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| 公司法指南 2017-2018

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| 司法管辖区Q&A

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N.M. Eftakharul Alam Bhuiya,
Ahnaf Chowdhury,
Jarif Ahmed

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) if the shares are unlisted shares of a public limited company or are in a private limited company, and are sold to a resident of Bangladesh, then prior approval of BB is required for the outward remittance of the capital and capital gains, subject to such

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

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

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

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

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

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

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

The Bangladesh Securities and Exchange Commission ('BSEC'), which regulates capital markets in Bangladesh, also issues various

rules, orders, notifications and directives from time to time which have the effect of law and regulate the activities of companies.

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

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

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

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

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

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

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

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

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

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

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

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

(a) registration fee: Taka 76,250;

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

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

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

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

Other important registrations for a company include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Directors, other than directors nominated by corporate shareholders, must own qualifying shares, the number of which can be specified in the articles of association. Directors nominated by corporate shareholders are not required to

own qualifying shares. Directors must execute a Form IX: Consent of Director (in a prescribed format, as set forth in the Schedules to CA 1994). This executed Form IX must be filed with the RJSC for the directorship to become effective. Furthermore, a Form XII: Particulars of Directors, Managers and Managing Agents (in a prescribed format, as set forth in the Schedules to CA 1994) must be executed by the Managing Director and filed with the RJSC. For subsequent appointment of directors (post-incorporation), directors must be appointed at a general meeting of the shareholders, provided, however, casual vacancies on the board can be filled pursuant to a meeting of the existing board of directors. CA 1994 allows non-resident and/or foreign individuals to be appointed as directors of private limited companies.

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

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

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

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

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

Private Limited Companies

Shares may be offered at three different stages:

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

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

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

Public Limited Companies

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The main intellectual property rights companies should be aware of in Bangladesh are trademarks, patents and copyrights. Intellectual property such as industrial design

does not play a significant part, and very few cases have reached the Supreme Court of Bangladesh or have been reported.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1. 在您所在司法管辖区，外国公司的总体环境如何?

在评估外国公司和投资者在孟加拉国的总体环境时，应审查如下相关事项：

(a) 构成适用于外国公司与投资者的监管框架的主要法律法规，以及在规范外国公司和投资者的监管框架中发挥关键作用的政府机构与监管机构；以及

(b) 在此种监管框架下，外国公司和投资者可以使用的各种法律形式或选择，以及每种此类法律形式或选择的相对优势和劣势。

规范外国公司和投资者的主要法律法规如下：

(a) 经 2015 年《外汇管理法案》("FERA") 修订的《1947 年外汇管理法案》及孟加拉国银行 ("BB"，孟加拉国的中央银行）据此而颁布的相关条例。这些条例由孟加拉国银行编纂在《外汇交易指引》第 1 卷和第 2 卷（2009 年）之中，并经孟加拉国银行不定期发布的通告进行更新（统称为"外汇指引"）；以及

(b) 1994 年《孟加拉国公司法案》(1994 年第 XVIII 号法案）(简称"CA 1994 年")。

孟加拉国影响或规范外国公司和投资者的主要政府机构或监管机构如下：

(a) 孟加拉国投资发展局 ("BIDA")，以前被称为投资委员会；该政府机构通过向外国投资者提供咨询，在公用事业、征地等方面对外国投资者提供协助等方式促进在孟加拉国的外国投资；

(b) 孟加拉国银行，亦即孟加拉国的中央银行，该机构管理资本和资本收益的汇出；以及

(c) 股份公司及企业注册登记处 ("RJSC")，该机构负责对在孟加拉国设立营业地的外国公司和由外国所有的本地公司进行注册登记。

关于外国公司和投资者在孟加拉国所面临的挑战和 / 或孟加拉国为其提供的优惠待遇的一般情况，取决于外国公司或投资者选择了什么法律形式或作出何种选择在孟加拉国建立营业场所：

(a) 在孟加拉国以外成立的外国公司，(i) 在孟加拉国投资发展局登记为联络处或分支机构，并在孟加拉国投资发展局通知后的 30 天内通知孟加拉国银行，以及 (ii) 根据 1994 年《公司法案》之规定，在股份公司及企业注册登记处登记为外国公司。此类外国公司除了不具有独立的法人资格之外，还面临如下一些挑战：

(i) 此类登记仅在一定期限内有效，必须在期满时进行续期；并且

(ii) 其活动受到严格限制。具体而言，如果一家外国公司在孟加拉国投资发展局注册登记为联络处，则仅可以从事市场推广活动和其他非营利性活动，该等活动只能以外国办事处的汇入汇款作为资金支持（即联络处是被禁止从事任何商业或其他营利性活动的成本中心）。如果注册为分支机构，则该外国公司仅可以根据在向孟加拉国投资发展局提交的申请中所指明的项目协议或其他合约，

从事该协议或合约项下工作所必需的活动。如果外国公司在其向孟加拉国投资发展局提交的申请中有如此说明，则可以将其在指定合同中获得的当地收入投入其分支机构，同时，经孟加拉国投资发展局和孟加拉国银行事先批准，该外国公司也可以将分公司的利润汇回外国办事处。

(b) 外国公司或投资者根据 1994 年《公司法案》第 5 节和第 6 节之规定而在股份公司及企业注册登记处登记为本地注册的外商独资或部分外资 / 合资股份有限公司（以下简称“外资企业”）。如果该外资公司设立为工业企业，则可在孟加拉国投资发展局进行注册，从而可享受孟加拉国投资发展局提供的外商投资咨询和便利化服务。

关于外国投资者汇入的外汇汇款，根据《外汇管理法案（修订）》第 13（1）（s）条和“外汇指引”第 9 章第 1 项的规定，外国投资者可以自由投资孟加拉国的外国公司，前提是此类投资通过核准交易（“AD”）银行转入并予以记录。如果外国投资者使用自己的资金，则设立此类公司无须取得孟加拉国银行的批准（如果此类外资公司通过国外贷款的方式获得资金，根据《外汇指引》第 15 章整章之规定，此类国外贷款必须：(a) 在孟加拉国投资发展局进行登记，且其利息支付经孟加拉国投资发展局批准；并且（b）由贷款机构提供资金，但期限为 12 个月或以下的贷款除外，可由外国投资者 / 股东提供）。除了外资企业需要在孟加拉国投资发展局进行登记以为其外国雇员取得工作许可的情况外（在此情况下，投入该公司股本的最低外国投资金额不得低于 50,000 美元），对此类公司进行的外国投资不受最低金额的限制。

对于外资企业向其外国股东汇出的外汇，根据《外汇管理法案（修订）》第 5（1）条和《外汇指引》第 10（31）（a）条的规定，外资企业可以通过规定的表格向其核准交易银行提出申请，通过其核准交易银行将分红汇给其外国股东。此类分红的汇出可自由进行，无须经孟加拉国银行的任何事先批准。

对于外国投资者通过出售其在外资公司中的股份而退出的情况，根据《外汇管理法案（修订）》第 13（1）（d）条和《外汇指引》第 9 章第 3（b）项的规定（经 2014 年 8 月 31 日孟加拉国银行第 32 号通告予以修订）：

(a) 如果该等股份系在达卡证券交易所（“DSE”）或吉大港证券交易所（“CSE”）上市的公众有限公司中的股份，则处置股份所取得的资本和资本收益可自由地向外国投资者汇出，且无须经孟加拉国银行的任何事先批准，但汇款金额不得超过该等股份的市场价值；

(b) 如果该等股份系公众有限公司中的非上市股份或者系私人有限公司中的股份，并且被出售给孟加拉国居民，则必须事先获得孟加拉国银行的批准才能向外汇出资本和资本收益，且该等汇款的金额应等于或少于该等股份的“公允市场价值”，而该价值须经获得许可的商业银行或特许会计师认证（其认证证书须与申请一同提交给孟加拉国银行以取得此类事先批准）。如果此类外资公司中的股份被出售给非孟加拉国居民，则根据《外汇指引》第 14 章所规定的一般豁免规定，此类出售行为无须孟加拉国银行的事先批准即可以完成。

关于 1994 年《公司法案》规定的注册要求，外资公司在股份公司及企业注册登记处进行注册与孟加拉国全资拥有的公司大致相同。注册程序自从股份公司及企业注册登记处为拟建公司的名称获得“名称许可”时开始，于股份公司及企业注册登记处签发注册登记证书之时完成。外资公司的注册登记程序不存在与本地所有公司有明显差异的任何事项，但根据《外汇指引》第 9 章第 2（b）项的规定，要求进入核准交易银行的外汇必须在发行股份前先在拟设公司的账户进行兑换。因此，与孟加拉国全资拥有的公司不同，外资公司必须以拟设公司的名称在孟加拉国开设拟设公司的银行账户，并向银行提交从股份公司及企业

注册登记处获得的名称许可证书。在向股份公司及企业注册登记处提交注册登记文件之前，外国投资者 / 股东必须：(a) 将适用的股本金额以外汇汇入该账户；以及 (b) 资金汇入后，从授权指定银行获得兑换证明，以证明已将作为此等股本资金的外汇转换为孟加拉国塔卡。在注册登记之时，兑换证明必须与新公司的公司章程与章程细则以及其他规定的股份公司及企业注册登记处表格一同提交给股份公司及企业注册登记处。

2. 在您所在司法管辖区，适用于公司的主要法律法规有哪些?

管理孟加拉国公司的主要法规是 1994 年的《公司法案》。该部法规由 11 章、404 条组成，涵盖公司章程和公司成立、股本、注册登记、董事责任、管理和行政活动（包括关于董事会和股东会的管理事项的所有程序）和公司清算等内容。

1994 年《公司法案》还包含 12 个规定和表格的附表，其中包括公司章程大纲和章程细则的模板以及年度财务报表的要求等相关内容。1994 年《公司法案》的“附表一”规定了适用于股份有限公司管理活动的有关规则，公司可在其公司章程采纳这些规则，其中有一些强制性规定是不得在公司章程中排除的。

2009 年《公司规则》(第 7309G 号)(简称“CR 2009”) 也是管理孟加拉国公司相关法律的一个组成部分。2009 年《公司规则》包含各种表格，分别适用于公司运作的不同方面和阶段，以及与公司法诉讼有关，其中包括减资申请、对债权人的通知、担保人的担保书、分红通知以及指定清算人通知。

1969 年《证券交易条例》、1987 年《证券交易规则》和 1993 年《证券交易委员会法案》(“SECA 1993”) 对于在孟加拉国两个证券交易所（亦即达卡证券交易所和吉大港证券交易所）之一上市的证券发行人都尤为重要。这些法律对发行人的活动进行规范并规定了对违规行为的处罚。

对孟加拉国资本市场进行管理的孟加拉国证券交易委员会（“BSEC”）也不定期地发布对公司活动进行规范的、具有法律效力的各种规则、命令、通知与法令。

影响公司法的其他法律法规，特别是关于公司董事个人责任的法律法规，是 1997 年《破产法案》、2009 年《洗钱预防法案》和 1881 年《可转让票据法案》。

3. 在您所在司法管辖区，最常见的公司类型有哪些?

私人股份有限公司（简称“私人有限公司”）和公众股份有限公司(简称“公众有限公司”)是孟加拉国最常见的两种公司类型。1994 年《公司法案》第 2（q）条将私人公司定义为，通过其公司章程限制转让其股份（若有）的权利、禁止任何邀请公众认购其股份或债权（若有）的行为，以及限制其成员人数最多不得超过 50 人（不包括其所雇佣的人员）的公司。1994 年《公司法案》第 2（r）条将上市公司定义为私人公司以外的公司。此外，可成立 1994 年《公司法案》第 28 条所规定的非营利性组织和 1994 年《公司法案》第 29 条所规定的担保有限公司，用以从事非营利性活动。

4. 在您所在司法管辖区，建立一家公司需要多长时间?

如果已事先起草了公司章程大纲和公司章程细则且已准备好向股份公司及企业注册登记处提交，并已从核准交易银行处收到了以拟设公司的名义（在其为全资或部分外资公司的情况下）开具的兑换证明，则在孟加拉国注册一家公司通常需要大约 10-15 个工作日的时间，自申请名称许可之时起至签发注册登记证书之时止。

公司的注册登记不存在官方的快速通道。但是对于在孟加拉国投资发展局登记为工业企业的外资公司，值得注意的是，孟加拉国正在通过立法在孟加拉国投资发展局设立一站式服务中心，协助外资企业注册登记，确保股份公司及企业注册登记处在材料提交后的 48 小时内完成注册登记。

5. 在您所在司法管辖区，对公司注册的主要要求有哪些？费用如何？

公司的注册登记自向股份公司及企业注册登记处申请名称许可并从该处取得名称许可证书时开始。在取得名称许可证书之后，拟定有外国股东的公司必须以拟设实体的名义开立银行账户并向该银行账户汇入初始股本（实缴资本），同时取得由该银行出具的兑换证明。

办理实体的注册登记事宜，须向股份公司及企业注册登记处提交以下文件：

(a) 公司章程大纲及章程细则
(b) 兑换证明（对外资企业而言）
(c) 名称许可证书
(d) 税务识别号（TIN）证书
(e) 国库单据
(f) “表一”（公司登记声明）
(g) “表六”（注册办事处情况及其变更的通知）
(h) “表九”（董事同意书）
(i) “表十”（同意担任董事的人员名单）
(j) “表十二”（董事、经理、经理人的详细情况及与其有关的任何变动情况）

为完成公司的注册登记，股份公司及企业注册登记处还要求额外提供外国股东和 / 或提名董事的身份证明文件（在该外国股东为公司股东的情况下）。

公司注册登记的费用根据其授权股本进行计算（部分）。例如，一家法定股本为五千万塔卡的公司将会产生以下费用：

(a) 注册登记费：76,250 塔卡；
(b) 注册申请费：2,400 塔卡；
(c) 公司章程大纲及章程细则的印花费：9,150 塔卡；
(d) 公司章程大纲、表十二以及公司注册数字证书的经核证副本的费用：2,220 塔卡。

注册登记费用可能会发生变动，很可能会需要支付额外的行政费用才能完成公司的注册登记程序。

公司的其他重要登记事项包括：

(a) 1991 年《增值税法案》所规定的增值税（“VAT”）登记；
(b) 根据办公地点或营业地点，由地方政府（村 / 县 / 市政府办事机构）针对公司特定贸易或业务类型发放的营业执照；
(c) 根据业务及其场所的性质和规模，建筑消防许可证、政府有关部门的具体许可和 / 或涉及经营特定物质和商品的许可证等。

这些注册的费用根据办公地点或营业地点以及公司股本的不同而有所区别。

6. 在您所在司法管辖区，公司注册后有哪些主要的报告要求？

孟加拉国公司在注册登记后的报告义务列示如下。向股份公司及企业注册登记处提交其规定的表格和 / 或 1994 年《公司法案》或 2009 年《公司条例》规定的表格等文件：

(a) “表七”（法定报告）：在自公司有权开始营业之日起的不少于一个月但不超过六个月的期间内，每家股份有限公司以及每家有股本金的担保有限公司都必须召开公司成员的股东大会，1994 年《公司法案》将其界定为法定会议。董事会必须编制一份报告，该报告被作为法定报告，且必须在该法定会议召开之日至少 21 天前将该报告递送给公司的每一位成员；
(b) “表八”（特别决议 / 非常决议）：每个特别决议和非常决议的副本必须书面打印或用打字机打出，经公司管理人员签名核证，并在其通过后的 15 天内提交给股份公司及企业注册登记处进行备案；
(c) “附表十”（股本年度总结、股东名单与董事年度总结）：根据 1994 年《公司法案》第 36（1）条之规定，公司必须在其注册登记后的 18 个月内向股份公司及企业注册登记处提交其股本年度总结以及股东名单，并在随后的每个年度都提交此等文件。私人公司必须随同其年度申报表提交由公司董事或其

他高级人员签发的证明，以证实该公司未向公众发出认购该公司任何股份或债券的任何邀请；

(d) “表四十一”（公司登记的主要办公地址的变更通知）：公司注册地址进行变更的通知必须在变更后的 21（二十一）天内向股份公司及企业注册登记处作出；

(e) 资产负债表和损益表：根据 1994 年《公司法案》第 190 条的规定，公司必须在向年度股东大会提交资产负债表和损益表之日后的 30 天内，向股份公司及企业注册登记处提交其资产负债表和损益表的副本。

以上列示并非详尽。在不同的情况下，会产生其他报告要求，如股份转让、配股申报、董事会变动等等。

根据 1994 年《公司法案》，公司秘书对在孟加拉国的公司而言不是一项强制性要求。

7. 在您所在司法管辖区，是否存在对外国公司的任何控制因素或限制？

关于适用于外资企业的外汇管理规定，请参见问题 1 的相关内容。

此外，国家工业发展委员会（“NCID”）共列出了 17 个被指定为“受控行业”的行业：(a) 深海捕鱼；(b) 私营部门的银行 / 金融机构；(c) 私营机构的保险公司；(d) 私营部门的发电、供电和配电；(e) 天然气 / 石油的勘探、开采和供应；(f) 煤炭的勘探、开采和供应；(g) 其他矿产资源的勘探、开采和供应；(h) 大型基础设施项目（如天桥、高架高速路、单轨铁路、经济区、内陆集装箱堆场 / 集装箱货站）；(i) 原油炼油厂（用作燃料的润滑油的回收 / 精炼）；(j) 以天然气 / 压缩天然气等矿物为原料的大中型工业；(k) 电讯服务（移动电话 / 手机服务及固定电话）；(l) 卫星频道；(m) 航空货运 / 客运；(n) 船舶运输；(o) 海港 / 深海港口；(p) VoIP / IP 电话；以及 (q) 使用从海滩积累的重质矿物的行业。

在这些行业中，政府保留确定外国投资者 / 股东与当地投资者 / 股东之间权益比率的权利。国家工业发展委员会有权按其认为合适的方式扩展或修改该受控制行业清单。未经政府有关部门的事先批准，在这些受控制行里的企业不得在孟加拉国投资发展局进行登记。

除了国家工业发展委员会规定的更为广泛的限制之外，在某些情况下，针对特定行业的立法还对一些受控行业中的被许可实体设定了外国股份的最高限额。示例包括电信部门的某些服务，例如授予国际网关 (IGW)、互连交换 (ICX) 和 VoIP 服务提供商 (VSP) 的许可。

出于国家安全或其他原因，孟加拉国政府也将某些行业列为限制外国投资的“保留行业”：(a) 武器弹药和其他军事设备和机械；(b) 核电；(c) 防伪印刷和铸币；以及 (d) 在保育林边界内进行造林和机械化开采。

8. 在您所在司法管辖区，公司的典型董事结构（或家族式管理结构）以及责任问题是怎样的？

非由公司股东提名的董事必须拥有符合条件的股份，该等股份的数量可在公司章程中进行规定。由公司股东提名的董事不需要拥有符合条件的股份。董事必须签署“表九”，即董事同意书（按照 1994 年《公司法案》附表中规定的格式作出）。该份被签署的“表九”必须提交给股份公司及企业注册登记处进行备案，以使董事任职得以生效。此外，“表十二：董事、经理和经理人详细情况”（按照 1994 年《公司法案》附表中规定的格式作出）必须由总经理签署并提交给股份公司及企业注册登记处进行备案。对于随后的董事任命（公司注册成立之后），必须经由股东大会予以任命，但董事会的临时空缺可以根据现有董事会的会议结果进行填补。1994 年《公司法案》允许非居民和 / 或外国人被任命为私人有限公司的董事。

根据 1994 年《公司法案》，公司可由以股份为基础的股东有限责任或以担保为基础的股东有限责任构成（有限责任公司），也可以股东的无限责任为基础予以构成（无限责任公司）。1994 年《公司法案》第 5 (a) 条将股份有限公司定义为“以股份为基

础的有限公司，亦即，通过公司章程之规定，将公司成员的责任限定为每个成员对各自所持股份尚未支付的金额（若有）”。在1994 年《公司法案》第 235（iv）条进一步对股份有限责任公司进行强调，该条涉及公司清算时过去和现任成员的出资责任：“在股份有限公司的情况下，要求任何公司成员向公司提供资产的数额不得超过其作为现任或过去之公司成员而应负责的未支付股份的金额”。

9. 在您所在司法管辖区，建立公司所要求的最低董事及股东人数是多少？是否存在董事必须是自然人的任何要求？

根据 1994 年《公司法案》第 2（q）条和第 90（1）条之规定，孟加拉国的私人有限公司必须至少拥有两名董事和两名股东，以及最多 50 名股东。根据 1994 年《公司法案》第 90（1）条之规定，要求作为公众有限公司之附属企业的公众有限公司与私人有限公司有至少三名董事和至少七名股东。

1994 年《公司法案》第 90（3）条明确规定，董事必须是自然人。

10. 在您所在司法管辖区，对股份发行有哪些要求？

私人有限公司

股份可在以下三个阶段发行：

(a) 在注册成立之时：可根据公司章程大纲及公司章程细则向公司成员发行股份。私人有限公司的股份不得向社会公众人士发行；

(b) 转让现有股份：可以按照该公司的公司章程细则所规定的方式将现有股东所持有的一股或多股转让给新股东。根据 1994 年《公司法案》附表 1 的第 18 条之规定，股份转让文书（即“表 117”）必须由转让人和受让人共同签署。在受让人的名字载入公司股东名册之前，转让人仍然是所转让股份的持有人。此外，转让人也必须签署誓章，以确认该股份转让行为已经公认的孟加拉国公证人依法公证；

(c) 配股：根据 1994 年《公司法案》第 151 条之规定，有股本的公司进行任何配股时，须向股份公司及企业注册登记处提交已规范填写的“表十五”。

公众有限公司

可根据以下文件向公众人士发行股份：

(a) 根据 1994 年《公司法案》第 138 条之规定而在股份公司及企业注册登记处进行登记的招股说明书；或者

(b) 根据 1994 年《公司法案》第 141 条之规定而在股份公司及企业注册登记处进行登记的、用以替代招股说明书的声明。

如果公众有限公司尚未在孟加拉国的证券交易所上市，则必须向孟加拉国证券交易委员会提出公司股份的首次公开发行（IPO）申请。该公司进行首次公开售股必须遵守孟加拉国证券交易委员会的规定以及有关证券交易所的适用上市规定。

11. 在您所在司法管辖区，公司应该注意哪些主要的劳动法律法规？劳动法中是否存在任何受到严格监管的方面？

规范孟加拉国就业和劳工事务的主要法规是 2006 年《劳动法案》（“LA 2006”）。2015 年《劳动条例》（“LR 2015”）系根据 2006 年《劳动法案》第 351 条颁布。该条例更为详细地对 2006 年《劳动法案》所涉及的事项进行了规定，并对 2006 年《劳动法案》的某些方面做出了更为清晰与具体的规定。2006 年《劳动法案》与 2015 年《劳动条例》必须共同进行解读，以准确全面地了解劳动法制度。

关于 2006 年《劳动法案》与 2015 年《劳动条例》的应用需要注意的一个重点是，2006 年《劳动法案》与 2015 年《劳动条例》中有利于雇员的规定，适用于 2006 年《劳动法案》所定义的“工人”范围内的员工。2006 年《劳动法案》（于 2013 年修订）第 2(65) 条将“工人”定义为包括除从事管理、行政［或监督］以外职能的所有员工。孟加拉国高等法院已对“工人”进行了宽泛地定义，认定经理等人员仅当有权雇佣和 / 或解雇其管理之下的雇员的情况下方可被视为非工人。

任何超出“工人”一词范围的雇员都是“非工人”。非工人的就业条件完全由非工人和雇主之间的雇佣合同进行约定。

此外，对于意图限制雇员在雇佣关系结束后从事竞争行为的限制性约定，可以援引1872 年《合同法案》第 27 条规定，该条规定使上述约定无效。

此外，在出口加工区经营的公司将受到1980 年《孟加拉国出口加工区管理局法案》和孟加拉国出口加工区管理局所制定的规则和条例的约束。

12. 在您所在司法管辖区，现行的公司治理制度是什么性质的？哪些机构或政府部门监管公司治理？

孟加拉国的公司法律框架由各种法规构成，即 1994 年《公司法案》、1969 年《证券交易委员会条例》、1993 年《证券交易委员会法案》、1972 年《孟加拉国银行法令》、1991 年《银行公司法案》、1993 年《金融机构法案》、1997 年《破产法案》以及 1947 年《外汇管理法案》。孟加拉国的公司治理主要由股份公司及企业注册登记处、证券交易委员会以及孟加拉国银行进行规范。现有制度并没有为企业提供足够的法律和经济动力来促进和实施公司治理行为。

13. 在您所在司法管辖区，设立公司是否授予任何类型的居留权？是否存在为取得该等居留权（如适用的话）而须与当地人士（例如您国家的公民）设立合伙或合资企业的方式的任何情形？

在孟加拉国设立外资公司时，外国投资者并不会自动获得居留权。但是，潜在的外国投资者可以通过向孟加拉国投资发展局申请投资者签证的方式来取得多次入境的三年期投资者签证。此类投资者签证允许签证持有人进入孟加拉国境内并短期逗留，但不允许此类投资者签证持有人在孟加拉国工作并赚取薪资。如果外国投资者希望作为被投资的外资公司的雇员而在孟加拉国居住，则在达到外国资本金额与本地雇员人数的最低数额的前提下，该外国投资者可有资格获得工作许可证在孟加拉国居住并赚取薪资。

14. 在您所在司法管辖区，公司何时纳税？可能适用于公司的主要税种有哪些？

在孟加拉国，根据 1984 年《所得税条令》第 75 条之规定，所有在孟加拉国注册成立的公司都必须从国家税务总局（“NBR”）获得电子税务识别号码（e-TIN），进行税务申报，申报日期为会计年度结束后六个月，或该年度 7 月 15 日，以较晚的日期为准。进行此类申报可附有经审计的财务报表、总收入的计算及其配套附表以及其他配套文件。首次申报的，可申请将申报日期延后最多两个月，并可随后再次延期两个月。

可适用于孟加拉国公司的主要税收是企业所得税和增值税。目前，非上市公司的企业所得税税率为公司年度总收入的 35％。增值税率通常取决于该公司所提供的产品和 / 或服务各自的 HS 编码（以名称与号码对贸易产品分类的国际标准化体系）。但是，孟加拉国最常见的增值税税率为 15％。

15. 在您所在司法管辖区，竞争法如何对公司进行规范？

2012 年《竞争法案》（“Comp Act”）的颁布是为了对市场进行监督并对产品和服务的终端消费者进行保护。该法案授权成立孟加拉国竞争委员会（“BCC”），并赋予该委员会对市场进行监督以及针对不道德的商业行为和组织采取必要措施的权力。

《竞争法案》第 16 条对组织和团体滥用其支配地位的行为进行了限制。“支配地位”被定义为某一组织通过创造垄断局面而在相关市场享有的强势地位。但是，《竞争法案》没有明确规定一个行为将被视为反竞争的准确限度。此外，《竞争法案》也未对孟加拉国竞争委员会确定相关市场时必须考虑的问题做出规定。

值得注意的是，虽然孟加拉国竞争委员会系根据《竞争法案》而建立，但出于很多实务上的原因，在监管市场行为和实施《竞争法案》的规定方面，该委员会还没有效力。

16. 在您所在司法管辖区，公司应了解的知识产权主要有哪些?

在孟加拉国，公司应注意的主要知识产权有商标、专利和版权。诸如工业品外观设计等的知识产权并不十分重要，很少案件被诉讼至孟加拉国最高法院或被报道。

在孟加拉国，申请人可以向工业部下属的专利、设计和商标部门申请商标或专利注册。

版权注册申请应向文化事务部下属的版权局提交。

注册商标或专利大约需要两年的时间，注册版权大约需要 4-6 个月的时间，前提是注册处未提出反对或不存在任何异议方。

孟加拉国与 176 个其他国家一样均是国际条约《保护工业产权巴黎公约》的缔约国。孟加拉国与其他 172 个国家一样也是国际条约《伯尔尼公约》的成员国。根据《伯尔尼公约》规定，如果一项版权作品在一个成员国注册，则将在《伯尔尼公约》的所有成员国均得到保护。

17. 在您所在司法管辖区，是否存在规范数据隐私的法律或法规?

