general requirement but it should be considered whether any regulatory permits or licenses are required.

### **BUSINESS EXPANSION**

No general requirements.

### **EXIT STRATEGY**

Dissolution can be achieved by way of voluntary liquidation or strike-off procedure. It is also possible to merge a private limited company with another limited company registered under the laws of a state of the European Economic Area.

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Convene the AGM. File an annual return and audited financial statements with the CRO.

### **DIRECTOR/OFFICER REQUIREMENTS**

Must have at least two directors. A body corporate cannot act as a director.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

A company secretary must be appointed. It is possible for one of the directors to also act as company secretary. A body corporate may act as company secretary.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

None.

### **LOCAL OFFICE LEASE REQUIREMENT**

Every company is required to have a registered office address in Ireland. This is not required to be a business or trading address of the company and can be the address of a third party services provider.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

None.

### **SUFFICIENCY OF VIRTUAL OFFICE**

Insufficient, a physical address must be specified on incorporation documentation.



### **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.

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

At least one director of the company must be resident in the European Economic Area. Alternatively the company may file: (i) a bond with the CRO; or (ii) the company may obtain a certificate from the CRO confirming that the company has a real and continuous link with one or more economic activities in Ireland.

Whilst there is no legislative provision within the Irish tax code that requires a director of an Irish tax resident company to be Irish tax resident, it is strongly recommended, from a substance perspective, that at least one of the directors of such a company is Irish tax resident.

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

None. Nominee directors generally subject to the same duties as other directors.

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

Authority for management of the company's affairs is typically delegated collectively to the board of directors in the articles of association with certain fundamental decisions relating to the company being reserved for the shareholders (for example, changes to the company's constitutional documents).

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

Identities of the following persons must be disclosed and are publicly available from filings made at the CRO: (i) directors; (ii) secretary; and (iii) shareholders.

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

Directors – minimum two; and no maximum, however a company's articles of association may set an upper limit.

Shareholders – minimum one; and maximum 99.

### **REMOVAL OF DIRECTORS OR OFFICERS**

Shareholders can remove directors by availing of a statutory procedure set out in the Companies Acts. The articles of association of a company can also provide for removal by the other directors in certain circumstances.

### **REQUIRED AND OPTIONAL OFFICERS**

Directors and secretary are the only officers required under statute. The articles of association typically allow for the appointment of a managing director or other executive officer(s).

### **BOARD MEETING REQUIREMENTS**

Subject to the articles of association, the directors may meet as they think fit and no minimum number of board meetings is required annually.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

A quorum of two directors is typically required to convene a meeting of the board, subject to the articles of association.

The standard quorum for a general meeting of shareholders is two shareholders present in person or by proxy. However this number can be altered by amending the articles of association of the company.

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

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

There is no legal requirement for a company 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?**

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 can be located outside of Ireland.

Certain accounting records must be kept in Ireland.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

Every share is required to have a nominal value.

### **INCREASING OF CAPITALIZATION IF NEEDED**

Subject to the articles of association of the company so permitting, a company may increase its share capital by issuing and allotting further shares provided that the company's articles of association authorize such action.

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

Provided the company has sufficient distributable profits the payment of an interim dividend may be authorized by board approval.

It is also possible to repatriate funds by way of: (i) redemption of shares using distributable profits; or (ii) a court approved reduction of capital.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

Shares are generally freely transferrable subject to restrictions, such as pre-emption rights, that may be contained in a company's articles of association.

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

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 private limited company must indicate the word “limited” as the last word of the name. It is possible on payment of a fee to reserve a company name for a period of 28 days.

### **SUMMARY OF “KNOW YOUR CLIENT” REQUIREMENTS**

Typical KYC information required by banks, professional services firms, etc. is as follows: (i) proof of incorporation/registration; (ii) up-to-date list of directors; (iii) identification of the ultimate beneficial owners; (iv) personal identification of at least one director (copies of a recent utility bill and passport or driver’s license); and (v) disclosure of any politically exposed persons.

KYC information is not required to be submitted for the incorporation of the company itself.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

A special resolution of the shareholders (75 percent majority) of the company must be passed in order to alter the memorandum or articles of association of the company.

### **LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

No general business license is required but an authorization or permit may be required depending on the proposed business activities of the company.

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

Owing to administrative costs, shelf companies are generally not available for purchase but can be formed and “de-shelved” if required on a “needs be” basis.

## **PRIVATE UNLIMITED COMPANY**

### **BRIEF DESCRIPTION**

Separate and distinct legal entity. Managed by a board of directors which has collective authority for and is responsible for managing the affairs of the company. Subject to the articles of association, directors can be appointed by resolution of the board or the shareholders. Private unlimited companies cannot offer their shares to the public and the right to transfer shares must be restricted by the company’s articles of association. Shareholders can be held liable for all the debts of the company in the event of an insolvent liquidation.

### **MINIMUM CAPITAL REQUIREMENT**

No minimum capital requirement.

### **LEGAL LIABILITY**

Shareholders have unlimited liability for the debts of the company.

### **TAX PRESENCE**

If Irish tax resident, a private unlimited liability company is subject to Irish corporation tax on its worldwide income at 12.5 percent on its trading income and 25 percent for non-trading (passive) income.

If non-resident for Irish tax resident, a private unlimited liability company 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 (for example, income from the rental of Irish properties).

### **INCORPORATION PROCESS**

For purposes of incorporation the following documentation must be submitted to the Companies Registration Office (CRO): (i) Form A1 (application for incorporation); and (ii) memorandum and articles of association.

### **BUSINESS RECOGNITION**

Well recognized. Private unlimited liability company are most commonly used as part of group structures.

### **SHAREHOLDER MEETING REQUIREMENTS**

Required to hold an annual general meeting (AGM) once in each calendar year.

### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

Subject to the articles of association, the directors may meet as they think fit and no minimum number of board meetings is required.

### **ANNUAL COMPANY TAX RETURNS**

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 one or two installments within their current accounting period.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

No general requirement but it should be considered whether any regulatory permits or licenses are required.

### **BUSINESS EXPANSION**

No general requirements.

### **EXIT STRATEGY**

Dissolution can be achieved by way of voluntary liquidation or strike-off.

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Convene the AGM. File annual return and audited financial statements or auditors report with the CRO.

### **DIRECTOR/OFFICER REQUIREMENTS**

Must have at least two directors. A body corporate cannot act as a director.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

A company secretary must be appointed. It is possible for one of the directors to also act as company secretary. A body corporate may act as company secretary.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

None.

### **LOCAL OFFICE LEASE REQUIREMENT**

None but every company is required to have a registered office address in Ireland. This is not required to be a business or trading address of the company and can be the address of a third party services provider.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

N/A.

### **SUFFICIENCY OF VIRTUAL OFFICE**

Insufficient, a physical address must be specified on incorporation documentation.

### **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.

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

At least one director of the company must be resident in the European Economic Area. Alternatively the company may: (i) file a bond with the CRO; or (ii) obtain a certificate from the CRO confirming that the company has a real and continuous link with one or more economic activities in Ireland.

Whilst, there is no legislative provision within the Irish tax code that requires a director of an Irish tax resident company to be Irish tax resident, it is strongly recommended, from a substance perspective, that at least one of the directors of such a company is Irish tax resident.

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

None. Nominee directors generally subject to the same duties as other directors.

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

Authority for management of the company's affairs is typically delegated collectively to the board of directors in the articles of association with certain fundamental decisions relating to the company being reserved for the shareholders (for example, changes to the company's constitutional documents).

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

Identities of the following persons must be disclosed and are publicly available from filings made at the CRO: (i) directors; (ii) secretary; and (iii) shareholders.



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

Directors – minimum two; and no maximum, however a company's articles of association may set an upper limit.

Shareholders – minimum one; and maximum 99.

### **REMOVAL OF DIRECTORS OR OFFICERS**

Shareholders can remove directors by availing of a statutory procedure set out in the Companies Acts. The articles of association of a company can also provide for removal by the other directors in certain circumstances.

### **REQUIRED AND OPTIONAL OFFICERS**

Directors and secretary are the only officers required under statute. The articles of association typically allow for the appointment of a managing director or other executive officer(s).

### **BOARD MEETING REQUIREMENTS**

Subject to the articles of association, the directors may meet as they think fit and no minimum number of board meetings is required on an annual basis.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

A quorum of two directors is typically required to convene a meeting of the board, subject to the articles of association.

The standard quorum for a general meeting of shareholders is two shareholders present in person or by proxy. However this number can be altered by amending the articles of association of the company.

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

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

There is no legal requirement for a company 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?**

Subject to limited exceptions, audited financial statements must be prepared annually. However, depending on its shareholder profile, a private unlimited company can avoid the general requirement to publicly file its audited financial statements at the CRO.

Subject to certain approval and registration requirements, the auditor can be located outside of Ireland.

Certain accounting records must be kept in Ireland.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

Every share is required to have a nominal value.

### **INCREASING OF CAPITALIZATION IF NEEDED**

A company may increase its share capital by passing an ordinary resolution provided that the company's articles of association authorize such action.

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

Provided the company has sufficient distributable profits the payment of an interim dividend may be authorized by board approval.

It is also possible to repatriate funds by way of: (i) redemption of shares using distributable profits; or (ii) a return of capital approved by shareholder resolution.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

Shares are generally freely transferrable subject to restrictions, such as pre-emption rights, that may be contained in a company's articles of association.

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

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. It is possible, on payment of a fee, to reserve a company name for a period of 28 days.

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

Typical KYC information required by banks, professional services firms, etc. is as follows: (i) proof of incorporation/registration; (ii) up-to-date list of directors; (iii) identification of the ultimate beneficial owners; (iv) personal identification of at least one director (copies of a recent utility bill and passport or driver's license); and (v) disclosure of any politically exposed persons.

KYC information is not required to be submitted for the incorporation of the company itself.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

A special resolution of the shareholders (75 percent majority) of the company must be passed in order to alter the memorandum or articles of association of the company.

### **LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

No general business license is required but an authorization or permit may be required depending on the proposed business activities of the company.

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

Given the risk of unlimited liability, shelf companies are not formed as private unlimited companies. However, private limited companies can be converted to private unlimited companies following the de-shelving process.

### **BRANCH (REGISTERED UNDER THE EUROPEAN COMMUNITIES (BRANCH DISCLOSURE) REGULATIONS 1993)**

#### **BRIEF DESCRIPTION**

A company with limited liability incorporated under the laws of another jurisdiction and which establishes operations in Ireland is obliged to register a branch in certain circumstances. The branch is treated as part of the same legal entity as the company. The requirement to register a branch generally arises where the Irish operations of the foreign company has authority to independently negotiate and contract directly with third parties on an independent basis.

#### **MINIMUM CAPITAL REQUIREMENT**

Determined by the laws of the jurisdiction of incorporation.

#### **LEGAL LIABILITY**

Determined by the laws of the jurisdiction of incorporation.

#### **TAX PRESENCE**

An Irish branch is subject to Irish corporation tax on (i) trading income arising directly or indirectly through or from the branch, (ii) any income from property or rights used by, or held by or for, the branch and (iii) 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.

#### **REGISTRATION PROCESS**

For purposes of registration the following documentation must be submitted to the Companies Registration Office (CRO) within one month of the date of establishment of the branch in Ireland: (i) CRO Form F-12; (ii) certified copy of the company's constitutional documentation and certificate/articles of incorporation; and (iii) a copy of the latest accounting documents, as publicly disclosed pursuant to the accounting requirements in the State of incorporation of the company.

#### **BUSINESS RECOGNITION**

Well recognized.

#### **SHAREHOLDER MEETING REQUIREMENTS**

Determined by the laws of the jurisdiction of incorporation.

#### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

Determined by the laws of the jurisdiction of incorporation.

#### **ANNUAL COMPANY TAX RETURNS**

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 one or two installments within their current accounting period.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

No general requirement but it should be considered whether any regulatory permits or licenses are required.

### **BUSINESS EXPANSION**

No general requirements.

### **EXIT STRATEGY**

Notice of closure of the branch (Form F14) must be filed with the CRO within 14 days of the branch ceasing to exist, for example, on the liquidation of the company in the jurisdiction of incorporation.

### **ESTIMATED TOTAL FEES AND THIRD-PARTY COSTS TO REGISTER A BRANCH**

Filing fees and other disbursements of approximately €50; legal fees of approximately €1,000 (excluding VAT, if applicable).

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

A branch is required to file a copy of the company's annual audited financial statements with the CRO.

### **DIRECTOR/OFFICER REQUIREMENTS**

Determined by the laws of the jurisdiction of incorporation.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

Determined by the laws of the jurisdiction of incorporation.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

A branch is required to indicate the following on registration: (i) the person or persons authorized to represent the branch; (ii) a person resident in Ireland authorized to accept service of proceedings and notices; (iii) a person resident in Ireland authorized to ensure compliance with the provisions of the Irish branch regulations.

### **LOCAL OFFICE LEASE REQUIREMENT**

None but every branch is required to indicate its address in Ireland.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

N/A.

### **SUFFICIENCY OF VIRTUAL OFFICE**

Insufficient, a physical address must be specified on incorporation documentation.

### **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**

N/A. No requirement for local director or secretary.

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

None.

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

Determined by the laws of the jurisdiction of incorporation.

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

Determined by the laws of the jurisdiction of incorporation.

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

Details of the branch's representatives (see above) are publicly disclosed at the CRO.

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

Determined by the laws of the jurisdiction of incorporation.

### **REMOVAL OF DIRECTORS OR OFFICERS**

Determined by the laws of the jurisdiction of incorporation.

### **REQUIRED AND OPTIONAL OFFICERS**

Determined by the laws of the jurisdiction of incorporation.

### **BOARD MEETING REQUIREMENTS**

Determined by the laws of the jurisdiction of incorporation.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

Determined by the laws of the jurisdiction of incorporation.

### **MUST A BANK ACCOUNT BE OPENED PRIOR TO REGISTRATION AND MUST THE BANK ACCOUNT BE LOCAL?**

A bank account is not required 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?**

No requirement to audit the financial statements of the branch.

A branch is required to file a copy of the company's annual audited financial statements with the CRO.

No requirement for the branch's books to be kept locally.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

Determined by the laws of the jurisdiction of incorporation.

### **INCREASING OF CAPITALIZATION IF NEEDED**

Determined by the laws of the jurisdiction of incorporation.



### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

Determined by the laws of the jurisdiction of incorporation.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

Determined by the laws of the jurisdiction of incorporation.

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

A branch can 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**

Typical KYC information required by banks, professional service firms, etc. is as follows: (i) proof of incorporation / registration; (ii) up-to-date list of directors (if any); (iii) identification of the ultimate beneficial owners; (iv) personal identification of at least one director (copies of a recent utility bill and passport or driver’s license); and (v) disclosure of any politically exposed persons.

KYC information is not required to be submitted for registration of the branch.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

Determined by the laws of the jurisdiction of incorporation.

### **LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

No general business license is required but an authorization or permit may be required depending on the proposed business activities of the branch.

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

N/A.

## ISRAEL

### FORM OF ENTITY

#### Company

- (i) Unlimited number of shareholders. However, having over 50 shareholders will subject the company to different reporting requirements.
- (ii) Generally no personal liability of the shareholders.
- (iii) Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends.
- (iv) Typical charter documents include: Certificate of incorporation; and Articles of Association.
- (v) 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.
- (vi) Shareholders typically purchase shares in the corporation, either common or preferred.
- (vii) 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

- (i) Registration of an already existing corporate entity (excluding a partnership) organized outside of Israel (the Original Entity) with the Israeli Registrar of Companies;
- (ii) Defined under the Israeli Companies Law – 1999, as a “Foreign Company;” and
- (iii) Not a separate legal entity (same entity as the Original Entity).

### BRIEF DESCRIPTION

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.

### MINIMUM CAPITAL REQUIREMENT

No minimal requirement.

### LEGAL LIABILITY

Shareholders of a company are generally not liable for the debts of a company aside from their financial contribution to the company.

### **TAX PRESENCE**

A company is taxed at two levels. First, the company pays a corporate tax on its corporate income; shareholders are then taxed on dividends distributed by the company (if distributed).

### **INCORPORATION PROCESS**

Filing of various documents with the Israeli Registrar of Companies, including the company's articles of association and other incorporation forms.

### **BUSINESS RECOGNITION**

Well regarded and widely used.

### **SHAREHOLDER MEETING REQUIREMENTS**

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.

### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

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.

### **ANNUAL COMPANY TAX RETURNS**

Must annually file tax returns.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

Depending on the type of business and is issued by the municipality in which the company's facilities are located.

### **BUSINESS EXPANSION**

No need to change as business expands.

### **EXIT STRATEGY**

Voluntary liquidation is generally preformed *vis-à-vis* the Registrar of Companies. Involuntary liquidation will generally require the involvement of the court and/or the Official Receiver.

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

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.).

### **DIRECTOR/OFFICER REQUIREMENTS**

Minimum of one director. General manager and other officers are not required.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

None beyond the required director.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

None beyond the required director.

### **LOCAL OFFICE LEASE REQUIREMENT**

None required.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

None required.

### **SUFFICIENCY OF VIRTUAL OFFICE**

Insufficient. While physical presence is not required, a company must maintain a valid local registered mailing address.

### **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.

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

None.

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

None.

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

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.

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

Identity of directors and shareholders is publicly disclosed.

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

Shareholders – there must be a minimum of 1 shareholder, and while there is no maximum number, having over 35 shareholders may subject the company to various securities regulations and requirements (similar to those imposed on publicly traded companies).

Directors – there must be at least one director and there is no maximum number.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

There must be at least one shareholder.

### **REMOVAL OF DIRECTORS OR OFFICERS**

Directors are generally removed by a majority vote of the shareholders who appointed them. The board of directors appoints and removes the general manager.

### **REQUIRED AND OPTIONAL OFFICERS**

None required. Any optional officer is allowed.

### **BOARD MEETING REQUIREMENTS**

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.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

Shareholder meetings – Unless otherwise determined in the company's articles of association, the presence of at least two 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.

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

It is not necessary 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.)

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

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.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

Nominal value is not required. However, when used the nominal value will generally not be lower than NIS0.01 per share.

### **INCREASING OF CAPITALIZATION IF NEEDED**

Effectuated by shareholder action.

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

Generally by distribution of dividends, return of shareholder loans, etc.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

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 a "right of first refusal" or "co-sale right."

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

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.



### **SUMMARY OF “KNOW YOUR CLIENT” REQUIREMENTS**

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**

The shareholders must approve any amendment by such majority as determined in the articles of association (simple majority, if not otherwise determined).

### **LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

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**

N/A.

### **BRIEF DESCRIPTION**

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.

### **MINIMUM CAPITAL REQUIREMENT**

N/A.

### **LEGAL LIABILITY**

Same as the Original Entity.

### **TAX PRESENCE**

Only taxed at the corporate entity level on income.

### **INCORPORATION PROCESS**

Filing of various documents with the Israeli Registrar of Companies, including a Hebrew translation of the Original Entity’s incorporation documents.

### **BUSINESS RECOGNITION**

Well regarded and not uncommon for corporation with limited local presence (e.g. limited sales or marketing activity).

### **SHAREHOLDER MEETING REQUIREMENTS**

N/A.

### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

N/A.

### **ANNUAL COMPANY TAX RETURNS**

Must file tax returns annually.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

Depending on the type of business and is issued by the municipality in which the branch's facilities are located.

### **BUSINESS EXPANSION**

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**

N/A.

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

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**

N/A.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

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 ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

N/A.

### **LOCAL OFFICE LEASE REQUIREMENT**

N/A.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

N/A.

### **SUFFICIENCY OF VIRTUAL OFFICE**

Insufficient. While physical presence is not required, a Foreign Company must be represented by at least one person who regularly resided in Israel.

### **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**

N/A.

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

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**

N/A.

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

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**

Identity of directors is publicly disclosed.

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

N/A.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

N/A.

### **REMOVAL OF DIRECTORS OR OFFICERS**

N/A.

### **REQUIRED AND OPTIONAL OFFICERS**

N/A.

### **BOARD MEETING REQUIREMENTS**

N/A.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

N/A.

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

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?**

Yes.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

N/A.

### **INCREASING OF CAPITALIZATION IF NEEDED**

N/A.

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

Generally by distribution of dividends, return of shareholder loans, etc.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

N/A.

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

The branch will be registered under the same name as the Original Entity.

### **SUMMARY OF “KNOW YOUR CLIENT” REQUIREMENTS**

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**

N/A.

### **LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

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**

N/A.





## ITALY

### FORM OF ENTITY

#### ***Società per azioni (S.p.A.)***

- (i) Unlimited number of shareholders;
- (ii) Generally no personal liability of the shareholders;
- (iii) Requires a minimum corporate capital of €120,000;
- (iv) Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends;
- (v) Typical charter documents include: articles of association, bylaws (also part of the articles of association, although technically two separate documents), organizational board resolutions; registration with the proper Chamber of Commerce/Companies' Registry, stock certificates; and stock ledger;
- (vi) Board of directors has overall management responsibility; certain management powers can be (and usually are) delegated to individual directors (or an executive committee) as well as to proxy holders;
- (vii) Shareholdings are represented by shares; and
- (viii) The shares can be listed on stock exchanges.

#### ***Società a responsabilità limitata (S.r.l.)***

- (i) Unlimited number of quotaholders allowed;
- (ii) Generally no personal liability of the quotaholders;
- (iii) Requires a minimum corporate capital of €10,000;
- (iv) Taxed on its earnings at a corporate level and quotaholders are taxed on any distributed dividends;
- (v) Flexibility and versatility in terms of corporate governance and management;
- (vi) Typical charter documents include: articles of association, bylaws (also part of the articles of association, although technically two separate documents), registration with the proper Chamber of Commerce/Companies' Registry;
- (vii) Interests are represented by quotas; and
- (viii) The quotas cannot be listed on any stock exchange.





### **Branch Office**

- (i) Not a separate legal entity from its parent company;
- (ii) However, it still has the power to permanently represent the parent company in Italy;
- (iii) Autonomous in how it organizes its activities in Italy;
- (iv) Has decision making ability to carry on the business of its parent company in Italy;
- (v) One or more persons will be granted with the ability to represent the branch office in Italy;
- (vi) 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); and
- (vii) Typical charter documents include: registration with the appropriate Companies' Registry, issuance of an Italian fiscal code and VAT code, statement of new activity in Italy, power of attorney/proxy to be provided to the persons entitled to represent the branch office.

### **Representative office**

- (i) Not a separate legal entity from its parent company;
- (ii) It does not has the power to represent the parent company in Italy;
- (iii) 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 relationship with possible clients and monitor the Italian market;
- (iv) Cannot bind the parent company to any third party;
- (v) Not subject to taxation in Italy (by definition a representative office does not carry out a business activity); and
- (vi) Typical charter documents include: registration with the Economic and Administrative Register (R.E.A.), issuance of an Italian fiscal code.

## **SOCIETÀ A RESPONSABILITÀ LIMITATA (S.R.L.)**

### **BRIEF DESCRIPTION**

Separate and distinct legal entity. A S.r.l. can be managed either by a sole director, or by a group of directors who can then manage by forming a board of directors or who can manage by acting jointly or severally among them. Directors can also be quotaholders. Directors are elected by the quotaholders of the corporation.

### **MINIMUM CAPITAL REQUIREMENT**

Minimum capital requirement of €10,000.

### **LEGAL LIABILITY**

Quotaholders of a corporation are generally not liable for the debts of the corporation.

### **TAX PRESENCE**

Yes, its earnings are taxed at a corporate level and quotaholders are taxed on any distributed dividends.