孟加拉国没有规范个人信息或数据隐私的任何具体法律。但是，以下法律涉及到对数据隐私的规范：

(a) 2006 年《信息和通信技术法案》，该法案提供了针对计算机侵入和未经授权的数据访问的救济措施；

(b) 2006 年《信息权法案》，该法案禁止披露任何会损害个人隐私或个人生活的资料；

(c) 2006 年《劳动法案》，该法案就雇员不当披露雇主机密信息或商业机密的行为施以刑事处罚；

(d) 《孟加拉国宪法》一般性地规定了对隐私权的保护措施：公民的信件和其他通信的隐私权被宣示为孟加拉国公民的基本权利。

此外，孟加拉国银行于 2015 年发布了一项准则，以确保金融行业的信息、通信和技术安全。

18. 是否存在吸引外国公司到您所在司法管辖区的激励措施?

关于向外资公司的外国股东汇回分红和资本 / 资本收益有关的事项，请参见问题 1。

根据 1984 年《所得税条令》第 44-47 条之规定，对外国公司也有税收优惠。例如，根据 1984 年《所得税条令》第 46A、46B 和 46C 条之规定，对工业企业以及实体基础设施的业务按照各自适用的规定实施在一定年限内的免税政策。此外，根据 1984 年《所得税条令》（经 2015 年《孟加拉国所得税法（通告）》以及 2016 年《财政法案》修订）附表六第 A 部分的第 33 项之规定，对从软件开发信息技术业务、以信息技术为支撑的服务和全国电信传输网络所取得的任何收入在 2024 年 6 月 30 日之前实行免税政策。

此外，因为孟加拉国受益于其与其他国家所订立的众多双边投资协议，在大多数情况下均可以避免双重征税。

19. 在您所在司法管辖区，对公司破产进行规范的法律是什么?

关于孟加拉国企业破产的主要法律是 1997 年的《破产法案》以及 1994 年《公司法案》的第 234-344 条规定。

20. 在您所在司法管辖区，最近是否存在将影响您国公司法的改革提案或监管变化?

1994 年《公司法案》的修订已被讨论多年。在这方面，商务部已经公布了 2013 年《公司法案（草案）》以征求意见，但尚未实施，并且尚未确认该草案何时将被通过而成为一项法案。我们须持续关注该法案将会带来怎样的变化以及将对孟加拉国产生何种影响。

21. 关于您所在司法管辖区或者亚洲地区的公司法，是否有任何特点您想特别强调?

在孟加拉国，注册成立公司至少需要有两名股东，而在许多国家，单一股东即可以注册成立公司并可以自由持有该公司 100％的股份。此外，孟加拉国法律并未规定像某些司法管辖区规定的诸如有限责任公司类的税务中间公司。最后，需要注意 1994 年《公司法案》的以下规定：

(a) 第 106 条规定，股东 - 董事的解聘只能在正式召集且符合法定人数的特别股东大会上，经出席会议股东的四分之三票数表决通过。该条规定不适用于由公司股东指定的派遣董事，该等派遣董事可由其委任股东自行决定任命或解聘，这项规则应被列入公司章程；以及

(b) 第 85（1）条载有关于无论章程细则如何规定均将具有效力的会议及表决的规定，第 85（2）条则包含一些在章程细则无相关规定时将具有效力的规定。

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

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

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

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

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

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

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

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

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

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

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

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

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

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

of the essence and the founders are indifferent to the actual name of the company. This means that the applicant can have an approved company name immediately.

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

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

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

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

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

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

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

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

There are important post-incorporation requirements for Cyprus companies.

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

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

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

register of shareholders and bond holders, debts to current and former officials of the company and other information.

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

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

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

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

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

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

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

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

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

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

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

In private limited companies, there are no special rules on the minimum number of shareholders or officials. In fact, the single-member company is expressly envisaged by the CA and,

accordingly, it is possible for a company to have a sole shareholder and director and secretary. The only limitations that apply in private limited companies relate to the secretary; section 172 of the CA provides that no company shall have:

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

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

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

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

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

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

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

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

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

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

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

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

(d) laws prohibiting employment of children and otherwise regulating the protection of

vulnerable persons in the work environment, such as young persons;

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

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

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

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

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

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

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

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

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

foreign exchange results or whether these are realised or unrealised.

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

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

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

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

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

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

or in specific types of agreements pursuant to section 32A of the Competition Law.

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

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

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

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

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

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

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

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

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

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

through naturalisation by exception. The criteria are as follows:

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

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

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

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

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

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

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

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

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

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

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

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

Please refer to the previous responses.

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1. 在您所在司法管辖区，外国公司的总体环境如何？

塞浦路斯共和国（简称“塞浦路斯”）是一个成熟的金融中心和蓬勃发展的商业中心，在经济领域的一些主要增长行业内拥有众多投资机会。该岛国拥有优越的地理位置、完善的基础设施和高品质的生活，这是人们在此安家的关键原因，也是投资者选择塞浦路斯作为投资地的核心因素。该岛是投资欧盟（即“EU”）的理想入口，也是投资欧盟以外特别是中东、印度和中国的门户。作为大欧盟地区和欧元区的一员，塞浦路斯能够为投资者提供安全和稳定的投资环境，以及接触到超过 5 亿欧盟消费者的市场机会。塞浦路斯的基础设施为希望成就一番事业的投资者提供了理想的经商环境。由于塞浦路斯具备了现代化的道路交通网络、充分的港口设施和两个新建的国际机场，进出塞浦路斯的旅行和运输都是快速、高效和低成本的。

塞浦路斯的法律和监管框架以英国普通法原则为基础，可靠性高、简单明确，极大地强化了塞浦路斯作为一个国际金融中心的竞争优势。塞浦路斯的法律制度完全符合欧盟、反洗钱金融行动特别工作组（FATF）、经济合作与发展组织（OECD）、《海外账户税收合规法案》（FATCA）、金融稳定论坛的法律法规和欧盟反洗钱指令（EU AML）的要求，这为外国企业的运营提供了一个熟悉、可靠的法律环境。

此外，塞浦路斯的税收制度稳定且具有吸引力，为企业法人和自然人提供了多种税收激励措施及优惠。该税收制度完全符合欧盟、经合组织和国际法律法规的要求。塞浦路斯签署了 60 多个双重税收条约，并维持 12.5% 的公司税税率，是欧盟税率最低的国家之一，这使国际投资者和塞浦路斯国内企业有信心在此投资、发展，实现业务的兴旺繁荣。

塞浦路斯被普遍认为是一个欢迎投资者、易于营商的国家，在立法、监管和执行层面上都制定了简单明确和高效的管理流程，在实际操作中也是如此。根据《2017 年营商环境报告》，塞浦路斯的营商环境在全球排名第 45 位，总体评分为 72.65%，较 2016 年的营商环境有所改善。在单项排名中，较 2016 年的排位有所提升的领域包括开办企业（第 53 名）、获得电力（第 63 名）和纳税（第 34 名）。同时，与 2016 年排名持平的领域有跨境贸易（第 45 名）、合同执行（第 139 名）和办理破产（第 16 名）；但是，较 2016 年排名有所降低的领域包括办理施工许可证（第 125 名）、登记财产（第 91 名）、获得信贷（第 62 名）和保护少数投资者（第 27 名）。与欧盟国家相比，塞浦路斯在开办企业、保护少数投资者、纳税和办理破产等领域高于平均排名。

2. 在您所在司法管辖区，适用于公司的主要法律法规有哪些？

塞浦路斯公司受到塞浦路斯《公司法》（简称“CA”）（第 113 章）条款的约束。《公司法》源于 1948 年的英国公司法，在塞浦路斯施行已超过半个世纪，它界定和明确了在塞浦路斯注册公司须遵循的法律规定和规范，是使塞浦路斯成为充满活力的商业中心的基石。多年以来，通过多个定期生效的立法修订案（包括旨在使塞浦路斯《公司法》与欧盟在公司法领域的指令协调一致的法律），《公司法》逐步发展成熟。然而，

该法律的原则一直保持不变，使得法律的确定性得以延续。塞浦路斯《公司法》的规定非常详细，几乎涵盖了从公司成立直到公司解散的公司运营的方方面面。

除《公司法》以外，塞浦路斯最近也发布了旨在规范向私营企业提供管理服务的法规，相关条款包括在《2012 年规范提供管理服务的公司及相关事项的法律》中。

3. 在您所在司法管辖区，最常见的公司类型有哪些?

塞浦路斯最常见的公司类型是私人有限责任公司，这类公司几乎都是以股份为限承担责任。一旦公司成立，它将单独获得法人人格，可以独立于其股东或管理层（董事或公司秘书）进行交易。因此，股东的偿债责任仅限于为所持股份支付的金额，并且，如果公司因任何原因出现财务问题，公司股东无义务向公司提供资金支持或为其债务提供资金。这实际上意味着，在股东已经完全支付了其在公司中获得的股份的时候，股东对公司的交易行为不再承担任何个人责任。有限责任的理念是私人有限公司的一个基本特征，该理念旨在控制经营风险，是企业家成立公司的强大动力。

4. 在您所在司法管辖区，建立一家公司需要多长时间?

由于快速流程普遍适用于实际工作中，在塞浦路斯成立一个公司大约需要 2-3 个工作日。标准流程显然需要花费更长的时间，不过，没有人会选择标准流程，因为快速流程不仅能够确保以最短的时间注册一家公司，而且跟标准流程相比，快速流程的额外成本也可以忽略不计。公司注册及破产管理署（即“DRCOR”）是塞浦路斯负责公司注册的政府机构。该机构最近更新了软件系统，企业现在可以网上提交注册申请。目前，该机构正采取进一步措施以整合服务，使得这些服务得以网上办理，并简化注册流程。

5. 在您所在司法管辖区，对公司注册的主要要求有哪些? 费用如何?

在塞浦路斯成立公司的过程非常快速、直接和简单。首先，公司应向公司注册及破产管理署提交公司名称申请。这可以由申请人自己直接提交，或由律师或服务公司提交。在实践中为了简化流程，塞浦路斯的律师事务所和提供管理服务的公司通常会准备一些已经经过批准的公司名称，将其提供给那些注重速度并且对公司名称不是很在意的申请者使用。这种方式使申请人可以立即获得已经得到批准的公司名称。

其次，申请人需要聘用一家律师事务所来准备相关文件。根据塞浦路斯法律，只允许由已获得塞浦路斯律师公会颁发的执业资格证书的律师来准备和签署公司法律文件和确认已遵照流程的 HE1 表格。设立公司的申请人通常需要：

(a) 向律师事务所提交公司主要经营范围的简要说明，除非申请人欲采用标准的公司章程模板；

(b) 就注册股本数额及其分配方案作出决议，并就其做出说明；

(c) 提供公司创始人（股东）和管理层（董事和公司秘书）的详细信息和相关支持文件，以及符合“了解您的客户”和反洗钱相关法律规定的关于该等人士的文件；和

(d) 提供公司拟注册地址。

律师根据这些信息填写一些表格，并将表格提交给公司注册及破产管理署。当这些申请材料被提交给公司注册及破产管理署且申请人已缴纳相关费用以后，注册流程启动。如果没有其他问题，公司即按流程成立，并获发公司注册证书和公司章程核证副本。

相关法律文件可以网上提交或是派人送达公司注册及破产管理署办公地点。如果所有法律文件符合规定，并由公司管理层和股东签字确认，那么注册证书可在 2-3 个工作日内颁发。根据法律规定，注册证书是公司成立的证明文件。

6. 在您所在司法管辖区，公司注册后有哪些主要的报告要求?

塞浦路斯公司注册后还需要办理一些重要的事项。

首先，所有公司必须在税务部门登记以获得纳税识别号。此外，在某些情况下，企业还需要在增值税部门登记并获得增值税登记号码。

如聘用雇员，公司需在社会保险服务部门登记，并向为雇员设立的有关基金缴纳保费，如社会保险、带薪年假、失业保险、人力资源开发和社会团结基金。雇主支付的金额为雇员工资的一定比例。雇主每月缴费（包括雇员缴费部分）是在缴费月份结束后的一个月内支付。雇主登记申请表可以电子方式、人工送达或邮寄方式提交给地区社会保险办公室或市民服务中心。

第三，董事有义务安排财务账目记录和年度财务报表编制工作，这些资料须公正、准确地描述公司经营状况。塞浦路斯公司必须在公司注册后的 18 个月内，用年度报告（HE32 表格）形式向公司注册及破产管理署提交公司年度财务报表，此后提交时间为每年一次。年度财务报表的编制必须符合国际财务报告准则。年度报告还需包括公司注册办公地、股东和债券持有人名册、对公司现任和前任管理人员所欠债务等信息。

此外，塞浦路斯公司发生的每一项结构性变化 / 变更，例如公司注册办公地的变化、董事 / 秘书负责人的任免、股本的增加和减少等，都需要通知公司注册及破产管理署。

7. 在您所在司法管辖区，是否存在对外国公司的任何控制因素或限制?

外国公司可以不受任何限制地在塞浦路斯境内开展商业活动，但以下情况除外：

(a) 需要许可证才可以开展的特定业务，如银行业、保险业和投资咨询；以及

(b) 购买不动产，这需要持有内政部单独颁发的许可证才可以进行。

如果外国公司希望在塞浦路斯境内设立营业场所（在不设立塞浦路斯公司的情况下），那么它需要在塞浦路斯设立分公司或代表处，并在设立该营业场所后的一个月内，以海外公司的名义在公司注册及破产管理署进行登记。这不等同于一个新的法律实体的设立，它仍然是一家外国公司，只是通过分公司或代表处在塞浦路斯运营。

外国公司将需要提交一份书面报告，报告包括以下信息：海外公司的名称和法定形式、分公司的名称（如果与海外公司的名称不同）、海外公司的注册办公地和经营地址、海外公司经营目的和范围、公司基本信息备案地、认缴资金数额（如适用）、管辖该公司的国家的法律以及其他信息。此外，还需要提交章程文件和有关股东和董事的信息，并提名至少一名居住在塞浦路斯、被授权代表公司接受有关通知的代表。

8. 在您所在司法管辖区，公司的典型董事结构（或家族式管理结构）以及责任问题是怎样的?

通常情况下，塞浦路斯公司的管理工作由董事会承担，董事会可以行使公司（根据《公司法》或公司章程）赋予股东的所有权利。塞浦路斯公司的公司章程可能会规定某些权利仅由股东行使，也可能会对此类事项（通常被称为“保留事项”）的决议具体规定进行表决的法定人数、什么是多数表决通过以及表决流程。

关于董事责任，塞浦路斯法律没有对董事职责进行具体规定，有关董事责任依然可以借鉴英国普通法下适用的与董事相关的普通法规则和衡平法原则。因此，董事的义务应包括以公司的最佳利益行事，行使自由裁量权和进行独立判断，为正当的目的而行使权力，避免利益冲突等。

9. 在您所在司法管辖区，建立公司所要求的最低董事及股东人数是多少? 是否存在董事必须是自然人的任何要求?

对于私人有限责任公司，没有针对最少股东人数或管理层人数的特别规定。实际上，

《公司法》明确设想了单一成员公司，因此一家公司可能只有一位股东、董事和公司秘书。适用于私人有限责任公司的唯一限制与公司秘书有关;《公司法》第 172 条规定:

(a) 如果公司只有一名董事，则不得委任一个以该董事为唯一董事的法人团体作为公司秘书；或

(b) 如果公司只有一名董事，则不得委任一个以该董事为秘书的法人团体作为唯一董事。

这些限制条件不适用于只有一名成员的私人有限责任公司。

10. 在您所在司法管辖区，对股份发行有哪些要求?

私人有限责任公司增发股票需要股东和董事会联合进行。根据《公司法》，股东有权决定增加公司的法定股本。因此，他们拥有增发股份的决定权。也就是说，如果不存在未发行股本，在增发股份这个工作上，董事会几乎没有可以做的事情。如果公司的法定股本里含有未发行股本，那么通常是由董事会来决定是否发行这些新股。

《公司法》和公司章程通常都规定了现有股东所享有的优先认购权，规范了向第三方发行新股之前可先让现有股东认购的程序。公司章程还规定了股份分配流程。

有限责任公司分配股份后，必须在此后的一个月内向公司注册及破产管理署登记股份分配情况。登记信息包括分配股份的数量和名义金额，认购股份的股东姓名、地址和基本信息，每股已付金额、到期金额或应付金额（如适用）。如果分配的股份款项全部或部分以非现金形式支付，那么登记信息还需包括表明认购人获得股份的书面合同，并附上与分配有关的销售合同、服务合同或其他对价的合同，所附合同需经正式盖章。登记信息还需说明以此种形式分配的股份数量和面额，其中被认为已经缴清股款的股份数量，以及以此种形式分配股份的相关对价。

11. 在您所在司法管辖区，公司应该注意哪些主要的劳动法律法规? 劳动法中是否存在任何受到严格监管的方面?

塞浦路斯对于就业市场的监管非常严格，有许多单独立法对与就业有关的具体事项进行了规范：

(a) 关于雇主向雇员提供雇佣合同或雇佣关系有关条款信息的法律：该法律规范了在雇佣关系成立后每个雇主必须通过雇佣合同或其他方式向雇员提供的信息；

(b) 男女雇员同工同酬的法律，该法规范了男女雇员应同工同酬的情况；

(c) 有关产假、雇员孕期保护、育儿假、因不可抗力请假的法律；

(d) 禁止雇佣儿童，保护在工作环境中易受伤人群（如青年人）的法律；

(e) 关于终止雇佣关系的法律，该法律对解雇通知、解雇补偿金和裁员等问题进行了规范；

(f) 有关集体解雇、在企业或业务整体或部分转让过程中保护雇员利益的特殊法律。

12. 在您所在司法管辖区，现行的公司治理制度是什么性质的? 哪些机构或政府部门监管公司治理?

有关公众公司（尤其是上市公司）和受监管行业的公司（如银行、保险公司和投资咨询公司）的公司治理法规已经公布。在塞浦路斯，私人有限责任公司没有公司治理的实体义务，董事会成员有义务遵循有关董事职责的普通法原则（参见问题 8）。

13. 在您所在司法管辖区，设立公司是否授予任何类型的居留权? 是否存在为取得该等居留权（如适用的话）而须与当地人士（例如您国家的公民）设立合伙或合资企业的方式的任何情形?

在欧盟公民之外，塞浦路斯公司需提出特别申请才能获准在塞浦路斯雇佣非欧盟公民雇员。相关政策最初由部长理事会于

2006 年 11 月颁布，该政策规定了向在塞浦路斯注册的外国公司雇佣的、来自第三国的公民颁发和更新居留和工作许可证的具体事项。如果申请人是一家由外资拥有的塞浦路斯公司，那么申请人须满足资格要求（外资持股超过 50％，或外资所持股本不低于 171,000 欧元）。如果符合要求，申请人可以申请注册登记，以获得雇佣非欧盟公民在塞浦路斯生活和工作的权利。一般来说，申请人可以雇佣最多五名高层管理人员、十名中层管理人员和其他核心骨干。如果雇佣更多非欧盟公民的理由真实合理，民事登记和移民部有权根据每个公司的具体情况，酌情批准申请人雇佣更多的非欧盟公民。在获得了劳动部的必要批准的情况下，法律对申请人雇佣来自第三国公民作为支持人员的最高人数没有限制。此外，法律对家庭成员也制定了特别程序。详见问题 18。

14. 在您所在司法管辖区，公司何时纳税？可能适用于公司的主要税种有哪些？

如果一个公司是塞浦路斯的税务居民，即在塞浦路斯受到管理和控制，那么该公司必须纳税。所有塞浦路斯税务居民公司的应税收入为来自塞浦路斯境内和境外所有应税来源的收入。非塞浦路斯税务居民公司的应税收入包括通过在塞浦路斯设立的永久性机构开展业务活动所获得的收入，以及来自于塞浦路斯的一些特定收入。

塞浦路斯公司的所有营业利润在扣除了完全且只是在产生相关收入过程中发生的相关费用支出后按照 12.5％的统一税率纳税。外汇收益或亏损将不再影响应纳税额，对于带来这些外汇损益的资产 / 负债的情况以及这些损益是否已经实现不予考虑。

在满足一些具体条件的情况下，塞浦路斯公司收到的外国股息无需纳税，也可免缴“特别国防税”，这些条件包括：支付股息的公司直接或间接参与带来被动收入（非营业收入）的经营活动的比例不超过 50%，或是股息支付公司的收入的外国税务负担没有极大地低于在塞浦路斯的税务负担（支付股息一方所在国的税率为 6.25％或以上则满足此条件）。该优惠条件对于参与或持股比例没有限制，塞浦路斯的“参与豁免制度”是目前所知的类似制度中最为慷慨的一个。在实际情况中，因为上述要求很容易得到满足，所以几乎所有的外国股息收入在塞浦路斯都免缴任何税。

塞浦路斯税法体系明确地区分了收入和资本，因此资本收益不包括在企业的一般营业利润中，而是根据《资本利得税法》单独纳税。资本利得税仅适用于出售位于塞浦路斯的不动产以及出售相关资产为位于塞浦路斯的不动产的公司股份（非上市股票）。在经过指数化调整以后，资本利得征税标准为 20％的统一税率。对国际业务来说关键的问题是：出售在塞浦路斯境外所持有的不动产，出售相关资产为位于塞浦路斯境外的不动产的公司股份，以及出售非塞浦路斯公司的股份，所产生的资本利得完全免缴资本利得税。

对于向非税务居民（公司或个人）支付的股息、利息和在塞浦路斯境外的专利权使用费，无论收款人是否在已与塞浦路斯签订条约的国家居住，塞浦路斯均不征收预扣税。此外，塞浦路斯不会对由各种证券交易带来的收益或利润征税。

15. 在您所在司法管辖区，竞争法如何对公司进行规范？

竞争保护委员会（“CPC”）有专责保证市场在公平竞争的原则下不受任何反竞争行为影响地和谐运作，以促进经济增长和社会福祉。2008 年和 2014 年的《竞争保护法》（简称“《竞争法》”）与《控制企业集中法》（第 83(I)/2014 号法）一起，制定了旨在维护塞浦路斯市场有效竞争的原则和规范。该法律框架禁止企业间达成妨碍竞争的协议或合谋行为，禁止企业滥用行业支配地位的行为。同时，保护竞争委员会还承担特定责任以最终实现下列目标：以有竞争力的价格为消费者提供更优质的商品和服务，提高生产力和促进投资，营造有利于研究、创新和技术进步的市场环境。此外，《竞争法》还指定竞争保护委员会为塞浦路斯的市场竞争监管部门，负责第 1/2003 号条例

以及（在必要情况下）《欧洲联盟运作条约》（“TFEU”）第 101 和 102 条指令的执行。

根据《竞争法》，竞争保护委员会的专有权力包括对违反《竞争法》第 3 章和 / 或第 6 章、《欧洲联盟运作条约》第 101 和 / 或 102 条指令的违法行为开展调查并做出决定。竞争保护委员会有权根据违法行为的情况采取临时措施，限期整改、责令作为和 / 或采取结构性的补救措施，以终止违法行为。此外，竞争保护委员会还有权根据《竞争法》第 32A 条款，对国民经济中的某个特定行业或某些特定类别的协议开展调查。

对违反《竞争法》第 3 章和 / 或第 6 章、《欧洲联盟运作条约》第 101 和 / 或 102 条指令的每种违法行为，竞争保护委员会有权根据违法行为的严重性和持续时间实施行政处罚，处罚金额不超过违法行为发生当年或前一年企业合计年收入总和的 10 %，或企业联合体中每个成员企业违法行为发生当年或前一年收入的 10%。此外，竞争保护委员会还拥有其他一些附属权力，包括要求企业或企业联合体在规定时间内终止违法行为，并保证在未来不再发生类似行为。

16. 在您所在司法管辖区，公司应了解的知识产权主要有哪些？

塞浦路斯通过立法保护所有一般性的知识产权，包括商标、版权和邻接权、专利、工业品外观设计等。塞浦路斯也是若干国际多边条约的缔约国，包括《保护文学和艺术作品伯尔尼公约》、《保护工业产权巴黎公约》和《世界知识产权组织公约》。

近年来，塞浦路斯政府强调鼓励外国拥有知识产权的公司在塞浦路斯开展投资的工作。根据新的塞浦路斯知识产权规定（IP Box），从 2016 年 7 月 1 日起，塞浦路斯的拥有知识产权的公司就经营符合条件的知识产权业务所获得的符合条件的利润，按照 2.5 %（或更低）的有效税率征税。不符合条件的收入按 12.5 %（或更低）的有效税率征税。

17. 在您所在司法管辖区，是否存在规范数据隐私的法律或法规？

塞浦路斯通过经修订的 2001 年《个人数据处理（个人保护法）》（第 138（I）/2001 号法规）来实施欧盟关于数据保护的指令。处理数据的企业需以书面形式通知专员该企业正在建立存储系统，或是数据处理即将进行。通知信息将会保存在负责专员的“存储系统和数据处理登记”系统内。通知信息不收费。

当需要向欧盟 / 欧洲经济区以外的国家（非白名单国家）传输数据时，或是含有敏感数据、或可以使用通用标准取得数据的两个或更多个存储系统之间需要互联时，企业必须事先获得专员的批准。

18. 是否存在吸引外国公司到您所在司法管辖区的激励措施？

作为进一步鼓励外商直接投资和吸引高净值人士在塞浦路斯居住并开展业务的政策的一部分，2016 年 9 月，部长理事会推出了《非塞浦路斯投资者入籍特殊情况安排计划》（简称“《计划》”），从而确定了非塞浦路斯企业家或投资者可以获得塞浦路斯公民身份的新标准和条款。

根据该计划，一个达到规定的经济标准的非塞浦路斯公民，可以通过申请“特殊情况安排计划”获得塞浦路斯公民身份。经济标准可以以自身条件达到，也可以通过在一家或多家公司的持股达到，或者通过配偶或与配偶共同开展的投资项目达到，甚至还可以通过在符合经济标准的一家或多家公司担任高层管理人员达到。规定的经济标准如下：

（a）投资房地产、土地开发和基础设施项目：申请人必须投资至少 200 万欧元用于购买或建筑房屋，或进行其他土地开发项目（住宅或商业地产开发，发展旅游项目）或其他基础设施项目建设。投资于待开发的土地被纳入标准要求，条件是申请者的申请资料中须包括已购土地的开发投资计划。当然，对禁止开发区域土地所进行的土地投资被排除在外；

(b) 购买、设立或参与塞浦路斯公司或业务：申请人须已购买或已参与在塞浦路斯成立和运营的公司或组织，投资金额至少为 200 万欧元。已投入的资金须根据具体投资计划用以支持这些公司完全位于塞浦路斯境内的投资项目。申请需要经过评估，以核实这些公司或组织在塞浦路斯实际存在、已有显著业务活动和营收，且雇佣至少五名塞浦路斯公民或欧盟成员国公民。如果两个或两个以上的申请人同时或几乎同时对同一公司或业务进行投资，则上述最低雇员人数将增加。此外，在申请提交之日之前的五年里，公司的员工是合法、持续地居住在塞浦路斯的；

(c) 投资于由塞浦路斯证券交易委员会许可的塞浦路斯公司或者机构发行的另类投资基金（AIF）或金融资产：关于另类投资基金，申请人应购买至少 200 万欧元的另类投资基金产品，该等产品须在塞浦路斯境内设立并由塞浦路斯证券交易委员会批准和监管。申请人的投资必须完全在塞浦路斯境内进行，投资须符合《计划》的标准要求，或投资于财政部批准的地区。为确保符合现行《计划》标准要求的投资至少保持三年，基金经理或审计师须每年以书面形式就投资情况向财政部及内政部通知，并注明初始投资金额。购买塞浦路斯公司或组织的金融资产超过 200 万欧元的，适用该标准，这些金融资产包括债券、票据和证券，并且经塞浦路斯证券交易委员会批准、由已证明在塞浦路斯实际存在并开展实质经济活动的公司发行，而且必须以为这些公司或组织在塞浦路斯的独家投资计划融资为目的。由一个另类投资基金购买其他另类投资基金产品的单位份额的情况不适用该要求。

(d) 上述投资的组合：申请者可以选择上述投资的组合，投资总额须至少达 200 万欧元。根据这一标准，申请者可以购买最多 50 万欧元的由财政部公共债务管理办公室发行的塞浦路斯政府特别债券，但条件是投资者须持有债券至少三年。这些特别债券的特点和条款遵循《塞浦路斯政府债券的一般和特殊条款》的规定。通过二级市场购买的政府债券不适用该要求。

企业高层管理人员也可以提出入籍申请，条件是三年内他 / 她的薪酬在塞浦路斯产生了至少 10 万欧元的税收，并且这些税收已经缴纳或预缴纳。

申请者的上述投资行为须在申请之日前的三年之内进行，且在入籍后这些投资须保持至少三年。

其他一些适用条款和条件包括申请者须提供无犯罪记录，而且他 / 她在欧盟地区内的资产没有因制裁而被冻结。

19. 在您所在司法管辖区，对公司破产进行规范的法律是什么？

塞浦路斯的企业破产事宜受《公司法》监管。公司可以自愿申请清算，也可能因为公司债权人采取强制措施从而被动进入清算程序，后者主要是在公司不具有偿债能力的情形下发生。清算的途径有多种，可以通过法庭诉讼解决，也可以不通过。有偿债能力公司的自愿清算过程不存在特别的难题，并且通常自公司进入清算程序之日起的六个月内可以完成。最近在塞浦路斯立法通过了其他的企业破产形式，例如财务审查。财务审查制度以避免清算为目的，协助面临财务困境的企业制定资产重组计划。

20. 在您所在司法管辖区，最近是否存在将影响您国公司法的改革提案或监管变化？

目前没有已知即将发生的、将会对公司法产生影响的变化或立法改革举措。

21. 关于您所在司法管辖区或者亚洲地区的公司法，是否有任何特点您想特别强调？

请参考前面的回复。

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ECONOMIC LAWS PRACTICE
ADVOCATES & SOLICITORS

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

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

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

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

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

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

(d) 100% wholly owned subsidiary company;

(e) joint venture company.

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

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

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

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

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

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

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

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

The most common types of companies in India are:

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

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

  (i) restricts the right to transfer its shares;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Companies Act, 2013:

  (i) under the Companies Act, 2013, companies are required to make statutory filings with the Registrar of Companies

in respect of certain matters (e.g. the appointment or removal of directors, the passing of a special resolution by the members, any amendment in the constitutional documents of the company);

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

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

(b) Foreign Exchange Management Act, 1999:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ELP ECONOMIC LAWS PRACTICE
ADVOCATES & SOLICITORS

Suhail Nathani

Managing Partner, Economic Laws Practice

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Only natural persons can be appointed as directors.

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

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

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

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

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

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

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

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

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

Industrial relations

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

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

Payment of wages

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

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

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

Child and woman welfare

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

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

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

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

Conditions of work

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

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

Social security

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ELP ECONOMIC LAWS PRACTICE
ADVOCATES & SOLICITORS

Darshan Upadhyay

Partner, Economic Laws Practice

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

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

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

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

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

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

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

Important direct taxes are as follows:

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

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

Important indirect taxes are as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Central government incentives

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

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

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

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

State government incentives

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

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

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

The code includes insolvency resolution processes for individuals as well as entities, and prescribes a maximum time limit for completion of the insolvency resolution process. The resolution processes are conducted

by licensed insolvency professionals. The code provides that the National Company Law Tribunal ('NCLT') will adjudicate insolvency resolution for companies and the Debt Recovery Tribunal will adjudicate insolvency resolution for individuals.

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

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

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

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

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

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

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

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

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

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

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

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

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ECONOMIC LAWS PRACTICE
ADVOCATES & SOLICITORS

Economic Laws Practice (ELP) is a leading full-service Indian law firm, headquartered in Mumbai, India.

The firm was established in 2001 by eminent lawyers from diverse fields who envisioned a firm that would bring to the table a unique blend of professionals, ranging from lawyers, chartered accountants, cost accountants, economists and company secretaries; enabling us to offer services with a seamless cross-practice experience and top-of-the-line expertise to clients.

With 6 offices across India (Mumbai, New Delhi, Pune, Ahmedabad, Bangalore and Chennai), ELP has a team of over 170 qualified professionals. Working closely with leading national and international law firms in the UK, US, Middle East and Asia Pacific region gives ELP the ability to provide an extensive pan-India and global service offering to clients, adding to the smooth service that the firm prides itself on.

ELP has a unique positioning amongst law firms in India from the perspective of offering comprehensive services across the entire spectrum of transactional, advisory, litigation, regulatory, and tax matters. The firm's areas of expertise include Banking & Finance; Competition Law & Policy; Corporate & Commercial; Hospitality; Infrastructure (includes energy, oil & gas, mining and construction); International Trade & Customs; Litigation & Dispute Resolution; Private Equity & Venture Capital; Securities Laws & Capital Markets; Tax; and Telecommunication, Media & Technology.

ELP's vision is people centric and this is primarily reflected in the firm's focus to develop and nurture long-term relationships with clients by providing optimal solutions in a practical, qualititative and cost efficient manner. The firm's in-depth expertise, immediate availability, geographic reach, transparent approach and the involvement of senior partners in all assignments.

ELP is the firm of choice for clients due to our commitment to deliver excellence and has been ranked amongst the **"Top 10 firms in the country"** with the **"Highest Client Satisfaction score of 9/10 amongst the Top 10 firms"** as per the **RSG India Report 2015**.

The firm has also been recognized as a **"Top Tier firm in India for Dispute Resolution, Anti trust & Competition, Projects & Energy, Tax, WTO and International Trade"** by the **Legal 500 Asia-Pacific 2017**.

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ECONOMIC LAWS PRACTICE
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1. 在您所在司法管辖区，外国公司的总体环境如何?

印度的外国直接投资制度正在大幅开放，政府正在致力于提高透明度、增加渠道以及方便外国公司在印度开展业务。例如，一些重要的注册登记现在可以通过 EBiz Portal（https://www.ebiz.gov.in/services）进行在线申请，并且已经对一些常用的申请表进行了整合。凭藉其当前的投资环境，政府将印度描述为投资与商业机会的天然目的地。

外国公司可以通过以下机构形式在印度进行活动：

(a) 分公司：分公司从事的活动应与母公司所开展的活动一致，准许分公司进行指定的活动，包括出口 / 进口货物、提供服务和开展研究；

(b) 联络处：联络处不得直接或间接进行任何商业活动，其活动仅限于代表其母公司、促进出口 / 进口以及技术和 / 或财务合作，以及作为母公司与印度公司之间的沟通媒介；

(c) 项目办公室：计划在印度实施具体项目的外国公司可设立一个临时项目办公室和 / 或现场。该办公室只能用于从事与该项目相关的活动；

(d) 100％全资子公司；

(e) 合资公司。

2. 在您所在司法管辖区，适用于公司的主要法律法规有哪些?

以下是印度的一些主要法规，这些主要法规与据之颁布的规则和条例一起对公司及其活动进行规范：

(a) 2013 年《公司法》(Companies Act, 2013)，该部法律一般性地规定了与公司设立及管理相关的法律；

(b) 1992 年《印度证券交易委员会法》(Securities and Exchange Board of India Act, 1992)，该部法律适用于上市公司，处理证券市场的发展与监管以及保护证券投资者的利益等事宜；

(c) 2002 年《竞争法》(Competition Act, 2002)，该部法律对反竞争协议，任何人滥用市场支配地位的行为以及可能对市场竞争产生不利影响的兼并、合并和并购等事宜进行规定；

(d) 1999 年《外汇管理法》(Foreign Exchange Management Act, 1999)，该法规定了与外汇相关的规则，促进对外贸易和支付，促进印度外汇市场的发展和维护。

(e) 2016 年《破产法》(Insolvency and Bankruptcy Code, 2016)，该部法律涉及公司实体的破产事宜。

3. 在您所在司法管辖区，最常见的公司类型有哪些?

印度最常见的公司类型如下：

(a) 股份有限公众公司：2013 年《公司法》将公众公司定义为，除私人公司以外的、实缴股本至少为 500,000 卢比（五十万卢比）的公司；

(b) 股份有限私人公司：2013 年《公司法》将私人公司定义为最低实缴股本为 100,000 卢比（十万卢比）的公司，且其章程规定了如下事项：

(i) 限制转让股份的权利；

(ii) 除一人公司之外，其成员人数限制为 200 人；以及

(iii) 禁止任何邀请公众认购其证券的行为。

关于上述情况，请注意，股份有限公司意味着其成员的责任以未缴股本的数额为限。

4. 在您所在司法管辖区，建立一家公司需要多长时间？

标准的注册程序（包括获得对公司名称的批准）可以长达 3-4 周。如果拟被任命为新公司之董事的人员没有“董事识别号”（“DIN”）或“数字签名证书”（“DSC”），则该等人员必须在开始注册登记程序之前先申请并获得董事识别号和数字签名证书，该程序可能需要 3-4 周的时间。

虽然正常的注册登记程序涉及多个申请，但公司可以通过综合电子表单 INC-32 使用公司事务部（“MCA”）所引入的快速注册流程。在这个过程中，名称批准以及注册登记可以在提交表格后的两天内完成。

根据公司事务部网站信息，快速流程最终将取代正常的注册登记流程。

5. 在您所在司法管辖区，对公司注册的主要要求有哪些？费用如何？

所有的印度公司都必须按照 2013 年《公司法》规定的程序进行注册登记。虽然需要支付的费用会根据具体情况而有所差异，但注册登记成本通常包括以下内容：

(a) 根据公司的法定股本而计算的申请费用；

(b) 为公司章程大纲及公司章程细则支付的印花税，税额各邦不同。

从事某些业务的公司需要向相关部门监管机构进行注册，例如非银行金融公司（简称“NBFC”）通常必须向印度储备银行申请注册为非银行金融公司，而股票经纪人则需要向印度证券交易委员会进行注册。

6. 在您所在司法管辖区，公司注册后有哪些主要的报告要求？

根据某些法规，公司的报告和备案义务概述如下：

(a) 2013 年《公司法》：

(i) 根据 2013 年《公司法》，公司须就某些事宜向公司注册处进行法定备案（例如委任或解聘董事、会员通过特别决议案、公司章程文件所进行的任何修正等）；

(ii) 公司须在每个财务年度向公司注册处提交其财务报表，包括资产负债表、损益表、审计报告以及其年检报告；

公司应聘用公司秘书，以确保依照 2013 年《公司法》的规定进行所有法定备案。

(b) 1999 年《外汇管理法》：

(i) 公司必须就某些外汇交易向印度储备银行进行报告，例如：

- 由印度境外居民进行的或者向印度境外居民进行的印度证券销售；
- 印度境外居民进行的印度证券投资；
- 印度公司对外国证券进行的投资；

(ii) 所有已取得外国直接投资或在印度以外进行投资的印度公司都必须提交境外负债与资产的年检报告；

(c) 根据各种劳动法律规定，定期提交报税单（参见问题 11 以了解所适用的劳动法律概况）；

(d) 提交税务申报单以及税务审计报告；

(e) 2015 年《印度证券交易委员会（上市义务与披露要求）规则》(SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015) 所规定的上市公司合规要求。

7. 在您所在司法管辖区，是否存在对外国公司的任何控制因素或限制？

虽然并不详尽，但一些通常适用于外国公司的限制性规定列示如下：

(a) 外国公司设立的分支机构、联络处和项目办公室有一些固有的限制，如问题 1 所详述；

ELP ECONOMIC LAWS PRACTICE ADVOCATES & SOLICITORS

Suhail Nathani

管理合伙人，Economic Laws Practice

Suhail Nathani是ELP的管理合伙人，负责资本市场和证券法以及国际贸易和海关业务。他还兼任律所竞争法律与政策、企业与商业业务和私募股权与风险投资业务的负责人。他是英国剑桥大学的校友，并获得美国杜克大学法学硕士学位。除了印度之外，他也是纽约州律师公会会员。

在联合创办ELP之前，他曾在华盛顿特区一家经联邦通信委员会（FCC）许可的新设并且后来上市的电信运营商中担任总法律顾问（“GC”）。

Suhail拥有超过24年的经验为客户提供私人股权投资、并购、合资、战略联盟和跨行业企业重组方面的交易和咨询建议。他经常向印度和跨国公司提供跨境交易、外国直接投资和商业合同方面的建议。他也向上市以及非上市公司和中介机构提供了有关于印度证券法的各方面建议。

Suhail近期的一些交易包括就江森自控公司与日立电器（日本）和日立有限公司（日本）的全球空调业务合资企业事宜，向江森自控公司提供咨询。该合资公司据说是世界上最大的商业空调供应商。该交易被Inhouse Community的《亚洲法律顾问》在其“2015年度交易”奖项中评为“年度交易”之一。

该交易还被印度商业法律期刊（“IBLJ”）评选为“2016年年度交易”。

Suhail还对New Vernon私募股权有限公司和Hilson Estates有限公司分别向加拿大养老金计划投资委员会（“CPPIB”）和Shapoorji Pallonji集团的合资公司SPREP Pte有限公司出售其在Carwel Estates有限公司和Faery Estates有限公司中的全部股权并收购位于印度钦奈的SP Infocity IT Park的交易提供了法律咨询。该交易被印度商业法律期刊在其“2015年年度交易奖”中评为“年度房地产交易”。

(b) 当外国公司向印度进行投资时，有两条入境途径：

  (i) 自动途径：在此途径下，外国投资者不需要印度储备银行或印度政府对投资的批准；

  (ii) 批准途径：在此途径下，外国投资者应在进行投资前事先获得指定有权机关的批准；

(c) 某些行业不时对外国投资规定限制性条件（例如最低资本总额要求、完成项目的时间表或国内采购要求）。此外，在某些行业，外资的持股比例不能超过规定的行业性上限；

(d) 某些行业禁止外国投资（例如银会、房地产业务、香烟制造与原子能）；

(e) 出售和购买涉及外国公司和居民的印度证券需遵守印度储备银行规定的定价指引。

8. 在您所在司法管辖区，公司的典型董事结构（或家族式管理结构）以及责任问题是怎样的?

在大多数印度公司，董事均不是独立的专业人士。他们或者是与公司有利害关系的人士（例如股东），或者是公司的雇员。

2013 年《公司法》规定，上市公司董事会中应有三分之一的董事为独立董事。某些上市公司还必须根据其实缴股本、营业额或未偿债务而指定女董事和 / 或最低数量的独立董事。

每家公司都必须拥有至少一名在上一自然年度内在印度停留的期限不少于 182 天的董事。

董事是公司的代理人，也是与公司及其股东具有信托关系的受托人。董事们需要凭借其技能，以审慎和勤勉的方式来履行其职责。此外，根据 2013 年《公司法》的规定，董事在某些情况下可能是公司的“高级管理人员”，并对公司违反 2013 年《公司法》以及某些其他法规的行为承担责任。因此，根据董事与公司之间的任一上述关联，董事可能产生与公司有关的责任。

2013 年《公司法》第 245 节规定了集体诉讼。在集体诉讼中，一定数量的股东（具有最少 100 名股东，或规定的股东总数最低百分比）可以代表所有受影响的各方就公司和 / 或其董事的任何欺诈或不法行为或不作为而针对公司和 / 或其董事提起诉讼。如果法院裁定该等犯罪系由董事和高级管理人员的疏忽和 / 或串谋造成的，则法院可以酌情裁定刺破公司面纱并责成董事和高级管理人员承担责任。

9. 在您所在司法管辖区，建立公司所要求的最低董事及股东人数是多少？是否存在董事必须是自然人的任何要求?

印度公司中董事与股东的最低人数情况如下所示：

公司类型	最低董事人数	最低股东人数
公众公司	3	7
私人公司	2	2
一人公司	1	1

只有自然人可被任命为董事。

10. 在您所在司法管辖区，对股份发行有哪些要求?

以下是印度公司发行证券的常用方法：

(a) 认购权发行：公司以其现有股东在指定日期所持有的证券比例，向其发行具有对价的证券。认购权发行可由发行人的董事会授权进行，依法无需由股东批准。股东必须就其认购的认购权股份支付全部认购金额，或者选择不参与该认购权发行，或者放弃其权利由他人分享。

(b) 红股发行：公司以其现有股东在指定日期所持有的证券比例，向其发行无需对价的证券。该等红股系用该公司的自由准备金、证券溢价账户或资本回购准备金账户而予以发行。红股发行必须经由公司的董事会授权进行，并且是公司章程许可的。某些情况下，公司不得进行红股发行，例如当其拖欠任何存款或债务证券或者其雇员的法定费用的时候。

(c) 员工股票期权计划：根据员工股票期权机制，向员工依法发行证券，该等发行必须经由特别决议授权进行；

(d) 定向增发：公司向可能包括现有股东的一系列特定人员，以根据注册估值师出具的估值报告而确定的价格发行证券。定向增发必须以公司的股东特

别决议的方式予以批准，且进行定向增发还有一些程序性与合规要求（例如，在单独的银行账户中存入认购金额以使其在配股前不会被动用，和每个认购人均须满足最低投资要求）；

(e) 公开发行：根据依 1992 年《印度证券交易委员会法》颁布的法规，作为首次公开售股或后续公开发行而向公众进行的证券发行。

11. 在您所在司法管辖区，公司应该注意哪些主要的劳动法律法规？劳动法中是否存在任何受到严格监管的方面？

印度的劳工和就业事项受到严格监管；然而，大多数劳工法律并不涉及管理层或行政级员工。主要的劳动立法可分为以下几类：

产业关系

(a) 1926 年《工会法》(Trade Unions Act, 1926)：该部法律对工会的注册成立以及管理进行了规定；

(b) 1947 年《劳资纠纷法》(Industrial Disputes Act, 1947)：该部法律涉及劳资纠纷的调查与解决以及其他相关目的。

支付工资

(a) 1936 年《工资支付法》(Payment of Wages Act, 1936)：该部法律就向某些类别的就业人员支付工资事宜进行了规定；

(b) 1948 年《最低工资法》(Minimum Wages Act, 1948)：该部法律确定了就业人员的最低工资标准；

(c) 1965 年《奖金支付法》(Payment of Bonus Act, 1965)：该部法律就向就业人员支付奖金事宜进行了规定。

儿童和妇女福利

(a) 1961 年《生育津贴法》(Maternity Benefit Act, 1961)：该部法律规定妇女在分娩前后的一段时期的就业问题，并提供产假津贴；

(b) 1986 年《童工（禁止与管制）法》(Child Labour (Prohibition and Regulation) Act 1986)：该部法律禁止在某些工作中雇佣童工，并规定了在其他工作中童工的工作条件；

(c) 1976 年《同工同酬法》(Equal Remuneration Act, 1976)：该部法律规定向男性与女性工人支付同等报酬，以防止以性别为由的歧视；

(d) 2013 年《工作场所对妇女性骚扰（预防、禁止与纠正）法》(Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013)：该部法律处理在工作场所中对妇女进行的性骚扰以及预防和纠正性骚扰相关事宜。

工作条件

(a) 1948 年《工厂法》(Factories Act, 1948)：该部法律对工厂中的用工事宜进行了规定；

(b) 1970 年《合同工（规定与废止）法》(Contract Labour (Regulation and Abolition) Act, 1970)：该部法律对某些机构中雇佣合同工的事宜进行了规定，并废除了在某些情况下雇佣合同工。

社会保障

(a) 1972 年《离职金法》(Payment of Gratuity Act, 1972)：该部法律规定向在某些机构中就业的雇员提供离职金计划；

(b) 1923 年《劳工赔偿法》(Workman Compensation Act, 1923)：该部法律涉及事故发生时应向雇员支付赔偿金的事宜；

(c) 1948 年《雇员国家保险法》(Employees' State Insurance Act, 1948)：该部法律规定应为雇员投保，从而使雇员能够在出现疾病、生育和工伤等情况时获得某些保险赔偿；

(d) 1952 年《雇员公积金和相关规范法》(Employees' Provident Fund and Miscellaneous Provisions Act, 1952)：该部法律对工厂和某些其他机构中员工的公积金、养老金和存款型保险基金等事宜进行了规定。

12. 在您所在司法管辖区，现行的公司治理制度是什么性质的？哪些机构或政府部门监管公司治理？

印度公司的公司治理框架包括如下内容：

(a) 2013 年《公司法》，除其他规定外，载有与公司管理和行政有关的规定。在各邦和工会领域内，根据《公司法》规定而任命的公司注册管理机构对公司进行规范并确保其遵守其法定义务。中央政府通过各区域负责人对这些办事处行使行政控制权。

(b) 《印度证券交易委员会（SEBI）指引》(Securities and Exchange Board of India (SEBI) Guidelines）对上市公司和证券市场进行规范，以期保护证券投资者。

13. 在您所在司法管辖区，设立公司是否授予任何类型的居留权？是否存在为取得该等居留权（如适用的话）而须与当地人士（例如您国家的公民）设立合伙或合资企业的方式的任何情形？

并非在各种情况下外国公司均被要求与当地居民或企业合伙进行业务经营。根据外国直接投资政策，计划在印度经营业务的外国公司 / 投资者有两个供选择的途径，即自动途径和批准途径（参见问题 7）。对于某些行业的公司而言，存在针对境外居民持股的限制。因此，希望在这些行业进行经营的外国投资者必须与本地公司 / 个人建立合伙关系。

对于外资持股比例占大多数的、从事单一品牌零售贸易的公司而言，其所采购的商品价值的 30 % 以上须来源于印度国内，最好来自于中小微企业、乡村与家庭工业、或者工匠手艺人。

14. 在您所在司法管辖区，公司何时纳税？可能适用于公司的主要税种有哪些？

印度公司的全球收入均须在印度缴纳税款。

当一家印度公司在某一管辖区内开展业务并从该业务中获得收入时，该公司就应根据印度税收法律规定而缴纳相关税款。

在印度以外居住的人士须对其在印度的活动或出售其印度资产所产生的收入缴纳税款。

主要的直接税种如下所示：

(a) 所得税：对所有实体产生的财务收入而征收的税款；

(b) 资本利得税：当投资者以高于购买价格的价格出售资本资产时，对投资者实现的利润征收的税款。

主要的间接税种如下所示：

(a) 销售税：对销售货物而征收的税款；

(b) 服务税：对服务提供者就其所提供的某些服务而征收的税款，该等税款由服务提供者向服务接受人征收；

(c) 增值税：对生产阶段和最终销售阶段增加的价值进行征收的多阶段税种；

(d) 关税：对货物进出口征收的税款；

(e) 消费税：对某些商品的销售或以销售为目的的生产而征收的税款。

请注意，“商品和服务税”（GST）作为对在印度范围内制造、销售和消费商品和服务而征收的全面间接税，将很快囊括所有上述间接税种。

15. 在您所在司法管辖区，竞争法如何对公司进行规范？

根据 2002 年《竞争法》，印度竞争委员会的成立是为了规范公司的反竞争行为，包括如下活动：

(a) 订立反竞争协议，例如确定价格、限制生产或者分享市场或生产资料来源的协议等；

(b) 公司滥用市场支配地位的行为；

ELP ECONOMIC LAWS PRACTICE
ADVOCATES & SOLICITORS

Darshan Upadhyay

合伙人，Economic Laws Practice

Darshan Upadhyay是ELP律师事务所公司与商业业务、私募股权投资与风险投资业务的合伙人。他具有公司秘书资格，孟买大学的法律毕业生。

Darshan在私募股权和并购交易方面拥有超过14年的经验，他曾为财富500强公司、基金和跨国公司就业务进入、并购、合资和其他商业交易等与印度相关的业务活动提供法律咨询。他在外汇管制条例、印度证券交易委员会和一般公司法方面的专业知识是其从事并购交易的另一优势。

几家私募股权基金和对冲基金就各种重要事项向其进行咨询。他参与了一些最为复杂的并购交易，包括涉及结构设计、监管批准、公开发售合规以及其他交易支持的收购事项。

Darshan最近的一些交易包括向江森自控公司提供咨询——该合资企业据说是世界上最大的商业空调供应商。该交易被Inhouse Community的《亚洲法律顾问》在其“2015年度交易奖”中被评为“年度交易”。

他还就New Vernon私募股权有限公司和Hilson Estates有限公司为收购位于钦奈的SP Infocity IT Park而分别向加拿大养老金计划投资委员会（“CPPIB”）和Shapoorji Pallonji集团的合资公司SPREP Pte有限公司出售其在Carwel Estates有限公司和Faery Estates有限公司中所持有的全部股权的交易提供了法律咨询。该交易被印度商业法律期刊在其“2015年年度交易奖”中评为“年度房地产交易”。

他还作为共同法律顾问就阿提哈德航空收购捷特航空印度有限公司百分之二十四（24%）的股份事宜向捷特航空提供法律咨询。该交易被印度商业法律期刊在其“2013年度交易奖”中评为“年度并购与合资交易”奖。该交易还在Inhouse Community《亚洲法律顾问》的“2013年度交易奖项”中被评为“年度交易”。

(c) 公司进行的可能对市场竞争产生不利影响的联合（即兼并、合并或收购）。

16. 在您所在司法管辖区，公司应了解的知识产权主要有哪些？

根据印度的知识产权法律制度，公司以下类型的知识产权可获得保护：

(a) 商标：用于识别商品和服务的、以图形形式表现的标识；

(b) 专利：对可在工业上应用的新产品或过程授予的专利，允许持有人排除他人制造、使用或销售该发明；

(c) 版权：授予文学、戏剧、音乐和艺术作品的创作者以及电影和录音制作人的权利，包括与此类作品的复制、改编和传播相关的权利；

(d) 外观设计：关于外观设计的权利，即包含审美价值的图案、颜色或图案与颜色二者组合的形状、构造或构图；

(e) 域名：使用可以访问互联网上的某个网站或其他资源的唯一地址的权利；

(f) 保密信息与商业秘密：技术和科学信息，譬如公式、制造方法和规格、设计、计算机代码等等；

(g) 植物品种：包括符合 2001 年《植物品种和农民权利保护法》(Protection of Plant Varieties and Farmers' Rights Act, 2001）所规定的新颖性、独特性、一致性和稳定性标准的品种；

(h) 地理标识：用于具有特定地理来源且具有归因于该地理来源的品质或声誉的产品之上的标志；

(i) 半导体集成电路布图：半导体集成电路中的晶体管和其他电路元件的布局设计；

(j) 生物多样性：获得生物资源和相关的传统知识，以确保公正和公平地分享其所产生的利益。

此外，印度是各种知识产权国际公约（例如《伯尔尼保护文学和艺术作品公约》(Berne Convention for the Protection of Literary and Artistic Works)、《保护工业产权巴黎公约》(Paris Convention for the Protection of Industrial Property) 和《世界版权公约》(Universal Copyright Convention)）的签署国，根据这些公约，来自其他公约国家的人员可以利用某些优惠待遇，包括：

(a) 如果该人已经在公约国家申请专利、外观设计或商标注册，则可随后就同一发明、设计或商标在印度提交申请，且生效日期将为其首次申请的日期；

(b) 在公约国家创作的作品的版权在印度与印度作品一样受到同等的保护。

17. 在您所在司法管辖区，是否存在规范数据隐私的法律或法规？

在印度，有两项主要的针对数据隐私的立法：

(a) 根据 2000 年《资讯科技法》(Information Technology Act, 2000）及根据其而颁布的规则，如果拥有或处理敏感个人资料的公司在执行和维持合理的安全做法和程序中存在疏忽，导致任何人有不当损失或不当所得，则可以要求该公司作出损害赔偿；

(b) 2005 年《信用信息公司（监管）法》(Credit Information Companies (Regulation) Act, 2005）对信用信息公司进行了规范，并为使用信用信息的广泛活动规定了某些隐私原则。

18. 是否存在吸引外国公司到您所在司法管辖区的激励措施？

中央政府激励措施

(a) 向在特别经济区、国家投资和制造业区建立的单位以及出口导向型单位提供的激励措施；

(b) 出口激励措施，譬如关税退税、关税免税 / 减免计划、重点产品和市场计划等等；

(c) 以地区为基础的激励措施，例如在东北地区、查谟和克什米尔、喜马偕尔邦和北极邦建立单位；

(d) 特定行业的激励措施，例如电子行业的“修订的特别奖励方案”。

邦政府激励措施

每个邦政府都有自己的激励政策，该等激励政策根据投资额、项目所在地、创造的就业机会等因素提供各种激励措施。各邦的激励措施各不相同，且通常在各邦的产业政策之中规定。

19. 在您所在司法管辖区，对公司破产进行规范的法律是什么？

最近颁布的 2016 年《破产法》(Insolvency and Bankruptcy Code, 2016）是规范印度企业破产事宜的框架法律。它建立了印度破产委员会，以对印度的破产程序实施监督。

该部法律包括个人和实体的破产解决程序，并规定了完成破产解决程序的最长期限。

解决程序由持证的破产专业人员进行。该部法律规定，国家公司法法庭（“NCLT”）将对公司进行破产裁决，债务追偿法庭将对个人进行破产裁决。

20. 在您所在司法管辖区，最近是否存在将影响您国公司法的改革提案或监管变化?

2016 年《破产法》彻底修订了有关企业破产的法律（见问题 19 关于该方面问题的规定）。

印度储备银行（“RBI”）最近公布了 2017 年《外汇管理（跨境并购）条例》草案（Foreign Exchange Management (Cross Border Merger) Regulations, 2017），征询公众意见。这些规定旨在解决印度公司和外国公司进行兼并、分拆、合并或重组方案时可能出现的问题。

21. 关于您所在司法管辖区或者亚洲地区的公司法，是否有任何特点您想特别强调?