### **INCORPORATION PROCESS**

Must be done in front of an Italian notary public, involves the filing of articles of association and registration with the appropriate Chamber of Commerce/Companies' Registry.

### **BUSINESS RECOGNITION**

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**

Quotaholders are required to, at a minimum, approve the corporation's financial statements each year.

### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

Directors are required to, at a minimum, approve the corporation's draft financial statements each year.

### **ANNUAL COMPANY TAX RETURNS**

Must annually file tax returns with the Italian tax authority; the most common are (not exhaustive list): (i) corporate income tax return, (ii) regional income tax return, (iii) VAT return, (iv) 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: Intrastat form, communication of any transactions with counterparties originating from the list of black listed countries, etc.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

No annual filings after the initial filing for incorporation.

### **BUSINESS EXPANSION**

If a S.r.l. expands beyond a certain point (e.g., corporate capital in excess of €120,000 or if certain earnings thresholds are exceeded for 2 consecutive financial years, the company must appoint a board of statutory auditors or a sole auditor or an external auditor.

### **EXIT STRATEGY**

File dissolution documents with the appropriate Companies' Registry. Should there exist many quotaholders, various exit options can be agreed under a quotaholders agreements and, to the extent possible under Italian law, reflected into the company's by-laws.

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Approval of financial statements (both at quotaholders' and directors' level)

### **DIRECTOR/OFFICER REQUIREMENTS**

Directors are required.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

N/A.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

None beyond the required directors. Although as a practical matter, operations are easier if at least one of the directors is located in Italy.

### **LOCAL OFFICE LEASE REQUIREMENT**

An address is required in Italy.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

Italian accounting firm is required.

### **SUFFICIENCY OF VIRTUAL OFFICE**

An address is required in Italy.

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

Typically third party service provider. Lacking any physical spaces, usually the office of the accounting firm is declared as the registered office of the company. However, this would need to be contracted between the accounting firm and the company.

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

Not common.

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

Foreigner can be appointed as directors of the company, however, they are required to first obtain Italian fiscal code (which can be obtained by filing certain forms with the appropriate Chamber of Commerce/Companies' Registry).

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

None.

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

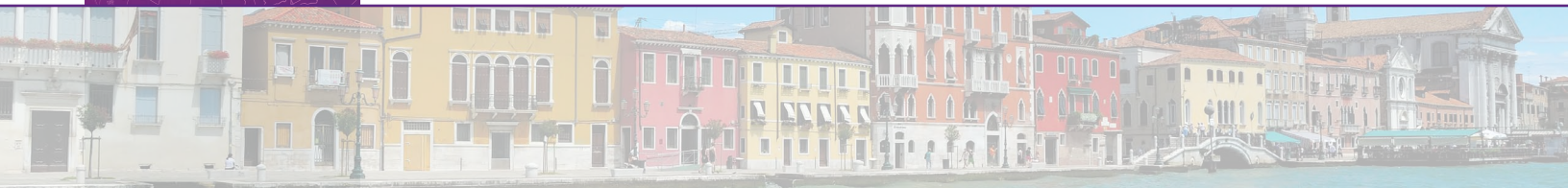
Directors are elected by the shareholders and are the highest authority in the management of the corporation. A S.r.l. can be managed either by a sole director, or by a group of directors who can then manage by forming a board of directors or who can manage by acting jointly or severally among them. Directors can also be quotaholders.

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

Quotaholders, directors, members of oversight body (e.g., members of the board of statutory auditors, if any), and proxy-holders (if any) are publicly identified.

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

The minimum and maximum number of directors are specified in the by-laws. For directors, generally the minimum number is one (sole director) and the maximum three or five (when they form a board).



### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

One quotaholder is sufficient.

### **REMOVAL OF DIRECTORS OR OFFICERS**

Removal of directors is generally allowed by a vote of quotaholders 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, he can be removed for “just cause” with a resolution of the quotaholders. In case of absence of a just cause the quotaholders meeting can remove such director but compensation for damages will be due.

### **REQUIRED AND OPTIONAL OFFICERS**

Nothing required.

### **BOARD MEETING REQUIREMENTS**

If provided for in the by-laws, resolutions can be taken by written consultation except for certain matters excluded under Italian law.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

Usually simple majority is sufficient, however, for the approval of certain matters, a different quorum is typically applied.

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

Yes, a temporary bank account (usually provided by the notary public notarizing the deed of incorporation) is used for the initial payment of the corporate capital. Then a local bank account for the company must be opened.

### **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 a sole auditor, a board of statutory auditors or an external auditors can be appointed on a voluntary basis or are required when the company expands beyond a certain point (e.g., corporate capital in excess of €120,000 or if certain earnings thresholds are exceeded for two consecutive financial years).

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

N/A.

### **INCREASING OF CAPITALIZATION IF NEEDED**

Effectuated by amending the charter document through a decision of the managing body and quotaholders meeting resolution adopted with the majorities provided in the by-laws. The quotaholders meeting must be done in front of the Italian notary public.

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

Funds can be repatriated abroad from the Italy via dividends.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

Can be provided for in the by-laws within certain limitations

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

Individual choice.

### **SUMMARY OF “KNOW YOUR CLIENT” REQUIREMENTS**

N/A.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

Decision of the managing body and quotaholders meeting resolution in front of an Italian notary public



### **LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

Depends on the specific business of the corporation.

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

Shelf companies can be purchased from third-party service providers, but are rarely used.



# JAPAN

## FORM OF ENTITY

### Branch

- (i) This form is used by foreign companies which wish to gain presence in Japan without establishing a subsidiary;
- (ii) Appointment of a representative in Japan and of a representative who has an address in Japan is needed. Other than that, there is no requirements regarding corporate maintenance; and
- (iii) Taxed on income arising within Japan in principle.

### Kabushiki-Kaisha (KK)

- (i) Unlimited number of shareholders;
- (ii) No personal liability of the shareholders;
- (iii) Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends;
- (iv) The corporate formalities are fairly strict; and
- (v) Directors have overall management responsibility. A KK may be established with or without a board of directors.

### Godo-Kaisha (GK)

- (i) Unlimited number of members allowed;
- (ii) Liability of members is limited to the amount of equity participation;
- (iii) Taxed on its earnings at a corporate level and members are taxed on any distributed dividends;
- (iv) There are few formal corporate governance requirements that must be observed; and
- (v) Members are designated to manage the business.

## BRANCH

### BRIEF DESCRIPTION

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 one representative in Japan.

### MINIMUM CAPITAL REQUIREMENT

No minimum capital is required.

### **LEGAL LIABILITY**

Depends on the governing law.

### **TAX PRESENCE**

Income arising within Japan is in principle taxed.

### **INCORPORATION PROCESS**

A foreign company is required to register with the Legal Affairs bureau.

### **BUSINESS RECOGNITION**

This form is used by foreign companies which wish to gain presence without establishing a subsidiary in Japan.

### **SHAREHOLDER MEETING REQUIREMENTS**

No requirements.

### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

No requirements.

### **ANNUAL COMPANY TAX RETURNS**

A registered branch must annually file tax returns with the National Tax Agency.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

A foreign company must register necessary information which are required in the same of the most similar form of companies in Japan to carry out transaction continuously. In addition, the foreign company must register the governing law, the name and address of the representative in Japan. If a foreign company has the same and the similar features as a KK, the company must also register the means to disclose a balance sheet.

### **BUSINESS EXPANSION**

No need to change as business expands.

### **EXIT STRATEGY**

A branch office can be closed by registering closure or by registering the resignation of all representatives in Japan.

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

No requirements.

### **DIRECTOR/OFFICER REQUIREMENTS**

At least one representative is needed. Also, at least one representative must have an address in Japan.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

None.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

No requirements.

### **LOCAL OFFICE LEASE REQUIREMENT**

To lease property in the name of a foreign company, most lessors will 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.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

No requirement. A representative's address will be considered as the address of a branch if the branch does not register its own address.

### **SUFFICIENCY OF VIRTUAL OFFICE**

Sufficient for registration.

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

Allowed for registration.

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

Allowed for registration.

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

At least one representative must have an address in Japan, but need not be a resident.

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

None.

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

No provision under Japanese legislation.

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

Not needed.

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

At least one representative in Japan is needed.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

Not required.

### **REMOVAL OF DIRECTORS OR OFFICERS**

No requirements.

### **REQUIRED AND OPTIONAL OFFICERS**

No requirements.

### **BOARD MEETING REQUIREMENTS**

No requirements.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

No requirements.

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

Not necessary for registration, and not limited to local account.

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

None.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

No requirements.

### **INCREASING OF CAPITALIZATION IF NEEDED**

Not needed.

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

A branch does not have equity participation share, but the income of a branch may contribute to dividends of a foreign country.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

No restrictions.

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

A trade name cannot be the one which can be mistaken as other companies.

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

There is no system that is similar to KYC in this jurisdiction.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

No requirements.

### **LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

The registration is required to conduct business continuously.

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

There is no concept of shelf company in this jurisdiction.

## **KK**

### **BRIEF DESCRIPTION**

A KK is 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. Most Kks have a board of directors.

### **MINIMUM CAPITAL REQUIREMENT**

No minimum capital is required.

### **LEGAL LIABILITY**

Liability of shareholders is limited to the amount of equity participation.

### **TAX PRESENCE**

A KK is taxed at two levels. First the KK is subject to corporate tax; then shareholders are taxed on any dividends distributed by the KK.

### **INCORPORATION PROCESS**

Certification of the articles of incorporation and registration to the Legal Affairs Bureau are required.

### **BUSINESS RECOGNITION**

Well regarded and widely used.

### **SHAREHOLDER MEETING REQUIREMENTS**

A regular general shareholders meeting, in principle, must be held at least once every year. It needs to be held within three months of the end of the fiscal year.

### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

A KK has to hold a directors meeting once in three months.

### **ANNUAL COMPANY TAX RETURNS**

A KK must annually file tax returns with the National Tax Agency.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

Initial registration is required. Also, a KK has to register change of items that have to be registered initially.

### **BUSINESS EXPANSION**

No need to change as business expands.

### **EXIT STRATEGY**

Filing dissolution documents with the Legal Affairs Bureau.

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Annual shareholders meeting and board directors meeting once in three months.

### **DIRECTOR/OFFICER REQUIREMENTS**

A Directors is required. A KK which does not have restriction on transfer of stocks has to have a board of directors which consists of more than three directors. A Statutory auditor or committees (or accounting advisors in certain KKs) is required in a KK which has a board.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

None.



### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

None beyond the required directors and officers.

### **LOCAL OFFICE LEASE REQUIREMENT**

None required for incorporation.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

None.

### **SUFFICIENCY OF VIRTUAL OFFICE**

Allowed 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**

Allowed for incorporation.

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

One representative director must be a resident of Japan.

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

None.

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

Directors are the highest authority in the management of a KK, and govern the organization. A KK with committees should have an executive officer. Executive officers are responsible of the execution of the operations of the KK.

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

Identity of directors is publicly disclosed, but of shareholders is not disclosed.

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

The minimum number is three in a KK with a board of directors. No limitation of the numbers of shareholders.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

One shareholder is sufficient.

### **REMOVAL OF DIRECTORS OR OFFICERS**

Removal of directors is generally allowed by a vote of shareholders.

### **REQUIRED AND OPTIONAL OFFICERS**

Executive officers and an accounting auditor are required in a KK with committees. An accounting auditor is required in a KK that has stated capital of at least ¥500 million or liabilities of at least ¥20 billion (this kind of KK is called “large company”). An accounting advisor is optional in every kinds of KKs.

### **BOARD MEETING REQUIREMENTS**

Board of director meeting is required once in three month. Vote can be replaced by written consent of all directors if set forth in articles of incorporation and statutory auditors do not give an objection.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

For a shareholder meeting, usually a majority of shareholders must be present during the meeting, or all shareholders must sign a written consent. For a board meeting, usually a majority of shareholders must be present during the meeting. The resolution can be replaceable by all directors’ written consent as mentioned above.

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

Not necessary in order to incorporate. The bank account does not have to be local one.

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

An audit is required for a KK with a board of directors or an accounting auditor. Statutory auditors review the financial documents of the company and are responsible for auditing the execution of duties by directors for compliance with statutes and the articles of incorporation. There is no requirement that a statutory auditor be an accountant and he/she does not have to be located in local jurisdiction. A KK must keep the company’s books for ten years.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

No statutory par stock value under the current jurisdiction.

### **INCREASING OF CAPITALIZATION IF NEEDED**

Increasing of capitalization can be done by consolidation of shares.

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

Funds can be repatriated abroad from Japan via dividends or distribution of residual assets.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

A KK can issue shares that cannot be transferred without the approval of a KK if written in the articles of incorporation.

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

A KK should use in its trade name the words “Kabushiki-Kaisha.” A trade name cannot be the one which can be mistaken for the other company.

### **SUMMARY OF “KNOW YOUR CLIENT” REQUIREMENTS**

There is no system that is similar to KYC in this jurisdiction.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

Special resolution of a shareholders meeting, which normally requires presence of a majority of shareholders and a majority of two thirds or more of votes is required.

### **LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

No licenses is required.

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

There is no concept of shelf company in this jurisdiction.

## **GK**

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### **BRIEF DESCRIPTION**

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.

### **MINIMUM CAPITAL REQUIREMENT**

No minimum capital is required.

### **LEGAL LIABILITY**

Liability of partners is limited to the amount of equity participation.

### **TAX PRESENCE**

A GK is taxed at two levels. First the GK is subject to corporate tax; then partners are taxed on any dividends distributed by the GK.

### **INCORPORATION PROCESS**

Certification of the articles of incorporation and registration to the Legal Affairs Bureau are required.

### **BUSINESS RECOGNITION**

Some business entities may be hesitant in dealing with third party GKs since the structure is relatively new (introduced with the adoption of revised corporate law in 2006).

### **SHAREHOLDER MEETING REQUIREMENTS**

None.

### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

None.

### **ANNUAL COMPANY TAX RETURNS**

A GK must annually file tax returns with the National Tax Agency.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

Initial registration is required. Also, a GK has to register change of items that were have to be registered initially.

### **BUSINESS EXPANSION**

No need to change as business expands.

### **EXIT STRATEGY**

Filing dissolution documents with the Legal Affairs Bureau.

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

None. A GK can organize the policy of maintenance flexibly.

### **DIRECTOR/OFFICER REQUIREMENTS**

No requirements regarding director. Normally a partner executes the business of the GK and he/she represents the GK. The GK can also appoint partners who execute the business. In this case, an executive partner represents the GK, but the GK can also appoint a representative.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

None.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

None.

### **LOCAL OFFICE LEASE REQUIREMENT**

None required for incorporation.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

None.

### **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**

Allowed for incorporation.

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

One representative must be a resident of Japan.

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

None.

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

Normally a partner executes the business of a GK and he/she represents the GK. A GK can also appoint partners who execute the business. In this case, an executive partner represents the GK, but the GK can also appoint a representative.

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

Identity of partners is not disclosed.

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

There is no limitation of the numbers of partners and executives.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

One shareholder is sufficient.

### **REMOVAL OF DIRECTORS OR OFFICERS**

Removal of executives is generally allowed by consents of all partners if there are justifiable grounds.

### **REQUIRED AND OPTIONAL OFFICERS**

None.

### **BOARD MEETING REQUIREMENTS**

None.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

None.

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

Not necessary in order to incorporate. The bank account does not have to be a local one.

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

None.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

N/A.

### **INCREASING OF CAPITALIZATION IF NEEDED**

No requirements regarding this.

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

Funds can be repatriated abroad from Japan via dividends or distribution of residual assets.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

A partner cannot transfer his/her equity without the consent of all partners.



### **OBTAINING A NAME AND NAMING REQUIREMENTS**

A GK should use in its trade name the words “Godo-Kaisha.” A trade name cannot be the one which can be mistaken for the other company.

### **SUMMARY OF “KNOW YOUR CLIENT” REQUIREMENTS**

There is no system that is similar to KYC in this jurisdiction.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

Normally all partners’ consent is needed.

### **LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

No licenses is required.

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

There is no concept of shelf company in this jurisdiction.



# LUXEMBOURG

## FORM OF ENTITY

### *Private Limited Liability Company (Société à responsabilité limitée or S.à r.l.)*

Terminology : the terms “shareholders”, “shares” and “directors” refer to “associés”, “parts sociales” and “gérants” (literally translated as “members”, “corporate units” and “managers”).

## PRIVATE LIMITED LIABILITY COMPANY (SOCIÉTÉ À RESPONSABILITÉ LIMITÉE OR S.À R.L.)

### BRIEF DESCRIPTION

Separate and distinct legal personality. Managed by a director or a board of directors responsible for making major business decisions and overseeing the general affairs of the company. Directors are elected by the shareholders and may represent the company acting alone, or as set out in the articles of association, if more than one is appointed.

### MINIMUM CAPITAL REQUIREMENT

€12.500, fully paid-up upon incorporation.

### LEGAL LIABILITY

Shareholders of the company generally not liable for the debts of the company, aside from their financial contribution to the capital of the company .

### TAX PRESENCE

The company pays a corporate tax on its corporate income (currently at the rate of 19.22 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).

### INCORPORATION PROCESS

Incorporation by notarial deed.

### BUSINESS RECOGNITION

Widely used.

### SHAREHOLDER MEETING REQUIREMENTS

Shareholders' resolutions may be taken in writing (no requirement to hold a shareholders meeting, unless there are more than 40 shareholders and except for share transfer approvals).

### BOARD OF DIRECTOR MEETING REQUIREMENTS

Director's resolutions to be taken, and board meetings (if more than one director) to be held in Luxembourg, preferably more than once a year.

### ANNUAL COMPANY TAX RETURNS

Annual filing of tax returns.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

Registration with the Register of Commerce and Companies and publication of notarial deed of incorporation in the Luxembourg official gazette.

### **BUSINESS EXPANSION**

No need to change as business expand, if activities included in corporate purpose clause.

### **EXIT STRATEGY**

Dissolution documents to be filed with the Register of Commerce and Companies and publication in the Luxembourg official gazette.

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Approval by the shareholders of the balance sheet and profit and loss account prepared by the management; annual shareholders meeting to be held if more than 25 shareholders.

### **DIRECTOR/OFFICER REQUIREMENTS**

At least one director required (individual or legal person).

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

None.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

The company must be managed in Luxembourg for substance reasons.

### **LOCAL OFFICE LEASE REQUIREMENT**

Registered office in Luxembourg required.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

The director (or at least one half of the directors, if more than one) must reside or work in Luxembourg.

### **SUFFICIENCY OF VIRTUAL OFFICE**

Real registered office required.

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

Corporate services providers may provide registered office address.

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

Corporate services providers may provide for directors in Luxembourg.

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

None.

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

None.

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

The directors may carry out all acts necessary or useful to achieve the corporate purpose, except those reserved by law or the articles of association to the shareholders.

A director acting alone or the directors acting together (as provided in the articles of association, if more than one), represent the company towards third parties.

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

The identity of directors may be found in the Register of Commerce and Companies records and the Luxembourg official gazette. The identity of the shareholders is published in the Luxembourg official gazette.

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

One or several directors; maximum of 40 shareholders.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

There must be at least one shareholder.

### **REMOVAL OF DIRECTORS OR OFFICERS**

Directors removed by the shareholders for legitimate reasons only, unless provided otherwise in the articles of association.

### **REQUIRED AND OPTIONAL OFFICERS**

None.

### **BOARD MEETING REQUIREMENTS**

Resolutions of the sole director recorded in minutes or in writing. If more than one director, board meetings would typically be held more than once a year (directors abroad may be represented by proxy or participate by electronic means).

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

Shareholders resolutions taken by shareholders representing more than half of the capital and, failing that, at the majority of the votes cast in a second consultation or meeting.

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

The capital must be deposited in a bank account in Luxembourg 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?**

Luxembourg certified statutory auditor required, unless the company exceeds two out of the three following thresholds in respect of total balance sheet (€4.4 million), net turnover (€8.8 million) and average number of personnel (50).

Internal auditor required if more than 25 shareholders (and there is no certified statutory auditor).

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

Shares may be with, or without, par value.

### **INCREASING OF CAPITALIZATION IF NEEDED**

Effectuated by amending the articles of association, which requires approval of the shareholders representing at least three quarters of the capital.

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

Repatriation of funds through payment of dividends, redemption of shares (capital decrease) or upon liquidation.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

Approval of shareholders representing at least three-quarters of the capital given at a shareholders meeting required for transfers of shares to non-shareholders.

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

Availability of corporate name checked with the Register of Commerce and Companies prior to incorporation.

### **SUMMARY OF “KNOW YOUR CLIENT” REQUIREMENTS**

Banks and professionals of the financial sector, including domiciliation companies (corporate services providers), as well as notaries, are subject to KYC obligations.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

Amendment of articles of association by shareholders representing three-quarters of the capital.

### **LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

Business permits required depending upon the professional activities to be carried out.

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

Shelf companies can be purchased from corporate services providers (not widely used where the articles of association and, in particular, the corporate purpose clause have to be amended to fit a given transaction).



## MEXICO

### FORM OF ENTITY

There are three types of commercial entities that generally are incorporated or formed under Mexican federal law: (i) *Sociedad Anónima de Capital Variable* (S.A. de C.V.) (similar to a corporation in the United States); (ii) *Sociedad de Responsabilidad Limitada de Capital Variable* (S. de R.L. de C.V.) (similar to an LLC in the United States); and (iii) *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*), which allows flexibility in the inclusion of certain rights and obligations to its shareholder (not permitted in a S.A. de C.V. or S. de R.L. de C.V.).

#### S.A. de C.V.

- (i) Unlimited number of shareholders.
- (ii) Generally no personal liability of the shareholders.
- (iii) Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends.
- (iv) Shareholders have preemptive rights to subscribe and pay shares if the S.A. de C.V. approves to increase its capital.
- (v) Typical charter documents include: articles of incorporation; bylaws; stock certificates; and (a) stock ledger; (b) shareholders meetings ledger; (c) board of directors ledger, and (d) capital variations ledger.
- (vi) Board of directors (or sole administrator) has overall management responsibility; officers have day-to-day responsibility.
- (vii) Shareholders typically incorporate the corporation or may purchase shares from existing shareholders.
- (viii) Relevant law requires a shareholders annual meeting to approve (i) preceding year-end-financial statements, (ii) ratification or appointment of new director(s), (iii) separation of 5 percent of the profits for a legal reserve, which shall reach an amount equivalent to the 20 percent of the social capital.
- (ix) Federal law requires, when there is foreign investment in the capital of the S.A. de C.V., to file an annual report with the Ministry of Economy reporting the preceding year year-end-financial statements.

#### S. de R.L. de C.V.

- (i) Up to 50 partners; contributions of the partners to the capital are represented by equity interests (not shares) which are not negotiable instruments.
- (ii) Generally no personal liability of the partners.
- (iii) Taxed on its earnings at a corporate level and partners are taxed on any distributed dividends.

- (iv) 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.
- (v) 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.
- (vi) 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.
- (vii) Board of directors (or sole administrator) has overall management responsibility; officers have day-to-day responsibility.
- (viii) Partners typically form the company or may acquire equity interests from existing partners, subject to the waiver of other partners' preemptive rights.
- (ix) Relevant law requires a partners annual meeting to approve (i) preceding year-end-financial statements, (ii) ratification or appointment of new director(s), (iii) separation of 5 percent of the profits for a legal reserve, which shall reach an amount equivalent to the 20 percent of the social capital.
- (x) Federal law requires, when there is foreign investment in the capital of the S. de R.L. de C.V., to file an annual report with the Ministry of Economy reporting the preceding year year-end-financial statements.