2013 年新《公司法》的重要特点如下：

(a) 推出消费税法，废除普遍的复杂间接税制，从而通过单一税收机制建立有利的营商环境；

(b) 外国直接投资制度的持续自由化；

(c) 设立快速法庭和仲裁庭，以便提供快速的程序和审判；

(d) 为实行有组织的和有时限的破产程序，而向 2016 年《破产法》所规定的新破产制度转变；

(e) 在古吉拉特邦设立国际金融服务中心；

(f) 引入一人公司的概念；

(g) 设立一个新的裁决机构，即国家公司法法庭和国家公司法上诉法庭。

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HHR LAWYERS

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

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

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

(a) establishing a foreign representative office;

(b) acquiring shares in an existing company;

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

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

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

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

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

Indonesian law recognises two general types of business entities:

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

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

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

National business entities are divided into:

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

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

Private enterprises further can be understood to include:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) limitation on shares ownership by foreign investors;

(c) certain locations;

(d) specific licences;

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

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

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

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

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

(a) been declared bankrupt;

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

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

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

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

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

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

accordance with the purposes and objectives of a company;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) government institutions;

(b) international agencies;

(c) representatives of foreign states;

(d) international organisations;

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

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

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

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

(i) impresario service business.

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

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

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

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

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

The Law of the Republic of Indonesia No. 5 of 1999 on Prohibition of Monopolistic Practices and Unfair Business Competition (the 'Competition Law') and its implementing

regulations are the key competition legislations in Indonesia. Similar to other countries, the Competition Law in principle determines the types and criteria of certain prohibitions which may cause a business undertaking or business participant to be subject to administrative and/or criminal sanctions:

(a) prohibited agreements: agreements resulting in monopolistic practices and/or unfair business competition, i.e. oligopoly, price determination, territorial division, cartel, etc.;

(b) monopolistic practices: activities resulting in unfair business competition, i.e. monopoly, monopsony, market domination, etc.; and

(c) unfair business practices: acts or behaviour involving the abuse of market dominant positions and include interlocking directorates, cross-shares holding, merger, acquisition and consolidation.

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

(a) annul an agreement;

(b) terminate a vertical integration;

(c) terminate activities that have been proven to have resulted in the occurrence of monopolistic practices and/or unfair business competition;

(d) terminate the abuse of dominant position;

(e) annul a merger, acquisition or consolidation;

(f) pay compensatory damages; and

(g) pay a fine.

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

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

(a) Law of Copyrights;

(b) Law of Patent;

(c) Law of Industrial Design;

(d) Law of Trademark;

(e) Law of Trade Secret;

(f) Law of Plant Variety Protection; and

(g) Law of Layout Design of Integrated Circuit.

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

Regulations which are relevant to data privacy are:

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

(b) the Law of the Republic of Indonesia No. 30 of 2002 on Trade Secrets (the 'Trade Secret Law').

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

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

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

(a) import duty relief;

(b) tax facilities;

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

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

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

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

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

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

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

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

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

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1. 在您所在司法管辖区，外国公司的总体环境如何?

要设立拟在印度尼西亚进行投资和从事经营的外国公司，最常见的方式为设立一家新的有限责任公司，该公司通常被称为外国投资公司（即“PMA 公司”）。大多数外国直接投资项目必须通过一家有限责任公司进行。为设立一家外国投资公司，外国企业必须核对 2016 年 44 号总统令所规定的《封闭业务活动与受限制业务活动清单》（以下简称“负面清单”），以确定拟在印度尼西亚开展的商业活动存在哪些外资股权限制。应该注意的是，负面清单提供了一系列禁止（对于所有投资项目）或限制外国公司 / 投资者在印度尼西亚进行的项目清单。

除了在负面清单的规限下设立一家外国投资公司之外，外国公司也可以通过如下方式在印度尼西亚开展业务：

(a) 设立外国代表办公室；
(b) 收购现有公司的股权；
(c) 收购上市公司的股权；以及
(d) 在某些商业活动中，做出外国公司可以采取的其他特殊安排，如与印度尼西亚政府签订“产品共享合同”以经营上游石油和天然气业务。

2. 在您所在司法管辖区，适用于公司的主要法律法规有哪些?

在印度尼西亚，2007 年第 40 号印度尼西亚共和国关于有限责任公司的法律（以下简称“《公司法》”）及其实施条例是规定印度尼西亚公司准则的主要法律，取代了之前的公司法，即 1995 年第 1 号印度尼西亚共和国法律。但是，对于外国投资公司而言，2007 年第 25 号印度尼西亚共和国法律及其实施条例亦是相关的法律。除非另有说明，本章回答的依据是《公司法》的规定。

3. 在您所在司法管辖区，最常见的公司类型有哪些?

印度尼西亚法律承认两大类型的企业实体：

(a) 根据印尼法律成立的国内企业实体；以及
(b) 根据外国法律成立的外国企业实体。

外国企业实体在印尼法律中没有明确规定，但在各种法律或法规中都有被提到。这类法律实体的存在对于税收具有重要意义。它们可以成为印度尼西亚公司的股东。

国内企业实体分为：

(a) 股权由国家全部或部分拥有的国有企业；以及
(b) 股权由自然人或法人拥有或者控制的私人企业。

私人企业进一步包括：

(a) 法人经营实体，例如有限责任公司与合作社；以及
(b) 非法人经营实体，例如合伙企业（特殊普通合伙企业，普通合伙企业和有限合伙企业）。独资企业由一个自然人拥有（并且可以通过公证契据予以设立）；合伙企业由两个或两个以上的自然人成立。在独资企业中，该实体的权利和义务不能从业主的权利与义务中分离。但是，正如问题 1 中所述，在印度尼西亚，外国公司最常见的企业实体类型是有限责任公司。外国投资者不得参与合伙或独资经营。除非

另有说明，本章中的公司应指有限责任公司。

4. 在您所在司法管辖区，建立一家公司需要多长时间？

成立一家公司的预估时间将很大程度上取决于投资者对企业结构以及将开展的业务活动的选择。为与我们在问题 3 中的回答保持一致，我们将提供的预估时间是从一家有限责任公司成立开始，至其获得法律与人权部(即“MOLHR”)批准为止。需注意，该等批准的签发是有限责任公司已获得法人资格的证据。对于本地公司而言，其成立可在五个工作日内完成：这包括在公证人面前签署一份契据，以及法律与人权部审批该契据的过程。应当注意的是，该预估时间不包括成立前创始人之间的协商时间。外国投资公司成立的预估时间将长于本地公司。这是因为在签署成立契据之前，外国投资公司必须首先获得投资协调委员会（全称 Badan Koordinasi Penanaman Modal，即“BKPM”）的批准。根据所需文件的齐备情况，投资协调委员会通常会于收到提交的申请表和文件后五个工作日内签发批准文件。

鉴于从法律与人权部以及投资协调委员会获得批准的过程是在网上进行的，进度较易于监控。

5. 在您所在司法管辖区，对公司注册的主要要求有哪些？费用如何？

在公司成立阶段，在法律与人权部处进行登记是获得法人实体批准必须完成的第一道登记程序。如果之后公司的组织章程发生任何修改，也需进行该等登记。特别地，对于外国投资公司而言，在设立、执行和修改阶段均需获得投资协调委员会的批准。此外，公司还需获得开展业务所必须的基本执照，例如住所证明、税务代码以及公司注册证。是否需要技术运营许可证主要取决于公司所开展的业务活动。

考虑到大多数印度尼西亚政府机构已经采用基于互联网的管理系统，公司申请登记 / 执照的过程基本上不需要收取官方费用。

6. 在您所在司法管辖区，公司注册后有哪些主要的报告要求？

特别针对外国投资公司而言，投资协调委员会要求其每个季度（如果一家公司未获得业务许可证）或每六个月（如果一家公司已获得业务许可证）定期提交投资活动报 告 (laporan kegiatan penanaman modal)。此外，登记后的报告义务也将很大程度上取决于公司所获得的许可证的类型与许可证签发机构。这是因为每个许可证均规定了公司在登记之后所需满足的特定条件和要求（包括登记后的报告义务）。当营业额达到一个较高水平时，公司需要每年提交经审计的财务报表。

7. 在您所在司法管辖区，是否存在对外国公司的任何控制因素或限制？

正如问题 1 中所述，外国公司在印度尼西亚有一些被禁止和被限制的企业投资活动。根据负面清单，被限制的业务活动的控制因素如下：

(a) 拟由中小微企业以及合作社所开展的业务活动；
(b) 对外国投资者持有股权的限制；
(c) 特定区域；
(d) 特定许可证；
(e) 持有本地企业的全部股权；和 / 或
(f) 东盟公司合作框架中对持有股权的限制。

此外，如果外国公司设立外国投资公司，投资协调委员会作为印度尼西亚监管外商投资的主要部门，会对最低资本额以及最小投资额作出一定要求，这些要求会高于对本地公司所要求的最低资本额和投资额。

8. 在您所在司法管辖区，公司的典型董事结构（或家族式管理结构）以及责任问题是怎样的？

《公司法》中的“董事”是指董事会（即“BOD”）。《公司法》规定，董事会由一个或多个成员组成，并且每位成员均须为自

然人 / 有资格提起诉讼的个体，除非在被任命为董事前的五年期间内，该人曾：

(a) 被宣布破产；

(b) 担任董事会或监事会成员（即“BOC”），并且对公司破产负有责任；或者

(c) 被裁定犯有造成国家财政亏损和 / 或与金融业有关的罪行。

《公司法》未对家庭管理结构做出任何特别规定。因此，可以得出的结论是，即使有家族关系，任何人担任董事会成员均必须遵守《公司法》的规定。

关于责任问题，《公司法》规定，只有当董事会没有以善意、谨慎与负责的方式履行其职责时，董事会才对公司所遭受的任何损失负有个人责任。因此，如果董事会或其任何成员能够证明如下情形，则可以避免承担责任：

(a) 损失并非由其错误或疏忽所致；

(b) 董事会已经从公司的最大利益出发，并根据公司的宗旨和目标，以善意、谨慎与负责的方式履行管理职责；

(c) 董事会在造成损失的管理活动中，并无直接或间接的个人利益关系；以及

(d) 董事会已采取措施防止该等损失的发生或继续。

9. 在您所在司法管辖区，建立公司所要求的最低董事及股东人数是多少？是否存在董事必须是自然人的任何要求？

正如问题 8 中所述，《公司法》规定的公司董事最低人数为一名，并且该名董事必须为自然人。

在设立阶段，公司必须有两名股东：两名自然人或两名法人，或者一名自然人与一名法人。所要求的股东最低人数根据该公司在创始人之间协议的基础上赖以建立的原则而予以确定。但是，《公司法》规定已获得法人资格地位的公司可以只有一名股东，但其存续期限不得超过六个月。六个月期限届满后，该股东必须将其部分股权转让给他人，或者该公司应当向他人发行新股。

10. 在您所在司法管辖区，对股份发行有哪些要求？

公司组织章程可以明确规定这些要求。根据《公司法》，向某一类股份的股东发行股份，或者向其他股东发行股份，可作为股份转让的附加要求，但该要求必须在公司组织章程中予以明确规定。如果发生这种情形，则股份发行只能进行一次，并且在要约日之后的 30 天内有效。

11. 在您所在司法管辖区，公司应该注意哪些主要的劳动法律法规？劳动法中是否存在任何受到严格监管的方面？

在印度尼西亚，规范劳资问题的主要法律是 2003 年第 13 号印度尼西亚共和国关于人力资源的法律（以下简称“《人力资源法》”）及其实施条例，这些法律均明确规定其目标为提高劳动者的福利。根据《人力资源法》的目标，在印度尼西亚受到严格规制的劳动关系问题包括（除了其他问题之外）：

(a) 社会保障，用人单位必须为每位劳动者提供健康保障和就业保障；

(b) 劳动合同，不论是永久性的或有限时间的雇佣关系均须签订劳动合同；

(c) 劳动关系终止，雇主须遵守较高且严格的要求；以及

(d) 聘请外籍人士作为向本地劳动者传授知识的媒介的，不能减少本地劳动者的就业机会。

12. 在您所在司法管辖区，现行的公司治理制度是什么性质的？哪些机构或政府部门监管公司治理？

根据《公司法》规定，印度尼西亚公司治理制度的基本原则如下：

(a) 透明度：公司管理人员作出的任何决定和行动，必须清楚和公开；

(b) 问责性：公司管理的架构和制度必须清楚，以便进行有效的管理；

(c) 责任制：公司必须遵守良好的公司治理制度与现行的法律法规；

(d) 独立性：公司必须予以专业管理，不得与管理层有利益冲突和 / 或受到管理层有违现行法律法规的压力；

(e) 公平性：公司股东的权利必须按照现行法律法规平等地实现。

在印度尼西亚，负责公司治理的政府机构因公司所在行业而异。例如，印度尼西亚银行是监管银行业公司治理的政府机构。

13. 在您所在司法管辖区，设立公司是否授予任何类型的居留权？是否存在为取得该等居留权（如适用的话）而须与当地人士（例如您国家的公民）设立合伙或合资企业的方式的任何情形？

在为外籍人员在印度尼西亚工作和居住提供担保的问题上，可授予该等居留权的用人单位限于如下类型：

(a) 政府机构；

(b) 国际机构；

(c) 外国国家代表；

(d) 国际组织；

(e) 外国贸易办事处、外交办事处及新闻机构的代表；

(f) 经主管机构注册的外国私人公司和外国机构；

(g) 以有限责任公司或基金会形式设立的印度尼西亚法人实体；

(h) 社会、宗教、教育及文化机构；及

(i) 文艺经理服务机构。

一旦外国公司在印度尼西亚设立了一家外国投资公司，只要在该外国投资公司工作并居住在印度尼西亚的外籍人员持有适当的资格，该外国投资公司便可为其提供担保。双边投资条约和投资法授予外国投资者管理其投资的权利，这也意味着授予了居留权，该等居留权的授予范围是灵活的。但是，应该指出的是，某些职位不对外籍人员开放，这取决于外国投资公司所经营的业务。此外，在印度尼西亚工作和居住的外籍人员必须从移民局获得居留许可证。

14. 在您所在司法管辖区，公司何时纳税？可能适用于公司的主要税种有哪些？

根据印度尼西亚现行的税收相关法规，公司自成立之日起应缴纳税款。应当注意的是，公司的设立日期是指公司在公证人面前签署成立契据的日期。这与印度尼西亚税务局对任何公司获得基本执照之一的税务代码的要求是一致的。

公司自其成立时起承担的主要税种是所得税（最高税率为 25%），其收入达到一定水平时，还有增值税（一般为 10%）。

15. 在您所在司法管辖区，竞争法如何对公司进行规范？

在印度尼西亚，1999 年第 5 号印度尼西亚共和国关于禁止垄断行为与不公平商业竞争的法律（以下简称“《竞争法》”）及其实施条例是主要的竞争立法。与其他国家类似，《竞争法》原则上确立了某些禁止行为的类型和标准，这些行为可能会导致有该行为的企业或业务参与者受到行政和 / 或刑事制裁：

(a) 禁止性协议：导致垄断行为和 / 或不正当竞争的协议，例如寡头垄断、固定价格、划分商品销售地域、企业联合等；

(b) 垄断行为：导致不正当商业竞争的活动，例如卖方垄断、买方垄断、市场支配等；以及

(c) 不公平的商业行为：涉及滥用市场支配地位的行动或行为，包括存在连锁董事、交叉持股、兼并、收购与整合。

在印度尼西亚，商业竞争监督委员会被委托执行《竞争法》（全称 Komisi Pengawas Persaingan Usaha，即“KPPU”），其权力包括针对违反《竞争法》行为的指控展开调查，确定及明确是否具有与该等违法行为有关的损失，并且对该等违法行为给予行政处分。商业竞争监督委员会可以责令该企业：

(a) 取消协议；

(b) 终止纵向联合；

(c) 终止被证明导致垄断行为和 / 或不公平商业竞争的活动；

(d) 终止滥用支配地位；

(e) 取消兼并、收购或合并；

(f) 支付损害赔偿金；以及

(g) 缴纳罚款。

16. 在您所在司法管辖区，公司应了解的知识产权主要有哪些?

由于印度尼西亚自 1994 年以来一直是世界贸易组织的签约国之一，并且其已批准 TRIPS 协定（与贸易有关的知识产权协议），知识产权已成为在印度尼西亚开展业务所必须考虑的一个重要问题。该问题的重要性在下列七项单独的法律中得以体现：

(a) 《著作权法》(Law of Copyrights)；

(b) 《专利权法》(Law of Patent)；

(c) 《工业设计法》(Law of Industrial Design)；

(d) 《商标法》(Law of Trademark)；

(e) 《商业秘密法》(Law of Trade Secret)；

(f) 《植物品种保护法》(Law of Plant Variety Protection)；以及

(g) 《集成电路布图设计法》(Law of Layout Design of Integrated Circuit)。

17. 在您所在司法管辖区，是否存在规范数据隐私的法律或法规?

与数据隐私相关的法律有：

(a) 2008 年第 11 号印度尼西亚共和国关于信息与电子交易的法律（经 2016 年第 19 号印度尼西亚共和国法律修订）（以下简称“《IT 法》”）；以及

(b) 2002 年第 30 号印度尼西亚共和国关于商业秘密法律（以下简称“《商业秘密法》”）。

应当注意的是，《IT 法》规定了对保护电子信息 / 数据的保护，而《商业秘密法》规定了对生产方法、加工方法、销售方法以及其他相关技术或业务信息的保护。

18. 是否存在吸引外国公司到您所在司法管辖区的激励措施?

印度尼西亚为刺激外来投资，提供了一些吸引外国公司的激励措施，其中包括：

(a) 进口关税减免；

(b) 税务设施；

(c) 以免除增值税及营业税的形式（及其他形式）为出口制造业提供税收优惠；以及

(d) 以免除进口税的形式（及其他形式）为保税区工业企业提供税收优惠。

19. 在您所在司法管辖区，对公司破产进行规范的法律是什么?

在印度尼西亚，2004 年第 37 号印度尼西亚共和国关于破产及暂停支付义务的法律及其实施条例是规范公司破产事宜的主要法律。

20. 在您所在司法管辖区，最近是否存在将影响您国公司法的改革提案或监管变化?

尚未出现将影响《公司法》的任何立法变化或改革。

21. 关于您所在司法管辖区或者亚洲地区的公司法，是否有任何特点您想特别强调?

《公司法》认可公司的双层管理结构，在该结构中，除了管理日常运营的董事会外，还存在负责监督董事会管理行为的监事会。如果监事会成员超过一名，则他们必须共同而非单独行动。

此外，如同普通法法域一样，在印度尼西亚不存在与董事平等的“高级职员”的概念。尽管在公司中的角色不同，董事会及监事会均处于同等地位，因为他们只能由公司的股东任免。

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

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

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

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

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

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

(b) operating a financial or corporate services business;

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

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

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

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

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

Other relevant legislation includes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subject to the precise requirements of their consent(s) issued under COBO, Jersey companies must notify material changes in beneficial ownership or control to the JFSC, or seek the consent of the JFSC to such changes. At the time of writing, beneficial ownership and control information is not available on any public register (and there is no present intention to make it available on a public register), but it may be shared by the JFSC with (for example)

local and foreign tax authorities or police forces as required by applicable laws, regulations and international agreements and commitments to which Jersey and/or the JFSC is party. In general, the requirement for consent from the JFSC to such changes applies only where the company is not provided with corporate services by a locally-regulated corporate services provider.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The main factor relevant to operating a business in Jersey that differs from many other jurisdictions is the requirement (subject to a number of exceptions) for an 'undertaking', which

for this purpose would include a business, to obtain and hold an appropriate licence under the Control of Housing and Work (Jersey) Law 2012 ('CHW Law'). As explained further below, the content of that licence is relevant to who can be employed by the business in Jersey. This requirement applies equally to Jersey and non-Jersey businesses, and licences are granted by the Jersey Population Office.

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

(a) its permitted licensed activity; and

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

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

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

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

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

Jersey residential property falls into one of two categories:

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

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

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

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

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

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

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

(c) employment contracts and other documentation.

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

The Jersey law of contract is somewhat different from the English law. However, in relation to employment contracts, the Jersey courts and tribunals have generally (although not exclusively) had regard to English law and principles, particularly when it comes to implied contractual duties. In general, employment law in Jersey is heavily influenced by English case law and so it is often the case that English cases relating to employment law will be cited before the Jersey Employment Tribunal or Jersey

courts. However, while English law heavily influences the development of employment law in Jersey, there are some important differences between the two jurisdictions and therefore local advice should be sought.

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

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

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

(c) certain Commonwealth citizens; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Jersey does not impose capital gains tax or equivalent.

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

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

Jersey has a developed competition law regime, which covers:

(a) abuse of dominant position;

(b) anti-competitive behaviour; and

(c) mergers and acquisitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Jersey also has two customary law insolvency procedures:

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

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

These processes are less often seen in an international context.

Finally, the Jersey Bankruptcy Law makes provision for cooperation by the Jersey courts with courts in certain foreign jurisdictions in an insolvency context (and the Jersey courts

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

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

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

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

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

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

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

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

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

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

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

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

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1. 在您所在司法管辖区，外国公司的总体环境如何?

50 多年来，泽西岛一直走在全球金融业的前列，被公认为是世界领先的汇集银行、投资基金、资本市场和私人财富的国际金融中心之一。该岛经济稳定，政治独立，税收中立，并且拥有一套完善的法律、监管和技术基础设施。它以稳健的法律框架和健全的公司治理实践享誉全球。

泽西岛是英国的皇家属地，但不是英国的一部分，也不属于欧盟。泽西岛拥有自己的政府，负责包括税收在内的国内事务；同时，它也有其自己的法院系统和司法机构。泽西岛与伦敦位于同一时区。

外国公司在泽西岛设立公司非常简便。并不要求泽西岛企业须采用公司的形式来开展业务，对于外国实体也没有任何分支机构注册要求。

根据所要从事业务的性质，公司可能需要从地方当局获得执照、批准或者许可。这些要求对于外国和当地实体同等适用。可能需要当地政府审批的活动类型包括：

(a) 在泽西岛经营一家实际存在的实体企业；

(b) 经营从事金融或公司服务的业务；

(c) 经营涉及博彩 / 赌博业的业务；以及

(d) 经营在泽西岛不受监管的其他特定业务，但该等其他特定业务必须遵守当地的“了解你的客户”、反洗钱和反恐怖融资的法律法规之规定（简称“泽西岛了解你的客户义务”）。

另外，在泽西岛经营企业的外国实体还必须在当地税务局（出于所得税与商品和服务税之目的）和社会保障部门（出于征收及缴纳社会保险费之目的）进行登记。

2. 在您所在司法管辖区，适用于公司的主要法律法规有哪些?

在泽西岛，主要的公司立法是 1991 年《公司法（泽西岛）》(Companies (Jersey) Law 1991，以下简称“泽西岛《公司法》”)。

其他相关立法包括：

(a) 2002 年《公司（一般规定）（泽西岛）法令》(Companies (General Provisions) (Jersey) Order 2002，简称“CGPO”)，该部法律对泽西岛《公司法》中有关公司成立、招股说明书、年审报告等内容以及与公司清盘有关的某些规定进行了补充规定；以及

(b) 1958 年《贷款监管（泽西岛）法令》(Control of Borrowing (Jersey) Order 1958，简称“COBO”)，该部法律规定了对在泽西岛设立公司的某些批准要求（简而言之，即对公司能够通过发行股份的方式募集资本的批准）以及对随后的某些公司行为（包括在某些情况下非股本证券的发行）的某些批准要求。

3. 在您所在司法管辖区，最常见的公司类型有哪些?

大多数在泽西岛注册成立的公司都是私人有限责任公司，其股份为有票面价值的股份（即每一股份的价值为其名义或者“票面”价值）。这类公司类似于英国的私人有限公司。

泽西岛《公司法》也允许设立股份为无面值股份的私人有限责任公司。为每一类无面值股票支付的资本贷记为该类科目下的“已申报资本账户”。根据泽西岛《公司法》之规定，已申报资本账户被当做股本溢价科目进行处理，并且已申报资本账户与股

本溢价在表面上是可分配的（在大多数情况下，授权进行分配的董事必须作出法定的偿付能力声明）。根据泽西岛《公司法》，名义资本是不可分配的，因此必须通过另一种替代机制进行处理，例如减资、回购或赎回。在资本和资本维持方面，上述以及一些其他的优势使得股份无面值的公司比股份有面值的公司具有更大的灵活性，因此股份无面值的私人有限公司也很受欢迎。

在泽西岛，还存在着数量庞大的公共有限责任公司（包括有面值股份和无面值股份），包括许多在英国、美国和其他市场上市的公司。截至本报告撰写之时，有 92 家泽西岛公司在全球股票交易市场上市，并且泽西岛拥有数量最多的在英国之外注册的富时 100 指数公司。

另外，在泽西岛设立无限责任公司、担保责任有限公司和独立投资组合公司也是可能的，但是这些类型的公司一般都是用于特定目的的，因此不像有限责任公司那样受欢迎。

4. 在您所在司法管辖区，建立一家公司需要多长时间？

有可能在同一天内完成一家泽西岛公司的注册。

但是，在泽西岛，泽西岛公司的设立以及公司服务的持续提供均是受到监管的活动，并且这些活动都必须遵守泽西岛了解你的客户义务。这意味着只有当负责注册事宜和 / 或持续提供公司服务的人士完成泽西岛了解你的客户义务与要求，并且从客户处获得必要的资料与文件之时，注册程序才可能完成。完成这一过程所需的时间取决于拟议的所有权结构的复杂性，如果客户具有较高风险或者具有复杂的所有权结构，则该过程可能需要更多的时间。

泽西岛金融服务委员会（简称“JFSC”）已经将某些活动确定为对该岛声誉意味着更高风险的活动；涉及此类活动的相关公司在设立之前，需要完成一些额外的工作（并且可能需要泽西岛金融服务委员会的事前批准）。这也可能延长完成泽西岛公司设立程序的实际时间期限。此类活动包括大多数类型的金融服务业务，某些类型的“高风险”商业业务（此类业务不受消费者权益保护相关规定的限制，例如分时度假活动），以及涉及军事或国防的设备或人员、无证经营药品、开展科学研究或开采自然资源的业务。

5. 在您所在司法管辖区，对公司注册的主要要求有哪些？费用如何？

要在泽西岛设立一家公司，必须向泽西岛公司注册处提交下列文件：

(a) 一份《贷款监管（泽西岛）法令》规定的审批申请表（包括在公司非由律师事务所或公司服务提供商办理注册事宜的情况下，相关的“了解你的客户”类文件与资料）；

(b) 一份列明某些基本公司信息的“详细说明”；以及

(c) 一份经由初始发起人（一名或多名）签署的公司章程大纲与章程细则的副本（如果章程未使用法律所规定的标准表格）。

另外，还需要为公司预留一个名称。一般而言，可以使用任何名称，但是如果与英国的公司和公司法衍生于英国公司法的其他司法管辖区的公司在名称上高度相似的，则存在着特定限制。

在泽西岛进行公司注册需向泽西岛公司注册处缴纳注册费，注册费取决于注册程序的办理时间长短。截至本报告撰写之时，注册费从£150（五个工作日内完成公司注册）至£550（两个小时内完成公司注册）不等，并且如果同意支付最低为£1,000 的费用，还可以享受“工作时间之外”的加急服务。

在雇佣律师事务所或者公司服务提供商来提供公司设立和 / 或持续提供公司服务的情况下，此类机构也将收取注册费用以及提供这些服务的费用。

6. 在您所在司法管辖区，公司注册后有哪些主要的报告要求?

泽西岛的公司必须向泽西岛公司注册处提交年审报告。对于私人公司而言，该报告必须包括法定股东以及股本的详细信息，但不需要包括受益股东或董事的详细信息。对于公众公司而言，则还须包括董事的详细信息。年审报告是公共文件。截至本报告撰写之时，提交年审报告需向泽西岛公司注册处支付£200（在线提交）或£210（书面提交）的费用。年审报告必须于每年 2 月 28 日之前提交，内容日期应截至当年的 1 月 1 日。

泽西岛的私人公司不需要向公共登记处提交账目。泽西岛的公众公司必须向泽西岛公司注册处提交账目，而后该等文件即成为公共文件（在某些情况下可以提交合并账目而非单独账目）。截至本报告撰写之时，公众公司提交账目需向泽西岛公司注册处支付£100 的费用。上市公司必须在其相关财务年度结束后的七个月内提交账目。

泽西岛公司必须在影响股权和 / 或其章程文件的某些文件（包括特别决议）通过 / 生效之日起的 21 天内，向泽西岛公司注册处提交这些文件。截至本报告撰写之时，这类提交行为无需缴纳费用，这类文件一旦被提交，即成为公共文件。

对于其他特定的公司行为，还存在相关的提交要求，例如发行招股说明书、减资、清盘、名称变更或者营业状态变更；截至本报告撰写之时，某些此类行为需向泽西岛公司注册处支付费用。同样地，此类文件一旦被提交，即成为公共文件。

根据依《贷款监管（泽西岛）法令》之规定而做出的批准（一项或多项）的明确要求，泽西岛公司必须就其实益所有权或控制权的任何重大变更通知泽西岛金融服务委员会，或者寻求泽西岛金融服务委员会对该等变更的同意。截至本报告撰写之时，在任何公共登记处均不可查询关于实益所有权或控制权的信息（目前也没有让人可通过公共登记处查询此类信息的打算），但是根据可适用的法律法规，以及以泽西岛和 / 或泽西岛金融服务委员会为当事人的国际协议和承诺之要求，此类信息可由泽西岛金融服务委员会与（诸如）当地和外国税务机关或者警察机构共享。一般来说，只有当公司的公司服务并非由受当地监管的公司服务提供商所提供的时候，该等变更才适用须获得泽西岛金融服务委员会同意的要求。

泽西岛公司必须在泽西岛设有注册办事处。公司的成员名册必须保存在泽西岛的注册办事处或泽西岛其他的一些地方，其董事和秘书名册以及成员大会和专门会议的会议记录必须保存在注册办事处。

泽西岛公司必须配备一名公司秘书，公司秘书不必是当地居民，而且对于私人公司而言，其公司秘书也无需具有任何特殊资格。

鉴于上述情况，普遍的做法是，泽西岛公司的所有人会任命一家公司服务提供商来提供注册办事处、担任公司秘书以及处理公司在泽西岛的持续申报事宜。

请注意，上述规定不排除因某一特定泽西岛实体的监管或其他地位而予以适用的任何特定申报或通知要求。

7. 在您所在司法管辖区，是否存在对外国公司的任何控制因素或限制?

对于泽西岛的外国公司，不存在控制因素或限制。

8. 在您所在司法管辖区，公司的典型董事结构（或家族式管理结构）以及责任问题是怎样的?

泽西岛公司由其董事进行管理，董事可根据相关的公司章程文件，将其权力的行使委派给其他特定董事、委员会或其他人员。

泽西岛公司的董事对该公司负有受信义务。泽西岛《公司法》对这些义务规定如下：

(a) 为公司的最大利益而诚实、善意地行事；以及

(b) 按合理谨慎之人在同等情况下所会采取的谨慎、勤勉和技能行事。

泽西岛法院在解释这些义务的性质和范围时，会尊重英国以及其他英联邦的法律；因此，在泽西岛的董事责任的总体情况与其他衍生于英国公司法的司法管辖区的此类情况十分相似（尽管会存在一些具体的不同之处）。

泽西岛《公司法》规定了非正当损害制度，泽西岛法院适用该制度的方式与英国法下的同等制度大体一致；并且，在允许股东代表公司针对公司董事提出损害赔偿时，泽西岛法院也高度遵循了英国法律原则。泽西岛《公司法》还规定了泽西岛公司董事的某些特定行为（例如不适当地做出偿付能力声明）可能会犯下的罪行，和各类债权人保护措施（该事项将在问题 19 中进一步予以讨论），并在公司发行招股说明书时对董事施加额外义务。

根据泽西岛的法律规定，法人团体（包括泽西岛公司）的董事及某些其他管理人员可能须对法人团体所犯下的罪行承担责任。

9. 在您所在司法管辖区，建立公司所要求的最低董事及股东人数是多少？是否存在董事必须是自然人的任何要求？

泽西岛的私人公司在设立时必须至少有一名董事与一名认购人（股东）。泽西岛的公众公司在设立时必须至少有两名董事与两名认购人。

泽西岛公司的董事无须为自然人，但是担任泽西岛公司董事的任何法人团体都必须：

(a) 已根据 1998 年《金融服务（泽西岛）法》(Financial Services (Jersey) Law 1998) 的规定进行登记，获准担任董事；以及

(b) 该法人团体本身不具有由法人团体担任的董事。

此外，根据泽西岛法律设立的有限合伙、单独有限合伙和有限责任合伙被禁止担任泽西岛公司的董事。

10. 在您所在司法管辖区，对股份发行有哪些要求？

泽西岛《公司法》在股票发行问题上并未规定任何法定优先权。因此，在表面看来，泽西岛公司的股票发行是属于公司董事的权力范围，不过，对于公众上市公司以及由多个股东共同拥有的公司而言，普遍的做法是在其公司章程中规定优先购买权或者对该权力作出某些其他限制。

根据泽西岛《公司法》之规定，向社会公众发出的成为泽西岛公司之成员或者购买或申购其证券的邀请，会被视作招股说明书，（除了某些有限的例外情形，包括员工股权激励计划这一例外情形）必须经过泽西岛公司注册处的事先批准并在公共登记簿上予以备案。《公司（一般规定）（泽西岛）法令》对任何此类招股说明书的内容进行了规定，而泽西岛公司注册处有权对该等内容要求进行削减。

除非邀请只限于向特定人群作出，否则该邀请即为“公开要约”，并且仅在下列情形中，邀请会被认为是仅限向特定人群作出的：

(a) 该邀请是邀请人或邀请人的代理人向与其直接沟通的特定类别的人士作出的；

(b) 该类人员是可能接受该邀请的唯一人群，并且拥有足以对该邀请作出合理评估的充分信息；以及

(c) 在世界范围内收到该邀请的总人数不超过 50 人。

泽西岛《公司法》还规定了反规避条款，以对付通过向少于 50 人分配或发行股份继而由之再向“公众”转售的情形。

在泽西岛，向社会公众发行非泽西岛法人团体的股份、单位股票以及某些其他证券时，可能也需要根据《公司（一般规定）（泽西岛）法令》的规定，在发行前取得对招股说明书的批准。《公司（一般规定）（泽西岛）法令》没有对任何此类招股说明书的内容作出规定，并且该等批准系由泽西岛金融服务委员会而非泽西岛公司注册处作出。

截至本报告撰写之时，获得此类批准无需缴纳相关费用。

11. 在您所在司法管辖区，公司应该注意哪些主要的劳动法律法规？劳动法中是否存在任何受到严格监管的方面？

与许多其他司法管辖区不同，在泽西岛运营企业的主要因素是要求“业务”（为本文之目的，此处的“业务”也包括企业）取得或持有 2012 年《住房及工作监管（泽西岛）法 》（Control of Housing and Work (Jersey) Law 2012，简称“CHW Law”）所规定的适当执照（但有若干例外）。该执照的内容与该企业可以在泽西岛雇佣什么人员有关，该问题将在下文进一步予以探讨。这一要求对于泽西岛企业及非泽西岛企业同等适用，执照由泽西岛人口办公室授予。

《住房及工作监管（泽西岛）法》对雇员的居住与就业状况以及企业的执照进行规范，并且这两个因素有着密切的联系。向某一“业务”所授予的执照将载明：

(a) 其被许可的有执照活动；以及

(b) 对于其在《住房及工作监管（泽西岛）法》所规定的各种居住及就业关系类别之内可雇佣雇员人数所适用的任何限制：

  (i) “有执照”的雇员：在泽西岛居住不到 10 年并且要求立即获得住房权的核心雇员；可雇佣最高人数可适用某些例外情况；

  (ii) “经登记”的雇员：在泽西岛居住 5-10 年的非核心雇员；可雇佣最高人数可适用某些例外情况；

  (iii) “有资格”的雇员：在泽西岛居住 10 年或以上的雇员；可雇佣最高人数通常不受限制；以及

  (iv) “仅有权工作的”雇员：在泽西岛居住 5-10 年的非核心雇员；可雇佣最高人数通常不受限制。

泽西岛的住宅物业被分为两类：

(a) “合格的”：只有那些“有资格”或“有执照”的人士及其被扶养人才能居住的住宅物业；以及

(b) “经登记的”：任何人均可居住的住宅物业。

与“合格的”住宅物业相比，“经登记的”的住宅物业相对更加昂贵且更加稀缺；因此，企业有权雇佣（在雇佣关系持续期间，该企业授予相应雇员“有执照”的身份）的“有执照”人员的数量通常是其在考虑进行招聘时（特别是从该岛外招聘时）的一个重要因素。

泽西岛人口办公室愿意在企业申请过程中讨论执照要求。另外，还可以向泽西岛的政府实体机构——泽西岛投资贸易发展署（Locate Jersey）寻求帮助，该机构旨在鼓励高价值、低占用的企业以及高净值个人迁居该岛。

就更具一般性的劳动法而言，泽西岛雇主和雇员的职责具有诸多来源，其中包括：

(a) 制定法（主要是 2003 年《劳动（泽西岛）法》Employment (Jersey) Law 2003）；

(b) 习惯法（即当地司法判决）；以及

(c) 雇佣合同和其他文件。

尽管泽西岛立法的数量正在增加，但其关于就业的立法比英国要少。泽西岛有雇佣关系裁判庭，负责审理与雇佣关系有关的诉讼请求（但对于超过£10,000 的合同索赔主张，则由泽西岛皇家法院予以处理）。

泽西岛的合同法与英国法律有所不同。但是，在雇佣合同方面，泽西岛法院及裁判庭一般（但不是唯一地）都会遵循英国法律和原则，特别是涉及默示合同义务的时候。总体而言，泽西岛的雇佣法深受英国判例法的影响，因此，泽西岛雇佣关系裁判庭或泽西岛法院经常援引英国有关劳动法的案例。但是，虽然英国法律极大地影响着泽西岛雇佣法的发展，但这两个司法管辖区之间存在一些重要的差异，因此应该寻求当地的建议。

最后，某些雇员可能需要取得工作许可。为了获得工作许可，用人单位将需要证明

没有合适的当地候选人以供其雇佣。目前，大部分的雇员都无需取得工作许可，具体包括：

(a) 具有居留权的英国公民以及英籍人士；

(b) 欧盟 / 欧洲经济区成员国的国民（但有个别例外情形）；

(c) 某些英联邦国家的公民；以及

(d) 未被限制居留的非欧盟 / 欧洲经济区的护照持有人。

12. 在您所在司法管辖区，现行的公司治理制度是什么性质的？哪些机构或政府部门监管公司治理？

泽西岛没有一般的公司治理制度（但是具有适用于归地方监管的企业的具体公司治理要求）。然而，对于在泽西岛境外运营的泽西岛公司，特别是在泽西岛以外的市场上市的泽西岛公司，如果有关司法管辖区或市场的公司治理要求适用于泽西岛公司，则受该等要求的规限。

13. 在您所在司法管辖区，设立公司是否授予任何类型的居留权？是否存在为取得该等居留权（如适用的话）而须与当地人士（例如您国家的公民）设立合伙或合资企业的方式的任何情形？

在泽西岛设立公司并不授予任何人以居留权。但是，作为针对将在泽西岛经营的企业的许可要求的一部分，该企业可被允许授予个人以“有执照”地位，从而使此类个人可占用“合格的”住所（详见前文问题 11 所述）。此外，泽西岛投资贸易发展署能够协助企业搬迁到岛上，这可能涉及授予个人居留权。

在泽西岛经营企业，不存在需与当地居民“合伙”的要求。

14. 在您所在司法管辖区，公司何时纳税？可能适用于公司的主要税种有哪些？

泽西岛公司将被视为泽西岛税务居民，除非具备如下情形：

(a) 其业务在泽西岛以外的一个国家或地区进行集中管理和控制，并且该国家或地区可对任何法人团体就其收入的任何部分按 10% 或以上的税率进行征税；以及

(b) 该公司在该国家或地区为税务居民；

如果在泽西岛境外注册的法人团体的业务在泽西岛内进行集中管理和控制，则该法人团体将被视为泽西岛的税务居民。泽西岛允许法人实体具有双重税务居民身份。

在泽西岛，对法人团体征收的所得税税率为 0%，但下列情况除外：

(a) 受当地监管的金融服务企业须缴纳 10% 的所得税；

(b) 地方公用事业企业须缴纳 20% 的所得税；以及

(c) 对从泽西岛房地产租赁或者泽西岛房地产开发所取得的收入应缴纳 20% 的所得税。

泽西岛不征收资本利得税或其他等效税种。

泽西岛企业可能需要在泽西岛缴纳商品及服务税（目前税率为 5%）。有泽西岛雇员的企业须缴纳社会保险费，并从雇员的薪酬中代扣代缴其社会保险费与所得税。截止本报告撰写之时，雇主的社会保险费缴费费率如下：根据雇员每个自然月的收入，£4,094 以内的那部分，费率为 6.5%，£4,094 与£13,542 之间的那部分，则费率为 2%。

15. 在您所在司法管辖区，竞争法如何对公司进行规范？

泽西岛具有发达的竞争法制度，该制度涵盖了下列事项：

(a) 滥用市场支配地位；

(b) 反竞争行为；以及

(c) 合并与收购。

泽西岛竞争法适用于在或者从泽西岛境内进行业务经营的所有人，不论是泽西岛公司、外国法人团体还是其他企业形式（包括个人）。

在泽西岛，与竞争事宜有关的主要立法是2005年《竞争（泽西岛）法》(Competition (Jersey) Law 2005，简称“Jersey Competition Law”)，且其对应的监管机构为泽西岛竞争监管局（简称“JCRA”）。泽西岛竞争监管局已为泽西岛《竞争法》的适用制定了各项指引，且泽西岛《竞争法》要求泽西岛竞争监管局及泽西岛法院尽量确保在处理竞争产生的问题时采用的处理方式与欧盟法下对同类问题的处理方式一致。

如果一项合并或收购处于泽西岛《竞争法》监管范围内，而且达到或超过2010年《竞争（合并与收购）（泽西岛）法令》(Competition (Mergers and Acquisitions) (Jersey) Order 2010）所规定的特定指标，则该项合并或收购需要经过泽西岛竞争监管局的事先批准。该等指标归纳如下：

(i) 创造或提高了当地25%或以上的供应份额或购买力（“横向”兼并）；

(ii) 与在世界上任何地方拥有当地25%或以上的供应份额或购买力的企业建立垂直关系（“纵向”兼并）；以及

(iii) 一方或多方拥有当地40%或以上的供应份额或购买力的情形（“混合”兼并），但存在某些例外情形。

泽西岛的合并与收购制度是强制性的，因为如果未取得所要求的批准，除了存在被罚款的可能性之外，对于位于泽西岛的财产的所有权也不能过户。

泽西岛竞争监管局被授予了泽西岛《竞争法》所规定的诸多调查权力。

16. 在您所在司法管辖区，公司应了解的知识产权主要有哪些？

泽西岛法律承认并规定的知识产权类型与大多数遵守现代公约的司法管辖区在这方面的规定基本相似，包括著作权、其他未注册的知识产权、商标、专利和已注册的外观设计权。

泽西岛的专利、商标和外观设计注册登记簿“依赖于”英国的注册登记簿，这是说，只有已在英国进行首次注册的知识产权才有可能在泽西岛的那些注册登记簿上注册。商标、已注册的外观设计或专利在泽西岛注册的过程中，必须提供在英国注册的核证副本。

17. 在您所在司法管辖区，是否存在规范数据隐私的法律或法规？

在泽西岛，针对数据保护及数据隐私，2005年《数据保护（泽西岛）法》(Data Protection (Jersey) Law 2005，简称泽西岛《数据保护法》）规定了与英国有关立法相类似的框架。泽西岛《数据保护法》特别地界定并规定了处理、披露和转移“个人数据”和“敏感个人数据”的条件和要求，并要求处理这些数据的人员在泽西岛信息专员处进行登记。目前，泽西岛没有任命数据保护官的要求。

泽西岛已经宣布，其意欲更新其数据保护法以保持与《欧盟一般数据保护条例》(EU General Data Protection Regulation，简称“GDPR”）中所规定制度相当的制度。预计泽西岛的新法律的生效时间大约与《欧盟一般数据保护条例》的生效时间一致，即2018年5月25日前后。

18. 是否存在吸引外国公司到您所在司法管辖区的激励措施？

不存在吸引外国公司进入泽西岛的相关激励措施，但泽西岛的公司及个人所得税制度、灵活的公司法律以及作为国际金融中心的领先地位，都使其成为一个对于经商而言具有吸引力的司法管辖区。

19. 在您所在司法管辖区，对公司破产进行规范的法律是什么？

在泽西岛，公司破产通常采取以下形式之一：

(a) 债权人根据泽西岛《公司法》之规定进行清盘；或者

(b) 根据1990年《破产（泽西岛）法》(Bankruptcy (Désastre) (Jersey) Law 199，

简称泽西岛《破产法》）之规定宣告公司财产陷入资不抵债状态。

为启动债权人清盘程序，根据泽西岛法律规定，股东有必要通过一项特别决议以开始进行清盘。债权人清盘与有偿债能力的清盘之间的区别在于，在前者中，董事没有作出有偿债能力清盘所要求的偿付能力声明（或者该公司在有偿债能力的清盘过程中变为无偿债能力）。当债权人清盘程序开始后，必须指定一名清算人，清算人将在该公司被结业前变现资产，处理有关的债务与索赔。

泽西岛《破产法》下的破产制度更加类似于其他司法管辖区中的自愿或非自愿破产程序。有合格主张的债权人（在特定情形下，还包括债务人）可以向法院申请将公司的资产宣告资不抵债；此时，由子爵（泽西岛法庭长官）对这些资产进行管理，并由其在公司被解散之前变卖这些资产并处理有关债务与索赔。

在有些情形下，泽西岛法院会根据泽西岛《公司法》采用公正合理清盘程序，以实施与英国破产接管类似的企业自救程序，但是可以实施该等救济的情形是有限的，而且这是一个尚在发展中的法律领域。

另外，泽西岛还有两个习惯法破产程序：

(a) 别除：即经债权请求人或强制执行债权人之请求，除去在债务人所有的不动产之上所设定的权利负担；以及

(b) 变卖（适用于动产）：即为债权人之利益而将债务人的财产予以变现。

在国际背景下，这些程序比较少见。

最后，泽西岛《破产法》规定，泽西岛法院在破产案件中可以与某些外国法域中的法院进行合作（并且泽西岛法院可以根据法律礼让原则，在个案基础上与其他外国法院进行合作）。对于与泽西岛公司相关的破产案件，也可指定英国破产管理人，具体做法是由泽西岛法院（在收到申请的情况下）请求英国法院作出该等指定。

陷入财务困难的泽西岛公司的董事负有额外的职责与潜在的义务，并且可以被要求采取措施以保护公司债权人的利益。在行使受信义务时（如前述问题 8 所述），无偿债能力或者接近无偿债能力的公司的董事应当考虑债权人的利益。

另外，泽西岛《公司法》与《破产法》的规定旨在当该公司进入债权人清盘程序或者其财产被宣告陷入资不抵债状态时，通过董事可能须承担的责任为债权人提供保护。例如，泽西岛《公司法》与《破产法》各自都规定了有关董事对不当交易（概括而言，即是在无法合理预期能够避免债权人清盘程序或者被宣告资不抵债状态时仍继续进行交易）与欺诈交易（概括而言，即是出于欺骗债权人的意图而继续经营业务）应承担的责任。

还存在一些关于诸如撤销估价过低的交易以及给予某一债权人不正当优先权的交易的规定，以及关于可能由董事所从事的与债权人清盘程序和 / 或被宣告为资不抵债状态相关的某些潜在违法行为的规定。

20. 在您所在司法管辖区，最近是否存在将影响您国公司法的改革提案或监管变化?

泽西岛政府乐于接受业界对泽西岛《公司法》提出的改进建议，并且有些对泽西岛《公司法》提出的修订草案正在商议之中。预计现有提案将不会对泽西岛的公司法产生重大影响，反而会简化现行法律中的某些规定。泽西岛政府与业界也在考虑为泽西岛实体提供任何额外的或替代性的公司结构是否具有益处。

泽西岛适用于合并与收购的竞争制度目前正在审查之中，此外，正如问题 17 所提到的那样，泽西岛的数据保护立法很可能会被修订，以应对即将到来的欧盟法律变更。

21. 关于您所在司法管辖区或者亚洲地区的公司法，是否有任何特点您想特别强调?

泽西岛的公司法与诸多其他司法管辖区的公司法相比更加灵活（特别是以英国公司法为基础的其他司法管辖区）。例如：

(a) 泽西岛的资本维持要求意味着泽西岛很可能比很多其他司法管辖区少了很多“分红障碍”；

(b) 可以将不可赎回股份转换为可赎回股份；

(c) 可以将民法从业人员所认为的“出资”变为泽西岛公司；以及

(d) 鉴于在股本方面的额外灵活性（包括没有法定的优先购买权），可以在泽西岛建立与诸多其他司法管辖区中的法人实体“看起来和实际上”都非常接近的公司，包括诸如特拉华州这样的司法管辖区。

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

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

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

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

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

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

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

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

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

(c) it maintains a bank account;

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

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

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

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

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

(i) it invests its funds or holds property.

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

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

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

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

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

The most common types of companies are:

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

(b) limited life companies;

(c) foreign companies;

(d) protected cell companies.

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

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

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

(a) domestic companies: 3–4 days

(b) foreign companies: 1–2 weeks

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

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

There are no fast-track mechanisms.

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

Domestic companies

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

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

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

Foreign companies – registration

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

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

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

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

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

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

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

Global Business Licence Companies (GBC1/GBC2)

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

Licensing requirements for GBCs are as follows:

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

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

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

(ii) the applicable processing fee;

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

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

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

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

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

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

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

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

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

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

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

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

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

Foreign Companies

A foreign company registered in Mauritius must:

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

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

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

number it shall file a notice of the increase.

GBCs

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

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

Secretary

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Offers to the public

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) an annual revenue exceeding MUR 200 million;

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

(c) at least 50 employees.

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

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

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

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

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

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

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

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

Value Added Tax Act 1988

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

Other taxes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1. 在您所在司法管辖区，外国公司的总体环境如何?

毛里求斯管辖区域相对比较欢迎外国投资者，且对于外国公司而言，在毛里求斯设立营业场所或在毛里求斯开展业务并不困难。

对于毛里求斯境外注册成立的公司，如果在毛里求斯有营业场所或正在毛里求斯经营业务，则必须在公司注册处注册登记为"外国公司"。该外国公司实际上要在毛里求斯设立分公司。

被视为在毛里求斯经营业务的外国公司活动范例如下：

(a) 在毛里求斯新设或者使用股权转让办事处或股权登记办事处；以及

(b) 以代理人、个人代表或受托人的身份，无论通过其雇员或代理人或以任何其他方式治理、管理或处理在毛里求斯的财产。

但是，如果外国公司仅在毛里求斯有如下事项，则不会被视为在毛里求斯经营业务：

(a) 该外国公司是或成为法律诉讼的一方，或者解决法律诉讼、索赔或争议；

(b) 该外国公司召开董事会或股东大会，或者进行与该外国公司内部事务相关的活动；

(c) 该外国公司持有一个银行账户；

(d) 该外国公司通过独立承包商出售财产；

(e) 该外国公司招揽或获取只有在毛里求斯以外接受才能使得合约具有约束力的订单；

(f) 该外国公司产生债务或者设立财产抵押；

(g) 该外国公司为其任何债务提供担保或追讨任何债务，或者执行其与这些债务之担保相关的权利；

(h) 该外国公司进行一项单独交易，该交易在 31 天内完成，而且不属于不时重复进行的那一些类似交易；或者

(i) 该外国公司进行资金投资或持有财产。

外国公司必须于公司注册处核实其目前的名称是否可用于在毛里求斯进行注册；如果是，则该外国公司必须预留其名称。在进行了预留之后，该外国公司会被要求提交一些文件，譬如经认证的公司注册证明文件副本与章程文件、董事名单、毛里求斯注册办事处地址、授权至少两名居住在毛里求斯的个人代表该外国公司接受传票送达与通知的授权书。

或者，外国公司可以在毛里求斯设立全资子公司。除在毛里求斯拥有不动产的这类公司外，在毛里求斯不存在对公司的外资所有权的限制。

2. 在您所在司法管辖区，适用于公司的主要法律法规有哪些?

主要的法律包括 2001 年《公司法》(Companies Act 2001)、2009 年《破产法》(Insolvency Act 2009)、1999 年《独立投资组合公司法》(Protected Cell Companies Act 1999) 和 2004 年《财务报告法》(Financial Reporting Act 2004)。

3. 在您所在司法管辖区，最常见的公司类型有哪些?

最常见的公司类型如下：

(a) 私人或公众公司（股份有限公司或担保责任有限公司或两者兼而有之）；

(b) 存续期有限的公司；

(c) 外国公司；

(d) 独立投资组合公司。

4. 在您所在司法管辖区，建立一家公司需要多长时间？

在毛里求斯成立公司所需的时间将根据公司的类型而有所不同。

根据个人经验，平均的注册或成立时间（视情况而定）如下：

(a) 国内公司：3-4 天

(b) 外国公司：1-2 周

(c) 一类全球营业执照公司（简称“GBC1”）：3-4 周

(d) 二类全球营业执照公司（简称“GBC2”）：2-5 天

没有快速机制。

5. 在您所在司法管辖区，对公司注册的主要要求有哪些？费用如何？

国内公司

申请人必须提交拟任股东、董事与公司秘书的详细资料和同意书。公司注册处提供与此有关的规定表格。如果公司拟制定公司章程（即宪章文件），则亦须提供该章程的复印件，并附有当地法律执业者、法律顾问或律师事务所出具的确认该章程符合当地法律规定的证明书。

此外，如果是担保责任有限公司，还必须同时提交一份经每一名被指定为公司成员的人所签字的或者由该人书面授权的代理人签字的文件，该文件包含该成员之同意，并说明该成员承诺在公司解散清算时向公司提供资产的明确最大数额。

首次注册登记时应缴纳相应费用，然后在每年年底支付年度费用或注册费。

外国公司 – 注册登记

外国公司在毛里求斯设立营业场所或者开始经营业务后的一个月内，必须向公司注册处提交以下文件：

(a) 经依法认证的在其注册登记地或成立地进行登记或成立的证明书副本或者具有类似效力的文件；

(b) 经依法认证的章程、宪章、规章或章程细则或者构成或界定其章程的其他文书的副本；

(c) 一份董事名单以及《公司法》要求应载入公司董事、管理人员及秘书登记簿的类似详细信息；

(d) 董事名单中有人居住在毛里求斯且为该公司当地董事会成员的，经该外国公司依法签署或由代表签署的说明当地董事权力的备忘录。

全球营业执照公司 (GBC1 / GBC2)

设立全球营业执照公司应遵守 2007 年《金融服务法》(Financial Services Act 2007) 的规定，该法规定，拟在毛里求斯境外开展业务的居民企业可以向金融服务委员会（简称“FSC”）申请一类全球营业执照（GBC1）或二类全球营业执照（GBC2）。GBC1 或 GBC2 的注册登记应在取得相关执照后进行。

公司类型	应付费用	
	成立登记（US$美元）	年度登记（US$美元）
私人公司	大概85	260
公众公司	大概387	387
外国公司	大概387	387

全球营业执照公司的许可要求如下：

(a) GBC1 或 GBC2 的申请应通过管理公司提交给金融服务委员会。该申请须经法律执业者、法律顾问或律师事务所认证符合毛里求斯的法律规定，否则无效。

(b) 该申请应通过提交申请表进行，申请表应附带如下文件：

  (i) 申请人拟开展业务的商业计划；

  (ii) 适用的处理费用；

  (iii) 如（a）所述的经法律执业者、法律顾问或律师事务所认证该申请符合毛里求斯法律规定的法律证明书；

  (iv) 客户尽职调查文件的认证副本；

  (v) 注册登记文件，诸如公司章程（如有）、国内公司所用的公司注册表格和证明文件等。

(c) 对于想要取得 GBC2 的公司，将适用同样的程序。但是，申请人只需要提交其拟开展业务的业务纲要，而非商业计划。

公司收到公司注册处的注册登记证书，即被视为在毛里求斯注册成立。

6. 在您所在司法管辖区，公司注册后有哪些主要的报告要求？

您所在司法管辖地对公司注册登记后的主要报告要求有哪些？

营业额超过 2,000 万毛里求斯卢比的国内公司（即非为 GBC1 或 GBC2 的公司），必须：

(a) 在其经审计财务报表签字之日起 28 天期间内向公司注册处提交该报表副本；

(b) 在公司股东年度大会召开之日起 28 天期间内向公司注册处提交年检报告（包含公司某些信息的规定表格，如董事、股东的姓名等）。公司股东年度大会必须在公司资产负债表日期后六个月之内召开；以及

(c) 在转让公司的股份之后，立即向公司注册处提交该文书的经认证副本。

上一会计期间营业额不超过 2,000 万毛里求斯卢比而且非为 GBC1 或 GBC2 的小型私人公司的，可向公司注册处提交一份财务摘要（而不是提交经审计的财务报表）。

GBC1详细信息	适用收费（US$美元）
应向金融服务委员会缴纳的年费	1,750
应向金融服务委员会缴纳的申请处理费	500
应向公司注册处缴纳的年费	大概 300

GBC2详细信息	适用收费(US$美元)
应向金融服务委员会缴纳的年费	235
应向金融服务委员会缴纳的申请处理费	100
应向公司注册处缴纳的年费	65
应向公司注册处缴纳的处理费用	65

外国公司

在毛里求斯注册的外国公司必须：

(a) 在其年度股东大会召开后三个月内，向公司注册处提交其资产负债表的副本，该资产负债表应载有其注册登记地适用于该公司的现行法律所要求附加的细目；如果上述法律不要求编制资产负债表，则提交毛里求斯法律所规定的资产负债表的副本；以及

(b) 提交符合国际会计准则的财务报表，其中该等财务报表公允地显示其在毛里求斯境内进行经营所使用的资产、产生的负债以及利润或损失。

此外，在毛里求斯注册的外国公司必须在以下事项发生变更后一个月内向公司注册处提交变更的详细信息：

- 所提交的章程、宪章、规章、备忘录或细则或者其他文书；
- 公司的董事；
- 授权代理人或其地址；
- 毛里求斯注册办事处的情况，或者其公开营业的时间情况；
- 在其注册登记地或成立地的注册办事处地址；
- 公司的名称；
- 担任当地董事会成员的、在毛里求斯居住的任何董事的权力；
- 外国公司的授权股本的增加（必须提交关于增加前金额以及增加金额的通知）；以及
- 如果没有股本的外国公司在其注册登记数量之外增加公司成员的人数，则应就该等人数增加提交通知。

全球营业执照公司

如同国内公司一样，GBC1 必须向公司注册处提交经其经审计的财务报表。此外，GBC1 必须在其财务年度结束后六个月内向金融服务委员会提交其经审计的财务报表和审计报告。

GBC2 必须在其资产负债表日期后六个月内向金融服务委员会提交年度财务摘要。

公司秘书

除了小型私人公司或 GBC2 之外，每家公司都必须至少有一名公司秘书。公司秘书必须是达到合法年龄以及拥有相应行为能力的自然人，并且公司秘书必须通常居住在毛里求斯并必须具有某些最低限度的资质，例如是法律执业者，或者是特许公司秘书与行政主管协会（简称“ICSA”）或特许管理会计师公会（简称“CIMA”）的成员。

此外，经公司注册处批准并在符合某些特定条件的情况下，公司可以担任公司秘书一职。公司秘书职位的空缺不得超过三个月。

7. 在您所在司法管辖区，是否存在对外国公司的任何控制因素或限制?