### **S.A.P.I de C.V.**

- (i) Same legal requirements and provisions for the S.A. de C.V., although relevant law allows certain flexibility in the inclusion of certain rights and obligations to its shareholder (not permitted in a S.A. de C.V.), such as drag-along rights, tag-along rights, put options, among others.
- (ii) A S.A.P.I de C.V. must be managed by a Board of Directors (sole administrator is not allowed).

### **S.A. DE C.V.**

#### **BRIEF DESCRIPTION**

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.

#### **MINIMUM CAPITAL REQUIREMENT**

No minimum capital requirement.

#### **LEGAL LIABILITY**

Shareholders of a corporation are generally not liable for the debts of a corporation aside from their financial contribution to the corporation.

### **TAX PRESENCE**

A S.A. de C.V. is taxed at two 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.

### **INCORPORATION PROCESS**

(i) Request use of corporate name; (ii) drafting and approval of bylaws and articles of incorporation, (iii) formalization of the documents with a Mexican Notary Public, and (iv) registration of the public deed with Public Registry of Commerce.

### **BUSINESS RECOGNITION**

Well regarded and widely used.

### **SHAREHOLDER MEETING REQUIREMENTS**

Required to hold annual meeting of shareholders to vote on certain items.

### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

Unless otherwise provided for in the corporation's bylaws, no annual meeting of the directors is required.

### **ANNUAL COMPANY TAX RETURNS**

Must annually file tax returns with federal and state tax authorities.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

With the Public of Registry of Commerce, with the Foreign Investments Bureau, if applicable, with the federal and state tax authorities.

### **BUSINESS EXPANSION**

No need to change as business expands (unless the business expansion entails a change in its organizational documents).

### **EXIT STRATEGY**

Dissolution and winding up shall be approved by the shareholders meeting, generally it is a long and complex process.

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Annual shareholder meeting and annual filing with the Foreign Investments Bureau.

### **DIRECTOR/OFFICER REQUIREMENTS**

Either a sole administrator or a Board of Directors.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

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 ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

Appointment of statutory advisor (*comisario*).

### **LOCAL OFFICE LEASE REQUIREMENT**

Not required for incorporation.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

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.

### **SUFFICIENCY OF VIRTUAL OFFICE**

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**

Sufficient for tax registration.

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

Permitted, usually common.

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

Regarding the shareholders, it depends on the corporate purpose of the entity (certain activities have foreign investment limitations). Regarding 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**

None.

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

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. 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 SHAREHOLDERS**

A summary of the organizational documents is public since the incorporation public deed shall be registered with the Public Registry of Commerce.

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

There must be a minimum of two shareholders, and no maximum number. No minimum or maximum limitations for directors.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

Two shareholders.

### **REMOVAL OF DIRECTORS OR OFFICERS**

Removal of directors is allowed by a vote of the majority of the shares.



### **REQUIRED AND OPTIONAL OFFICERS**

All are optional.

### **BOARD MEETING REQUIREMENTS**

No legal requirement.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

There are two kinds of shareholder meeting (i) ordinary, which requires half 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 (ii) extraordinary, which requires three quarters of the shares to be represented for deeming as legally convened a meeting, and its resolutions shall be adopted by half of votes present in a specific meeting.

Board of Directors shall be considered as legally convened if half 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?**

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?**

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**

MX\$1.00, or shares may be non-par value shares.

### **INCREASING OF CAPITALIZATION IF NEEDED**

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 (I.E. DIVIDENDS OR REDEMPTION)**

Funds can be repatriated abroad from the US via dividends or redemption.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

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.

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

Proposed name shall be approved by the Ministry of Economy.

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

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**

Through an extraordinary shareholders meeting.

### **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 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.**

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### **BRIEF DESCRIPTION**

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.

### **MINIMUM CAPITAL REQUIREMENT**

No minimum capital requirement.

### **LEGAL LIABILITY**

Partners of a company are generally not liable for the debts of a company aside from their financial contribution to the company.

### **TAX PRESENCE**

A S. de R.L. de C.V. is taxed at two 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.

### **FORMATION PROCESS**

(i) Request use of corporate name; (ii) drafting and approval of bylaws and articles of formation, (iii) formalization of the documents with a Mexican Notary Public, and (iv) registration of the public deed with Public Registry of Commerce.

### **BUSINESS RECOGNITION**

Well regarded and widely used.

### **PARTNER MEETING REQUIREMENTS**

Required to hold annual meeting of partners to vote on certain items.

### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

Unless otherwise provided for in the company's bylaws, no annual meeting of the directors is required.

### **ANNUAL COMPANY TAX RETURNS**

Must annually file tax returns with federal and state tax authorities.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

With the Public of Registry of Commerce, with the Foreign Investments Bureau, if applicable, with the federal and state tax authorities.

### **BUSINESS EXPANSION**

No need to change as business expands (unless the business expansion entails a change in its organization documents).

### **EXIT STRATEGY**

Dissolution and winding up shall be approved by the partners meeting, generally is long and complex process.

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Annual partners meeting and annual filing with the Foreign Investments Bureau.

### **DIRECTOR/OFFICER REQUIREMENTS**

Either a sole administrator or a Board of Directors.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

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 ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

No legal requirement.

### **LOCAL OFFICE LEASE REQUIREMENT**

Not required for formation.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

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.

### **SUFFICIENCY OF VIRTUAL OFFICE**

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**

Sufficient for tax registration.

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

Permitted, usually common.



### **NATIONALITY OR RESIDENCY REQUIREMENTS FOR PARTNERS, DIRECTORS AND OFFICERS**

Regarding the partners, it depends on the corporate purpose of the entity (certain activities have foreign investment limitations). Regarding directors 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).

### **RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE PARTNERS OR DIRECTORS**

None.

### **SUMMARY OF DIRECTOR'S, OFFICER'S AND PARTNER'S AUTHORITY AND LIMITATIONS THEREOF**

The Board of Directors (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 Directors or the partners to oversee day-to-day operations of the corporation.

### **PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND PARTNERS**

A summary of the organization documents is public since the formation public deed shall be registered with the Public Registry of Commerce.

### **MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND PARTNERS**

There must be a minimum of two partners, and a maximum of 50. No minimum or maximum limitation for directors.

### **MINIMUM NUMBER OF PARTNERS REQUIRED**

Two partners.

### **REMOVAL OF DIRECTORS OR OFFICERS**

Removal of directors is allowed by a vote of the majority of the partners (partners have one for each MX\$1.00).

### **REQUIRED AND OPTIONAL OFFICERS**

All are optional.

### **BOARD MEETING REQUIREMENTS**

No legal requirement.

### **QUORUM REQUIREMENTS FOR PARTNER AND BOARD MEETINGS**

There are two kinds of partners meeting (i) ordinary, which requires half 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; and (ii) extraordinary, which requires three quarters of the capital to be represented for deeming as legally convened a meeting, and its resolutions shall be adopted by majority of votes present in a specific meeting, except for certain matters that requires unanimous approval.

Board of Directors shall be considered as legally convened if half 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 FORMATION, AND MUST THE BANK ACCOUNT BE LOCAL?**

Not necessary 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?**

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.

### **REQUIREMENT REGARDING PAR VALUE OF EQUITY INTEREST**

MX\$1.00, or a multiple of it.

### **INCREASING OF CAPITALIZATION IF NEEDED**

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.

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

Funds can be repatriated abroad from the US via dividends or redemption.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

Partners have "Right of First Refusal."

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

Proposed name shall be approved by the Ministry of Economy.

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

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.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

Through an extraordinary partners meeting.

### **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 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.**

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#### **BRIEF DESCRIPTION**

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.

#### **MINIMUM CAPITAL REQUIREMENT**

No minimum capital requirement.

#### **LEGAL LIABILITY**

Shareholders of a corporation are generally not liable for the debts of a corporation aside from their financial contribution to the corporation.

#### **TAX PRESENCE**

A S.A.P.I. de C.V. is taxed at two 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**

(i) Request use of corporate name; (ii) drafting and approval of bylaws and articles of incorporation, (iii) formalization of the documents with a Mexican Notary Public, and (iv) registration of the public deed with Public Registry of Commerce.

#### **BUSINESS RECOGNITION**

Well regarded and widely used.

#### **SHAREHOLDER MEETING REQUIREMENTS**

Required to hold annual meeting of shareholders to vote on certain items.

#### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

Unless otherwise provided for in the corporation's bylaws, no annual meeting of the directors is required.

#### **ANNUAL COMPANY TAX RETURNS**

Must annually file tax returns with federal and state tax authorities.

#### **BUSINESS REGISTRATION FILING REQUIREMENTS**

With the Public of Registry of Commerce, with the Foreign Investments Bureau, if applicable, with the federal and state tax authorities.

#### **BUSINESS EXPANSION**

No need to change as business expands (unless the business expansion entails a change in its organizational documents).



### **EXIT STRATEGY**

Dissolution and winding up shall be approved by the shareholders meeting, generally it is a long and complex process.

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Annual shareholder meeting and annual filing with the Foreign Investments Bureau.

### **DIRECTOR/OFFICER REQUIREMENTS**

A Board of Directors.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

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 ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

Appointment of statutory advisor (*comisario*) or a surveillance committee.

### **LOCAL OFFICE LEASE REQUIREMENT**

Not required for incorporation.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

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**

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**

Sufficient for tax registration.

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

Permitted, usually common.

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

Regarding the shareholders, it depends on the corporate purpose of the entity (certain activities have foreign investment limitations). Regarding 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**

None.



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

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. 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 SHAREHOLDERS**

A summary of the organizational documents is public since the incorporation public deed shall be registered with the Public Registry of Commerce.

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

There must be a minimum of two shareholders, and no maximum number. No minimum or maximum limitations for directors.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

Two shareholders.

### **REMOVAL OF DIRECTORS OR OFFICERS**

Removal of directors is allowed by a vote of the majority of the shares.

### **REQUIRED AND OPTIONAL OFFICERS**

All are optional.

### **BOARD MEETING REQUIREMENTS**

No legal requirement.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

There are two kinds of shareholder meeting (i) ordinary, which requires half 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 (ii) extraordinary, which requires three quarters of the shares to be represented for deeming as legally convened a meeting, and its resolutions shall be adopted by half of votes present in a specific meeting.

Board of Directors shall be considered as legally convened if half 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?**

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?**

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**

MX\$1.00, or shares may be non-par value shares.

### **INCREASING OF CAPITALIZATION IF NEEDED**

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 (I.E. DIVIDENDS OR REDEMPTION)**

Funds can be repatriated abroad from the US via dividends or redemption.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

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.

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

Proposed name shall be approved by the Ministry of Economy.

### **SUMMARY OF “KNOW YOUR CLIENT” REQUIREMENTS**

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**

Through an extraordinary shareholders meeting.

### **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 but are not widely used and, since the enactment of the Mexican Anti-Money Laundering Law, we expect even fewer cases.





## NETHERLANDS

### FORM OF ENTITY

#### **Branch office (local office of a non-Dutch legal entity in the Netherlands)**

- (i) Not a separate legal entity, it is a local office of a non-Dutch legal entity in the Netherlands (the head office);
- (ii) 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;
- (iii) 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
- (iv) 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)**

- (i) Unlimited number of shareholders;
- (ii) Generally no personal liability of the shareholders;
- (iii) Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends;
- (iv) Typical charter documents include: articles of incorporation (included in its deed of incorporation which requires to be executed before a civil-law notary in the Netherlands) and shareholders register;
- (v) Board of directors has overall management and day-to-day responsibility;
- (vi) 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 no share certificates can be issued. Different types of shares can be created (common, preferred, without voting rights or without profit entitlement); and
- (vii) A BV requires to file annual accounts with the Dutch Trade Register (exemptions can apply, for instance in case of consolidation).



### ***Co-operative U.A. (a co-operative association with exclusion of liability)***

- (i) Unlimited number of members (with a minimum of two);
- (ii) 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 B.A. (with limited liability of its members to contribute to a deficit) and the Co-operative W.A. (with statutory liability for its members). This overview is limited to the (most commonly used) Co-operative U.A. (with exclusion of liability for its members), hereinafter also referred to as: “Co-operative;”
- (iii) Taxed on its earnings at a corporate level and members are taxed on any distributed dividends;
- (iv) Typical charter documents include: articles of incorporation (included in its deed of incorporation which requires 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;
- (v) Management board has overall management and day-to-day responsibility;
- (vi) 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
- (vii) A Co-operative requires to file annual accounts with the Dutch Trade Register.

### ***C.V. (a Dutch limited partnership)***

- (i) Unlimited number of partners (with a minimum at least one general partner and at least one limited partner);
- (ii) 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;
- (iii) A CV is not a legal entity under Dutch law. It is an (partnership) agreement between one or more general partners and one or more limited partners. The partners can either be legal persons or natural persons;
- (iv) 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 hold the beneficial ownership of the assets on behalf of the CV;
- (v) 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;



- (vi) Typical charter documents include: partnership agreement to be signed by all partners, and a partners register;
- (vii) 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;
- (viii) 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
- (ix) A CV only requires to prepare and file annual accounts with the Dutch Trade Register if (in short) all its general partners are capital companies under foreign law.



### BRANCH OFFICE

#### BRIEF DESCRIPTION

Not a separate legal entity, it is a local office of a non-Dutch legal entity in the Netherlands (the head office).

#### MINIMUM CAPITAL REQUIREMENT

Determined by governing law of the head office.

#### LEGAL LIABILITY

Determined by governing law of the head office.

#### TAX PRESENCE

Entities that are not a resident of the Netherlands for tax purposes are subject to Dutch corporate income tax, 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.

#### INCORPORATION PROCESS

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.

#### BUSINESS RECOGNITION

Widely used.

### **SHAREHOLDER MEETING REQUIREMENTS**

Determined by governing law of the head office.

### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

Determined by governing law of the head office.

### **ANNUAL COMPANY TAX RETURNS**

The foreign company owning the branch (the head office) must annually file tax returns with Dutch tax authorities.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

A branch office must be registered in the Dutch Trade Register within eight days after its establishment. Information on its directors and proxy holders must be up to date in the Trade Register (changes require to be filed within eight days).

### **BUSINESS EXPANSION**

No need to change as business expands.

### **EXIT STRATEGY**

File de-registration 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.

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Determined by governing law of the head office.

### **DIRECTOR/OFFICER REQUIREMENTS**

Determined by governing law of the head office.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

None.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

The head office may appoint one 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.

### **LOCAL OFFICE LEASE REQUIREMENT**

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.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

None.

### **SUFFICIENCY OF VIRTUAL OFFICE**

Not sufficient.

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

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**

Allowed and commonly provided by Dutch Trust companies.

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

Determined by governing law of the head office.

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

Determined by governing law of the head office.

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

Determined by governing law of the head office.

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

Identity of directors of the head office and proxy holders (if appointed) of the branch office is publicly disclosed.

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

Determined by governing law of the head office.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

Determined by governing law of the head office.

### **REMOVAL OF DIRECTORS OR OFFICERS**

Determined by governing law of the head office.

### **REQUIRED AND OPTIONAL OFFICERS**

Determined by governing law of the head office.

### **BOARD MEETING REQUIREMENTS**

Determined by governing law of the head office.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

Determined by governing law of the head office.

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

Not necessary in order to establish a branch office. 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?**

Determined by governing law of the head office. 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. The governing law of the head office also determines if the accounts need to be audited.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

Determined by governing law of the head office.

### **INCREASING OF CAPITALIZATION IF NEEDED**

Determined by governing law of the head office.

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

Determined by governing law of the head office.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

Determined by governing law of the head office.

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

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 (not yet registered as name of another company). The name of a branch office often is composed of the name of the head office followed by “Netherlands branch” or “Dutch branch.”

### **SUMMARY OF “KNOW YOUR CLIENT” REQUIREMENTS**

Dutch civil-law notaries and Trust companies each have their own KYC requirements. Generally clients require to disclose the identity of ultimate holders of 25 percent or more of the shares and provide documentation (such as notarized and apostilled passport copies) of individuals involved with the branch office as director or proxy holder.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

Determined by governing law of the head office.

### **LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

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**

N/A.

### **B.V. (PRIVATE COMPANY WITH LIMITED LIABILITY)**

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#### **BRIEF DESCRIPTION**

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 of directors to supervise the policies of the board of directors and the general course of affairs of the BV and its affiliated business.

#### **MINIMUM CAPITAL REQUIREMENT**

No minimum capital requirement. Issued capital can be as small as €0.01 (or one cent in any other currency).

#### **LEGAL LIABILITY**

Shareholders of a BV are generally not liable for the debts of a BV aside from their financial contribution to the BV.

#### **TAX PRESENCE**

Dutch corporate income tax is imposed on the worldwide profits of the BV. The tax rate on the first €200,000 of taxable profit is 20 percent. The rate on taxable profit in excess of €200,000 is 25 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.

#### **INCORPORATION PROCESS**

Execute Deed of Incorporation (including Articles of Association) before a civil-law notary officiating in the Netherlands. 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, the details of its directors 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.

#### **BUSINESS RECOGNITION**

Well regarded and widely used.

#### **SHAREHOLDER MEETING REQUIREMENTS**

Required to hold annual meeting of shareholders to vote on certain items, such as appointment of directors and adoption of annual accounts.

#### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

Annual meeting of the directors is required. Tax substance may require more than one meeting to be held per year in the Netherlands.



### **ANNUAL COMPANY TAX RETURNS**

Must annually file tax returns with Dutch tax authorities.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

A BV must be registered in the Dutch Trade Register within eight days after its incorporation. Information on its directors and shareholder (only in case of 100 percent shareholding) must be up to date in the Trade Register (changes require to be filed within eight days).

### **BUSINESS EXPANSION**

No need to change as business expands.

### **EXIT STRATEGY**

File dissolution documents with the Dutch Trade Register after completing voluntary liquidation procedure (including a mandatory two-month waiting period in which creditors can file opposition against liquidation accounts).



### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Annual director and shareholder meeting.

### **DIRECTOR/OFFICER REQUIREMENTS**

A BV must have at least one 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).

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

None.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

None beyond the required director. If there is no presence in the Netherlands yet, a Dutch Trust company can provide local representative(s), office address and administration services to the BV.

### **LOCAL OFFICE LEASE REQUIREMENT**

None required for incorporation. The office address of the BV must be registered in the Trade Register within 8 days after incorporation. Tax substance rules require that the BV has its office address in the Netherlands.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

None.

### **SUFFICIENCY OF VIRTUAL OFFICE**

Not sufficient.

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

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**

Allowed and commonly provided by Dutch Trust companies.

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

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.

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

The concept of nominee shareholders itself is not known in the Netherlands, however there are possibilities under Dutch law to get to a similar result.

Nominee directors not allowed.

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

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.

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

Identity of directors and proxy holders (officers) is publicly disclosed; identity of the shareholder only in case it holds 100 percent of the shares of the BV.

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

There must be a minimum of one shareholder, and no maximum number. For directors, the minimum number is one (sometimes more (local) Dutch tax resident directors are required for tax substance), while there is no maximum number.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

One shareholder is sufficient.

### **REMOVAL OF DIRECTORS OR OFFICERS**

Directors can be dismissed by a resolution of the shareholders meeting.

### **REQUIRED AND OPTIONAL OFFICERS**

None required; optional officers (proxy holders) are allowed.

### **BOARD MEETING REQUIREMENTS**

Typically one annual director meeting is required, however more than one physical board may be advisable to create sufficient tax substance in the Netherlands.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

For a shareholder meeting, usually a majority of shareholders must be present during the shareholder meeting (unless the Articles of the BV prescribe otherwise). If provided for in the Articles, shareholders can adopt resolutions in writing without holding a meeting. 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 (provided they all agree to do so).

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

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 opened in the Netherlands).

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

An audit is not generally required for a BV, unless it is considered to be a '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).

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

Minimum par value per share is one cent (in any currency).

### **INCREASING OF CAPITALIZATION IF NEEDED**

The Articles of a BV only require to mention 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).

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

Funds can be repatriated via dividends (including repayment from reserves) or redemption.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

Shares require to 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).

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

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 (not yet registered as name of another company). The name of a BV must begin or end with “B.V.”.

### **SUMMARY OF “KNOW YOUR CLIENT” REQUIREMENTS**

Dutch civil-law notaries and Trust companies each have their own KYC requirements. Generally clients require to disclose the identity of ultimate holders of 25 percent or more of the shares and provide documentation (such as notarized and apostilled passport copies) of individuals involved with the BV as director or (representative of) shareholder.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

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.

### **LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

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**

Since the BV law changed on 1 October 2012 and became more flexible, a BV can be incorporated within one to two weeks and purchase of a shelf company has become very unusual (if at all available).

## **CO-OPERATIVE U.A.**

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### **BRIEF DESCRIPTION**

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.

### **MINIMUM CAPITAL REQUIREMENT**

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.

### **LEGAL LIABILITY**

Members of a Co-operative U.A. are not liable for the debts of the Co-operative aside from their financial contribution to the Co-operative.

### **TAX PRESENCE**

Dutch corporate income tax is imposed on the worldwide profits of the Co-operative. The tax rate on the first €200,000 of taxable profit is 20 percent. The rate on taxable profit in excess of €200,000 is 25 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.

### **INCORPORATION PROCESS**

Execute 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 with the Dutch Trade Register. The notary prepares 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.



### **BUSINESS RECOGNITION**

Well regarded and widely used.

### **SHAREHOLDER MEETING REQUIREMENTS**

Required to hold annual meeting of members to vote on certain items, such as appointment of board members and adoption of annual accounts.

### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

Annual meeting of the board members is required. Tax substance may require more than one meeting to be held per year.

### **ANNUAL COMPANY TAX RETURNS**

Must annually file tax returns with Dutch tax authorities.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

A Co-operative must be registered in the Dutch Trade Register within eight days after its incorporation. Information on its board members must be up to date in the Trade Register (changes require to be filed within eight days).

### **BUSINESS EXPANSION**

No need to change as business expands.

### **EXIT STRATEGY**

File dissolution documents with the Dutch Trade Register after completing voluntary liquidation procedure (including a mandatory two-month waiting period in which creditors can file opposition against liquidation accounts).

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Annual management board and members meeting.



### **DIRECTOR/OFFICER REQUIREMENTS**

A Co-operative must have at least one board member. 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).

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

None.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

None beyond the required board member. If there is no presence in the Netherlands yet, a Dutch Trust company can provide local representative(s), office address and administration services to the Co-operative.

### **LOCAL OFFICE LEASE REQUIREMENT**

None required for incorporation. The office address of the Co-operative must be registered in the Trade Register within eight days after incorporation. Tax substance rules require that the Co-operative has its office address in the Netherlands.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

None.

### **SUFFICIENCY OF VIRTUAL OFFICE**

Not sufficient.

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

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**

Allowed and commonly provided by Dutch Trust companies.

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

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.

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

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 get to a similar result.

Nominee board members not allowed.

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

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.

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

Identity of board members and proxy holders (officers) is publicly disclosed; identity of the members is not disclosed.

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

There must be a minimum of two members, and no maximum number. For board members, the minimum number is one, while there is no maximum number.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

A Co-operative should have at least two members.

### **REMOVAL OF DIRECTORS OR OFFICERS**

Board members can be dismissed by a resolution of the meeting of members.

### **REQUIRED AND OPTIONAL OFFICERS**

None required; optional officers (proxy holders) are allowed.

### **BOARD MEETING REQUIREMENTS**

Typically one annual board meeting is required, however more than one physical board may be advisable to create sufficient tax substance in the Netherlands.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

For a meeting of members, usually a majority of members must be present during the meeting (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 (provided they all agree to do so).