除对毛里求斯的不动产存在外国所有权限制之外，在毛里求斯不存在针对外国公司的特别限制或控制因素。

8. 在您所在司法管辖区，公司的典型董事结构（或家族式管理结构）以及责任问题是怎样的?

公司的业务和事务由董事会进行管理或者由董事会进行指导或监督。董事可能包括一名“影子”或事实上的董事。

公众和 / 或上市公司董事会将一定权力授予董事会的委员会（如审计委员会、投资委员会、公司治理委员会等）是很常见的做法。若具有如下情形，则董事会不对委员会的行为负责：

(a) 董事会在行使权力之前的任何时候始终具有合理理由认为，委员会会行使与《公司法》和本公司章程所规定的董事职责相适应的权力；以及

(b) 董事会已适当采取合理方式来监督委员会的权力行使。

董事有义务依法行事，诚实且善意地为公司的最大利益以及为该等权力明示或默示包含的目的而行使其权力。董事有义务行使合理审慎之人在类似情况下会行使的该等谨慎、勤勉和技能。

9. 在您所在司法管辖区，建立公司所要求的最低董事及股东人数是多少？是否存在董事必须是自然人的任何要求？

每一家在毛里求斯注册成立的公司都必须至少有一名通常居住在毛里求斯的自然人董事，并且应至少指定一名股东。

只有 GBC2 可能有一名公司董事。另外，因为税收归属问题，GBC1 往往至少有两名本地董事。

外国公司不需要有任何本地董事。但是，他们至少需要两名由本地自然人担任的代理人。

10. 在您所在司法管辖区，对股份发行有哪些要求？

当公司发行股份时，董事会必须确定所发行股份的对价金额，并且必须确保该对价对公司以及所有现有股东而言都是公平且合理的。

可以在公司中发行不同类别的股份，这些股份随附不同的权利、特权、限制和条件。

如果公司发行的股票与现有股份所享有的表决权或分配权同等或优先，这些股份必须首先向现有股份持有人发行，如果现有股份持有人接受该股份要约，则将维持这些股东的相关表决权与分配权。具体取决于公司章程的规定。

公开发售

任何人不得向公众出售证券的要约，除非：

(a) 在要约之时，发行人实际存在；

(b) 该要约通过招股说明书的形式作出，且该招股说明书符合相关证券法律的规定；以及

(c) 金融服务委员会已对该招股说明书进行登记。2007 年《证券（公开发售）条例》(The Securities (Public Offer) Rules 2007) 规定了招股说明书中必须包含的信息。这些信息是投资者及其专业顾问为了能够对证券发行人的资产与负债、财务状况、损益和前景以及附着于该等证券的权利和法律责任进行充分的评估而会合理要求或合理预期在招股说明书中找到的信息。

11. 在您所在司法管辖区，公司应该注意哪些主要的劳动法律法规？劳动法中是否存在任何受到严格监管的方面？

在毛里求斯，管理雇佣关系的重要立法是 2008 年《就业权利法》(简称《就业权利法》)、“2008 年《雇佣关系法》(简称《雇佣关系法》) 以及“2005 年职业健康与安全法”。

法律严格规定了工作中的健康和安全问题，特别是涉及对工人或其他人员有人身伤害风险的活动（例如工业或制造业活动）。

此外，立法往往对月薪不超过 30,000 毛里求斯卢比的工人提供更多的保护。

实践中，往往更经常依赖有关终止雇佣关系的部分。《就业权利法》中关于终止的章节涉及在合同终止后的赔偿金支付、在雇佣关系终止之前应提供的通知以及其他相关的问题。

关于外国公司，1971 年《非公民就业限制法》(Non-citizen Employment Restriction Act 1971) 要求外国人在毛里求斯工作应具有有效的工作许可证或职业许可证。

12. 在您所在司法管辖区，现行的公司治理制度是什么性质的？哪些机构或政府部门监管公司治理？

根据 2004 年《财务报告法》(Financial Reporting Act 2004)，成立了国家公司治理委员会（简称“NCCG”）。除其他职能之外，国家公司治理委员会具有发布《公司治理准则》与指引以及建立对前述准则与指引进行定期评估之机制的职能。

国家公司治理委员会可以由一名主席以及不超过十名的其他成员组成。他们每个人都由负责公司事务的部长任命。每名成员都必须在法律、财务、企业和业务事务方面具有丰富的经验或专业知识。

2016 年《国家公司治理准则》(The National Code of Corporate Governance 2016) 于 2017 年 2 月推出。它适用于被称为“公共利益实体”的实体，其中包括在前两个连续年度内至少具有以下至少两种情形的上市公司和公司或集团公司：

(a) 年收入超过 2 亿毛里求斯卢比；

(b) 资产总值超过 5 亿毛里求斯卢比；或者

(c) 至少有 50 名员工。

13. 在您所在司法管辖区，设立公司是否授予任何类型的居留权？是否存在为取得该等居留权（如适用的话）而须与当地人士（例如您国家的公民）设立合伙或合资企业的方式的任何情形？

在毛里求斯进行公司注册登记时，并不含对居留权的自动授予。

14. 在您所在司法管辖区，公司何时纳税？可能适用于公司的主要税种有哪些？

适用于公司的主要税收法律是 1995 年《所得税法》(Income Tax Act 1995) 和 1998 年《增值税法》(Value Added Tax Act 1998)。在毛里求斯，没有资本利得税。

如果某一公司被视为毛里求斯的税务居民或其具有来自毛里求斯的收入，则该公司应在毛里求斯被征税。在下列情形中，公司的收入被界定为来源于毛里求斯：

(a) 收入来自于毛里求斯，无论该公司是毛里求斯居民企业亦或是其他地方的居民企业；或者

(b) 收入是在公司属于毛里求斯居民企业之时取得的，无论该收入是来自于毛里求斯还是其他地方。

毛里求斯的每家居民企业，亦即在毛里求斯注册成立的或其中央管理层在毛里求斯的公司，都有义务就其应税收入按 15% 的税率缴纳所得税。

1988 年《增值税法》(Value Added Tax Act 1988)

如果出于增值税之目的而在毛里求斯税务局登记的公司提供了一项应税供应，则该公司必须缴纳增值税。现行的增值税税率为 15%。

其他税收

在某些交易中，根据交易的性质，可能适用土地出让税、登记税或印花税。

15. 在您所在司法管辖区，竞争法如何对公司进行规范？

2007 年《竞争法》(Competition Act 2007)（简称“竞争法”）的颁布是为了建立竞争委员会，从而对竞争监管以及其附带和相关的事宜制定更好的规定。

《竞争法》规定并授权竞争委员会根据需要来与有利害关系人士或当事方进行任何听证会，确定是否正在发生或已经发生限制性商业行为，对已认定的反竞争做法裁定其认为适当的惩罚或其他补救措施，以及决定企业应采取什么行动来确保履行此类惩罚或补救措施。

《竞争法》在第三部分做出了关于诸如串通协议和操纵投标之类的限制性商业行为的规定。

《竞争法》还对垄断进行了规定，特别是如下情形所描述的商品或服务的提供：

(a) 30% 或以上的此类商品或服务系由一家企业在市场上提供或收购；或者

(b) 70% 或以上的此类商品或服务系由不超过三家企业在市场上提供或收购。

16. 在您所在司法管辖区，公司应了解的知识产权主要有哪些？

毛里求斯的法律对著作权、专利、工业外观设计、标识（即商标、商号、服务标识和集体商标）、集成电路的布局设计和地理标志提供保护。

毛里求斯是众多知识产权公约的缔约国，包括《保护工业产权巴黎公约》(Paris Convention for the Protection of Industrial Property)、《保护文学和艺术作品伯尔尼公约》(Berne Convention for the Protection of Literary and Artistic Works) 以及《建立世界知识产权组织公约》(Convention

Establishing the World Intellectual Property Organization）。

17. 在您所在司法管辖区，是否存在规范数据隐私的法律或法规？

的确，鉴于被用来获取、传输以及利用、记录或存储与个人有关的数据的技术的发展，为保护个人的隐私权而颁布了 2004 年《数据保护法》(Data Protection Act 2004)（简称“DPA”）。

2004 年《数据保护法》强调数据的处理、数据控制机构的义务以及数据主体的权利。

2004 年《数据保护法》还规定，除第八部分中列出的豁免机构外，2004 年《数据保护法》适用于符合如下条件的数据控制机构：

(a) 在毛里求斯设立并在此背景下处理数据；以及

(b) 虽未在毛里求斯设立，但为数据处理而非借毛里求斯过境之目的而在毛里求斯使用设备。

18. 是否存在吸引外国公司到您所在司法管辖区的激励措施？

没有吸引外国公司到毛里求斯开展业务的具体激励措施。

19. 在您所在司法管辖区，对公司破产进行规范的法律是什么？

2009 年《破产法》(Insolvency Act 2009)（简称“IA”）是规范与个人破产、公司破产、破产时的资产分配以及相关事宜的法律。它规定了公司进入管理、清算或清盘和相关问题的机制与监管框架。

2009 年《破产法》为公司的自愿管理、接管和清算确立了立法基础。

2009 年《破产法》是在新西兰破产法律专家的协助下编写的，并广泛借鉴了新西兰所适用的制度。

20. 在您所在司法管辖区，最近是否存在将影响您国公司法的改革提案或监管变化？

目前未有对 2001 年《公司法》(Companies Act 2001）提出改革。

21. 关于您所在司法管辖区或者亚洲地区的公司法，是否有任何特点您想特别强调？

毛里求斯的《公司法》是以新西兰的 1993 年《公司法》(Companies Act 1993）为基础的。而新西兰的 1993 年《公司法》是受英国公司法启发的。作为英联邦国家，毛里求斯遵循普通法原则，从业人员在解释立法或判例法时可以援引英格兰和澳大利亚的判例法。

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Mayne Wetherell is the law firm of choice for complex and high value foreign direct investment transactions in New Zealand.

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Mayne Wetherell

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

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

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

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

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

(a) be of good character;

(b) have relevant business experience or acumen;

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) information about the directors;

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

(c) the company address;

(d) director and shareholder consent certificates; and

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

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

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

(a) where and when the company is incorporated;

(b) information about the directors;

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

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

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

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

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

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

Annual return

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

Financial statements

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

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

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

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

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

Annual reports

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

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

Tax returns

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

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

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

Company secretary

A company secretary is not required in New Zealand.

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

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

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

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

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

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

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

(b) to exercise powers for a proper purpose;

(c) not to trade recklessly;

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

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

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

(a) to supervise the share register;

(b) to disclose interests; and

(c) to disclose share dealings.

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

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

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

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

A company must have at least one director:

(a) who lives in New Zealand, or

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

Directors must be natural persons.

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

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

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

Mayne Wetherell

Matthew Olsen

Partner, Mayne Wetherell

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

Recent transactions:

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

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

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

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

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

(a) promote collective bargaining;

(b) regulate the operation of unions;

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

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

(e) prescribe basic protections for individual employees.

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

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

(b) a description of the work;

(c) the location of the workplace;

(d) the agreed hours;

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

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

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

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

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

The following legislation also applies to New Zealand employment arrangements:

(a) Human Rights Act 1993;

(b) Parental Leave and Employment Protection Act 1987;

(c) Holidays Act 2003; and

(d) Health and Safety at Work Act 2015.

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

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

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

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

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

Entrepreneur Work Visa

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

To qualify, the applicant must:

(a) provide a detailed business plan;

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

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

Entrepreneur Residence Visa

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

Investor/Investor Plus Visa

People who wish to invest funds in a business and live in New Zealand can apply for residence under Investor/Investor Plus categories.

To qualify for the Investor Visa, the applicant must:

(a) invest at least NZ$3 million over a four-year period in acceptable investments in New Zealand, including equity in a public or private business, bonds or a new residential property development for commercial purposes ('Acceptable Investments');

(b) reside in New Zealand for at least 146 days in each of the last three years of the four-year investment period or 438 days over the entire investment period;

(c) have a minimum of three years' business experience;

(d) satisfy English-language requirements; and

(e) be 65 years old or under.

To qualify for the Investor Plus Visa, the applicant must:

(a) invest at least NZ$10 million over a three-year period in Acceptable Investments in New Zealand; and

(b) reside in New Zealand for at least 44 days in each of the last two years of the three-year investment period or 88 days over the entire investment period.

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

The main types of taxes applicable to companies in New Zealand are income tax and GST:

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

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

There are no comprehensive capital gains tax, gift, stamp, or estate duties in New Zealand.

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

The Commerce Commission ('ComCom') is New Zealand's competition regulator that enforces the Commerce Act.

The Commerce Act applies to both foreign and domestic entities doing business in New Zealand. Penalties for contravening the Commerce Act typically include damages and injunctions.

The ComCom provides guidance on the relevant areas of regulation on its website at www.comcom.govt.nz.

Restrictive agreements and practices

The Commerce Act aims to promote competition in markets within New Zealand. It prohibits certain types of agreements or collective practices, including agreements that:

(a) substantially lessen competition in the market;

(b) exclude or limit dealings with a rival, unless it can be shown that the agreement does not substantially lessen competition; or

(c) fix, maintain or control prices.

Unilateral conduct

Illegal actions by individual businesses under the Commerce Act include a person or business:

(a) taking advantage of a substantial degree of market power for an anti-competitive purpose; or

(b) specifying a minimum price at which goods or services can be sold by someone else (resale price maintenance).

Mergers and acquisitions

The Commerce Act prohibits business acquisitions and other conduct that substantially lessen competition in a market. The Commerce Act applies regardless of whether a foreign entity is involved and does not provide for exemptions for foreign entities. Merging firms can apply to the Commerce Commission for:

(a) clearance of a proposed merger, which will be granted if it is not likely to substantially lessen competition in the market; and/or

(b) authorisation for a merger, where the resulting public benefits outweigh the detriment.

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

New Zealand has a central intellectual property register operated by the Intellectual Property Office of New Zealand, and recognises certain unregistered rights such as copyright, trade secrets and unregistered trade marks.

New Zealand is a signatory to, among others, the Paris Convention, the Agreement on Trade-Related Aspects of Intellectual Property Rights and the Madrid Protocol (a treaty administered by the International Bureau of the World Intellectual Property Organization).

Patents

The main type of patent is a patent of invention. A patent of addition can be granted for improvements or modifications to an invention that is already patented.

An invention is patentable if it:

(a) is a manner of manufacture;

(b) involves a novel and inventive step;

(c) is useful; and

(d) is not excluded under the Patents Act 2013 (e.g. for being contrary to public policy or morality).

Registration protects a patent for 20 years, provided that all fees are paid and there has not been a successful application to revoke its registration.

Trade marks

A trade mark is defined in the Trade Marks Act 2002 as a sign that is capable of being represented graphically and capable of distinguishing one person's goods or services from another's. In addition, a trade mark must not be prevented from registration on any absolute or relative ground, such as being confusingly similar to another mark.

A trade mark term is 10 years. Registration can be indefinitely renewed for further periods of 10 years.

Registered designs

A design is registrable under the Designs Act 1956 if it is novel in New Zealand and can be applied to an article of manufacture, unless the features of design for which protection is sought are dictated solely by the function of the article.

The term of a design registration is 15 years. After the term has expired, the design may be used by any other party.

Unregistered designs

Unregistered designs can be protected by copyright laws.

Copyright

The property right of copyright automatically vests in certain categories of original work. There is no registration system. Generally, copyright in a literary, dramatic, musical or artistic work expires 50 years from the end of the calendar year in which the author dies.

Others

The other main intellectual property rights in New Zealand include:

(a) plant variety rights: these are protected under the Plant Variety Rights Act 1987. Any kind of plant can be registered (excluding algae and bacteria). The register is administered by the Plant Variety Rights Office (which is part of the Intellectual Property Office of New Zealand).

(b) domain names: these can be registered as a trade mark or, as with an unregistered trade mark, gain protection from the tort of passing off and the Fair Trading Act 1986.

(c) confidential information and trade secrets: these are protected by the tort of breach of confidence, the law of contract and employment law.

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

The collection, use and disclosure of personal information is regulated by the Privacy Act 1993 ('Privacy Act') and codes issued by the Privacy Commissioner.

An aggrieved individual who wishes to lodge a complaint must do so with the Privacy Commissioner in the first instance. The Privacy Act sets out information privacy principles that the Privacy Commissioner must take into account in exercising his or her powers, including that personal information must be:

(a) collected for a lawful and necessary purpose;

(b) collected directly from the relevant individual (subject to certain exceptions); and

(c) protected by security safeguards that are reasonable in the circumstances.

The Privacy Commissioner does not have powers to fine or prosecute, and if settlement is not reached between the parties, the Privacy Commissioner can refer the complaint to the Director of Human Rights Proceedings. If the director considers that proceedings can be brought, it will act on behalf of the claimant to initiate proceedings with the Human Rights Review Tribunal. The tribunal can award damages of up to NZ$200,000, and its decision can be appealed to the High Court.

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

Incentives for foreign investors are generally not available in New Zealand. However, ad hoc incentives are available for specific sectors. For example, the Employment Relations (Film Production Work) Amendment Act 2010 secured concessions for a foreign investor by amending employment rules for the film industry.

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

Liquidation

A liquidator may be appointed to a company by:

(a) special resolution (75% or more, or a higher threshold prescribed by the constitution) of the company's shareholders;

(b) the board of directors of the company on the occurrence of an event specified in the company's constitution; or

(c) the court, on the application of certain persons (including a creditor of the company), who may appoint a liquidator if (among other reasons) it is satisfied that the company is unable to pay its debts.

Upon the appointment of a liquidator, the liquidator will have custody and control of the company's assets. The liquidator will realise and distribute the assets or the proceeds from the realisation of the assets in accordance with the order and procedure prescribed by the Companies Act. Subject to certain exceptions, creditors are ranked in the following hierarchy:

(a) secured creditors;

(b) preferential unsecured creditors;

(c) unsecured creditors (distributions to unsecured creditors are to be based on the proportion of debt owed);

(d) shareholders.

Receiver

The appointment of receivers is governed by the Receiverships Act 1993. A receiver is a person who is appointed either under a deed or agreement, or by the court, for the purpose of realising assets or managing the business of a company for the benefit of secured creditors.

A company does not have to be placed into receivership before it can be placed into liquidation. A receiver can also be appointed before or after liquidation proceedings have commenced.

Voluntary administration

A company can enter into voluntary administration, whereby an administrator is appointed by the company, a liquidator, the court or a secured creditor who holds a charge over the whole (or substantially the whole) of that company's property.

The administrator's role is to investigate the company's affairs and form an opinion as to whether it would be in the creditor's interests:

(a) for the company to execute a deed of company arrangement providing for payment towards the creditors' debts;

(b) for the company to be liquidated; or

(c) for the administration of the company to end.

Statutory management

A company may also be placed under statutory management on the recommendation of the FMA. This will occur where the company is

considered to be operating fraudulently or recklessly, including by incurring debts which it is unlikely to be able to pay. The effect of statutory management is to freeze the position of a company so as to preserve the interests of shareholders, creditors and the public, and to have a statutory manager appointed by the New Zealand government to deal with the affairs of the company in a more orderly or expeditious manner.

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

There have not been any recent proposals for reforms or regulatory changes to New Zealand company law which are material. Minor amendments to the Companies Act have come into force from time to time. For example, from 31 May 2017, the Registrar of Companies is conferred the power to remove an overseas company registered in New Zealand from the register of overseas companies in New Zealand, if:

(a) the Registrar is satisfied that the overseas company has ceased to carry on business in New Zealand; and

(b) 20 working days' notice has been given to the public and to the overseas company to object to the removal if the company is still carrying on business in New Zealand.

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

New Zealand has a small but active capital market. NZX Limited operates New Zealand's registered securities exchange with:

(a) a main equities market (New Zealand Stock Market);

(b) an equities market for growth companies (NXT Market); and

(c) a debt market (New Zealand Debt Market, for bonds and fixed-income securities).

An offer of financial products (including shares and debt securities) must comply with the FMCA (New Zealand's key financial markets regulation), including:

(a) Information about 'regulated offers' must be disclosed in a product disclosure statement and the Disclose Register. Together, this information must include all material information about the offer of a financial product and be up-to-date, accurate and understandable.

(b) Exclusions to this requirement include offers made to close business associates, wholesale investors, employee incentive schemes and small offers (NZ$2 million from 20 investors in any 12-month period).

The FMCA also provides for crowd-funding providers and peer-to-peer lending providers to apply for licences from the FMA. Licensed crowd-funders and peer-to-peer lenders are able to offer shares or debt securities respectively, without the standard disclosure requirements under the FMCA.

Persons seeking to raise amounts from equity crowd-funding or peer-to-peer lending are subject to a limit of NZ$2 million in a 12-month period, without a product disclosure statement having to be issued.

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1. 在您所在司法管辖区，外国公司的总体环境如何?

总体而言，新西兰对外商投资采取了开放的政策，并且对跨国公司须在新西兰遵守的相关公司法律的要求并不繁重。在世界银行发布的 2017 年经济体营商环境排名中，新西兰在当地监管环境下开设及运营企业的便利程度方面名列第一。

外国投资须经海外投资办公室（以下简称“OIO”）或新西兰其他相关政府部门许可的唯一情况是，该项投资将导致海外人士（或其关联人）从敏感土地和 / 或重要商业资产中获得直接利益，或者取得该等土地和 / 或资产 25% 或以上的所有权和 / 或利益控制权。

“重要商业资产”是指价值超过 1 亿新西兰元的高价值商业资产。“敏感土地”包括海滩或海床、保护区及非城市用地。

所有许可申请均按规定的投资标准考核。申请者必须：

(a) 品行端正；
(b) 拥有相关商业经验或才能；
(c) 能够表明对该项投资的财务承诺；和
(d) 根据新西兰移民法，有资格获得签证或入境许可。

申请敏感土地许可的申请者还须证明其投资将（或有可能）对新西兰有益，并且在某些情形下，这些益处是实质性的、可识别的。

除 OIO 的监管之外，对某些行业进行投资还需要经过行业性的批准。这些审批要求或所有权限制通常对潜在外商投资者实行与国内投资者同等的待遇。

2. 在您所在司法管辖区，适用于公司的主要法律法规有哪些?

1993 年《公司法》(Companies Act 1993)（以下简称“《公司法》”）是新西兰规范公司的法律法规中最为主要的法律。《公司法》规定了有关公司及其关键股东（包括董事、股东与债权人）的权利与义务的主要事项。

3. 在您所在司法管辖区，最常见的公司类型有哪些?

不论是对外国还是国内公司而言，有限责任公司都是新西兰境内最常用的公司结构。

海外实体在新西兰进行投资的常见结构包括新建或收购一家当地子公司，或者为现有海外公司注册一家分支机构。

4. 在您所在司法管辖区，建立一家公司需要多长时间?

公司注册程序方便快捷，并且一旦提交相关信息（详见问题 5），公司几乎立即就可以开始运营。

5. 在您所在司法管辖区，对公司注册的主要要求有哪些? 费用如何?