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

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 opened in the Netherlands).

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

An audit is not generally required for a Co-operative, unless it is considered to be a 'large company' (when certain threshold amounts are exceeded in respect of assets, net turnover and employee number). 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).

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

N/A. A Co-operative does not have a capital divided into shares.

### **INCREASING OF CAPITALIZATION IF NEEDED**

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).

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

Funds can be repatriated via dividends (including repayment from reserves) and repayments from the member accounts.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

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 implication, the 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.

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

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 (not yet registered as name of another company). The name of a Co-operative U.A. must include the word "Coöperatief" together with "U.A.".

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

Dutch civil-law notaries and Trust companies each have their own KYC requirements. Generally clients require to disclose the identity of ultimate holders of 25 percent or more of the shares (interests) and provide documentation (such as notarized and apostilled passport copies) of individuals involved with the Co-operative as board member or (representative of) member.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

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.

### **LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

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**

N/A.

### **C.V. (A LIMITED PARTNERSHIP)**

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#### **BRIEF DESCRIPTION**

A CV is not a legal entity under Dutch law. It is an (partnership) agreement between one or more general partners and one 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.

#### **MINIMUM CAPITAL REQUIREMENT**

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**

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**

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**

Execute partnership agreement.

#### **BUSINESS RECOGNITION**

Widely used.

#### **SHAREHOLDER MEETING REQUIREMENTS**

Partnership agreement usually includes requirement to hold annual meeting of partners.

#### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

Generally no requirements.

#### **ANNUAL COMPANY TAX RETURNS**

Must annually file tax returns with Dutch tax authorities, if the CV is considered an open CV.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

A CV must be registered in the Dutch Trade Register if it has an enterprise in the Netherlands. For a CV with an enterprise outside the Netherlands, registration is not mandatory. If a CV is registered, information on its general partner and management committee members (proxy holders), if any, must be up to date in the Trade Register (changes require to be filed within eight days).

### **BUSINESS EXPANSION**

No need to change as business expands.

### **EXIT STRATEGY**

File dissolution documents with the Dutch Trade Register after completing liquidation requirements as may be included in the partnership agreement.

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Annual partners meeting (if so required by the partnership agreement).

### **DIRECTOR/OFFICER REQUIREMENTS**

A CV must have at least one general partner. If so provided for by the partnership agreement, a CV can have a management committee (who are proxy holders granted representation powers by the general partner).

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

None.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

None beyond the requirement of at least one general partner.

### **LOCAL OFFICE LEASE REQUIREMENT**

None 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**

None.

### **SUFFICIENCY OF VIRTUAL OFFICE**

Not sufficient.

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

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**

Allowed however not commonly provided for Dutch CVs.

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

None.



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

The concept of nominee partners itself is not known in the Netherlands, however there are possibilities under Dutch law to get to a similar result.

Nominee directors N/A.

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

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**

If the CV has an enterprise in the Netherlands and is therefore registered in the Trade Register, the identity of the general partner(s) and the management committee members (proxy holders), if any, is publicly disclosed; identity of the limited partner(s) is not disclosed.

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

There must be a minimum of two partners (of which one general and one limited partner), and no maximum number.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

There must be a minimum of two partners (of which one general and one limited partner).

### **REMOVAL OF DIRECTORS OR OFFICERS**

Members of the management committee, if any, can be dismissed in the way as provided for in the partnership agreement.

### **REQUIRED AND OPTIONAL OFFICERS**

None required; optional management committee members (proxy holders) are allowed.

### **BOARD MEETING REQUIREMENTS**

None.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

For a partners meeting, usually a majority of partners must be present during the meeting (unless the partnership agreement otherwise). If provided for in the partnership agreement, 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?**

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?**

An audit is not generally required for a CV, unless it is considered to be a 'large company' (when certain threshold amounts are exceeded in respect of assets, net turnover and employee number, which is very unlikely for a CV). Generally corporate books and records of the CV are kept at the address of the CV.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

N/A. A CV does not have a capital divided into shares.

### **INCREASING OF CAPITALIZATION IF NEEDED**

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 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 (I.E. DIVIDENDS OR REDEMPTION)**

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 one partner and that partners cannot be excluded from a profit right.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

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, in which respect granting a power of attorney to the managing partner will suffice.

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

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 (not yet registered as name of another company). The name of a CV must include "C.V." To prevent that the limited partner becomes liable as if he 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**

Dutch lawyers, civil-law notaries and Trust companies each have their own KYC requirements. Generally clients require to disclose the identity of ultimate holders of 25 percent or more of the shares (interests) and provide documentation (such as notarized and apostilled passport copies) of individuals involved with the CV as a partner (or management committee member).

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

The partnership agreement usually provides that it can be amended by all partners jointly.

### **LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

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**

N/A.



## RUSSIA

### FORM OF ENTITY<sup>1</sup>

#### **Open Joint-Stock Company**

- (i) Unlimited number of shareholders;
- (ii) Generally no personal liability of the shareholders;
- (iii) Typical documents include: charter; regulations; board resolutions;
- (iv) General shareholders' meeting is the highest management body; Board of directors (obligatory when 50+ shareholders) has overall management responsibility; Sole Executive Body (Executive board) have day-to-day responsibility; and
- (v) The shares are freely transferable. It is prohibited to establish the company's or its shareholders' pre-emptive right to acquire shares alienated by the shareholders of the company.

#### **Closed Joint-Stock Company**

- (i) Up to 50 shareholders;
- (ii) Generally no personal liability of the shareholders;
- (iii) Typical documents include: charter; board resolutions;
- (iv) General shareholders' meeting is the highest management body; Board of directors (if any) has overall management responsibility; Sole Executive Body (Executive board) have day-to-day responsibility;
- (v) Closed joint-stock company may not conduct open subscription for shares or otherwise offer them for acquisition to an unlimited number of people; and
- (vi) The company's shareholders enjoy the right of first refusal 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)**

- (i) Up to 50 participants;
- (ii) Generally no personal liability of the members;

<sup>1</sup> Please note that a major reform of the Civil Code of the Russian Federation is currently being considered in the Russian parliament that will have a significant impact on the legal entities.

- (iii) Typical documents include: charter; board resolutions; and
- (iv) Participants have the right to sell its participatory interest in the charter capital or a part thereof to one or several participants of this company. No consent shall be required from the company or other participants of the company to do so unless otherwise stipulated by the company's charter. The company's participants have the preemptive right to acquire participatory interest(s) from other participants; waiver from the pre-emptive right is allowed.

### JOINT-STOCK COMPANY (OPEN AND CLOSED)

#### BRIEF DESCRIPTION

A commercial organization the charter capital of which is divided into a definite number of shares. Shares qualify as securities in the meaning of 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 meeting of shareholders (the highest governing body of the company) which is responsible for major decisions regarding the company – amending the charter, reorganization and liquidation, increasing and decreasing the charter capital, approving annual reports and some deals etc.; by the executive body (general director or general 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.

In a company with less than fifty 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.

#### MINIMUM CAPITAL REQUIREMENT

For an open joint-stock company: 1,000 MMW (minimum monthly wages) or RUB100,000 (approximately US\$2,800 as of March 2014).

For a closed joint-stock company – 100 MMW or RUB10,000 (approximately US\$280 as of March 2014).

#### LEGAL LIABILITY

Shareholders of a company are generally not liable for the debts of a company aside from their financial contribution to the company.

#### TAX PRESENCE

A company is taxed at two levels (commonly referred to as double taxation). First the company pays a profit tax on its corporate income; then the company distributes dividends to shareholders and withholds the income tax on those dividends acting as a tax agent.

#### INCORPORATION PROCESS

Filing of a set of documents, including the application for state registration, decision on incorporation, the charter with an appropriate registration authority (local tax inspectorate). Registration of the issue of shares.



### **BUSINESS RECOGNITION**

Open joint-stock company – mainly used for the large companies.

Closed joint-stock company – not so widely used in comparison with the limited liability companies, as the procedure for incorporation is more complicated.

### **SHAREHOLDER MEETING REQUIREMENTS**

Required to hold annual shareholders meeting to vote on certain items, such as election of directors, approval of annual reports, profit-and-loss reports, distribution of profit etc.

### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

The procedure for convening and conducting of board meetings is determined by the charter of the company and an internal regulations of the company.

### **ANNUAL COMPANY TAX RETURNS**

Must file quarterly and annually tax returns with local tax authorities.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

Initial registration and shareholders' registration are required, as well as quarter and annual filings.

### **BUSINESS EXPANSION**

Open joint-stock company – no need to change as business expands.

Closed joint-stock company should be converted to an open joint-stock company if it intends to offer shares on the stock market or when the number of shareholders exceeds 50.

### **EXIT STRATEGY**

Complicated, bureaucratic and usually a lengthy procedure (from four months up to two 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**

Annual general shareholders' meeting.

### **DIRECTOR/OFFICER REQUIREMENTS**

Board of directors is required (the charter of the company with less than fifty shareholders may provide that the functions of the board of directors shall be carried out by the general meeting of shareholders); executive body (sole or sole and collective) is required; internal auditor (or auditing commission) is required.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

N/A.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

None beyond the required directors and officers.

### **LOCAL OFFICE LEASE REQUIREMENT**

Premises are required to be used as a registered legal address of the company, where a sole executive body is supposed to be sitting.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

None beyond the required directors and officers and registered address.

### **SUFFICIENCY OF VIRTUAL OFFICE**

Not sufficient.

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

Leased or owned premises are required.

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

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.

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

None. Though work permit is required for foreign employees (officers, sole executive body). Special requirements for foreign participation in certain types of businesses to be considered (banking, insurance, strategically important sectors etc.).

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

N/A.

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

General meeting of shareholders (the highest management body of the company) is responsible for major decisions regarding the company – 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.

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 fifty 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 (general director or general director and directorate) is responsible for day-to-day activities of the company.

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

Identity of the sole executive body (general director) is publicly disclosed; identity of shareholders is not publicly disclosed.

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

Open joint-stock company: minimum one shareholder, and no maximum number.

Closed joint-stock company: maximum 50 shareholders.

The board of directors: minimum five members.

For a company with more than one thousand shareholders: minimum seven members.

For a company with more than ten thousand shareholders: minimum nine members.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

One shareholder is sufficient.

A company cannot have another company having one shareholder/participant as a sole founder (shareholder) unless otherwise provided for by the federal law.

### **REMOVAL OF DIRECTORS OR OFFICERS**

Removal of the sole executive body – anytime by a decision of the general meeting of shareholders (or board of directors, if such decisions are within the competence of the board of directors).

### **REQUIRED AND OPTIONAL OFFICERS**

Typically an executive body (sole, or sole and collective) and internal auditor (or audit commission) are required.

### **BOARD MEETING REQUIREMENTS**

The procedure for convening and conducting of board meetings is determined by the charter of the company or an internal regulations of the company.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

Normally, general meeting of shareholders: more than 50 percent of votes. 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?**

Not necessary in order to incorporate, but usually recommended. A local bank account must be opened within three months in order for shares to be paid up or local taxes to be settled of required immediately post-incorporation.

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

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 taxing authorities) at the registered address of the company.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

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.

### **INCREASING OF CAPITALIZATION IF NEEDED**

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 meeting of shareholders.

The decision to increase the charter capital of a company by issuing additional shares must be taken by a general meeting of shareholders or the board of directors of a company if such decisions are within its competence in accordance with the charter of the company.

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

Funds can be repatriated abroad from Russia via dividends, buy-back of shares or redemption.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

Shares in an open 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 closed 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 right of first refusal 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 other procedure is provided in the company's charter. The charter may provide for the company's priority right to purchase shares sold by its shareholders if the shareholders did not use their right of first refusal.

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

The company must have a unique full company name and can have a short company name.

The full company name must contain an indication of the type of the company (closed or open).

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

Typically not required, though legal service providers may have their own KYC documents to be completed.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

Generally, a decision has to be taken by the general meeting of shareholders ( $\frac{3}{4}$  majority vote), except for the cases provided for in the law and in the charter.

### **LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

Only certain types of activities require license.

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

Highly not recommended and is not a wide-spread practice due to unclear business history (filings, taxation issues and possible “hidden” debts).

### **LIMITED LIABILITY COMPANY**

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#### **BRIEF DESCRIPTION**

A commercial organization the charter capital of which is divided into participatory interests. Participatory interests do not qualify as securities in the meaning of Russian law. The company participants 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 meeting of participants (the highest management body of the company) which is responsible for major decisions regarding the company – amending the charter, reorganization and liquidation, approving annual reports etc., by the executive body (general director or general 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.

#### **MINIMUM CAPITAL REQUIREMENT**

There is a minimum of RUB10,000 (approximately US\$280 as of March 2014).

#### **LEGAL LIABILITY**

The participants in a company are generally not liable for the debts of a company aside from their financial contribution to the company.

#### **TAX PRESENCE**

A company is taxed at two levels (commonly referred to as double taxation). First the company pays profits tax on its corporate income; then the company distributes dividends to shareholders and withholds the personal income tax on those dividends (where paid in cash) acting as a tax agent.

#### **INCORPORATION PROCESS**

File a set of documents including the application for state registration, decision on incorporation, the charter with the appropriate registration authority (local tax inspectorate).

#### **BUSINESS RECOGNITION**

Well regarded and widely used.

#### **PARTICIPANTS MEETING REQUIREMENTS**

It is required to hold an annual meeting of participants.

#### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

The procedure for the convocation and conducting of board meetings is determined by the charter of the company.

#### **ANNUAL COMPANY TAX RETURNS**

Must file quarterly and annually tax returns with local tax authorities.



### **BUSINESS REGISTRATION FILING REQUIREMENTS**

Initial registration is required, as well as quarter and annual filings.

### **BUSINESS EXPANSION**

If the company intends to enter the stock market or when the number of participants exceeds 50 it should be converted to open joint-stock company.

### **EXIT STRATEGY**

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**

Annual general meeting of participants.

### **DIRECTOR/OFFICER REQUIREMENTS**

Executive body (sole or collective) is required, internal auditor/audit commission is required in a company with more than 15 participants. The company's charter may provide for the formation of a board of directors.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

N/A.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

None beyond the required officers.

### **LOCAL OFFICE LEASE REQUIREMENT**

Premises are required to be used as a registered legal address of the company, where a sole executive body is supposed to be sitting.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

None beyond the required officers and registered address.

### **SUFFICIENCY OF VIRTUAL OFFICE**

Not sufficient.

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

Leased or owned premises are required.

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

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.

### **NATIONALITY OR RESIDENCY REQUIREMENTS FOR PARTICIPANTS, DIRECTORS AND OFFICERS**

None. Though work permit is required for foreign employees (officers, sole executive body).

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

N/A.

### **SUMMARY OF DIRECTOR'S, OFFICER'S AND PARTICIPANTS' AUTHORITY AND LIMITATIONS THEREOF**

General meeting of participants (the highest management body of the company) is responsible for major decisions regarding the company – 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 sole executive body (general director or general director and directorate) is responsible for day-to-day activities of the company.

### **PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND PARTICIPANTS**

Identity of the sole executive body (general director) is publicly disclosed; identity of participants is not publicly disclosed.

### **MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND PARTICIPANTS**

Minimum one, maximum 50 participants.

No special requirements regarding the directors.

### **MINIMUM NUMBER OF PARTICIPANTS REQUIRED**

One participant is sufficient.

A company cannot have another company having one shareholder/participant as a sole founder (shareholder).

### **REMOVAL OF DIRECTORS OR OFFICERS**

Removal of the sole executive body – anytime by a decision of the general meeting of participants.

### **REQUIRED AND OPTIONAL OFFICERS**

Typically an executive body (sole or collective) is required. An internal auditor (or audit commission) is required in a company with more than 15 participants.

### **BOARD MEETING REQUIREMENTS**

The procedure for convening and conducting of board meetings is determined by the charter of the company.

### **QUORUM REQUIREMENTS FOR PARTICIPANT AND BOARD MEETINGS**

General meeting of participants: No direct requirements. However most of decisions shall be taken by a majority of votes of the company's participants. Some decisions shall be taken by a two-third majority of votes of the company's participants or by all participants of a company unanimously.

Board of directors: no special requirements.

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

A bank account should be opened prior to incorporation for the purposes of payment of at least 50 percent of the charter capital.

Bank account must 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?**

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**

N/A.

### **INCREASING OF CAPITALIZATION IF NEEDED**

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 participants, unless this is forbidden by the company's charter, by means of the contributions of third entities/persons to be accepted into the company. The decision to increase the charter capital shall be taken by a general meeting of the participants.

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

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

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

The company's participants shall have the right to sell or alienate in any other way its share in the charter capital of the company or a part thereof to one or several participants of this company. No consent shall be required from the company or other participants of the company for making such a transaction unless otherwise stipulated by the company's rules.

The company's participants enjoy the preemptive right to buy the share or a part of the share of the company's participant at the price offered to a third person or at the price other than the price offered to a third person and fixed in advance by the company's charter in proportion to the size of their shares, unless the company's charter stipulates a different procedure for the exercise of this right.

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

The company must have a full company name and can have a short company name.

The company name shall include the words 'limited liability company'.

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

Typically not required, though legal service providers may have their own KYC documents to be completed.

### ***APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT***

By the general meeting of participants ( $\frac{2}{3}$  majority vote).

### ***LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION***

Only certain types of activities require license.

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

Not recommended due to unclear business history (filings, taxation issues and possible debts).

## SAUDI ARABIA

### FORM OF ENTITY

#### **Limited Liability Company (LLC)**

- (i) LLC is one of the most common forms of legal entity chosen by foreign investors; and
- (ii) Establishing an LLC may take four to six months from the date of submission of application.

#### **Branch of a foreign Company**

- (i) Foreign investors may also choose to establish a branch instead of an LLC to do business in in the Kingdom of Saudi Arabia (KSA);
- (ii) A branch operates on behalf of the parent company (foreign registered company) and has no separate legal existence in KSA;
- (iii) Registration of a branch with Saudi Arabian General Investment Authority (SAGIA) follows the same general procedure as that of an LLC. The Ministry of Commerce and Industry (MOCI) issues a commercial registration certificate before the branch is considered fully registered in KSA;
- (iv) Incorporation of a branch may take three to five months from the date of submission of application to SAGIA;
- (v) The parent company of the branch has liability for the branch's activities that it undertakes in KSA;
- (vi) The paid-up capital for a branch does not confer limitation of liability as compared to limited liability companies. The capital in a branch simply serves as a security for the Saudi market; and
- (vii) 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 limited liability company. 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.

### LIMITED LIABILITY COMPANY

#### **BRIEF DESCRIPTION**

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.

#### **MINIMUM CAPITAL REQUIREMENT**

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, minimum capital is required. Industrial activities: SAR1 million, Trading: SAR20 million, agricultural: SAR25 million, real estate: SAR30 million.



### **LEGAL LIABILITY**

Shareholders of an LLC are generally not liable for the debts of a corporation aside from their financial contribution to the corporation.

### **TAX PRESENCE**

Corporate tax and withholding tax is applicable. There is no value added tax in KSA.

### **INCORPORATION PROCESS**

File for an investment license at SAGIA and then complete incorporation process at MOCI and other government departments. Specific licenses are required for certain activities.

### **BUSINESS RECOGNITION**

Well regarded and widely used.

### **SHAREHOLDER MEETING REQUIREMENTS**

Required to hold at least one annual meeting for LLCs with more than 20 shareholders. For LLCs with 20 shareholders or less, decisions can be made individually.

### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

There is no requirement for a board of directors. The company may be managed by a General Manager only. If a board of directors is formed, there is no requirement for frequency of meetings.

### **ANNUAL COMPANY TAX RETURNS**

Required to annually file tax returns at the Zakat and Income Tax Department.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

LLCs have to renew their SAGIA license, commercial registration certificate upon expiry, and renew subscription to chamber of commerce annually.

### **BUSINESS EXPANSION**

An LLC cannot have more than 50 shareholders, in which case it will have to be converted into a joint-stock company.

### **EXIT STRATEGY**

Appointment of a liquidator either from shareholders or third parties to carryout dissolution.

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

A shareholder meeting shall be convened at least once a year. Accounts shall be prepared within four months from the end of the financial year.

### **DIRECTOR/OFFICER REQUIREMENTS**

Shareholders may appoint a manager, managers, and/or a board of directors.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

No local corporate secretary requirement.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

None beyond the required managers or directors.

### **LOCAL OFFICE LEASE REQUIREMENT**

A local office lease and local address is required.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

N/A.

### **SUFFICIENCY OF VIRTUAL OFFICE**

A virtual office is not sufficient.

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

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**

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**

The general manager needs to be a resident. Directors are not required to be nationals or residents. There are specific requirements regarding the nationality of shareholders in certain activities.

Trading activities: Saudi partner to own at least 25 percent of shareholding.

Engineering 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**

Restrictions above apply.

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

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**

There is no requirement to publicly disclose the identity of directors and shareholders.

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

Shareholders: a minimum of two required, and maximum fifty shareholders.

Directors: There is no minimum or maximum requirement.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

At least two shareholders are required in an LLC.

### **REMOVAL OF DIRECTORS OR OFFICERS**

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**

N/A.

### **BOARD MEETING REQUIREMENTS**

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**

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?**

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?**

Company's accounts must be audited by an auditor licensed to operate in KSA.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

Shares have to be equal in value.

### **INCREASING OF CAPITALIZATION IF NEEDED**

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 (I.E. DIVIDENDS OR REDEMPTION)**

Funds to be taken as dividends, subject to statutory requirements to maintain a reserve, and local tax.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

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**

LLC should have "limited" at the end of its name, and the proposed name must be approved by MOCI.

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

Not required by law.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

Amendments have to be approved by a majority of shareholders representing at least  $\frac{3}{4}$  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**

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...etc.

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

Shelf companies are not common in Saudi Arabia due to the difficulty and time consuming purchasing process.



# SINGAPORE

## FORM OF ENTITY

### **Limited Liability Company**

- (i) Separate legal entity
- (ii) A Private LLC should not have more than 50 members and its memorandum and articles of association (M&AA) should provide for restrictions on the right to transfer its shares whereas a Public LLC should have more than 50 members and its M&AA need not provide for similar share transfer restrictions
- (iii) Limited liability for the shareholders and no personal liability, save for exceptional circumstances.
- (iv) Single tier tax policy; Taxed on its earnings at a corporate level and dividends are distributed to shareholders tax free.
- (v) Typical charter documents include : Certificate of incorporation and M&AA.
- (vi) The business of the company is managed by and under the board of directors and there is separation of ownership and management.
- (vii) Shareholder subscribe or purchase shares in the company, either ordinary or preference.

## LIMITED LIABILITY COMPANY

### BRIEF DESCRIPTION

Separate and distinct legal entity with limited liability for its members. Managed by a board of directors, which is responsible for making major business decisions and overseeing the general affairs of the corporation. Appointment of directors is generally left to the company's articles of association and they are typically nominated by the shareholders of the Company. Favorable single tier taxation regime proves to be advantageous to shareholders.

### MINIMUM CAPITAL REQUIREMENT

There is no minimum paid up capital requirement, but typically and for convenience the minimum amount is usually SGD 1.

### LEGAL LIABILITY

The liability of the members to contribute to the debts of the company, is limited to the amount that they each agreed to contribute as capital to the company.

### TAX PRESENCE

Singapore follows a single-tier tax policy which means that once the income has been taxed at the corporate level, dividends can be distributed to shareholders, tax free.



### **INCORPORATION PROCESS**

Incorporating a company involves (a) first obtaining approval for the name of the company by way of online application to the Accounting and Corporate Regulatory Authority (ACRA) via BizFile, and submitting the approved name alongside the company's M&AA, some details of the directors and shareholders of the company, together with the payment of prescribed fees; and (b) applying for approvals and licenses from other governmental agencies, if necessary.