要设立一家公司，该公司的名称必须首先获得公司登记机构的批准。该公司的基本信息必须通过网上表格予以提供，包括：

(a) 与董事有关的信息；
(b) 股东的详细资料及股份数量；
(c) 公司地址；
(d) 董事及股东的同意证明；和
(e) 公司章程。章程并非强制性的，但对于允许某些公司行为而言非常有用。

此程序可以当天完成，收费极少。

任何在新西兰开展业务的海外公司都必须在新西兰海外公司登记簿上登记成为海外公司，并提供以下信息：

(a) 该公司注册成立的时间与地点；

(b) 关于董事的信息；

(c) 其营业地点，如果营业地点超过一个，则为在新西兰的主要营业地点；和

(d) 在新西兰境内的联系地址及联系人。

海外公司的注册程序通过网上完成，非常简单，收费极少。

欲知更多信息，可访问新西兰公司办公室网站，网址为 www.companiesoffice.govt.nz/companies。

公司必须更新公司登记簿以反映董事信息、公司地址、公司章程及持股情况的任何变化。

6. 在您所在司法管辖区，公司注册后有哪些主要的报告要求？

年检

每年，公司必须在指定的月份提交年检报告（需花费少许费用），以确认一些详细信息（包括公司地址、股份数量、谁为股东以及谁为董事）。如果截至到期日仍未提交年检报告，公司将面临从公司登记簿中被除名的风险。

财务报表

某些公司必须每年编制经审计的财务报表，并且必须将其提交给公司登记机构，这些公司包括：

(a) 大型海外公司（资产或收入超过一定门槛的、母公司为海外公司的新西兰公司或在新西兰注册的海外公司）；

(b) 大型公司（资产或收入超过一定门槛的、组建于新西兰境内的公司）；

(c) 股东超过（含）10 人的公司。如果该等公司并非大型国内公司或大型海外公司，且 95% 的股东支持退出该要求的议案，则其可以选择退出该要求，不编制经审计的财务报表。

自 2017 年 5 月 31 日起，如果大型公司或大型海外公司被合并在海外母公司编制的集团财务报表项下，则该大型公司与大型海外公司不再被要求编制经审计的财务报表。

年度报告

大型公司及大型海外公司还必须编制包含《公司法》指定信息的年度报告。自 2017 年 5 月 31 日起，如果经 95% 或以上的股东支持，则该等公司可不再按该要求编制年度报告。

纳税申报

受新西兰税务约束的公司必须向税务局（即新西兰税务机关）提交相关的纳税申报表。该等申报何时必须提交将取决于包括税收类型在内的诸多因素。在新西兰，适用于公司的主要税收类型为所得税以及商品和服务税（以下简称“GST”）：

(a) 所得税适用的税基为公司扣除可抵扣项目后的净收入，税率为 28%。在双重税收协定的规限下，所得税适用的范围为新西兰居民在世界范围内所取得的收入与非新西兰居民在新西兰境内所得收入。提交年度所得税申报的到期日取决于公司的资产负债表日。通常，在税务代理机构登记的纳税人可以申请展期。

(b) GST 适用于新西兰境内某些商品与服务的供应，以及向新西兰出口的某些商品与服务，税率为 15%。GST 申报可以按月进行，也可以两个月或者六个月为频度进行（取决于相关业务的年营业额）。

公司秘书

在新西兰，不要求设置公司秘书。

7. 在您所在司法管辖区，是否存在对外国公司的任何控制因素或限制？

在新西兰境内开展业务的海外公司必须在新西兰公司办公室进行登记。为完成登记，海外公司必须提供关于其股东的详细资料与在国外注册登记的证据，并且拥有至少一名 / 家被授权代表该海外公司接收送达文件的新西兰居民或组建于新西兰的公司。

Mayne Wetherell

Matthew Olsen

合伙人，Mayne Wetherell

Matthew是Mayne Wetherell律师事务所的一位公司法合伙人。Matthew在一系列公司活动领域具有丰富的经验，包括国内和国外并购、合资企业和资本市场，尤其专注于外商直接投资。

近期交易：

- 作为代表律师，参与环球罗宾娜公司（Universal Robina Corporation）以7亿新西兰元收购太平洋股权合伙公司(Pacific Equity Partners)持有的格瑞芬斯食品公司（Griffin's Foods）股权，和以6亿新西兰元收购澳大利亚零售品牌公司（Snack Brands Australia）的交易。
- 作为代表律师，参与由科尔伯格-克拉维斯集团（KKR）、瓦德投资管理合伙公司（Varde Partners）和德意志银行（Deutsche Bank）组成的联合体收购通用资本（GE Capital）价值80亿新西兰元的消费者贷款业务，以及参与贝恩资本（Bain Capital）和德意志银行收购通用资本的商业金融资产组合的交易。
- 在泰格尔食品公司（Tegel Foods）首发上市（IPO）过程中，为中间资本集团（Intermediate Capital Group）提供法律咨询。
- 为德州太平洋集团（TPG）收购Inghams公司及之后Inghams在澳大利亚证券交易所上市提供法律咨询。
- 代表澳大利亚伦普利澳洲公司（Lempriere Australia），参与同卡瓦利洗毛厂（Cavalier）的合并，以及对卡瓦利羊毛洗涤业务资产的剥离。

经登记的海外公司必须在任何书面通讯与文件中均使用其全名及注册登记地址，在公司章程、董事、营业地点或地址发生任何变更后的 20 日内通知公司登记机构，并且提交年检报告。

8. 在您所在司法管辖区，公司的典型董事结构（或家族式管理结构）以及责任问题是怎样的？

公司董事会结构因公司股权结构而异。例如，如果该公司为全资子公司，则董事可由其控股公司予以任命；如果该公司拥有多名股东，则每位股东均可任命董事（一些公司也会选择任命一名或多名独立董事）。如果公司通过普通决议（即股东的简单多数）以外的方式任命董事，则必须在公司章程中规定董事的任命方式。

根据《公司法》，董事对公司具有如下受信义务：

(a) 为公司的最大利益而善意行事；

(b) 为正当目的行使权力；

(c) 不得盲目进行交易；

(d) 依照一个理性的董事在相同情况下会行使的谨慎、勤勉和技能行事；和

(e) 与使用公司信息有关的义务。

此外，董事对公司和直接对股东负有如下义务：

(a) 监管股份登记；

(b) 披露利益关系；

(c) 披露股份交易情况。

对于违反非直接向股东承担的义务的行为，股东可以提起派生诉讼。违反上述任何义务的救济方式包括禁令、遵守令及损害赔偿。

董事违反《公司法》或相关公司章程所规定的管理职责，以及直接或间接故意违反 1986 年《公平贸易法》(Fair Trading Act 1986) 或 1986 年《商业法》(Commerce Act 1986) (以下简称《商业法》) 的，须承担责任。

9. 在您所在司法管辖区，建立公司所要求的最低董事及股东人数是多少？是否存在董事必须是自然人的任何要求？

公司必须至少拥有一名符合如下情况之一的董事：

(a) 居住在新西兰；或

(b) 居住在澳大利亚，同时也是澳大利亚公司的董事。

董事必须是自然人。

公司必须至少有一份股份和必须至少有一位股东。

10. 在您所在司法管辖区，对股份发行有哪些要求？

在公司章程的规限下，董事会可以在任何时候发行其认为合适的任何数量的股份。如果发行的股票与已发行股票在投票权或分配权方面地位相等，将适用《公司法》所规定的优先购买权制度，除非公司章程另有规定。董事会必须确定对公司及现有股东而言公平合理的股份发行对价及条款。

股份发行可能受 2013 年《金融市场行为法》(Financial Markets Conduct Act 2013) (以下简称“FMCA”) 的规限。FMCA 就受监管的发行行为规定了明确的披露要求，包括提交产品披露声明的义务。在某些情形下，发行行为将被免除披露要求，包括投资者为合格投资者的情形。

11. 在您所在司法管辖区，公司应该注意哪些主要的劳动法律法规？劳动法中是否存在任何受到严格监管的方面？

2000 年《雇佣关系法》(Employment Relations Act 2000) 是规范新西兰境内雇员与雇主之间关系的主要法律。其目标是：

(a) 促进集体谈判；

(b) 规范工会运作；

(c) 解决雇佣关系中固有的权力不平等问题；

(d) 提供个人申诉及争议的框架；和

(e) 规定对个人雇员的基本保护措施。

根据 2000 年《雇佣关系法》(Employment Relations Act 2000)，每位雇员都必须签订书面雇佣合同。个人雇佣合同必须至少包含如下信息：

(a) 雇主与雇员的名称 / 名字；

(b) 工作内容描述；

(c) 工作场所的位置；

(d) 商定的工作时间；

(e) 薪酬及支付方式；

(f) 关于如何解决雇佣关系问题的通俗解释；和

(g) 解释在业务被出售或转让时应遵循程序的雇员保护规定。

某些规定已于法律条文中默示，无需纳入劳动合同（除非双方试图提供高于最低标准的规定），包括休息和休假的权利。

集体雇佣合同适用于作为工会成员的雇员，由工会与雇主签订集体协议。受集体协议约束的雇员可以与雇主达成附加的雇佣条款。

下列法律法规也适用于新西兰境内的雇佣关系安排：

(a) 1993 年《人权法案》(Human Rights Act 1993)；

(b) 1987 年《育儿假和雇佣保护法》(Parental Leave and Employment Protection Act 1987)；

(c) 2003 年《假期法》(Holidays Act 2003)；和

(d) 2015 年《职业安全健康法》(Health and Safety at Work Act 2015)。

12. 在您所在司法管辖区，现行的公司治理制度是什么性质的？哪些机构或政府部门监管公司治理？

公司办公室（商业、创新及就业部的组成部分之一）与金融市场管理局（简称“FMA”）是共同负责监管新西兰境内公司治理的政府机构。FMA 推动和促进新西兰发展公平、有效和透明的金融市场。

如果公司是上市公司，新西兰证券交易所有限公司也负责根据《新西兰证券交易所上市规则》对其公司治理进行监管。《新西兰证券交易所上市规则》要求发行人在其年度报告中披露其公司治理原则与《新西兰证券交易所公司治理最佳实践规范》所规定原则有多大程度的实质性差别。

13. 在您所在司法管辖区，设立公司是否授予任何类型的居留权？是否存在为取得该等居留权（如适用的话）而须与当地人士（例如您国家的公民）设立合伙或合资企业的方式的任何情形？

在新西兰设立一家公司，其本身并不具有也不创设任何居留权。但是，新西兰的签证制度为在新西兰运营企业或进行投资的海外人员提供了各种选择。

企业家工作签证

希望在新西兰经营业务的人士可以申请企业家工作签证。企业家工作签证的持有者最初可以在新西兰进行为期 12 个月的业务经营，一旦开始采取行动设立企业，则可以获得 24 个月的展期。

要符合该签证的资格，申请者必须：

(a) 提供一份详细的商业计划；

(b) 至少获得 120 分移民新西兰的资格积分；以及

(c) 投资其业务的资金至少为 100,000 新西兰元（在科学或信息和通信技术领域，该项资本要求可以免除）。

企业家居留签证

一旦获得企业家工作签证的人士经营其企业已达两年（或者在其满足额外条件时，该期限为六个月，包括已在新西兰投资 500,000 新西兰元并且创造至少 3 个新工作机会），则亦将有资格申请企业家居留签证，该签证将允许这类人士及其家人无限期地在新西兰居住、工作与学习。

新西兰普通 / 高额投资者签证

希望在新西兰进行业务投资并居住的人士可以根据普通 / 高额投资移民签证类别的相关规定申请居留。

要符合普通投资移民签证的资格，申请者必须：

(a) 在四年的期间内投资于新西兰所认可投资项目的投资额至少为 150 万新西兰元，包括投资公众或私人企业股权、债券或商业目的的新建住宅开发（统称为“认可的投资项目”）；

(b) 在四年投资期间的后三年中，每年至少在新西兰居住 146 天；

(c) 拥有至少 100 万新西兰元的结算资金和 / 或资产；

(d) 拥有至少三年的商业经验；

(e) 满足英语水平要求；以及

(f) 年龄在 65 岁及以下。

要符合高额投资移民签证的资格，申请者必须：

(a) 在三年的期间内投资于新西兰认可的投资项目中的投资额至少为 1,000 万新西兰元；以及

(b) 在三年投资期间的后两年中，每年至少在新西兰居住 44 天。

14. 在您所在司法管辖区，公司何时纳税？可能适用于公司的主要税种有哪些？

在新西兰，适用于公司的主要税种为所得税与 GST：

(a) 所得税适用的税基为公司扣除可抵扣项目后的净收入，税率为 28%。根据双重税收协定，所得税适用的范围为新西兰居民在世界范围内所取得的收入与非新西兰居民在新西兰境内所得收入。提交年度所得税申报的到期日取决于公司的资产负债表日。通常，在税务代理机构登记的纳税人可以申请展期。

(b) GST 适用于新西兰境内某些商品与服务的供应，以及向新西兰出口的某些商品与服务，税率为 15%。GST 申报可以按月进行，也可以两个月或者六个月为频度进行（取决于相关业务的年营业额）。

新西兰无综合性资本利得税、赠与税、印花税或遗产税。

15. 在您所在司法管辖区，竞争法如何对公司进行规范？

在新西兰，商务委员会（简称“ComCom”）是实施《商业法》的竞争监管机构。

《商业法》适用于在新西兰从事经营活动的外国及国内实体。违反《商业法》的典型惩罚措施包括赔偿和禁令。

ComCom 在其网站提供了相关领域的监管指引，详见网址 www.comcom.govt.nz。

限制性协议及行为

《商业法》旨在促进新西兰境内市场的竞争。其禁止某些类型的协议或集体行为，包括具有如下性质的协议：

(a) 大幅减少市场竞争；

(b) 排除或限制与竞争对手的交易，除非可以证明该协议没有实质性地减少竞争；

(c) 固定、维持或控制价格。

单方行为

企业在《商业法》下的违法行为包括自然人或企业的以下行为：

(a) 为反竞争之目的滥用市场支配地位；

(b) 确定他人出售商品或服务的最低价格（维持转售价格）。

兼并与收购

《商业法》禁止大幅减少市场竞争的企业收购及其他行为。不论外国实体是否参与，《商业法》均适用，并且并未给予外国实体提供豁免。进行兼并的公司可以向商务委员会申请：

(a) 批准兼并建议，如果兼并不太可能大幅减少市场竞争，批准是会给予的；

(b) 在兼并产生的公共利益大于损害的情形下，授权批准兼并。

16. 在您所在司法管辖区，公司应了解的知识产权主要有哪些？

新西兰设有由新西兰知识产权局运营的中央知识产权登记处，并且承认某些未经登记的权利，例如版权、商业秘密和未注册的商标等。

新西兰是《巴黎公约》、《与贸易有关的知识产权协定》及《马德里议定书》（由世界知识产权组织国际管理局管理的条约）的签署国之一。

专利

专利的主要类型是发明专利。对已经取得专利的发明所进行改进或修改，可以授予附加专利。

如果一项发明满足下列条件之一，则可被授予专利：

(a) 属于一种制造方法；

(b) 涉及具有新颖性和创造性的步骤；

(c) 具有实用性；和

(d) 未被 2013 年《专利法》(Patents Act 2013) 排除在外（例如，因违反公共政策或道德而被排除在外）。

如果已缴纳所有费用，并且不存在成功的撤销其注册的申请，注册对专利的保护期为 20 年。

商标

在 2002 年《商标法》(Trade Marks Act 2002) 中，商标被定义为能够以图形的形式表达并且能够区别商品或服务来源的标志。此外，不得基于任何绝对或相对的理由来拒绝对商标注册，例如与另一个商标混淆性相似。

商标的保护期为 10 年。商标注册可以无限期地予以展期，每次展期 10 年。

经注册的外观设计

如果一项外观设计在新西兰具有新颖性，并且可被用于制作的物品，则该项设计可根据 1956 年《外观设计法》(Designs Act 1956) 进行注册，除非寻求保护的外观设计的特征仅由物品的功能所决定。

外观设计注册的保护期为 15 年。该期限届满后，该外观设计可被任何他方所使用。

未经注册的外观设计

未经注册的外观设计可受著作权法保护。

著作权

著作权自动归属于某些类别的原创作品，并不存在登记制度。一般而言，文学作品、戏剧作品、音乐作品或艺术作品的著作权保护期限为作者的有生之年至其死亡后第 50 个日历年度的年末。

其他权利

在新西兰，其他主要的知识产权包括：

(a) 植物新品种权：这些权利受 1987 年《植物新品种权利法》(Plant Variety Rights Act 1987) 保护。任何类型的植物均可被注册（藻类和细菌除外）。该项注册由植物新品种权利办公室（新西兰知识产权局的部门之一）管理。

(b) 域名：这些权利可作为商标注册，或者与未经注册的商标一样，获得假冒行为侵权救济与 1986 年《公平贸易法》(Fair Trading Act 1986) 的保护。

(c) 保密信息和商业秘密：这些权利受违反保密义务的侵权救济、合同法和劳动法的保护。

17. 在您所在司法管辖区，是否存在规范数据隐私的法律或法规？

采集、使用和披露个人信息的行为受 1993 年《隐私法》(Privacy Act 1993)（简称《隐私法》）和隐私委员会发布的准则的规范。

如果一个受侵害的个人欲提出投诉，必须立即先行向隐私保护专员投诉。《隐私法》详细规定了隐私保护专员在行使其权利时必须考虑的信息隐私保护原则，包括个人信息必须：

(a) 以合法且必要的目的进行采集；

(b) 直接向相关个人采集（但存在一些例外）；和

(c) 根据有关环境得到合理的安全保障措施的保护。

隐私保护专员无权罚款或起诉，并且如果双方之间未能达成和解，隐私保护专员可将该等投诉提交给人权事务主任。如果主任认为可提起诉讼，则须代表申诉人向人权审查法庭提起诉讼。法庭可判定最高达到 200,000 新西兰元的损害赔偿，且对法庭的裁决可向高等法院提起上诉。

18. 是否存在吸引外国公司到您所在司法管辖区的激励措施？

总体而言，新西兰并没有针对外国投资者的激励措施。但是，特定行业存在着特设的激励措施。例如，2010 年《雇佣关系（电影制作工作）法修正案》(Employment Relations (Film Production Work) Amendment Act 2010) 通过修改电影行业的雇佣规则，向外国投资者提供了优惠。

19. 在您所在司法管辖区，对公司破产进行规范的法律是什么？

清算

公司的清算人可通过如下方式任命：

(a) 公司股东通过特别决议（75% 或以上，或者章程所规定的更高标准）任命；

(b) 发生公司章程所明确的事件之时，由公司董事会任命；

(c) 如果法院确信公司无力偿还其债务，法院可根据特定人士（包括公司的债权人）的申请而指定。

自清算人被任命时起，该清算人将保管和控制公司的资产。清算人将按照《公司法》规定的顺序和程序变现和分配资产或由资产变现所产生的收益。除某些例外情形外，债权人受清偿的先后顺序如下：

(a) 取得担保的债权人；

(b) 具有优先权的无担保债权人；

(c) 无担保债权人（按公司对无担保债权人所负债务的比例进行分配）；

(d) 股东。

接管人

接管人的任命受 1993 年《接管法案》（Receiverships Act1993）管辖。接管人是指根据契据或协议、或者经法院指定而任命的，为具有担保的债权人之利益而变现资产或管理公司业务的人。

公司在被清算之前，不必进入接管程序。在清算程序开始之前或之后，均可任命接管人。

自愿破产管理

公司进入自愿破产管理程序，由公司、清算人、法院或者对该公司的全部财产（或接近全部）具有担保的债权人指定自愿破产管理程序管理人。

管理人的职责是调查公司的有关事项，并对下述安排是否符合债权人利益作出意见：

(a) 由公司签署一份公司债务安排契据，规定如何向债权人偿付债务；

(b) 对公司进行清算；或者

(c) 终结对公司的破产管理。

法定管理

公司也可根据 FMA 的建议而被置于法定管理之下。法定管理将发生于公司被认为进行了欺诈或盲目经营的情形，包括引起公司很可能无法偿还的债务的情形。法定管理的效果是冻结公司的状态以保护股东、债权人和社会公众的利益，并且由新西兰政府指定法定管理人从而能够以更加有序或迅速的方式处理公司事务。

20. 在您所在司法管辖区，最近是否存在将影响您国公司法的改革提案或监管变化？

最近，未发生针对新西兰公司法的重大改革提案及监管变化。公司法的小修订则不时发生。例如，自 2017 年 5 月 31 日起，公司登记机构有权在下述情况发生时将已在新西兰登记的海外公司从新西兰海外公司登记簿中除名：

(a) 登记机构确信该海外公司已停止在新西兰开展业务；以及

(b) 已提前 20 个工作日通知公众和该海外公司，如果该海外公司仍继续在新西兰境内开展业务，则可以在该期间内对除名提出反对意见。

21. 关于您所在司法管辖区或者亚洲地区的公司法，是否有任何特点您想特别强调？

新西兰有一个规模不大但较活跃的资本市场。新西兰证券交易所有限公司经营新西兰的下列注册证券交易市场：

(a) 主要股票市场（新西兰主板股票市场）；

(b) 成长公司的股票市场（新西兰创业板股票市场）；和

(c) 债务市场（新西兰债券及固定收益证券市场）。

金融产品的发行（包括股票和债券）必须符合 FMCA（新西兰的主要金融市场监管规则）的规定，包括：

(a) 在产品披露声明及披露登记簿中必须披露有关“受监管的发行”的信息。同时，

该信息必须包括与金融产品发行有关的所有重要信息，并且必须是最新的、准确的和可理解的。

(b) 本要求有例外情况，包括向紧密合作的业务伙伴、大额投资者、员工激励计划作出的发行，以及小规模的发行（在任意 12 个月期间内向 20 个投资者募集 200 万新西兰元）。

FMCA 还规定了众筹资金提供者及 P2P 贷款提供者可向 FMA 申请牌照。持照的众筹资金提供者及 P2P 贷款提供者可以分别发行股份或债券，不受 FMCA 所规定的标准披露要求的约束。

企图通过众筹或 P2P 贷款的方式募集资金的人，必须遵守在 12 个月期限内不得超过 200 万新西兰元的限制，但不必发布产品披露声明。

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

Foreign companies in Vietnam in general enjoy similar treatment as their domestic counterparts in terms of commercial presence, incorporation procedures, tax treatment and others. Under the commitments of Vietnam to the WTO and other bilateral treaties, Vietnam undertakes to apply full 'national treatment' principle to foreign investors to operate in certain service sectors. Specifically, the government provides foreign investors with guarantees in respect of the following:

(a) asset ownership;

(b) business and investment activities;

(c) remittance of assets of foreign investors to overseas;

(d) the government's guarantees for a number of important projects; and

(e) investment guarantees in the event of changes in laws.

However, Vietnam still maintains certain restrictions which are unfavourable to foreign companies in a number of industries. For example:

(a) Foreign-controlled companies must, regardless of which business sectors they operate in, follow the investment procedure applicable to foreign investors when:

  (i) it sets up a new company;

  (ii) it acquires shares in existing domestic companies; and

  (iii) it enters into Business Cooperation Contracts.[1]

(b) Foreign investors are subject to certain limitations with regard to foreign ownership, e.g. the form of investment, scope of business and qualifications of specialists (see question 7).

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

The main laws and regulations that govern company law in Vietnam are as follows:

(a) The Law on Investment of the National Assembly dated 26 November 2014 (the 'LOI');

(b) The Law on Enterprises of the National Assembly dated 26 November 2014 (the 'LOE');

(c) Decree 78/2015 of the Government dated 14 September 2015 on enterprise registration;

(d) Decree 96/2015 of the Government dated 19 October 2015 implementing the LOE ('Decree 96/2015'); and

(e) Decree 118/2015 of the Government dated 12 November 2015 guiding a number of articles of the LOI ('Decree 118/2015').

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

Under the LOE, the following are the four main corporate structures:

(a) limited liability companies ('LLCs');

[1] Article 23.1 of the Law on Investment of the National Assembly dated 26 November 2014

(b) joint stock companies ('JSCs');

(c) incorporated partnerships; and

(d) private enterprises (i.e. sole proprietorships).

LLCs and JSCs appear to be the most popular structures for foreign investors who wish to set up a joint venture company with a local partner or a wholly foreign-owned company. The table below compares an LLC with two or more members/investors being the equity holders (the 'Multi-Member LLC') and a JSC:

	Multi-Member LLC	JSC
Members/ Shareholders	• At least two members. • No more than 50 members.	• At least three shareholders. • No restriction on the maximum number of shareholders.
Capital	• The equity capital is not divided into shares or stocks. • An LLC is not entitled to issue shares.	• The share capital is divided into shares of equal value. • Entitled to issue shares for the purpose of raising capital.
Legal entity status	It has legal entity status from the date of issuance of the Enterprise Registration Certificate ('ERC').[2]	It has legal entity status from the date of issuance of the ERC.[3]
Capital contribution	Members/investors have to make full capital contribution within 90 days after the issuance of the ERC.	Shareholders must pay in full for the shares which they have subscribed within 90 days from the date of issuance of the ERC.
Pre-emptive right	Transfer of equity/Charter capital by a member is subject to the pre-emptive rights of the other members.	Not applicable.
Lock-up period	Not applicable.	Within the first three years of establishment, the founding shareholder(s) can only transfer their shares to a party which is not a founding shareholder if so approved by the General Shareholders' Meeting (the 'GSM').

[2] Article 47.2 of the LOE

[3] Article 110.2 of the LOE

	Multi-Member LLC	JSC
Liability	Liable to debts and other obligations of the company in proportion to the capital contributed or committed to contribute into the LLC.	Liability for debts and other liabilities of the company is limited to the amount of capital contributed.
Structure of organisational management	The Members' Council ('MC') is the highest decision-making body.	• GSM is the highest decision-making body. • The board of management ('BOM') is the management body.
	A General Director (or Director) is obliged to run the day-to-day business operations and is responsible before MC. A board of controllers is required if the LLC has 11 or more members/investors.	A General Director (or Director) manages the day-to-day business operations under the supervision of BOM and is responsible before BOM. A board of controllers is required if the JSC has more than 11 individual shareholders or has institutional shareholders together holding more than 50% of total share capital.[4]
Quorum rules	• An MC meeting is quorate if attendants represent at least 65% of the Charter capital.[5] • If a quorum is not met at the first meeting, the second meeting is quorate if attendants represent at least 50% of the Charter capital. • If the quorum is not met in the second meeting, the third meeting is deemed to be quorate regardless of the attendants.	• A GSM is quorate if attendants represent at least 51% of the total shares.[6] • If a quorum is not met at the first meeting, the second meeting is quorate if attendants represent at least 33% of the total shares.[7] • If the quorum is not met in the second meeting, the third meeting is deemed to be quorate regardless of the attendants.
Approval thresholds	MC decisions shall be approved at a meeting by votes representing at least 65% of the aggregate capital of	• GSM decisions shall be approved by shareholders representing at least 51% of the total voting shares of all attendants or at least

	Multi-Member LLC	JSC
Approval thresholds (cont.)	the attendants or at least 75% if such decisions are related to certain key corporate issues.[8]	65% if such simpledecisions are related to certain key corporate issues.[9] BOM decisions shall be approved by a simple majority of its members.
Voting rights	Vote in proportion to capital share.[10]	One ordinary share will be conferred one vote.
	No voting preference.	• Voting preference shares are given more votes than ordinary shares. • The number of votes given to such shares is specified in the JSC Charter.

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

At law, the timeline for a foreign investor to incorporate a company in Vietnam takes 18–58 business days:

In practice, the timelines below may vary significantly since the licensing authority has wide discretion to decide whether the application documents are sufficient and whether additional information or clarification is needed. Furthermore, the licensing authority may need to obtain 'internal opinions' from specialised authorities before issuing the in-principle approval, which inevitably lengthens the licensing process.

	Procedure	Timeline[11]
(a)	Incorporation of company which does not require in-principle approval	18 business days
(i)	Investment Registration Certificate ('IRC')	15 business days
(ii)	ERC	3 business days

4 Article 134.1(a) of the LOE
5 Article 59.1 of the LOE
6 Article 141.1 of the LOE
7 Article 141.2 of the LOE
8 Article 60.3 of the LOE
9 Article 144 of the LOE
10 Article 50.2 of the LOE
11 Estimated timeline is counted from the date when the licensing authority receives the proper application documents.

	Procedure	Timeline[11]
(b)	Incorporation of company which requires in-principle approval	43–58 business days
(i)	In-principle approval by the National Assembly	No statutory timeline
	In-principle approval by the Prime Minister	50 business days[12]
	In-principle approval by a provincial People's Committee	35 business days
(ii)	IRC	5 business days[13]
(iii)	ERC	3 business days

5. What are the main registration requirements for companies in your jurisdiction? What are the fees?

IRC

Before setting up a company, the foreign investor must propose an investment project and apply for an IRC.[14]

In-principle approval

Subject to the scope and nature of the investment project, the foreign investor in some cases must obtain an in-principle approval from a relevant authority before obtaining an IRC. An in-principle approval is one deciding that the relevant project will be licensed.[15]

Investment deposit

For investment projects involving the lease or allocation of land from the government which requires the conversion of the land use purpose, the foreign investor will have to make a deposit. The deposit ranges from 1% to 3% of the project investment capital, depending on the nature and size of the project.[16]

Online registration

Investors are required to register online at the 'National Portal on Foreign Investment' prior to submitting an application for an IRC.

Application dossiers

An application file for the IRC including documents prescribed by laws will be submitted to the relevant provincial Department of Planning and Investment.

ERC

After an IRC has been issued, the foreign investor may proceed to apply for an ERC from the Business Registration Agency. The ERC certifies the incorporation of a company.

6. What are the main post-registration reporting requirements for companies in your jurisdiction?

Reporting obligations

Any post-incorporation amendment to the company's Enterprise Registration Content requires registration with or notification to the Business Registration Agency. The authority has three days to decide whether to accept or reject the request for registration or the notification.[17]

12 Article 33.2 of the LOI
13 Articles 30.6 and 31.8 of Decree 118/2015
14 Article 22 of the LOI
15 Articles 31, 32, 33, 34 and 35 of the LOI
16 Article 42 of the LOI
17 Articles 31 and 32 of the LOE

Company's seal

Newly incorporated companies can design their own seal but must notify the Business Registration Agency of the seal's design where the headquarters is located for public viewing of the National Business Registration Portal.[18]

Company secretary

This is not specifically required by Vietnamese laws.

7. Are there any controlling factors or restrictions on foreign companies in your jurisdiction?

Conditional business sectors

Similar to many countries, Vietnam reserves its sovereign right to restrict investment in certain conditional business sectors. Investment projects in conditional business sectors must satisfy certain conditions for reason of national defence and security, social order and security, social ethics, and public health. These conditions are applicable equally to both foreign investors and local investors alike. In addition, Vietnam also reserves its sovereign right to limit foreign investment in certain sectors by imposing particular conditions, such as:

(a) foreign ownership limitation;

(b) form of investment and requirements for Vietnamese partners;

(c) operational details; and

(d) other conditions stipulated in international treaties to which Vietnam is a party.