### **BUSINESS RECOGNITION**

Well regarded and widely used

### **SHAREHOLDER MEETING REQUIREMENTS**

After one month but not more than three months after the date on which it is entitled to commence business, a public limited company must hold a statutory meeting. Every company is required to hold its first annual general meeting within 18 months of incorporation, with each subsequent annual general meeting held every 15 months (subject to the Registrar's power to extend this time limit). The annual general meetings may be dispensed with upon the passing of a unanimous resolution of the shareholders.

### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

No requirements unless stated under the articles of association, but generally a minimum of once a year.

### **ANNUAL COMPANY TAX RETURNS**

Tax returns must be filed annually with the Inland Revenue Authority of Singapore (IRAS) and this should include a declaration of income in a prescribed format, 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 statement with supporting schedules, and any other documents to be retained and submitted to IRAS upon request.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

Required to submit an annual return and their annual accounts to the ACRA and annual tax return before the IRAS.

### **BUSINESS EXPANSION**

No need to change as business expands

### **EXIT STRATEGY**

A Singapore company may be dissolved by striking off, winding up compulsorily by court or voluntarily by members or creditors.

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Appointment of auditor and auditing of financial statements (where required); maintaining accounting records and accounts, holding annual general meetings (unless dispensed with by shareholders in the case of private companies); filing Annual Returns with ACRA and IRAS.

### **DIRECTOR/OFFICER REQUIREMENTS**

At least one director who is ordinarily resident in Singapore (i.e., Singapore citizen, Singapore permanent resident, an EntrePass holder or an Employment Pass holder and who has a local residential address) required.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

At least one natural person who has his principal or only place of residence in Singapore required. For public companies, the secretary will need to fulfill certain eligibility criteria under the Companies Act.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

None required for incorporation.

### **LOCAL OFFICE LEASE REQUIREMENT**

A company incorporated in Singapore must have a registered office in Singapore. DLA Piper Singapore can arrange for a local registered address that communications may be sent to.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

Foreigners who do not have a SingPass must engage an incorporation agent. Local residents can choose to self-register the company.

### **SUFFICIENCY OF VIRTUAL OFFICE**

Sufficient for incorporation.

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

May be obtained from third party service providers.

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

Allowed for incorporation.

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

Shareholders: None.

Directors: Minimum requirement of one director who is ordinarily resident in Singapore.

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

Nominee directors have to be natural persons above the age of 18.

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

Directors are typically nominated by the shareholders and are the highest authority in the management of the corporation, and govern the organization by establishing broad policies and objectives.

### **PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND/OR SHAREHOLDERS**

Identity of directors, shareholders and company secretary are publicly disclosed.

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

There must be a minimum number of one shareholder. For private companies, the number of shareholders should not be more than 50,

For directors, the minimum number of directors required is one person, who is locally resident and maximum is usually stated in the articles of association.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

One shareholder is sufficient.

### **REMOVAL OF DIRECTORS OR OFFICERS**

Depends on the articles of association. Typically, directors can be removed by the passing of a board resolution.

### **REQUIRED AND OPTIONAL OFFICERS**

Required: one local resident director or nominee director, auditor (unless exempted) and secretary.

Optional: Managing Director.

### **BOARD MEETING REQUIREMENTS**

None, unless articles of association provide differently.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

At any general meeting, the company's articles of association may specify a quorum. If the quorum is not stated, any 2 members personally present at the meeting are enough to form the quorum. However, if the company has only 1 member, it may pass a resolution by that member recording the resolution and signing the record.

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

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?**

Companies which are dormant or companies whose annual revenue is less than five million SGD 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. Typically auditors are located locally and of high quality, negating the need for foreign auditors.

Usually the accounts are kept at the registered office but the directors can decide to keep them at a different place by way of a resolution of the board of directors.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

In Singapore, shares of a company have no par value or nominal value.

### **INCREASING OF CAPITALIZATION IF NEEDED**

Share capital can be increased any time after incorporation.

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

No restriction on the free entry and repatriation of funds, subject to any anti-money laundering laws.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

Subject to any restrictions of share transfers in the articles of association, a shareholder of the company may sell or transfer their shares to others. Such transfer is completed after a directors' resolution of the company is passed, the share transfer form is executed, notice of transfer of shares/list of shareholders is filed with ACRA, any applicable stamp duty is paid and the register of members is updated.

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

An application for approval of name change has to be obtained from ACRA and a resolution has to be passed in favor of the name change at an Extraordinary General Meeting. The name change is effective upon the receipt of the certificate confirming incorporation of company under 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**

Legal service providers are required to complete KYC procedures.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

A special resolution is required to be passed (being a resolution passed with 75% of members present and voting and entitled to vote) for amending the memorandum and articles of association of the company.

### **LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

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**

Shelf companies may be purchased from third party service providers.

## SOUTH KOREA

### FORM OF ENTITY

#### *Joint-stock Company (Jusik Hoesa)*

- (i) Unlimited number of shareholders;
- (ii) Generally no personal liability of the shareholders;
- (iii) Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends;
- (iv) Typical charter documents include: articles of incorporation; share certificates; and shareholders' registry;
- (v) Board of directors decides important matters related to daily operations and the representative director or executive officer has authority to bind the company;
- (vi) Shareholders typically purchase shares in the company, either common or preferred; and
- (vii) An external audit is required for (x) publicly listed companies or (y) joint-stock companies with total assets of at least KRW10 billion and such audited financial statements are publicly disclosed.

#### *Limited Company (Yuhan Hoesa)*

- (i) Unlimited number of members allowed;
- (ii) Generally no personal liability of the members;
- (iii) Taxed on its earnings at a corporate level and members are taxed on any distributed dividends;
- (iv) Typical charter documents include: articles of incorporation; unit certificates; and members' registry;
- (v) Directors decide important matters related to daily operations and director (in case a limited company has one director) or representative director who is elected at member meeting (in case a limited company has two or more directors) has authority to bind the company;
- (vi) Members typically purchase units in the company, but only one class of units is allowed;
- (vii) No external audit requirement; and
- (viii) No obligation to disclose financial statements.





### Branch

- (i) A foreign company intending to directly engage in business in Korea shall (a) appoint a representative in Korea and establish a branch in Korea or (b) have one or more of its representatives have his/her address in Korea;
- (ii) Not a separate and distinct entity; unlike other separate and distinct entities, legal liabilities extend to the foreign company (head office);
- (iii) 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;
- (iv) Incorporation process: report to foreign exchange bank; court registration;
- (v) Business registration is required;
- (vi) Representative in Korea has authority to bind the branch; identity of the representative in Korea is publicly disclosed; and
- (vii) Net income can be remitted abroad from Korea after settlement 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.



### JOINT-STOCK COMPANY (JUSIK HOESA)

#### BRIEF DESCRIPTION

Separate and distinct entity. (i) Shareholder meeting is the ultimate decision-making body and determines fundamental matters; (ii) board of directors, which is comprised of directors who are elected at shareholder meeting, decides important matters related to daily operations of the company not specially reserved for determination by shareholder meeting; (iii) representative director or executive officer, who is elected by the board of directors, is the administrative arm responsible for implementing the decisions of shareholder meeting and board of directors with authority to bind the company; and (iv) statutory auditor(s) supervise(s) the management of the company's business and audits the company's accounts.

#### MINIMUM CAPITAL REQUIREMENT

No minimum capital requirement; however, in case of a foreign investor, KRW100 million required for each foreign investor to be qualified for benefits under the Foreign Investment Promotion Law (the FIPL).

#### LEGAL LIABILITY

Shareholders of a company are generally not liable for the debts of a company aside from their financial contribution to the company.

#### TAX PRESENCE

A joint-stock company pays corporate tax on its corporate income and distributes profits to shareholders who then pay income tax on those dividends.

### **INCORPORATION PROCESS**

Obtain foreign investment authorization under the FIPL (in case of a foreign investor); comply with certain statutorily required incorporation procedures; court registration; registration as a “foreign invested enterprise” under the FIPL (in case of a foreign investor).

### **BUSINESS RECOGNITION**

Generally used by large-sized companies.

### **SHAREHOLDER MEETING REQUIREMENTS**

Required to hold shareholder meeting for each fiscal year.

### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

No board of directors meeting requirements; however, a resolution of board of directors is required to hold shareholder meeting.

### **ANNUAL COMPANY TAX RETURNS**

Must file tax returns with tax office within three months after the end of each fiscal year.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

Business registration with tax office is required within 20 days after the commencement of business.

### **BUSINESS EXPANSION**

No need to change as business expands except for amendment of articles of incorporation (addition of new business objectives) and court registration thereof.

### **EXIT STRATEGY**

Comply with certain statutorily required dissolution procedures; file dissolution documents with the court.

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Shareholder meeting for each fiscal year.

### **DIRECTOR/OFFICER REQUIREMENTS**

Representative director (or executive officer), directors and statutory auditor are required.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

None.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

None beyond the required directors and officers.

### **LOCAL OFFICE LEASE REQUIREMENT**

Required for business registration.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

Actual premise is necessary for business registration.



### **SUFFICIENCY OF VIRTUAL OFFICE**

Not sufficient for incorporation.

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

None.

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

None.

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

None.

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

None.

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

(i) Shareholder meeting is the ultimate decision-making body and determines fundamental matters; (ii) board of directors, which is comprised of directors who are elected at shareholder meeting, decides important matters related to daily operations of the company not specially reserved for determination by shareholder meeting; (iii) representative director or executive officer, who is elected by board of directors, is the administrative arm responsible for implementing the decisions of shareholder meeting and board of directors with authority to bind the company; and (iv) statutory auditor(s) supervise(s) the management of the company's business and audits the company's accounts.

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

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.

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

There must be a minimum of one shareholder, and no maximum number. For directors, there must be a minimum of three directors, and no maximum number; companies whose total paid-in capital is less than KRW1 billion may elect only one or two directors.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

One shareholder is sufficient.

### **REMOVAL OF DIRECTORS OR OFFICERS**

Removal of a director or statutory auditor requires a special resolution of shareholder meeting (see response to "Quorum Requirements for Shareholder and Board Meetings" below for quorum requirements for a special resolution).

Removal of an executive officer requires a resolution of board of directors.



### **REQUIRED AND OPTIONAL OFFICERS**

A joint-stock company may have executive officers, in which case the company should not have representative directors.

Executive officers are elected by board of directors.

### **BOARD MEETING REQUIREMENTS**

No board of directors meeting requirements; however, a resolution of board of directors is required to hold shareholder meeting. Written resolutions in lieu of a board of directors meeting are prohibited.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

For a shareholder meeting, an ordinary resolution must be adopted by a majority of the votes of the shareholders present at the meeting and  $\frac{1}{4}$  or more of the total number of the shares issued and outstanding; a special resolution must be adopted by  $\frac{2}{3}$  or more of the votes of the shareholders present at the meeting and  $\frac{1}{3}$  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.



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

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?**

An external audit is required for (x) publicly listed companies or (y) joint-stock companies with total assets of at least KRW10 billion and such audited financial statements are publicly disclosed.

An external auditor should be licensed in local jurisdiction.

Company's books should be kept with the company.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

Minimum capital per share is KRW100; shares without par value may be issued, in which case shares with par value cannot be issued.

### **INCREASING OF CAPITALIZATION IF NEEDED**

Permitted without amendment of articles of incorporation if increase is within the amount of authorized capital; if in excess of authorized capital, amendment of articles of incorporation is required which requires a special resolution of shareholder meeting. In both cases, authorization of board of directors and court registration is required.

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

Funds can be repatriated abroad from Korea via dividends or redemption; however, in case of foreign investor, maintaining an investment of at least KRW100,000,000 for each foreign investor is required to be qualified for benefits under the FIPL.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

Shares are freely transferrable; however, articles of incorporation may provide that transfer of shares is subject to approval from the board of directors.

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

Trade name may not be registered 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**

None.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

Amendment of articles of incorporation requires a special resolution of shareholder meeting.

### **LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

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**

Shelf companies can be purchased from third-party by purchasing shares in such shelf companies.

## **LIMITED COMPANY (YUHAN HOESA)**

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### **BRIEF DESCRIPTION**

(i) Member meeting is the ultimate decision-making body and determines fundamental matters; (ii) directors, who are elected at member meeting, decide important matters related to daily operations of the company not specially reserved for determination by member meeting by majority vote of directors; (iii) director (in case a limited company has one director) or representative director who is elected at member meeting (in case a limited company has two or more directors) is the administrative arm responsible for implementing the decisions of member meeting and directors with authority to bind the company; and (iv) statutory auditor(s) (if any) supervise(s) the management of the company's business and audits the company's accounts.

### **MINIMUM CAPITAL REQUIREMENT**

No minimum capital requirement; however, in the case of a foreign investor, KRW100 million required for each foreign investor to be qualified for benefits under the FIPL.





### **LEGAL LIABILITY**

Members of a company are generally not liable for the debts of a company aside from their financial contribution to the company.

### **TAX PRESENCE**

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**

Obtain foreign investment authorization under the FIPL (in case of foreign investor); comply with certain statutorily required incorporation procedures; court registration; registration as a “foreign invested enterprise” under the FIPL (in case of foreign investor).

### **BUSINESS RECOGNITION**

Generally used by small and medium-sized companies; often used by individuals operating small family-owned business.

### **SHAREHOLDER MEETING REQUIREMENTS**

Required to hold member meeting for each fiscal year.

### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

Board of directors is not a required organization, but may be established.

### **ANNUAL COMPANY TAX RETURNS**

Must file annual tax returns with tax office within three months after the end of each fiscal year.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

Business registration with tax office is required within 20 days after commencement of business.

### **BUSINESS EXPANSION**

No need to change as business expands except for amendment of articles of incorporation (addition of new business objectives) and court registration thereof.

### **EXIT STRATEGY**

Comply with certain statutorily required dissolution procedures; file dissolution documents with the court.

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Member meeting for each fiscal year.

### **DIRECTOR/OFFICER REQUIREMENTS**

One or more directors are required; in case a limited company has two or more directors, representative director is required.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

None.



### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

None beyond the required directors and officers.

### **LOCAL OFFICE LEASE REQUIREMENT**

Required for business registration.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

Actual premise is necessary for business registration.

### **SUFFICIENCY OF VIRTUAL OFFICE**

Not sufficient for incorporation.

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

None.

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

None.

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

None.

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

None.

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

(i) Member meeting is the ultimate decision-making body and determines fundamental matters; (ii) directors, who are elected at member meeting, decide important matters related to daily operations of the company not specially reserved for determination by member meeting by majority vote of directors; (iii) director (in case a limited company has one director) or representative director who is elected at member meeting (in case a limited company has two or more directors) is the administrative arm responsible for implementing the decisions of member meeting and directors with authority to bind the company; and (iv) statutory auditor(s) (if any) supervise(s) the management of the company's business and audits the company's accounts.

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

Identity of representative director (if any), directors and statutory auditors (if any) is publicly disclosed; identity of members is not publicly disclosed.

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

There must be a minimum of one member and no maximum number. For directors, there must be a minimum of one director, and no maximum number.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

One member is sufficient.



### **REMOVAL OF DIRECTORS OR OFFICERS**

Removal of director and statutory auditor (if any) requires a special resolution of member meeting (see response to “Quorum Requirements For Shareholder And Board Meetings” below for quorum requirements for a special resolution).

### **REQUIRED AND OPTIONAL OFFICERS**

A limited company may have one or more statutory auditors.

### **BOARD MEETING REQUIREMENTS**

Board of directors is not a required organization.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

For a member meeting, 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 must be adopted by majority of all the members and  $\frac{3}{4}$  or more of the total votes.

If a limited company has two 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?**

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?**

No external audit requirement.

No obligation to publicly disclose financial statements.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

Minimum capital per unit is KRW100.

### **INCREASING OF CAPITALIZATION IF NEEDED**

Effectuated by amending articles of incorporation which requires special resolution of member meeting; court registration is required.

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

Funds can be repatriated abroad from Korea via dividends or redemption; however, in case of foreign investor, maintaining an investment of at least KRW100 million for each foreign investor is required to be qualified for benefits under the FIPL.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

Units are freely transferrable unless otherwise provided in articles of incorporation.



### **OBTAINING A NAME AND NAMING REQUIREMENTS**

Trade name may not be registered 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**

None.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

Amendment of articles of incorporation requires a special resolution of member meeting.

### **LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

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**

Shelf companies can be purchased from third-party by purchasing units in such shelf companies.





## SPAIN

### FORM OF ENTITY

#### Branch (*Sucursal*)

- (i) Secondary Establishment economic and legally subordinated to the principal one.
- (ii) Autonomy to operate with its own organization different from the principal establishment.
- (iii) Without legal personality (i.e. Branches are not a separate legal entity).
- (iv) Permanent activity.
- (v) Total or partially conduction of the principal establishment's activity.
- (vi) Branches are taxed under the general provisions of the Corporate Income Tax. Moreover, if the branch is also a permanent establishment as of VAT purposes, annual VAT tax return will need to be filed.
- (vii) The organizational documents are the principal company's bylaws (*estatutos sociales*).



#### Joint-stock Company (*Sociedad Anónima*)

- (i) Unlimited number of shareholders;
- (ii) Generally no personal liability of the shareholders;
- (iii) Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends, although double taxation relief may apply;
- (iv) The organizational documents are the bylaws (*estatutos sociales*);
- (v) 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;
- (vi) Ordinary shares and preferred shares are possible. Shares are generally freely transferable. Can be listed in a stock market; and
- (vii) Annual accounts are registered at the Mercantile Registry, reporting the economic status of the company.



### **Limited Liability Company (Sociedad Limitada)**

- (i) Unlimited number of members allowed;
- (ii) Generally no personal liability of the members;
- (iii) Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends, although double taxation relief may apply;
- (iv) The organizational documents are the bylaws (*estatutos sociales*);
- (v) 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;
- (vi) Ordinary shares and preferred shares are possible. Typically have share transfer restrictions. Cannot be listed in a stock market; and
- (vii) Annual accounts are registered at the Mercantile Registry, reporting the economic status of the company.



### **BRANCH**

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#### **BRIEF DESCRIPTION**

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 cancellation or change of location.

#### **MINIMUM CAPITAL REQUIREMENT**

There are no minimum capital requirements.

#### **LEGAL LIABILITY**

The liability derived from the branch is part of the headquarters' legal liability.

#### **TAX PRESENCE**

A non-resident branch in Spain will be considered a permanent establishment (PE).

#### **INCORPORATION PROCESS**

The opening of a branch must be resolved by the principal company, notarized and registered in the Trade Registry. Finally the registration will be published in the Official Gazette of the Trade Registry.

In the event of a foreign company establishing a branch in Spain, the registration in the Trade Registry is also mandatory. Adequate supporting documents shall be provided proving the existence of the headquarters, its bylaws, the identity of its directors and the creation of the branch. Once registered, the Registrar will send the information to the Trade Registry in order to publish the announcement of the incorporation of the branch.

### **BUSINESS RECOGNITION**

Well regarded and widely used.

### **SHAREHOLDER MEETING REQUIREMENTS**

There are no shareholder meetings in branches.

### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

There are no board meetings in branches.

### **ANNUAL COMPANY TAX RETURNS**

Branches are taxed under the general provisions of the Corporate Income Tax. Moreover, if the branch is also a permanent establishment for VAT purposes, the relevant VAT tax returns will need to be filed.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

Branches in Spain need to be registered in the Trade Registry and with the Spanish Tax Authorities. Filing a tax census return is required so that the branch gets a tax identification number and is identified as of tax purposes.

### **BUSINESS EXPANSION**

No need to change as business expands.

### **EXIT STRATEGY**

File liquidation documents in the Trade Registry.

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

The Branch must file its own accounts in the Trade 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).

### **DIRECTOR REQUIREMENTS**

A representative for the branch must be appointed from incorporation.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

Not required for branches.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

None.

### **LOCAL OFFICE LEASE REQUIREMENT**

None required for incorporation.

### **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 for incorporation.

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

Not required for branches.

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

N/A.

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

N/A.

### **SUMMARY OF DIRECTOR'S, AND SHAREHOLDER'S AUTHORITY AND LIMITATIONS THEREOF**

The branch does not have Directors or Shareholders. However, a natural person shall be designated as branch representative (equivalent to a proxy of the principal company).

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

The branch does not have Directors or Shareholders. However, the branch representative must be registered in the Trade Registry.

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

The branch does not have Directors or Shareholders.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

The branch does not have Shareholders.

### **REMOVAL OF DIRECTORS OR OFFICERS**

Removal of branch representatives is allowed at the principal company's will.

### **REQUIRED AND OPTIONAL OFFICERS**

The branch does not have officers.

### **BOARD MEETING REQUIREMENTS**

The branch does not have board meetings.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

The branch does not have shareholder or board meetings.

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

According to common practice a Spanish bank account should be opened. Dealing with foreign bank accounts is difficult and often delays things.

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

The accountancy of the branch is not different from its principal company but a branch may have its separate accounting and file separate accounts.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

N/A. Branches do not have stock/shares.

### **INCREASING OF CAPITALIZATION IF NEEDED**

N/A. Further funds may, however, be allocated to a branch.

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

N/A. Branch funds are funds of the principal company.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

There are no shares/stock in a branch.

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

A certificate declaring that nobody has used the name chosen for your headquarters is not necessary even if there is another company with the same name.

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

An ultimate beneficial ownership declaration is required in which any ultimate beneficiary owning (directly or indirectly) more than 25 percent of the company must be identified.

### **APPROVAL REQUIREMENTS FOR AMENDING BYLAWS**

Generally the shareholders of the principal company must formally approve any amendment to the bylaws, but the branch does not have separate 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 regional and local licenses.

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

N/A.

## **JOINT-STOCK COMPANY**

### **BRIEF DESCRIPTION**

Separate and distinct legal entity. Managed by a board of directors or a sole director or joint directors or joint and several directors. The board of directors is responsible for making business decisions and overseeing the affairs of the company. Directors are elected by the shareholders of the company. Executive Committee and Managing Directors are only appointed if there is a Board by its directors and require delegation of Board powers.

### **MINIMUM CAPITAL REQUIREMENT**

Minimum of €60,000.

### **LEGAL LIABILITY**

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**

Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends, although double taxation relief may apply.

### **INCORPORATION PROCESS**

Company name clearance. Setting up a bank account. Incorporation deed and bylaws. Notarization and registration in the Trade Registry of the Notarial deed.

### **BUSINESS RECOGNITION**

Well regarded and widely used.

### **SHAREHOLDER MEETING REQUIREMENTS**

Required to hold annual meeting of shareholders within the first six months of the financial year to vote on certain items, such as election of directors, approval of the annual accounts, the distribution of earnings, amendment of the bylaws, capital increase and reduction.

### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

Director meetings are required when necessary and duly called.

### **ANNUAL COMPANY TAX RETURNS**

Companies must annually file a company income tax return with Tax authorities. Other periodic returns may be of mandatory filing: VAT, Payroll withholding, etc.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

Filings with the Tax authorities may be needed by those entities that perform business or professional activities or operations by a permanent establishment or that pay income subject to withholding. In addition, certain activities or businesses may require specific licenses or registrations in special public registers.

### **BUSINESS EXPANSION**

No need to change as business expands.

### **EXIT STRATEGY**

File liquidation documents in the Commercial Registry.

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Annual shareholders' general meeting.



### **DIRECTOR REQUIREMENTS**

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.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

A Secretary is mandatory in case of a board of directors but does not need to be a Spanish resident.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

None, apart from the directors/Board.

### **LOCAL OFFICE LEASE REQUIREMENT**

None required for incorporation.

### **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 for incorporation.

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

Allowed for incorporation. Typically, law firms may act as secretaries but would not act as directors.

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

None. Tax efficiency considerations to be borne in mind.

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

There are some restrictions for a person to be appointed directors (e.g. Minors, insolvent persons or entities, and persons with a convicted for criminal offences).

### **SUMMARY OF DIRECTOR'S, AND SHAREHOLDER'S AUTHORITY AND LIMITATIONS THEREOF**

Directors are elected by the shareholders and 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**

Identity of directors and empowered attorneys with general powers is publicly disclosed.

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

There must be a minimum of one shareholder, and no maximum number. The board of directors shall have no less than three 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.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

One shareholder is sufficient.

### **REMOVAL OF DIRECTORS OR OFFICERS**

Removal of directors is allowed by a vote of shareholders.

### **REQUIRED AND OPTIONAL OFFICERS**

Chairman and Secretary are required if there is a Board; Vice-Chairman and Vice-Secretary are allowed and typically used.

### **BOARD MEETING REQUIREMENTS**

Bylaws usually govern most of this. Meetings must be in physical attendance, via written resolutions or others (e.g. Conference call) if legal requirements are met.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

For a shareholder meeting, 25 percent of shareholders must attend or be represented on first call. Bylaw can establish different quorums. For directors, typically a majority of directors must be present during a board meeting; alternatively, all of the directors must execute written resolutions.

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

According to common practice a Spanish bank account should be opened. Dealing with foreign bank accounts is difficult and often delays things.

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

The financial statements and, as appropriate, the management report must be reviewed by an auditor qualified to practice in Spain unless the company may issue an abridged balance sheets. The books do not need to be kept locally.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

There is no statutory minimum par value.

### **INCREASING OF CAPITALIZATION IF NEEDED**

Requires a shareholder resolution.

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

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

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

Joint-stock companies (*Sociedad Anónima*), In general have no share transfer restrictions aside from those set out in the bylaws, shareholder agreements etc. Clauses in the bylaws that render shares non-transferable in practice are null and void.

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

A certificate declaring that nobody has used the name chosen for your company must be obtained.

### **SUMMARY OF “KNOW YOUR CLIENT” REQUIREMENTS**

An ultimate beneficial ownership declaration is required in which any ultimate beneficiary owning (directly or indirectly) more than 25 percent of the company must be identified.

### **APPROVAL REQUIREMENTS FOR AMENDING BYLAWS**

Generally the shareholders must formally approve any amendment to the 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 regional and local licenses.

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

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

## **LIMITED LIABILITY COMPANY**

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### **BRIEF DESCRIPTION**

Separate and distinct legal entity. Managed by a board of directors or a sole director or joint directors or joint and several directors. The board of directors is responsible for making business decisions and overseeing the affairs of the company. Directors are elected by the shareholders of the company. Executive Committee and Managing Directors are only appointed if there is a Board by its directors and require delegation of Board powers.

### **MINIMUM CAPITAL REQUIREMENT**

Minimum of €3,000.

### **LEGAL LIABILITY**

Shareholders of a limited liability company (*sociedad limitada*) are generally not liable for the debts of a company aside from their financial contribution to the company.

### **TAX PRESENCE**

Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends, although double taxation relief may apply.

### **INCORPORATION PROCESS**

Company name clearance. Setting up a bank account. Incorporation deed and bylaws. Notarization and registration in the Trade Registry of the Notarial deed.

### **BUSINESS RECOGNITION**

Well regarded and widely used.

### **SHAREHOLDER MEETING REQUIREMENTS**

Required to hold annual meeting of shareholders within the first six months of the financial year to vote on certain items, such as election of directors, approval of the annual accounts, the distribution of earnings, amendment of the bylaws, capital increase and reduction.

### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

Director meetings are required when necessary and duly called.

### **ANNUAL COMPANY TAX RETURNS**

Companies must annually file a company income tax return with Tax authorities. Other periodic returns may be of mandatory filing: VAT, Payroll withholding, etc.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

Filings with the Tax authorities may be needed by those entities that perform business or professional activities or operations by a permanent establishment or that pay income subject to withholding. In addition, certain activities or businesses may require specific licenses or registrations in special public registers.

### **BUSINESS EXPANSION**

No need to change as business expands except for certain special cases such as listing on a stock market, banking activities etc.

### **EXIT STRATEGY**

File liquidation documents in the Commercial Registry.

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Annual shareholders' general meeting.

### **DIRECTOR REQUIREMENTS**

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.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

A Secretary is mandatory in case of a board of directors but does not need to be a Spanish resident.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

None, apart from the directors/Board.

### **LOCAL OFFICE LEASE REQUIREMENT**

None required for incorporation.

### **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 for incorporation.

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

Allowed for incorporation. Typically, law firms may act as secretaries but would not act as directors.

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

None. Tax efficiency considerations to be borne in mind.

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

There are some restrictions for a person to be appointed directors (e.g. Minors, insolvent persons or entities, and persons with a convicted for criminal offences).

### **SUMMARY OF DIRECTOR'S, AND SHAREHOLDER'S AUTHORITY AND LIMITATIONS THEREOF**

Directors are elected by the shareholders and 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**

Identity of directors and empowered attorneys with general powers is publicly disclosed.

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

There must be a minimum of one shareholder, and no maximum number. The board of directors shall not have less than three 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.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

One shareholder is sufficient.

### **REMOVAL OF DIRECTORS OR OFFICERS**

Removal of directors is allowed by a vote of shareholders.

### **REQUIRED AND OPTIONAL OFFICERS**

Chairman and Secretary are required if there is a Board; Vice-Chairman and Vice-Secretary are allowed and typically used.

### **BOARD MEETING REQUIREMENTS**

Bylaws usually govern most of this. Meetings must be in physical attendance, via written resolutions or others (e.g. Conference call) if legal requirements are met.



### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

Governed by bylaws for shareholders. For directors, typically a majority of directors must be present during a board meeting; alternatively, all of the directors must execute written resolutions.

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

According to common practice a Spanish bank account should be opened. Dealing with foreign bank accounts is difficult and often delays things.

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

The financial statements and, as appropriate, the management report must be reviewed by an auditor qualified to practice in Spain unless the company may issue an abridged balance sheets. The books do not need to be kept locally.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

There is no statutory minimum par value.

### **INCREASING OF CAPITALIZATION IF NEEDED**

Requires a shareholder resolution.

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

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

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

Limited Liability Companies (*Sociedad Limitada*), typically have share transfer restrictions.

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

A certificate declaring that nobody has used the name chosen for your company must be obtained.

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

An ultimate beneficial ownership declaration is required in which any ultimate beneficiary owning (directly or indirectly) more than 25 percent of the company must be identified.

### **APPROVAL REQUIREMENTS FOR AMENDING BYLAWS**

Generally the shareholders must formally approve any amendment to the 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 regional and local licenses.

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

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



## SWEDEN

### FORM OF ENTITY

#### Limited company (Sw. *aktiebolag*, AB)

- (i) Minimum of one shareholder.
- (ii) Generally no personal liability of the shareholders.
- (iii) AB is taxed on its earnings at a corporate level and shareholders are taxed on salary withdrawn and distributed profits from AB. AB is subject to a Swedish corporate income tax rate which currently amounts to 22 percent.
- (iv) Typical charter documents include: articles of association; rules of procedure for the board of directors; organizational board resolutions; share certificates; and share ledger.
- (v) Board of directors has overall management responsibility; managing director and other officers have day-to-day responsibility.
- (vi) Shareholders typically purchase shares in the AB. Separate classes of shares with different rights (voting, dividends, etc.) are commonly used.
- (vii) Annual report shall be filed annually with the Swedish Companies Registration Office (Sw. *Bolagsverket*, SCRO).
- (viii) There are two types of AB; private or public.

#### Trading partnership (Sw. *handelsbolag*, HB)

- (i) Two or more partners (natural persons or legal entities) are required.
- (ii) No start-up capital requirement.
- (iii) HB is tax transparent. Partners are taxed for their part of the HB's surplus (income tax and social security contributions).
- (iv) Incorporated by registration with the Swedish Companies Registration Office (Sw. *Bolagsverket*, SCRO)
- (v) The partners are personally responsible for the HB's debts, including debts that already exist when becoming a partner.
- (vi) The business name must contain the word "*handelsbolag*."
- (vii) An authorized or approved auditor and filing of annual accounts are required where the HB meets certain criteria regarding the partners, number of employees, balance sheet total and net turnover.



### **Limited partnership (Sw. *kommanditbolag*, KB)**

- (i) Two or more partners (natural persons or legal entities) are required of which one shall be the general partner and one the limited partner.
- (ii) The general partners have unlimited personal responsibility (jointly and severally) for the agreements and debts of the KB. Limited partners are only responsible for the amount contributed. The responsibility includes debts that already exist when becoming a partner.
- (iii) No start-up capital requirement for general partners, capital requirement for each limited partner is at least SEK 1.
- (iv) KB is tax transparent. Partners are taxed for their part of the KB's surplus (income tax and social security contributions).
- (v) Incorporated by registration with the Swedish Companies Registration Office (Sw. *Bolagsverket*, SCRO)
- (vi) The business name must contain the word "*kommanditbolag*."
- (vii) An authorized or approved auditor and filing of annual accounts are required where the KB meets certain criteria regarding the partners, number of employees, balance sheet total and net turnover.



### **Branch office (Sw. *filial*)**

- (i) A foreign-based company that engages in business activities in Sweden can register a branch office, with separate management in Sweden.
- (ii) A branch is not a separate legal entity but is a part of the foreign-based company.
- (iii) No independent capital and the assets and liabilities are a part of the total assets of the foreign-based company.
- (iv) One managing director shall be 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.
- (v) The branch is subject to a Swedish corporate tax rate which currently amounts to 22 percent.
- (vi) Incorporated by registration with the Swedish Companies Registration Office (Sw. *Bolagsverket*, SCRO)
- (vii) The business name must contain the word "*filial*."
- (viii) A branch is to keep its own accounting records, and these are to be kept separate from the foreign-based company. Annual report of the branch office and the foreign company are normally required to be filed with the SCRO.
- (ix) 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.

### AKTIEBOLAG (AB)

#### BRIEF DESCRIPTION

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 of the AB. The managing director (optional in private AB:s, required in public AB:s), who runs the day-to-day operations of the AB, is appointed by the board of directors. Other officers are appointed by the board of directors or by the managing director.

#### MINIMUM CAPITAL REQUIREMENT

Private AB: SEK50,000 (roughly US\$7,900) or the corresponding amount in EUR.

Public AB: SEK500,000 (roughly US\$79,000) or the corresponding amount in EUR.

#### LEGAL LIABILITY

Shareholders of an AB are generally not liable for the debts of an AB.

#### TAX PRESENCE

The profits of an AB are taxed at two levels (commonly referred to as double taxation). First the AB pays a corporate tax on its corporate income; then shareholder's pays tax on the distributed profits from the AB. AB is subject to a Swedish corporate income tax rate which currently amounts to 22 percent.

#### INCORPORATION PROCESS

Subscription for shares and payment of share capital, signing of memorandum of association, registration of memorandum of association with the SCRO.

#### BUSINESS RECOGNITION

Well regarded and widely used.

#### SHAREHOLDER MEETING REQUIREMENTS

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.

#### BOARD OF DIRECTOR MEETING REQUIREMENTS

No statutory minimum number requirement. In practice, at least one inaugural meeting is held in connection with the annual meeting of shareholders.

#### ANNUAL COMPANY TAX RETURNS

Must file annual tax returns with the Swedish Tax Agency.

#### BUSINESS REGISTRATION FILING REQUIREMENTS

Initial registration, annual filings of annual accounts.

#### BUSINESS EXPANSION

No need to change as business expands. An AB can change category from private to public.



### EXIT STRATEGY

File dissolution documents with the SCRO.

### ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

Annual shareholders' meeting which can be completed *per caputlam*, i.e., by written consent by all shareholders.

### DIRECTOR/OFFICER REQUIREMENTS

Director(s) and, where applicable, deputy director(s) and employee representatives. Managing director is required in public AB:s and optional in private AB:s.

A legal person may not serve as a director. A director or officer must be over 18 years of age. He or she must not be declared bankrupt, be prohibited to carry on business or have a guardian.

### LOCAL CORPORATE SECRETARY REQUIREMENT

N/A.

### LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT

None beyond the required directors and, where applicable, managing director.

### LOCAL OFFICE LEASE REQUIREMENT

None required for incorporation.

### OTHER PHYSICAL PRESENCE REQUIREMENTS

In the event the AB has no authorized representative (i.e. 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 person authorized to receive service of process on behalf of the company.

### 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

N/A.

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

Founder (unless granted an exemption by the SCRO):

- (i) a natural person domiciled within the European Economic Area;
- (ii) a Swedish legal entity; or
- (iii) 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):

- (i) Not less than one-half of the directors and, where applicable, the deputy directors, shall be resident within the European Economic Area.

Managing director (unless granted an exemption by the SCRO):

- (i) Required to be resident within the European Economic Area.

**RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS**  
N/A.

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

Directors of the board are elected by the shareholders and are the highest authority in the management of the AB, and govern the organization by establishing broad policies and objectives. A managing director is appointed by the directors to manage the day-to-day operations of the AB. The board of directors shall issue instructions regarding the allocation of work between the board of directors and the managing director. The managing director is always authorized to represent the company and sign on its behalf in matters related to the day-to-day management of the company.

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

Identity of directors and managing director is publicly disclosed; 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.

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

There must be a minimum of one shareholder.

Minimum director requirements private AB:

- (i) One director and one deputy director.

Minimum director requirements public AB:

- (i) Three directors; and
- (ii) Managing director (may, but is not required to, be a director of the board of directors).

Where the board consists of one or two directors, at least one deputy director shall be appointed.

There is no maximum number of directors on the board of directors.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

One shareholder is sufficient.

### **REMOVAL OF DIRECTORS OR OFFICERS**

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.

### **REQUIRED AND OPTIONAL OFFICERS**

Where the board consists of two or more directors, a chairman shall be appointed by the board.

Managing director is required in public AB:s and 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 are resident in Sweden. Such person is not granted any other authority or decision-making powers.

The board of directors may appoint one or more special company signatories with authority to represent and sign on behalf of the company (no decision-making powers).

### **BOARD MEETING REQUIREMENTS**

No statutory minimum number requirement. In practice at least one inaugural meeting in connection with the annual meeting of shareholders. Can be held by telephone or completed via written consent by all directors.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

For a shareholders' meeting, no specific quorum requirements apply. 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 the directors must execute written resolutions.

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

Where the share capital shall be paid in cash, opening a bank account with a bank within the EEA is required.

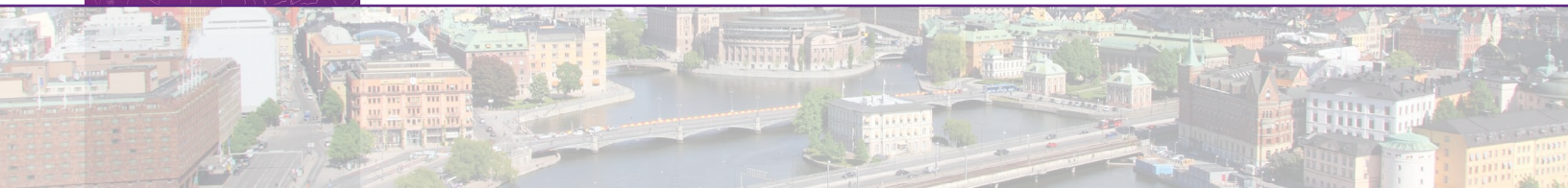
### **AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY'S BOOKS BE KEPT LOCALLY?**

An AB shall have at least one auditor where the company fulfills more than one of the following conditions:

The average number of employees during each of the two most recent financial years has exceeded three;

The company's reported balance sheet total for each of the two most recent financial years has exceeded SEK1.5 million;

The company's reported net turnover for each of the two most recent financial years has exceeded SEK3 million;



Only an authorized public accountant or approved public accountant. Such person has to be resident within Sweden, the EEA or Switzerland. Furthermore, a registered accounting firm may serve as auditor; and

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.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

None.

### **INCREASING OF CAPITALIZATION IF NEEDED**

Effectuated by amending the articles of association, which requires authorization from both the board of directors and a qualified majority of the shareholders, and registration with the SCRO.

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

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

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

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.

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

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." Public companies are required to add the corporate ending (publ).

### **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**

Typically, a majority of two thirds 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 of the shareholders present at the general meeting where such together represent not less than nine-tenths of all shares in the company.

### **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**

Shelf companies can be purchased from third-party service providers and are ready to be operated the same day as the purchase is finalized.



## SWITZERLAND

### FORM OF ENTITY

This is an overview of certain aspects of Swiss corporate law as of the date hereof which: (i) does not purport to be comprehensive; and (ii) may not be relied upon as legal or other advice or in any other way.

#### **Stock Corporation (Aktiengesellschaft, AG)**

- (i) Unlimited number of shareholders allowed but at least one founder (individual or legal entity);
- (ii) Shareholder's liability is limited to the amount subscribed;
- (iii) Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends;
- (iv) Board of directors is the managing body and has the authority to represent the company 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
- (v) Annual audit report required (waiver possible for small companies).

#### **Limited Liability Company (Gesellschaft mit beschränkter Haftung, GmbH)**

- (i) Unlimited number of quota-holders allowed but at least one founder (individual or legal entity);
- (ii) The limited liability company has sole liability of debts, although, articles of incorporation can impose obligation to pay in additional capital;
- (iii) Taxed on its earnings at a corporate level and quota-holders are taxed on any distributed dividends;
- (iv) In absence of any rules to the contrary, the management is delegated to all partners;
- (v) Generally, annual audit report required (waiver possible for small companies); and
- (vi) Legal form intended for small and medium sized companies.

### STOCK CORPORATION

#### BRIEF DESCRIPTION

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.



### **MINIMUM CAPITAL REQUIREMENT**

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**

Shareholders of a corporation are generally not liable for the debts of a corporation, except for payment of share price.

### **TAX PRESENCE**

A stock corporation is taxed at two 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**

Incorporation meeting with the notary public; filing of the incorporation documents with the commercial register; registration of the company in the commercial register.

### **BUSINESS RECOGNITION**

Well regarded and widely used, more than 35 percent of the companies in Switzerland are organized as stock corporations.

### **SHAREHOLDER MEETING REQUIREMENTS**

Required to hold annual general meeting of shareholders to vote on certain items, such as election of directors.

### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

Annual meeting of the board of directors is required.

### **ANNUAL COMPANY TAX RETURNS**

Must annually file tax returns with federal and cantonal tax authorities.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

Registration in commercial registry is required.

### **BUSINESS EXPANSION**

No need to change as business expands.

### **EXIT STRATEGY**

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**

Annual board of directors and general meeting of shareholders; annual report generally consisting of annual accounts and management report.



### **DIRECTOR/MANAGER REQUIREMENTS**

If there are several board members, one board member 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 managers, but articles of incorporation may authorize the board of directors to do so.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

None required.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

At least one director or manager needs to have single signatory power and residence in Switzerland or two board members/managers need to have joint signatory power by two and Swiss residence.

### **LOCAL OFFICE LEASE REQUIREMENT**

None required, but in absence of local offices a c/o-address is required.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

Requirement to choose a domicile.

### **SUFFICIENCY OF VIRTUAL OFFICE**

Sufficient for incorporation, however, a written declaration by the holder of the domicile needs to be supplied confirming that he allows the company to have its domicile at the address stated.

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

Possible.

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

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 MANAGERS**

At least one board member or manager with single signatory power or two board members/managers with joint signatory power by two have to be resident in Switzerland.

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

Generally none for nominee directors. In contrast, the company may (in case of registered shares with restriction of transferability) refuse entry in the share register where the acquirer fails to declare expressly that he has acquired the shares in his own name and for his own account.

### **SUMMARY OF DIRECTOR'S, MANAGER'S AND SHAREHOLDER'S AUTHORITY AND LIMITATIONS THEREOF**

The board of directors is elected by the general meeting of shareholders and is the managing body. It has the authority to represent the company with respect to third parties. Managers are appointed by the board of directors to oversee day-to-day operations of the corporation.

### **PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, MANAGERS AND SHAREHOLDERS**

Identity of directors and managers is publicly disclosed; identity of shareholders is generally not publicly disclosed, except of disclosure obligations under stock exchange law.

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

There must be at least one shareholder. No maximum number exists. For directors, the minimum number is one, while there is no maximum number.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

One shareholder is sufficient.

### **REMOVAL OF DIRECTORS OR MANAGERS**

The general meeting of shareholders is entitled to dismiss the members of the board of directors.

### **REQUIRED AND OPTIONAL MANAGERS**

None required; any optional manager is allowed, if the board of directors is authorized to delegate powers in the articles of incorporation.

### **BOARD MEETING REQUIREMENTS**

At least one 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**

None required for shareholder and board meetings. However, a company's articles of incorporation or the organizational regulations may state a quorum.

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

In case of incorporation by cash the share capital is paid 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?**

Auditors have to audit the company'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 company's books must be kept locally.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

The nominal value of a share must be at least CHF0.01.

### **INCREASING OF CAPITALIZATION IF NEEDED**

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 (I.E. DIVIDENDS OR REDEMPTION)**

Free equity can be repatriated abroad from Switzerland via dividend or redemption. Withholding tax (35 percent) may arise.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

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**

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**

No general KYC requirements excepts for financial intermediaries as stated in the Swiss Money Laundering Act.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

Generally a majority of shareholders must formally approve any amendment to the articles of incorporation.

### **LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

In general no license requirements except for specific sectors such as for example banking and insurance.

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

The purchase of a shelf company and its subsequent reactivation includes various legal risks and is not advisable under Swiss law.





# TAIWAN

## FORM OF ENTITY

*Company Limited by Shares*

*Limited Company*

*Branch Office of a Foreign Company*

## COMPANY LIMITED BY SHARES

### BRIEF DESCRIPTION

A company limited by shares must carry on profit-seeking business, and is a separate and distinct legal entity whereby its capital is divided into shares. The company must have at least three directors and one supervisor, and the company is managed by the board of directors and the chairman (also a director), who is elected by the board. A foreign investor may file a foreign investment application (FIA) with the Investment Commission and upon approval establishes a company (FIA company) in Taiwan.

### MINIMUM CAPITAL REQUIREMENT

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 who is required to work for the company in Taiwan.

### LEGAL LIABILITY

Shareholders are not liable for the debts of the company aside from their financial contribution to the company.

### TAX PRESENCE

A company (including an FIA company) is taxed on its worldwide net income.

### INCORPORATION PROCESS

File for company registration (and FIA if the shareholder(s) is a foreign national) with the Ministry of Economic Affairs.

### BUSINESS RECOGNITION

Well regarded and widely used.

### SHAREHOLDER MEETING REQUIREMENTS

If there is more than one shareholder, shareholders' meetings must be held to approve certain important corporate matters, such as approval of the company's annual financial statements. If there is only one shareholder then no shareholder meetings are required and the function of the shareholders meeting is replaced with board meetings.

### BOARD OF DIRECTOR MEETING REQUIREMENTS

An annual board meeting is required to convene the annual shareholders' meeting.



### **ANNUAL COMPANY TAX RETURNS**

The company must file annual tax returns and pay its income tax each year.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

The company must apply for business registration with the tax authority after incorporation.

### **BUSINESS EXPANSION**

Generally, an application to the Ministry of Economic Affairs for amending its company registration to expand its scope of business is required.

### **EXIT STRATEGY**

Dissolution and liquidation documents must be filed with the Ministry of Economic Affairs and liquidation must be approved by the District Court where the company is situated.

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Annual board meeting and shareholders' meeting.

### **DIRECTOR/OFFICER REQUIREMENTS**

At least three directors, one supervisor, and a chairman of the board are required.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

None.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

None for an FIA company.

### **LOCAL OFFICE LEASE REQUIREMENT**

A local registered business address is required.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

None for incorporation.

### **SUFFICIENCY OF VIRTUAL OFFICE**

Sufficient to meet the requirement of having a local registered business address.

### **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**

The nationality and residency requirements for an FIA company are exempted.

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

None.



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

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.

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

The identities of the directors and supervisor are publicly disclosed; the identities of the shareholders are not publicly disclosed.

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

Must have at least three directors. There is no maximum number of directors. (See below for shareholders.)

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

Must have at least two shareholders, but may have a sole shareholder if such sole shareholder is a company. There is no maximum number of shareholders.

### **REMOVAL OF DIRECTORS OR OFFICERS**

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.

### **REQUIRED AND OPTIONAL OFFICERS**

No required officers.

### **BOARD MEETING REQUIREMENTS**

Generally one regular board meeting is required, which can either be a physical meeting or held via videoconference. Neither a written resolution in lieu of a board meeting or a board meeting held by telephone conference is permitted.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

Other than for certain important matters, a simple majority must be present for both board (directors) and shareholders' (voting shares) meetings.

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

Before incorporation of the company, a preparatory bank account must be opened at a local bank to receive the company's paid-in capital. After the company registration and business registration are completed, the company 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?**

A company with capital over NTD30 million (approximately US\$1 million) must have its annual financial statements audited by a local CPA. The company's books and records must be kept at the company's place of business.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

Minimum par value of NTD10 per share.

### **INCREASING OF CAPITALIZATION IF NEEDED**

An increase in the company's working capital will result in a Capital Tax of NTD1 for every NTD4,000 increase.

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

The company may repatriate all its after-tax profits as dividends after the annual shareholders' meeting has accepted the annual financial statements. In order to repatriate the company's invested capital, the company would have to either reduce its capital or liquidate.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

The company's initial shareholders may not transfer their shares during the first year after the company is incorporated. The transfer of shares may not be prohibited or restricted by a company's articles of incorporations. Transfers by or to foreign investors require FIA approval.

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

A Chinese name reservation must be made before filing for incorporation.

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

Not required by statute, except that direct Mainland Chinese (PRC) investment is not permitted and PRC ownership in a foreign shareholder of the company should not exceed 30 percent.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

Any amendment to the company's articles of incorporation generally requires shareholders' meeting approvals.

### **LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

Special licenses/permits are required for certain business activities (e.g., banking, securities, telecommunications and manufacturing). Aside from this, the company may carry on its business after completion of the incorporation process and business registration.

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

Shelf companies are not available in Taiwan.

## **LIMITED COMPANY**

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### **BRIEF DESCRIPTION**

Another type of profit-seeking enterprise that can be established is a limited company, which is owned by members and their respective ownerships are stated in terms of the amount of the members' capital contributions. A foreign investor may file an FIA with the Investment Commission and upon approval establishes an FIA company in Taiwan. A limited company has less corporate formalities than a company limited by shares. For example, a limited company needs to only have one director, and does not have a board of directors nor hold shareholders' meetings.

### **MINIMUM CAPITAL REQUIREMENT**

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 required to work for the company in Taiwan.

### **LEGAL LIABILITY**

Members are not liable for the debts of the company aside from their capital contributions to the company.

### **TAX PRESENCE**

A company (including an FIA company) is taxed on its worldwide net income.

### **INCORPORATION PROCESS**

File for company registration with the Ministry of Economic Affairs.

### **BUSINESS RECOGNITION**

Typically a closely-held company.

### **SHAREHOLDER MEETING REQUIREMENTS**

N/A. Members are not required to meet annually.

### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

N/A.



### **ANNUAL COMPANY TAX RETURNS**

The company must file annual tax returns and pay its income tax each year.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

The company must apply for business registration with the tax authority upon establishment.

### **BUSINESS EXPANSION**

Generally, an application to the Ministry of Economic Affairs for amending its company registration to expand its scope of business is required.

### **EXIT STRATEGY**

Dissolution and liquidation documents must be filed with the Ministry of Economic Affairs and liquidation must be approved by the District Court where the company is situated.

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

None.

### **DIRECTOR/OFFICER REQUIREMENTS**

The company must have at least one director.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

None.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

None for an FIA company.

### **LOCAL OFFICE LEASE REQUIREMENT**

A local registered business address is required.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

None for incorporation.

### **SUFFICIENCY OF VIRTUAL OFFICE**

Sufficient to meet the requirement of having a local registered business address.

### **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**

The nationality and residency requirements for an FIA company is exempted.

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

None.

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

The director(s) is the "responsible person" of the company and required to conduct the business of the company in good faith and exercise the due care of a good administrator.

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

The identity(ies) of the director(s) is publicly disclosed. The identity(ies) of the member(s) is not publicly disclosed.

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

Must have at least one, but not more than three, directors.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

One member is sufficient.

### **REMOVAL OF DIRECTORS OR OFFICERS**

All members must consent to remove or replace the director(s).

### **REQUIRED AND OPTIONAL OFFICERS**

No required officers.

### **BOARD MEETING REQUIREMENTS**

N/A.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

N/A.

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

Before incorporation of the company, a preparatory bank account must be opened at a local bank to receive the company's paid-in capital. After the company registration and business registration are completed, the company 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?**

A company with capital over NTD30 million (approximately US\$1 million) must have its annual financial statements audited by a local CPA. The company's books and records must be kept at the company's place of business.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

N/A.

### **INCREASING OF CAPITALIZATION IF NEEDED**

An increase in the company's working capital will result in a Capital Tax of NTD1 for every NTD4,000 increase.

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

The company may repatriate all its after-tax profits. In order to repatriate the company's invested capital, the company would have to either reduce its capital or liquidate.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

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.

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

A name Chinese reservation must be made before filing for incorporation.

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

Not required by statute, except that direct Mainland Chinese (PRC) investment is not permitted and PRC ownership in a foreign shareholder of the company should not exceed 30 percent.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

Any amendment to the company's articles of incorporation requires approval of all members.

### **LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

Special licenses/permits are required for certain business activities.



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

Shelf companies are not available in Taiwan.

### **BRANCH OFFICE OF A FOREIGN COMPANY**

#### **BRIEF DESCRIPTION**

A branch office of a foreign company may be established to carry on the profit-seeking business. A branch office is exempted from almost all of the corporate formality requirements of a company limited by shares.

#### **MINIMUM CAPITAL REQUIREMENT**

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 required to work for the branch office in Taiwan.

#### **LEGAL LIABILITY**

The branch office is considered part of its parent company (i.e., head office), and so the head office would be liable for any activities or debts of the branch office.

#### **TAX PRESENCE**

The net profit of the branch office is subject to income tax.

#### **INCORPORATION PROCESS**

File for recognition of the head office and registration of the branch office with the Ministry of Economic Affairs.

#### **BUSINESS RECOGNITION**

Well regarded and widely used by foreign companies because of certain tax advantages.

#### **SHAREHOLDER MEETING REQUIREMENTS**

N/A.

#### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

N/A.

#### **ANNUAL COMPANY TAX RETURNS**

The branch office must file annual tax returns and pay its income tax each year.

#### **BUSINESS REGISTRATION FILING REQUIREMENTS**

The branch office must apply for business registration with the tax authority after being established.

#### **BUSINESS EXPANSION**

Generally, an application to the Ministry of Economic Affairs for amending the branch registration to expand its scope of business is required.

### **EXIT STRATEGY**

Deregistration and liquidation documents must be filed with the Ministry of Economic Affairs and liquidation must be approved by the District Court where the branch office is situated.

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

None.

### **DIRECTOR/OFFICER REQUIREMENTS**

The branch office must have a branch manager as the sole responsible person of the branch office.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

None.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

The branch office must have an agent for litigious and non-litigious matters. This can be the same person as the branch manager.

### **LOCAL OFFICE LEASE REQUIREMENT**

A local registered business address is required.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

None for establishment of the branch office.

### **SUFFICIENCY OF VIRTUAL OFFICE**

Sufficient to meet the requirement of having a local registered business address.

### **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**

The litigious and non-litigious agent and the branch manager may be a foreign national without local residency.

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

N/A.

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

N/A.

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

The identities of the branch manager and agent for litigious and non-litigious matters is publicly disclosed.

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

N/A.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

N/A.

### **REMOVAL OF DIRECTORS OR OFFICERS**

N/A.

### **REQUIRED AND OPTIONAL OFFICERS**

The branch office must have a branch manager.

### **BOARD MEETING REQUIREMENTS**

N/A.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

N/A.

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

Before applying for registration of the branch office, a preparatory bank account must be opened at a local bank to receive the branch office's working capital. After the branch office's registration and business registration are completed, the branch office 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?**

A branch office with capital over NTD30 million (approximately US\$100,000) must have its annual financial statements audited by a local CPA. The branch office's books and accounts must be kept at the branch office's place of business.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

N/A.

### **INCREASING OF CAPITALIZATION IF NEEDED**

An increase in the branch office's working capital will result in a Capital Tax of NTD1 (approximately US\$0.03) for every NTD4,000 increase.

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

Although a branch office is not entitled to the same repatriation right as an FIA company, the current lifting of foreign exchange control allows a branch office to freely make outward remittances in foreign currency of up to US\$50 million. However, if the foreign exchange control is re-implemented, then this will also limit a branch office's ability to remit funds to its foreign head office.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

N/A.

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

A Chinese name reservation must be made before filing for the branch's registration.

### **SUMMARY OF “KNOW YOUR CLIENT” REQUIREMENTS**

Not required.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

N/A.

### **LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

Special licenses/permits are required for certain business activities. Aside from this, the branch office may carry on its business after completion of the recognition of the head office, branch registration, and business registration.

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

N/A.





# TURKEY

## FORM OF ENTITY

### *Joint-Stock Company*

- (i) Can be incorporated with sole shareholder, unlimited number of shareholders;
- (ii) Generally no personal liability of the shareholders;
- (iii) Taxed on its earnings at a corporate level;
- (iv) Typical charter documents include: articles of incorporation; bylaws; organizational board resolutions; stock certificates; and stock ledger;
- (v) Board of directors has overall management responsibility; officers have day-to-day responsibility; and
- (vi) Shareholders typically purchase stock in the corporation, either common or preferred.

### *Limited Liability Company*

- (i) Can be incorporated with sole shareholder, up to 50 shareholders;
- (ii) Generally no personal liability of the members;
- (iii) Taxed on its earnings at a corporate level;
- (iv) Typical charter documents include: articles of incorporation; bylaws; organizational board resolutions; stock certificates; and stock ledger; and
- (v) Board of managers has overall management responsibility.

## JOINT-STOCK COMPANY

### BRIEF DESCRIPTION

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. Directors are elected by the shareholders of the company or by the articles of association of the company.

### MINIMUM CAPITAL REQUIREMENT

TL50,000 (roughly €21,800). Joint-stock companies are not immediately due at incorporation; ¼ of the capital is required to be paid before the registration and the rest within 24 months.

### TAX PRESENCE

The company is subject to Corporate Income Tax at 20 percent and might be subject to VAT at 1, 8 or 18 percent according to the specific event. Income Tax on salaries at 15, 20, 27 and 35 percent is applied in accordance with increase in revenues.



### **INCORPORATION PROCESS**

Registration with the Trade Registry, Chamber of Commerce and Tax Office as well as the Social Security Institution (SSK) is required in case of employment of personnel. Authorization from the Ministry of Industry and Commerce is required for companies engaged in certain businesses, mainly in the banking, finance and insurance industries.

Articles of association must be filed with and approved by the Trade Registry. With the new commercial code the principle of ultra vires became invalid. Therefore, transactions out of the extent of the article of purpose and scope will not be considered as null and void.

### **BUSINESS RECOGNITION**

Well regarded and widely used.

### **SHAREHOLDER MEETING REQUIREMENTS**

Required to hold annual meeting of shareholders to vote on certain items, such as election of directors.

### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

Quorum for board of directors meeting requires majority of the board members to be present at the board meeting. Majority votes of those present at the meeting are required for resolution with certain exceptions.

### **ANNUAL COMPANY TAX RETURNS**

Must annually file tax returns with tax authorities; however in every three months, must file advance tax returns with tax authorities.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

Require initial registration, as well as annual filings.

### **BUSINESS EXPANSION**

No need to change as business expands.

### **EXIT STRATEGY**

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Annual general assembly meeting

### **DIRECTOR/OFFICER REQUIREMENTS**

Directors are required to be fully competent in terms of power of disposition.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

N/A.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

None beyond the required directors.

### **LOCAL OFFICE LEASE REQUIREMENT**

None.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

None.

### **SUFFICIENCY OF VIRTUAL OFFICE**

Lease agreement is required for main office.

### **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**

Allowed for incorporation.

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

There is no Turkish resident board member/manager requirement for joint-stock companies and limited liability companies and they are not required to be Turkish nationals. (However, tax authorities may require a Turkish resident representative of joint-stock company).

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

None.

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

Directors are elected by the shareholders 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.

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

Identity of directors and officers and or shareholders are not disclosed. Certain companies are required to disclose information on their websites including information with regard to identities of board members and auditors of the company.

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

There must be a minimum of one shareholder, and no maximum number. For directors, 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**

Removal of directors is generally allowed by a vote of shareholders.

### **REQUIRED AND OPTIONAL OFFICERS**

No requirement for any officer.

### **BOARD MEETING REQUIREMENTS**

None.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

Quorum for general assembly meeting requires shareholders representing at least  $\frac{1}{4}$  of the capital of the company present at the meeting. If not achieved, no quorum for the second meeting. Majority votes of those present at the meeting are required for resolution with certain exceptions as required under Turkish Commercial Code.

Quorum for board of directors meeting requires majority of board members present at the meeting. Majority votes of those present at the meeting are required for resolution.

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

In case of establishment of a company, yes. Please be informed that  $\frac{1}{4}$  of the share capital of the company must be transferred to a bank account of the company before incorporation (The remaining  $\frac{3}{4}$  of the share capital must be paid within two years as of the incorporation). Such bank account will be blocked until the incorporation is registered. After the registration, this bank account becomes a regular bank account which the company can use to transfer funds, realize any banking transactions etc. Also any transfer above EUR 3,500 must be realized through banks. In any event, necessity for opening of bank account occurs in order to maintain the regular commercial operations of a company. The bank account must be 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?**

Company auditors are required to be located in local jurisdiction. No specific provision where company's books shall be kept.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

Minimum Nominal Value is TL0.01.

### **INCREASING OF CAPITALIZATION IF NEEDED**

Effectuated by amending the articles of association of the company, which requires general assembly resolution.

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

Requires specific analysis depending on each case.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

Parties sign a transfer agreement stating the number of transferred shares if the company has not issued share certificates. Otherwise, the share certificates are transferred via endorsement. An agreement is discretionary. Share transfer is approved by the Board and recorded in the company's share ledger. Unless otherwise agreed in the articles of association, no shareholder approval is required for regular share transfers (for contributions i.e. issuing new shares in capital increase, the required). Share transfers are not subject to registration at the trade registry. The Turkish Commercial Code favors the free transferability of shares in joint-stock companies and states that the share transfers can be made subject to the approval of company only if: (i) the necessity of such approval; and (ii) significant grounds for avoiding such approval are stated in the Articles of Association of the relevant company.

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

A corporate ending of “Anonim Şirketi” must be used. There should be at least one word stipulating one of the areas of work that the company is involved in. Such word must be in Turkish.

### **SUMMARY OF “KNOW YOUR CLIENT” REQUIREMENTS**

None.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

General assembly resolution is required in order to amend the articles of association of the company. Quorum for general assembly meeting requires shareholders representing  $\frac{1}{2}$  of the capital of the company present at the meeting. If not achieved, shareholders representing  $\frac{1}{3}$  of the capital of the company is required to hold the meeting. Majority of the votes will be sufficient for resolution.

### **LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

Typically the only license required would be a business opening and operation license.

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

None.

## **LIMITED LIABILITY COMPANY (LLC)**

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### **BRIEF DESCRIPTION**

Separate and distinct legal entity. Managed by a board of managers, which is responsible for making major business decisions and overseeing the general affairs of the company. Managers are elected by the shareholders of the company or by the articles of association of the company.

### **MINIMUM CAPITAL REQUIREMENT**

TL10,000 (roughly €4,400). Limited companies are not immediately due at incorporation;  $\frac{1}{4}$  of the capital is required to be paid before the registration and the rest within 24 months.

### **TAX PRESENCE**

The company is subject to Corporate Income Tax at 20 percent and might be subject to VAT at 1, 8 or 18 percent, according to the specific event. Income Tax on salaries at 15, 20, 27 and 35 percent is applied in accordance with increase in revenues.

### **INCORPORATION PROCESS**

Registration with Trade Registry, local Chamber of Commerce and Tax Office as well as the Social Security Institution (SGK) is required in case of employment of personnel.

### **BUSINESS RECOGNITION**

Well regarded and widely used.

### **SHAREHOLDER MEETING REQUIREMENTS**

Required to hold annual meeting of partners to vote on certain items, such as election of managers.

### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

None.

### **ANNUAL COMPANY TAX RETURNS**

Must annually file tax returns with tax authorities; however in every three months, must file advance tax returns with tax authorities.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

Require initial registration, as well as annual filings.

### **BUSINESS EXPANSION**

No need to change as business expands.

### **EXIT STRATEGY**

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Annual partners general assembly meeting.

### **DIRECTOR/OFFICER REQUIREMENTS**

Only Managers.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

None.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

None beyond the required partners.

### **LOCAL OFFICE LEASE REQUIREMENT**

None.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

None.

### **SUFFICIENCY OF VIRTUAL OFFICE**

Lease agreement is required for main office.

### **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**

Allowed for incorporation.

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

None.

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

One of the managers of the company is required to be from the shareholders of the company.



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

Partners (shareholders) conduct the management of the corporation, and govern the organization by establishing broad policies and objectives. Such might be assigned to managers.

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

Current shareholders can be seen from articles of the association of the company as registered before the relevant trade registry.

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

There must be a minimum of one shareholder, and maximum of 50 shareholders. For managers, the minimum number is one, and no maximum number.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

One shareholder is sufficient.

### **REMOVAL OF DIRECTORS OR OFFICERS**

Removal of directors is generally allowed by a vote of shareholders.

### **REQUIRED AND OPTIONAL OFFICERS**

None.

### **BOARD MEETING REQUIREMENTS**

Typically one annual partners assembly meeting is required, which can be usually completed via written consent if necessary.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

There is no quorum to hold a partners assembly meeting. Majority votes of the partners present at the meeting is sufficient for resolution with certain exceptions such as amending articles of association of the company etc.

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

In case of establishment of a company, yes. Please be informed that  $\frac{1}{4}$  of the share capital of the company must be transferred to a bank account of the company before incorporation (The remaining  $\frac{3}{4}$  of the share capital must be paid within two years as of the incorporation). Such bank account will be blocked until the incorporation is registered. After the registration, this bank account becomes a regular bank account which the company can use to transfer funds, realize any banking transactions etc. Also any transfer above €3,500 must be realized through banks. In any event, necessity for opening of bank account occurs in order to maintain the regular commercial operations of a company. The bank account must be 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?**

Company auditors are required to be located in local jurisdiction. No specific provision where company's books shall be kept.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

Minimum Nominal Value is TL25.

### **INCREASING OF CAPITALIZATION IF NEEDED**

Effectuated by amending the articles of association of the company, which requires partners general assembly resolution.

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

Requires specific analysis depending on each case.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

Share transfers in limited liability companies are subject to two validity conditions: (i) share transfer must be made before a notary public by execution of a share transfer agreement between the transferor and the transferee and (ii) share transfer must be approved by the partners' assembly of the relevant company. The Turkish Commercial Code provides that the share transfers would be registered before the trade registry in order to protect the company's and third parties' interests. The approval of  $\frac{3}{4}$  of the shareholders holding at least  $\frac{3}{4}$  of the share capital required in order for the share transfer to be effective against the company. Prohibition of transfer of shares or strict conditions for transfer of shares can be agreed in the Articles of Association of an LLP.

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

A corporate ending of "Limited Şirketi" must be used. There should be at least one word stipulating one of the areas of work that the company is involved in. Such word must be in Turkish.

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

None.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

Partners general assembly resolution is required in order to amend the articles of association of the company. There is no quorum to hold a general assembly meeting. Majority of the votes will be sufficient for resolution with certain exceptions such as amending articles of association of the company requiring affirmative votes of shareholders representing  $\frac{2}{3}$  of the capital of the company.

### **LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

Typically the only license required would be a business opening and operation license.

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

None.

## UNITED ARAB EMIRATES (UAE)

### FORM OF ENTITY – UAE MAINLAND

#### **Limited Liability Company (UAE LLC)**

- (i) Number of shareholders must not exceed fifty and must not be less than two;
- (ii) Shareholders' liability limited to their share in the capital;
- (iii) A UAE national or a company wholly owned by UAE nationals must hold at least 51 percent of the shares;
- (iv) Maximum ratio of profit and loss shared is 80 percent to the non-UAE shareholder and 20 percent to the UAE shareholder; and
- (v) May not engage in the business of insurance, banking or investment on behalf of other parties.

#### **Branch Office**

- (i) Used by foreign companies wishing to establish a business presence in the UAE;
- (ii) Permitted to perform contracts or conduct activities as specified in its license but is prohibited from conducting trading activities;
- (iii) 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 objects;
- (iv) Required by law to appoint a national agent, who must be a UAE national or a company wholly owned by a UAE national and who has no entitlement to the business or the management of the branch office; and
- (v) Managed by a manager who will operate pursuant to a power of attorney.

#### **Representative Office (also known as a liaison office)**

- (i) Used by foreign companies wishing to establish a business presence in the UAE;
- (ii) Activities limited to gathering information and soliciting orders and projects to be performed by the parent company's head office;
- (iii) Serves as an administrative and marketing center for the parent company; and
- (iv) Required by law to appoint a national agent, who must be a UAE national or a company wholly owned by UAE national.

### **FORM OF ENTITY – UAE MAINLAND**

#### **Free Zone Limited Liability Company (FZ-LLC)**

- (i) Used by foreign companies wishing to establish a business presence in the UAE;
- (ii) As the free zone is deemed to be offshore, it allows for 100 percent foreign ownership;
- (iii) Shareholders' liability limited to their share in the capital<sup>2</sup>
- (iv) No corporate or income tax for a guaranteed 50-year period. 100 percent repatriation of capital possible;
- (v) Activities are limited to those that the company is licensed to carry out in the particular free zone. Activities cannot be carried out on mainland UAE; and
- (vi) Exemption from customs duty for goods and services.

#### **Branch Office**

- (i) Used by foreign companies wishing to establish a business presence in the UAE.
- (ii) Legally regarded as part of its parent company.
- (iii) No share capital requirements as it is not a separate legal entity.
- (iv) Can conduct all or some of the operations inherent in the parent company's business.

### **BRIEF DESCRIPTION**

UAE LLC: Separate and distinct legal entity. Requires 51 percent of the total shareholding to be owned by a UAE national or a company wholly owned by UAE nationals (subject to limited scenarios where all the shareholders are nationals of the Gulf Cooperative Council).

FZ-LLC: Separate and distinct legal entity. 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.

### **MINIMUM CAPITAL REQUIREMENT**

UAE LLC: Must have sufficient capital for its business purpose and shall be fixed by the partners.

FZ-LLC: Varies depending on the business park and business activity chosen in the Dubai Technology and Media Free Zone (DTMFZ), for example, in Dubai Media City the minimum paid up capital of AED50,000 aside from activities within Broadcasting TV Segment and Radio Segment, which has a minimum capital requirement of AED2.5 million.

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<sup>2</sup> Please note that there are a number of free zones in the UAE, each of which is governed by different rules and regulations. In this document, we have provided a summary of the rules and regulations for setting up a limited liability company in the DTMFZ only. The DTMFZ is made up of 9 business parks, each operating as a distinct entity and which covers the four industry clusters of ICT, Media, Education and Sciences.

### **LEGAL LIABILITY**

UAE LLC: Shareholders only liable to the extent of their share in the capital.

FZ-LLC: Shareholders only liable to the extent of their share in the capital.

### **TAX PRESENCE**

UAE LLC: No tax payable, save for companies engaged in oil, gas, hospitality and petrochemical activities, etc.

FZ-LLC: No tax payable.

### **INCORPORATION PROCESS**

UAE LLC: License required from the Department of Economic Development (DED). Additional approvals may be required by other government departments depending on the nature of the UAE LLC's activities.

FZ-LLC: License required from the DTMFZ. Additional approvals may be required by other government departments depending on the nature of the FZ-LLC's activities.

### **BUSINESS RECOGNITION**

UAE LLC: Well-regarded and widely used.

FZ-LLC: Well-regarded and widely used.

### **SHAREHOLDER MEETING REQUIREMENTS**

UAE LLC: General Assembly composed of all partners convened once a year. Resolutions require approval of partners representing at least one half of the capital (unless the company memorandum states a larger majority).

FZ-LLC: General meeting shall be convened at least once in every calendar year (unless the company only has one shareholder). Resolutions require simple majority of votes (or by such majority as prescribed in the memorandum and articles of association of the company).

### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

UAE LLC: As stated in the company's memorandum of association.

FZ-LLC: As stated in the company's memorandum of association and articles of association.

### **ANNUAL COMPANY TAX RETURNS**

UAE LLC: No tax payable.

FZ-LLC: No tax payable.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

UAE LLC: Various documents required to be submitted to the DED, including the application form for initial license approval.

FZ-LLC: Various documents required to be submitted, including an application for a license to carry on business submitted to the DTMFZ.



### **BUSINESS EXPANSION**

UAE LLC: License and memorandum of association are required to be updated. For this purpose approval from the DED is necessary.

FZ-LLC: License required to be updated. For this purpose approval from the DTMFZ is necessary.

### **EXIT STRATEGY**

UAE LLC: 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 and published in two local daily newspapers in the Arabic language.

FZ-LLC: Internal procedures to be followed such as shareholder approvals. License must be cancelled and certificate of de-registration obtained from the DTMFZ who will also publish relevant cancellation details in the local media.

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

UAE LLC: Annual general assembly.

FZ-LLC: Annual general meeting.

### **DIRECTOR/OFFICER REQUIREMENTS**

UAE LLC: One or more managers required.

FZ-LLC: One or more directors required.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

UAE LLC: Not required.

FZ-LLC: Required but must be an individual secretary and not a body corporate.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

UAE LLC: None beyond the required directors.

FZ-LLC: None beyond the required directors.

### **LOCAL OFFICE LEASE REQUIREMENT**

UAE LLC: Yes, an owned or rented physical office space is required.

FZ-LLC: Registered office required in the DTMFZ.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

UAE LLC: No other express provisions.

FZ-LLC: No other express provisions.

### **SUFFICIENCY OF VIRTUAL OFFICE**

UAE LLC: Not sufficient. An owned or rented physical office space is required.

FZ-LLC: Possible in the DTMFZ or some other free zones.

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

UAE LLC: Not sufficient.

FZ-LLC: Not sufficient.

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

UAE LLC: No express provision.

FZ-LLC: No express provision.

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

UAE LLC: A UAE national or a company wholly owned by UAE nationals must hold at least 51 percent of the shares. No nationality restrictions when appointing a manager/director/officer.

FZ-LLC: No nationality restrictions.

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

UAE LLC: No express provision.

FZ-LLC: No express provision.

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

UAE LLC: 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.

FZ-LLC: As specified in the company memorandum and his/her explicit mandate for certain.

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

UAE LLC: Such information is available to the public through public search carried out with the Chamber of Commerce and Industry for a minimal fee.

FZ-LLC: No.

### **MINIMUM AND MAXIMUM NUMBER OF DIRECTORS**

UAE LLC: LLC's have managers. Minimum number of managers is one. Maximum number of managers is five.

FZ-LLC: Minimum one director is required. Maximum four.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

UAE LLC: Maximum 50. Minimum two.

FZ-LLC: Maximum 50. Minimum two.

### **REMOVAL OF DIRECTORS OR OFFICERS**

UAE LLC: If appointed for a limited term in office, the manager shall remain for the duration unless the memorandum provides he 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.

FZ-LLC: Subject to a company's memorandum and articles of association, the members 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.

### **REQUIRED AND OPTIONAL OFFICERS**

UAE LLC: No other officers strictly required.

FZ-LLC: No other officers strictly required.

### **BOARD MEETING REQUIREMENTS**

UAE LLC: As stated in the company memorandum.

FZ-LLC: As stated in the company's bye-laws.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

UAE LLC: For the general assembly, shareholders holding at least one half of the capital of the company must attend (unless a larger majority is required by the company memorandum).

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).

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

UAE LLC: No. A bank account is not required to be opened prior to incorporation but only after the LLC is established 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.

FZ-LLC: Yes, 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.

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

UAE LLC: Auditor(s) 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.

FZ-LLC: Yes, auditor (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. They shall be submitted to DTMFZ for the purpose of renewing the license. Company's books must be kept in the FZ-LLC's office.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

UAE LLC: No express provision.

FZ-LLC: No express provision.

### **INCREASING OF CAPITALIZATION IF NEEDED**

UAE LLC: Approval of partners representing three quarters of the capital required, unless the company memorandum provides for an additional numerical majority of partners.

FZ-LLC: Authorization by an ordinary resolution and by the company's memorandum and articles of association required.

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

UAE LLC: No restrictions. Funds can be repatriated freely.

FZ-LLC: No restrictions. Funds can be repatriated freely.

### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

UAE LLC: Must at all times comply with the foreign ownership restrictions. Approval is required from the DED and share transfer documents must be signed before a UAE notary and filed with the authorities to obtain an amended license reflecting the revised shareholding pattern.

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 DTMFZ.



### **OBTAINING A NAME AND NAMING REQUIREMENTS**

UAE LLC: Trade Name Reservation Form must be submitted to the DED.

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. The name must be entered on the register of companies maintained by the DTMFZ.

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

UAE 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.

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.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

UAE LLC: Approval of partners representing three quarters of the capital required to amend the company memorandum, unless the company memorandum provides for an additional numerical majority of partners.

FZ-LLC: Special resolution (majority of not less than three-fourths of the shareholders entitled to vote) required to amend the provisions of the memorandum of the company but such amendment shall only take effect when accepted for registration by the DTMFZ.

### ***LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION***

UAE LLC: License required from the DED. Additional approvals may be required depending on the nature of activities.

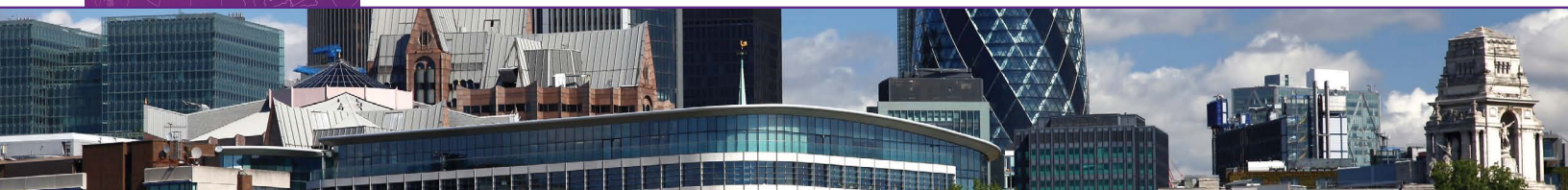
FZ-LLC: License required to carry on a business in the DTMFZ. Additional approvals may be required depending on the nature of activities.

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

UAE LLC: The concept of a shelf company is not recognized in the UAE.

FZ-LLC: The concept of a shelf company is not recognized in the free zones.





## UNITED KINGDOM

### FORM OF ENTITY

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*

- (i) Separate and distinct legal entity. Subject to certain exceptions (such as fraud), shareholders are not liable for debts and obligations of the company;
- (ii) Taxed on its earnings at a corporate level and shareholders taxed on any distributed dividends;
- (iii) Management and organization governed by articles of association. Board of directors have overall management responsibility;
- (iv) Must file an annual return at least every 12 months setting out (amongst other things) details of company's share capital, shareholders and directors;
- (v) Must file annual accounts (subject to certain exceptions for small and dormant companies). Accounts are publicly available; and
- (vi) 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)*

- (i) 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;
- (ii) Flexibility in management and organization. Management and organization are governed by a confidential LLP agreement. Designated members responsible for certain statutory requirements (such as signing annual accounts). LLP must have two designated members;
- (iii) Generally taxed as a partnership. Individual members liable for income and capital gains tax on their share of LLP's profits/gains;
- (iv) Must file an annual return at least every 12 months setting out (amongst other things) details of LLP's membership;
- (v) Must file annual accounts (subject to certain exceptions for small and dormant LLPs). Accounts are publicly available; and
- (vi) Event driven filings need to be made from time to time (such as changes to the members of the LLP).



### **Registered UK Establishment**

- (i) Alternative to establishing a separate UK private limited company. Not a separate legal entity. Represents a local registration of the overseas company;
- (ii) Registration mandatory if operating an establishment in the UK. Registration must be effected within one month of opening the UK establishment. Cost of registration subject to the country of incorporation of the overseas company;
- (iii) Generally subject to UK corporation tax on any profits attributable to the establishment;
- (iv) Generally subject to similar reporting requirements as a UK private limited company. Requires a UK registered address; and
- (v) 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).

## **PRIVATE LIMITED COMPANY**

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### **BRIEF DESCRIPTION**

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.

### **MINIMUM CAPITAL REQUIREMENT**

None.

### **LEGAL LIABILITY**

Shareholders not liable for debts of the company.

### **TAX PRESENCE**

Company's profits taxed at two 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 (e.g. when paying interest).

### **INCORPORATION PROCESS**

Delivery of Form IN01 (containing details of company name, registered office, articles of association, directors, share capital and initial shareholdings) and a memorandum of association to the Registrar of Companies.

### **BUSINESS RECOGNITION**

Well regarded and widely used.



### **SHAREHOLDER MEETING REQUIREMENTS**

General meeting must be called at 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 dividends) require shareholder approval. Otherwise, no statutory requirement to hold shareholder meetings (subject to any express provision in the company's articles).

### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

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.

### **ANNUAL COMPANY TAX RETURNS**

Must file annual corporation tax return with HMRC within 12 months of the end of company's financial year.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

No separate business registration requirements. This may vary if the company is operating in a regulated sector.

### **BUSINESS EXPANSION**

No requirement to change the corporate structure or the company registration as the business expands.

### **EXIT STRATEGY**

Voluntary strike-off (commonly used where assets and liabilities are negligible) or liquidation.

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Must file an annual return at least every 12 months setting out (amongst other things) details of company's share capital, shareholders and directors.

Must prepare annual accounts covering the previous financial year and deliver these to Registrar of Companies House within nine 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).

### **DIRECTOR/OFFICER REQUIREMENTS**

Minimum of at least one director (or any greater number provided for by articles), at least one of whom is a natural person.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

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).

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

None.

### **LOCAL OFFICE LEASE REQUIREMENT**

None.



### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

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.

### **SUFFICIENCY OF VIRTUAL OFFICE**

Registered office must be a physical location within the UK.

### **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**

Permitted. Requirement that at least one director is a natural person.

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

None. Requirement that at least one director is a natural person.

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

None, provided that at least one director is a natural person.

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

Directors are responsible for the day-to-day management of the company. They owe fiduciary duties to the company, 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.

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

Identities of directors and shareholders (together with details of their respective shareholdings) are publicly available.

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

There is a statutory minimum requirement of one shareholder, and no maximum number. For directors, there is a statutory minimum requirement of one (who must be a natural person), and no maximum number. The company's articles may contain additional stipulations.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

At least one shareholder is required.

### **REMOVAL OF DIRECTORS OR OFFICERS**

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.





### **REQUIRED AND OPTIONAL OFFICERS**

At least one director required. Appointment of secretary optional.

### **BOARD MEETING REQUIREMENTS**

No statutory requirement as to the conduct of board meetings. However, company's articles will commonly make provision for quorum and voting requirements.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

In the case of a shareholders' meeting, the minimum quorum is two (or one 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 two (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.

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

No.

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

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 three years. A copy of the accounts and auditor's report must be delivered to the Registrar of Companies House within nine months of the end of the financial year, upon which they will become publicly available.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

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.

### **INCREASING OF CAPITALIZATION IF NEEDED**

Generally permitted. For companies with only one 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.

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

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.





### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

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.

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

Companies may generally select any name as long as:

- (i) It ends with the word, "Limited" or "Ltd";
- (ii) It is not the same as or too similar to a name already on the index maintained by Companies House;
- (iii) It does not contain certain restricted or sensitive words, symbols or expressions (such as "authority," "agency" and "court"); and
- (iv) It does not give the impression of being connected with the British Government or with a local authority.

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

Generally not required. Firms in the financial or legal sector will typically impose their own KYC procedures.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

Articles of association may be amended with the approval of shareholders holding at least 75 percent of the voting rights of the company.

### **LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

No general business license required. Particular licenses or permits may be necessary to conduct certain activities in specific industries.

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

Shelf companies can be purchased from third-party providers. Easier to incorporate at the outset.

## **REGISTERED UK ESTABLISHMENT**

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### **BRIEF DESCRIPTION**

On 1 October 2009, new UK legislation replaced the dual regime of registering branches and places of business with a single regime of registering a 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 "N/A" on the basis that the UK establishment is merely a registration of an overseas company and therefore any rules, regulations or other requirements are primarily governed by the laws of the country of incorporation.



### MINIMUM CAPITAL REQUIREMENT

N/A.

### LEGAL LIABILITY

N/A.

### TAX PRESENCE

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

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

- (i) The name of the overseas company;
- (ii) Its legal form, country of incorporation, identity of register in which it is registered and registered number in that register;
- (iii) Its governing law and accounting requirements;
- (iv) Details of its accounts and constitutional documents;
- (v) Address of principal place of business or registered office of the overseas company;
- (vi) Objects of the overseas company;
- (vii) Amount of issued share capital of the overseas company; and
- (viii) Full details of the officers of the overseas company (including their service address).

#### UK ESTABLISHMENT

- (i) Name of UK establishment;
- (ii) Registered office address of the UK establishment;
- (iii) Date UK establishment opened and type of business carried on UK establishment;
- (iv) Permanent representative of the UK establishment (including his service address); and
- (v) Full details of any person authorized to accept service on behalf of the UK establishment.

### BUSINESS RECOGNITION

Not as well regarded and widely used as a private limited company.

### SHAREHOLDER MEETING REQUIREMENTS

N/A.

### BOARD OF DIRECTOR MEETING REQUIREMENTS

N/A.



### **ANNUAL COMPANY TAX RETURNS**

May be required to file annual corporation tax return with HMRC within 12 months of the end of the UK establishments financial year.

### **BUSINESS REGISTRATION FILING REQUIREMENTS**

No separate business registration requirements.

### **BUSINESS EXPANSION**

No requirement to change as business expands.

### **EXIT STRATEGY**

A UK establishment can be closed by giving notice to Companies House.

### **ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

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**

N/A.

### **LOCAL CORPORATE SECRETARY REQUIREMENT**

N/A.

### **LOCAL LEGAL OR ADMINISTRATIVE REPRESENTATIVE REQUIREMENT**

None.

### **LOCAL OFFICE LEASE REQUIREMENT**

None.

### **OTHER PHYSICAL PRESENCE REQUIREMENTS**

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**

Service address must be a physical location within the UK.

### **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**

Permitted.

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

N/A.



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

N/A.

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

N/A.

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

Identities of directors (and other authorized representatives) are publicly available.

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

N/A.

### **MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

N/A.

### **REMOVAL OF DIRECTORS OR OFFICERS**

N/A.

### **REQUIRED AND OPTIONAL OFFICERS**

N/A.

### **BOARD MEETING REQUIREMENTS**

N/A.

### **QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

N/A.

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

No.

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

N/A.

### **REQUIREMENT REGARDING PAR VALUE OF STOCK**

N/A.

### **INCREASING OF CAPITALIZATION IF NEEDED**

N/A.

### **SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (I.E. DIVIDENDS OR REDEMPTION)**

N/A.



### **RESTRICTIONS ON TRANSFERABILITY OF SHARES**

N/A.

### **OBTAINING A NAME AND NAMING REQUIREMENTS**

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:

- (i) It is not the same as or too similar to a name already on the index maintained by Companies House;
- (ii) It does not contain certain restricted or sensitive words, symbols or expressions (such as “authority,” “agency” and “court”); and
- (iii) It does not give the impression of being connected with the British Government or with a local authority.

### **SUMMARY OF “KNOW YOUR CLIENT” REQUIREMENTS**

Generally not required. Firms in the financial or legal sector will typically impose their own KYC procedures.

### **APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT**

N/A.

### **LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION**

N/A.

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

N/A.







## UNITED STATES

### FORM OF ENTITY

#### **C Corporation**

- (i) Unlimited number of shareholders
- (ii) Generally no personal liability of the shareholders
- (iii) Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends
- (iv) Typical charter documents include: articles of incorporation; bylaws; organizational board resolutions; stock certificates; and stock ledger
- (v) Board of directors has overall management responsibility; officers have day-to-day responsibility
- (vi) Shareholders typically purchase stock in the corporation, either common or preferred and
- (vii) Most states require an annual report to be filed with the Secretary of State, typically reporting the officers and directors of the corporation

#### **S Corporation**

- (i) Up to 100 shareholders; only one class of stock allowed
- (ii) Generally no personal liability of the shareholders
- (iii) With the filing of a IRS Form 2553, a C Corporation becomes a S Corporation, whereby the profits and losses are passed through to the shareholders
- (iv) Typical charter documents include: articles of incorporation; bylaws; organizational board resolutions; stock certificates; stock ledger; IRS and state S Corporation election form
- (v) Board of directors has overall management responsibility; officers have day-to-day responsibility and
- (vi) Shareholders typically purchase stock in the corporation, but only one class of stock is allowed

#### **Limited Liability Company (LLC)**

- (i) Unlimited number of members allowed
- (ii) Generally no personal liability of the members
- (iii) Not taxed (unless chosen to be taxed); profits and losses are passed through to the members
- (iv) Typical charter documents include: articles of organization or certificate of formation; operating agreement
- (v) Operating Agreement sets forth how the business is to be managed; a member (owner) or Manager can be designated to manage the business and
- (vi) 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.



### C CORPORATION

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#### BRIEF DESCRIPTION

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 stockholders of the corporation. Officers, who run the day-to-day operations of the corporation, are appointed by the directors.

#### MINIMUM CAPITAL REQUIREMENT

No minimum capital requirement.

#### LEGAL LIABILITY

Shareholders of a corporation are generally not liable for the debts of a corporation aside from their financial contribution to the corporation.

#### TAX PRESENCE

A C corporation is taxed at two levels (commonly referred to as double taxation). First the C corporation pays a corporate tax on its corporate income; then the C corporation distributes profits to stockholders who then pay income tax on those dividends.

#### INCORPORATION PROCESS

File Certificate of Incorporation or Articles of Incorporation with the appropriate Secretary of State.

#### BUSINESS RECOGNITION

Well regarded and widely used.

#### SHAREHOLDER MEETING REQUIREMENTS

Required to hold annual meeting of shareholders to vote on certain items, such as election of directors.

#### BOARD OF DIRECTOR MEETING REQUIREMENTS

Annual meeting of the directors is required.

#### ANNUAL COMPANY TAX RETURNS

Must annually file tax returns with federal and state tax authorities.

#### BUSINESS REGISTRATION FILING REQUIREMENTS

Most states require initial registration, as well as annual filings.

#### BUSINESS EXPANSION

No need to change as business expands.

#### EXIT STRATEGY

File dissolution documents with the appropriate Secretary of State.



### **S CORPORATION**

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#### **BRIEF DESCRIPTION**

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 stockholders of the corporation. Officers, who run the day-to-day operations of the corporation, are appointed by the directors.

#### **MINIMUM CAPITAL REQUIREMENT**

No minimum capital requirement.

#### **LEGAL LIABILITY**

Shareholders of a corporation are generally not liable for the debts of a corporation aside from their financial contribution to the corporation.

#### **TAX PRESENCE**

Pass-through entity taxed like a partnership, as there is only one level of taxation. The corporate profits “pass through” to the owners, who pay taxes on the profits at their individual tax rates.

#### **INCORPORATION PROCESS**

File Certificate of Incorporation or Articles of Incorporation with the appropriate Secretary of State, as well as the appropriate S corporation election documents.

#### **BUSINESS RECOGNITION**

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.

#### **SHAREHOLDER MEETING REQUIREMENTS**

Required to hold annual meeting of shareholders to vote on certain items, such as election of directors.

#### **BOARD OF DIRECTOR MEETING REQUIREMENTS**

Annual meeting of the directors is required.

#### **ANNUAL COMPANY TAX RETURNS**

Profits “pass through” to the shareholders who pay taxes at their individual tax rates.

#### **BUSINESS REGISTRATION FILING REQUIREMENTS**

Most states require initial registration, as well as annual filings.

#### **BUSINESS EXPANSION**

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.

#### **EXIT STRATEGY**

File dissolution documents with the appropriate Secretary of State.



### LIMITED LIABILITY COMPANY (LLC)

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#### **BRIEF DESCRIPTION**

Separate and distinct legal entity. Managed by either the members of the LLC or a manager appointed by the members. Members of the LLC have flexibility in structuring the company, including the ability to divide ownership and voting rights in multiple ways.

#### **MINIMUM CAPITAL REQUIREMENT**

No minimum capital requirement.

#### **LEGAL LIABILITY**

Members are generally not liable for the debts of the LLC aside from their contribution to the LLC.

#### **TAX PRESENCE**

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 taxation. The corporate profits “pass through” to the owners, who pay taxes on the profits at their individual tax rates.

#### **INCORPORATION PROCESS**

File Articles of Organization or Certificate of Formation with the appropriate Secretary of State.

#### **BUSINESS RECOGNITION**

Well regarded and used regularly in particular industries, but otherwise not as widely used generally.

#### **SHAREHOLDER MEETING REQUIREMENTS**

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**

Annual meeting of the members or managers is not required. Provisions of the operating agreement will determine any meeting requirements.

#### **ANNUAL COMPANY TAX RETURNS**

Profits “pass through” to the shareholders who pay taxes at their individual tax rates, unless LLC elects to be treated as a corporation.

#### **BUSINESS REGISTRATION FILING REQUIREMENTS**

Most states require initial registration, as well as annual filings.

#### **BUSINESS EXPANSION**

No need to change as business expands. However, many institutional investors will require an LLC to convert to a corporation before investing.

#### **EXIT STRATEGY**

File dissolution documents with the appropriate Secretary of State.



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