Regarding treaty-based conditions which Vietnam imposes, the basic conditions are found in the Schedule of Specific Commitments in Services contained in Vietnam's WTO accession package. Less restrictive conditions for foreign investors are available to investors from ASEAN countries under the ASEAN Economic Community framework.

Minimum capital requirements

A minimum Charter capital (which is the share or equity capital registered in a company's ERC) is required in certain businesses, such as banks and real estate business.

In some types of investment projects, the Charter capital of the project company must reach a certain ratio to the total investment capital of the project, e.g. real estate development projects.

Operation licences

Operation licences will be required after an ERC has been issued and before the company commences its relevant business in Vietnam.

Operation licences are required for businesses having a significant impact on the social and national economic interests, such as education, banking and insurance.

Certificate of satisfaction of business conditions

The certificate is to ensure that the company has already satisfied the compulsory requirements for its products or services. For example, a foreign-invested trading company is required to obtain a trading licence.

8. What is the typical structure of directors (or family management structure) and liability issues for companies in your jurisdiction?

The business and operational affairs of a company are mostly under the management of either BOM (with respect to JSCs) or MC (with respect to LLCs). In comparison, BOM and MC may have the same functions, powers and authority as those of the board of directors in other jurisdictions, and each member of BOM/MC should be considered as a director thereof. Generally, members of BOM and MC shall be appointed by shareholders and capital-contributing members, respectively.

BOM in a JSC shall consist of 3–11 members who are elected by the shareholders of the

[18] Article 15.4 of Decree 96/2015

company[19] for a term of five years with no limit on the number of terms.[20] Members of BOM are entitled to elect a member to be the Chairman of BOM to manage the operation of BOM. In an LLC, MC shall consist of all capital-contributing members.[21] Similar to BOM, all members of MC are entitled to elect a member as the Chairman of MC for managing the operation of MC.

In Vietnam, the Chairman and members of BOM, the Chairman and members of MC and the General Director and other directors are collectively defined as the Managers of a company.[22] They are subject to a number of fiduciary duties to the company:

(a) to perform the given rights and obligations in accordance with the applicable laws and the company's Charter;

(b) to act prudently, truthfully, and in the best manner to protect the maximum interest of the company;

(c) to act in the best interest of the company and shareholders; shall not use the company's information, secrets or business opportunities; or misuse the position, power, or assets of the company for self-seeking purposes or serving the interest of other parties; and

(d) to promptly and accurately notify the company of the companies that they and their related persons own or have controlling stakes or shares in.[23]

9. What is the minimum number of directors and shareholders required to set up a company in your jurisdiction? Are there any requirements that a director must be a natural person?

Under the LOE, a single-member LLC is founded by one organisation or individual called the owner. A multi-member LLC is founded by at least two, but no more than 50, individuals and/or organisations being members. A JSC requires at least three individuals and/or organisations being its shareholders for incorporation.

A director of a company must be a natural person who actually runs the general operations of the company. All members of BOM in a JSC are elected by shareholders and must be natural persons.[24] For LLCs, organisational members can perform the rights and obligations in MC only through their authorised representatives who must be natural persons.[25]

10. What are the requirements on how shares are offered in your jurisdiction?

Under the LOE, only JSCs are entitled to issue shares, except where an LCC issues shares in a private placement in order to convert into a JSC.[26] The required conditions on offering shares are based on the form of the share offering and the type of company which offers its shares (i.e. public JSC or non-public JSC). Briefly, the typical requirements for offering shares under Vietnamese laws are set out below.

Private placement

Private placement means a direct placement of shares to professional securities investors or to fewer than 100 non-professional securities

19 Article 143.2(d) of the LOE
20 Article 150.2 of the LOE
21 Article 56 of the LOE
22 Article 18.4 of the LOE
23 Articles 71.1, 83 and 160 of the LOE
24 Article 151.1 of the LOE
25 Article 15.1 of the LOE
26 Article 3.2 of Decree 58/2012/ND-CP of Government dated 28 July 2012 on guiding a number of articles of the law on securities ('Decree 58')

investors, not through the mass media or Internet.[27]

Requirements for a non-public company or an LCC in the case of converting to a JSC:[28]

(a) for a JSC, an offering plan and a plan on the use of proceeds from offering shares must be approved by the GSM. In case of an LCC converting to a JSC, the above plans must be approved by MC or the owner of the company; and

(b) other conditions prescribed in specialised law(s) must be met if the company operates in conditional business sectors.

Requirements for a public company:[29]

(a) an offering plan and a plan on the use of proceeds from offering shares must be adopted by the GSM;

(b) the share offering under a private placement form shall be restricted to sales of at least one year since the date of completing the offering phase, except in certain cases;

(c) the period between the two phases of offering shares shall not be fewer than six months; and

(d) other conditions prescribed in specialised law(s) must be met if the company operates in conditional business sectors.

Public offering

This is the issuance of shares by one of the following methods: offering through mass media; offering shares to more than 100 investors who are not professional investors; or offering shares to an uncertain number of investors.[30]

Under the public offering of shares, the issuing JSC, whether public or non-public, shall satisfy the following conditions:[31]

(a) the Charter capital contributed at the time of registration of the offering shares is at least VND10 billion calculated in the accounts of the issuing JSC;

(b) its business operation in the year preceding the offering year is profitable and, at the same time, it has not accrued any loss up to the offering year;

(c) its offering plan and plan on the use of proceeds from offering have been approved by the GSM; and

(d) the public company registering the securities offered to the public must commit to sending securities to organised stock markets within one year since the end date of the offering phase passed by GSM.

11. What are the key laws and regulations on employment in your jurisdiction that companies should be aware of? Are there any aspects of employment law that are heavily regulated?

The main laws and regulations on employment in Vietnam are as follows:

(a) the Labour Code of the National Assembly dated 18 June 2012, the Law on Trade Unions of the National Assembly dated 20 June 2012, the Law on Health Insurance of the National Assembly dated 14 December 2008, the Law on Social Insurance of the National Assembly dated 20 November 2014, and their implementing decrees and circulars;

(b) the Supreme People's Court's annual practice summaries and guidelines; and

(c) collective labour agreements and internal employment rules of the company.

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27 Article 1.3 of the Law on Amendment of Securities Law of the National Assembly dated 24 November 2010 (the 'Law on Amendment of Securities Law')

28 Articles 4.1 and 4.2 of Decree 58

29 Article 4.3 of Decree 58

30 Article 6.12 of the Law on Securities of the National Assembly dated 29 June 2006 (the 'Law on Securities')

31 Article 12 of the Law on Securities and Article 7 of the Law on Amendment of Securities Law

Generally, Vietnamese labour regulations provide strong protection for employees. The interests and benefits of employees are tendentiously drafted in favour of the employees, particularly on issues relating to unilateral termination or dismissal by the company and the insurance policy. Where the termination or dismissal is for an improper reason or the process is undue, the employer will be obliged to make compensation to the employee and pay penalty to the government.

The labour laws of Vietnam require the compulsory purchase of social, health and unemployment insurances. The obligations to pay those insurance premiums are borne by and split in specific ratios between the employer and the employee. In case of violation, depending on the nature and seriousness of the violation, the government may impose a fine or even criminal liabilities on the company.[32]

If a company recruits foreign employees, it must ensure that work permits are acquired from the labour authority in order for them to work for the company in Vietnam.

12. What is the nature of the corporate governance regime in effect in your jurisdiction? What agencies or government bodies regulate corporate governance?

See question 1 for the corporate structure of a JSC and an LCC. Normally, the GSM and MC are the highest decision-making authorities in a JSC and an LCC, respectively. BOM is obliged to comply with and execute the resolutions of the GSM. However, it also has its own power to make decisions on matters which it is authorised to make under the company's Charter or specifically delegated by the GSM. In addition, the General Director is in charge of the day-to-day business of a company and takes responsibility before the GSM and BOM (in a JSC) or MC (in an LLC).

When applying for incorporation, the corporate governance will be assessed and approved by the relevant government bodies. Normally, when establishing a company, an investor shall submit an application file which includes the corporate governance contents (in the Charter) to the Business Registration Agency. Once in operation, if the company is subsequently converted to a public company, its corporate structure will be subject to further governance by the States Securities Commission of Vietnam.[33] Where a company is a credit institution, its corporate governance shall be under the supervision of the State Bank of Vietnam. Where a company is an insurance company, its corporate governance shall be under the supervision of the Ministry of Finance.[34]

13. Does establishing a company in your jurisdiction grant any kind of residency rights? Are there any conditions that in order to receive these residency rights (if applicable) one must partner or establish a joint venture with a local (e.g. a citizen of your jurisdiction)?

Under the Law on Entry, Exit, Transit and Residence of Foreigners in Vietnam, foreign investors are allowed to apply for a DT visa (a DT visa is issued to foreign investors and lawyers operating in Vietnam).[35] When entering Vietnam, the immigration control unit at border checkpoints will grant a temporary residence permit with its seal affixed in the investor's passport or a separate visa. The validity period of a temporary residence permit under a DT visa is 12 months. For a longer residence period, foreign investors must obtain a

[32] As drafted under Articles 214 and 216 of the Penal Code of the National Assembly dated 27 November 2015

[33] Articles 25 and 26 of the Law on Securities and Article 34 of Decree 58

[34] Articles 22, 37 and 51 of the Law on Credit Institutions

[35] Article 8.7 of the Law on Entry, Exit, Transit and Residence of Foreigners in Vietnam

temporary residence card which has a validity period of up to five years.[36]

There is no regulation that requires a foreign investor to co-operate with a local citizen or set up a joint venture with a local partner in Vietnam in order to have residence rights in Vietnam. To obtain a DT visa, a foreign investor must be invited or sponsored by an organisation or individual in Vietnam. Upon notification from the inviting or sponsoring entity, the investor shall submit his/her passport, application and photos to the overseas visa-issuing authority of Vietnam to obtain a DT visa within three workings days.[37]

To obtain a temporary residence card, the Vietnamese entity which invites or sponsors the foreign investor shall submit dossiers including a written invitation and the investor's passport and DT visa to the Immigration Authority.

14. When is a company subject to tax in your jurisdiction? What are the main taxes that may apply to companies in your jurisdiction?

Companies set up by foreign investors in Vietnam are treated equally as domestic companies in terms of taxes. Below is a list of the various taxes applicable to both domestic and foreign-invested companies under Vietnamese laws:

(a) Value added tax ('VAT') is a tax imposed on the added value of goods or services arising in the process from production, circulation to consumption. VAT is paid monthly. There are cases where VAT is exempted.[38] Other than that, VAT range from 5% to 10% depending on the type of goods or services.

(b) Corporate income tax ('CIT') is a tax imposed on a company's taxable profit and is paid quarterly. The standard CIT rate was reduced from 25% to 22% in 2014 and then to 20% since 1 January 2016.[39]

(c) Import/export duties which apply to imported/exported goods are normally paid before the relevant goods are cleared and released by the customs office.[40] Under the law, import and export duty rates range from 0% to 40%, depending on whether it is import or export and on specific items of goods.

(d) Personal income tax ('PIT') is the tax imposed on incomes earned by individuals in Vietnam. PIT is paid monthly and is finalised by the end of the calendar year. Under the law on PIT, taxpayers include residents and non-residents. While residents are subject to progressive tax rates (with the maximum rate at 35%) on their worldwide income, non-residents are subject to a flat rate of 20% on their income earned from their employment in Vietnam.[41]

15. How does the competition law in your jurisdiction regulate companies?

The competition law in Vietnam[42] governs the activities of business organisations and individuals that manufacture or supply products or services in Vietnam, in relation to 'restraint to competition' and 'unfair competition'.

Activities of 'restraint to competition' are those that reduce, distort or hinder competition in

36 Article 31.1(a) of the Law on Entry, Exit, Transit and Residence of Foreigners in Vietnam

37 Article 17.2 of the Law on Entry, Exit, Transit and Residence of Foreigners in Vietnam

38 Article 9 of Circular 219 of the Ministry of Finance dated 31 December 2013

39 Article 11 of Circular 78 of the Ministry of Finance dated 18 June 2014

40 Article 9.1 of the Law on Import, Export of the National Assembly dated 6 April 2016

41 Article 26 of the Law on Personal Income Tax dated 21 November 2007 (as amended)

42 Law No. 27/2004/QH11 of the National Assembly dated 3 December 2004 ('Law on Competition')

the market, including agreements on restraint of competition, abuse of dominant market position or monopoly position and economic concentration.[43] Activities of 'unfair competition' are those that, throughout a company's business period, are contrary to business ethics, causing or might cause a detriment to the interests of the State and/or the legitimate rights and interests of other companies or consumers.[44]

Individuals or organisations that are found to have committed those acts described above shall be subject to a warning or fine. Depending on the seriousness, additional penalties may be imposed, e.g. withdrawal of the business registration certificate, revocation of the right to use a licence or practising certificate, or confiscation of the means used to commit the act. In addition, measures may be imposed to remedy the consequences, e.g. restructuring, division and separation of companies or removal of illegal terms or conditions from a contract or business transaction. Compensation may also be payable where such act causes loss to the State, an individual or an organisation.[45]

16. What are the main intellectual property rights companies should be aware of in your jurisdiction?

Vietnamese intellectual property law classifies intellectual property rights into three categories: copyright and related rights, industrial property rights, and the right to plant varieties,[46] each of which is administered by a different authority. Companies should take intellectual property rights into account since those rights might have considerable influence on their property.

Copyright is the right of an organisation or individual to works which such organisation or individual has created or owned.[47] Copyright registration is not mandatory in order for the owner to exercise and be entitled to such rights. In other words, the copyright owner shall automatically have legal rights to their creation without having it registered. However, obtaining a Copyright Registration Certificate would exempt the owner from having to prove their right if a dispute arises.[48]

An industrial property right is the right of an organisation or individual to patents, industrial designs, lay-out designs of semi-conductor integrated circuits, trademarks, trade names, geographical indications and trade secrets which they have created or owned. To register an industrial property right in Vietnam, companies holding such right should note the following:

(a) the 'first to file' principle: where two parties apply, the first one who files the application will be awarded the patent;[49]

(b) the priority principle: the applicant shall be able to claim its priority right on the first application for registration the same subject as other applicant provided that fully satisfying specifically legitimate conditions; and

(c) the validity of protected titles applicable to each type of industrial property shall vary.[50]

43 Article 3.3 of the Law on Competition

44 Article 3.4 of the Law on Competition

45 Article 117 of the Law on Competition

46 Article 4.1 of the Law on Intellectual Property 50/2005/QH11 of the National Assembly dated 29 November 2005, as amended by the Law on Intellectual Property 36/2009/QH12 of the National Assembly dated 19 June 2009 ('Law on Intellectual Property').

47 Article 4.2 of the Law on Intellectual Property

48 Article 49 of the Law on Intellectual Property

49 Article 90 of the Law on Intellectual Property

50 Article 93 of the Law on Intellectual Property

17. Does your jurisdiction have laws or regulations that govern data privacy?

Data privacy in Vietnam is governed by the Law on Information and Technology 67/2006/QH11 of the National Assembly dated 29 June 2006 and its guiding regulations (the 'Law on Technology'). It protects the right of technology users and developers to secure data privacy and allows them to collect, process and use information only if approval is obtained from the owner of such information, except in exemption cases.[51] Once personal information has been stored in the network environment, an individual or organisation may request to inspect, correct, or delete their information and claim compensation for damage caused by wrongful supply of their personal information.[52]

The unauthorised access to, use, modification, deletion, and/or distribution of personal or organisational information must be prevented by all possible means. Any data privacy violation shall result in administrative consequences.[53] In addition, foreigners who commit such violation may be subject to such additional punishment as deportation.[54]

Despite the obligations to protect the data privacy of network environment users, the publication of certain information of organisations and individuals who conduct business activities in the network environment is necessary in order to protect their clients, including:

(a) name, location, contact information;

(b) operation licences and/or equivalent documents (if applicable);

(c) name of the competent authority managing the provider (if applicable); and

(d) description of goods or services.[55]

[51] Articles 21.1, 22.2 and 72 of the Law on Technology

[52] Articles 22.1 and 22.3 of the Law on Technology

[53] Article 16.3 of the Law on Technology

[54] Article 54.5 of Decree 174/2013/ND-CP

[55] Article 9.2 of the Law on Technology

18. Are there any incentives to attract foreign companies to your jurisdiction?

To attract foreign investors to Vietnam, investment incentives are provided for foreign investment projects in certain business sectors and locations. In particular, investment incentives provided under the investment laws of Vietnam (for both foreign and domestic investors) include:[56]

(a) lower CIT rates for a particular term or for the entire term of the project, exemption and reduction of CIT;

(b) exemption of import duties; and

(c) exemption or reduction of land rent, land use fees and land use tax.

To qualify for the above incentives, companies (set up by either foreign or domestic investors) must meet one of the following requirements:

(a) the investment project is in a preferential investment business line as regulated under Annex I of Decree 118/2015, such as the production of high-tech ancillary products or of new materials, new energy, renewable energy;

(b) the investment project is conducted in one of the designated preferential investment geographical areas, which are regulated under Annex II of Decree 118/2015;

(c) the investment project carries a total investment capital of at least VND 6,000 billion disbursable within three years from the project registration;

(d) the investment project is in a rural area and employs at least 500 employees; or

(e) the company is a high-tech company, scientific and technological company or organisation.

[56] Article 15.1 of the LOI

19. What is the law on corporate insolvency in your jurisdiction?

In Vietnam, the law on bankruptcy[57] governs the procedures and statutory timing of insolvency of companies, which include credit institutions. A company shall be considered as insolvent if it fails to pay a due debt within three months from its due date.[58] However, an insolvent company shall be regarded as bankrupt only after being declared bankrupt by a competent court, which shall handle such case when it receives a petition for bankruptcy from the insolvent company or its creditor(s) or its employees.

Once a court commences bankruptcy proceedings, any transaction (such as payment of undue debts) made by the insolvent company within six months (or 18 months if transacted with related parties) prior to the date when the court commences bankruptcy proceedings shall be invalid.[59] If no rehabilitation plan is approved by the creditor's meeting, the court shall declare the insolvent entity bankrupt.

20. Have there been any recent proposals for reforms or regulatory changes that will impact company law in your jurisdiction?

Recently, the draft Law Amending Business Laws was introduced for public comments in order to amend a number of articles in business law and other relevant laws. Although there is no official announcement on when the draft law may be proposed and passed by the National Assembly, the draft Law Amending Business Laws would significantly change the business law of Vietnam, e.g.:

(a) the draft Law Amending Business Laws shall adjust Articles 13.1 and 13.2 of the LOI regarding the investment incentives to ensure that investors enjoy not only current incentives as prescribed in the original provisions, but also the same granted rights and interests for the remaining time of their investment projects, should there be any new legal instruments promulgated in the future;[60]

(b) the requirement to have an investment project before setting up the corporate vehicle is removed in the amended provisions of Articles 22.1 and 22.2 of the LOI;[61]

(c) supplementing and amending the scope of investment projects subject to the investment policy of the provincial People's Committees;[62]

(d) projects of listed companies or public companies as registered for trading shall no longer be subject to the issuance of IRC;[63]

(e) simplifying the procedure of establishing companies by making the procedure consistent with LOE provisions instead of specialised laws as prescribed in the current regulation;[64] and

(f) relaxing land restrictions on companies by allowing the land user to sublease the land with lump-sum payment.[65]

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57 The Law on Bankruptcy No. 51/2014/QH13 of the National Assembly dated 19 June 2016 (the 'Law on Bankruptcy')

58 Article 4.1 of the Law on Bankruptcy

59 Articles 40 and 59 of the Law on Bankruptcy

60 Article 1.3 of the draft Law Amending Business Laws

61 Article 1.6 of the draft Law Amending Business Laws

62 Article 1.10 of the draft Law Amending Business Laws

63 Article 1.14 of the draft Law Amending Business Laws

64 Article 2.1 of the draft Law Amending Business Laws

65 Article 3.8 of the draft Law Amending Business Laws

21. Are there any features regarding company law in your jurisdiction or in Asia that you wish to highlight?

The Vietnamese government has set up a plan to restructure State-owned enterprises ('SOEs') in the period 2016–20 under Decision 58/2016/QD-TTg dated 28 December 2016. Under this plan, the State shall equitise 240 SOEs by selling the State capital therein in whole or in part. Accordingly, investors will have an opportunity to broaden their investment opportunities in Vietnam.

The limit on foreign ownership of trading companies in the securities market appears to have been removed. Recently, a number of trading companies (e.g. Vinamilk[66] and Domesco Medical Import-Export JSC) were allowed to remove the cap on foreign ownership while still maintaining their trading business.[67] This would open floodgates for other publicly traded companies to do the same.

Last but not least, in early 2016, the Ministry of Finance published a draft circular guiding the investment activities of share purchase by foreign investors in Vietnamese companies, in a favourable manner towards foreign investors. Article 7.3.4 in the draft circular proposes that preferential shares of JSCs held by foreign investors shall not be counted in the calculation of the limit on foreign ownership in those JSCs. If adopted, the circular will likely encourage foreign buy-outs of shares in domestic JSCs in Vietnam.

[66] http://www.reuters.com/article/us-vinamilk-ownership-idUSKCN0Y716G

[67] http://cafef.vn/domesco-chinh-thuc-noi-room-ngoai-len-100-20160902073813465.chn

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1. 在您所在司法管辖区，外国公司的总体环境如何?

总体而言，在越南的外国公司在商业存在、注册程序、税收待遇以及其他方面，享有与越南国内同行类似的待遇。根据越南对世界贸易组织和在其他双边条约中的承诺，越南承诺对外国投资者在某些服务行业实施全面的“国民待遇”原则。具体而言，政府向外国投资者在如下方面提供保证：

(a) 资产所有权；

(b) 商业和投资活动；

(c) 外国投资者资产的汇出；

(d) 政府对若干重要项目的担保；以及

(e) 法律变更时对投资的保证。

然而，越南仍然在若干行业保留一些不利于外国公司的限制。例如：

(a) 外国控股公司无论在何种行业进行业务经营，都应在如下情形中遵循适用于外国投资者的投资程序：

(i) 设立新公司；

(ii) 收购现有国内公司的股份；以及

(iii) 订立业务合作合同。[1]

(b) 外国投资者在外国所有权方面受到一定限制，例如投资形式、业务范围和专业资格（详见问题 7）。

2. 在您所在司法管辖区，适用于公司的主要法律法规有哪些?

在越南，规范公司法的主要法律法规如下：

(a) 2014 年 11 月 26 日国会《投资法》（即“LOI”，以下简称《投资法》）；

(b) 2014 年 11 月 26 日国会《企业法》（即“LOE”，以下简称《企业法》）；

(c) 2015 年 9 月 14 日《关于企业登记的越南政府法令》（第 78/2015 号）；

(d) 2015 年 10 月 19 日《关于实施 < 企业法 > 的越南政府法令》（第 96/2015 号，以下简称“第 96/2015 号令”）；以及

(e) 2015 年 11 月 12 日《对 < 投资法 > 若干条款进行指导的越南政府法令》（第 118/2015 号，以下简称“第 118/2015 号令”）。

3. 在您所在司法管辖区，最常见的公司类型有哪些?

根据《企业法》之规定，四种主要的公司结构如下：

(a) 有限责任公司（即“LLC”）；

(b) 股份公司（即“JSC”）；

(c) 合伙企业；以及

(d) 私人企业（即独资企业）。

对于希望与当地合作伙伴设立合资企业或设立外商独资公司的外国投资者而言，有限责任公司和股份公司是两种最受欢迎的公司结构。下表对由两名或以上成员 / 投资者作为股权持有人的有限责任公司（以下简称“多位成员有限责任公司”）和股份公司进行了比较：

[1] 《2014年11月26日国会《投资法》第23.1条

	多位成员有限责任公司	股份公司
成员/股东	• 至少两名成员。 • 最多不超过50名成员。	• 至少3名股东。 • 对股东人数的上限没有限制。
资本	• 权益资本不必划分为股份或股票。 • 有限责任公司无权发行股份。	• 股本被划分为具有相同价值的股份。 • 有权以筹集资本为目的发行股份
法人实体地位	自签发企业注册登记证书（即"ERC"）之日起，即具有法人实体地位。[2]	自签发企业注册登记证书之日起，即具有法人实体地位。[3]
实缴资本	成员/投资者须在企业注册登记证书签发后的90天内缴纳全部出资额。	股东须在企业注册登记证书签发后的90天内全额支付其所认购的股份的价款。
优先认购权	公司成员对权益资本/注册资本的转让受到其他公司成员的优先认购权的限制。	不适用。
锁定期	不适用。	在成立之后的三年之内，如果发起人股东将其股份转让给非发起人股东，必须经股东大会（即"GSM"）批准。
责任	按照对有限责任公司实缴或认缴的出资额的比例承担公司的债务及其他义务。	对公司的债务及其他义务所承担的责任以出资额为限。
组织管理结构	成员委员会（即"MC"）是其最高决策机构。	• 股东大会是其最高决策机构。 • 董事会（即"BOM"）是其管理机构。
	董事长（或董事）应负责管理日常的业务运营并向成员委员会负责。	董事长（或董事）在董事会的监督下对日常业务运营进行管理并向董事会负责。
	如果有限责任公司的成员/投资者人数达到11人或以上，则应设立监察委员会。	如果股份公司具有11名以上的个人股东或者具有合计持有全部股本的50%以上的机构投资者，则应设立监察委员会。[4]
法定人数规则	• 如果出席成员委员会会议的成员代表全部注册资本65%以上的份额，则达到法定人数。[5]	• 如果出席股东大会会议的股东代表全部股份51%以上的份额，则即达到法定人数。[6]

2 《企业法》第47.2条
3 《企业法》第110.2条
4 《企业法》第134.1(a)条
5 《企业法》第59.1条
6 《企业法》第141.1条

	多位成员有限责任公司	股份公司
法定人数规则（继上页）	• 如果首次会议未达到法定人数，则当出席第二次会议的公司成员/投资者代表全部注册资本50%以上的份额时，即达到法定人数。 • 如果第二次会议未达到法定人数，则第三次会议被视为达到法定人数，无论出席会议的公司成员/投资者多少。	• 如果首次会议未达到法定人数，则当出席第二次会议的股东代表全部股份33%以上的份额时，即达到法定人数 。[7] • 如果第二次会议未达到法定人数，则第三次会议被视为达到法定人数，无论出席会议的股东多少。
批准门槛	成员委员会决定应由代表出席会议的成员/投资者的全部资本的65%以上的表决票予以通过，此类决定有关某些重要的公司问题时，应由代表出席会议的所有成员/投资者的全部资本的75%以上的表决票予以通过。[8]	• 股东大会决议应由代表全体出席会议股东所持的有表决权股份的51%以上的表决票予以通过，此类决定有关某些重要的公司问题时，应由代表全体出席会议股东所持的有表决权股份的65%以上的表决票予以通过。[9] 董事会决定应由董事会成员的简单多数票予以通过。
表决权	按资本份额的比例进行表决。[10]	一股普通股对应一个表决权。
	无表决权优先票。	• 表决权优先股具有比普通股更多的投票数。 • 给予此类股份的投票数在股份公司章程中进行规定 。

4. 在您所在司法管辖区，建立一家公司需要多长时间?

在法律上，外国投资者在越南注册成立一家公司需要 18-58 个工作日的时间：

实践中，对于决定申请文件是否充分以及是否需要额外的信息或说明，发证机关具有宽泛的酌情处理权，因此上述时间期限可能会存在很大差异。此外，发证机关在做出原则性批准之前，可能需要从专门机构获得“内部意见”，这不可避免地会延长审批过程。

为加快进程，投资者应密切跟进有关部门，并积极采取措施促使专门机构做出“内部意见”。

7 《企业法》第141.2条
8 《企业法》第60.3条
9 《企业法》第144条
10 《企业法》第50.2条

	程序	时限 [11]
(a)	不需要原则性批准的公司注册登记	18个工作日
(i)	投资登记证书(即“IRC”)	15个工作日
(ii)	企业注册登记证书	3个工作日
(b)	需要原则性批准的公司注册登记	43 – 58个工作日
(i)	国会的原则性批准	无法定时限要求
	总理的原则性批准	50个工作日[12]
	省级人民委员会的原则性批准	35个工作日
(ii)	投资登记证书	5个工作日[13]
(iii)	企业注册登记证书	3个工作日

5. 在您所在司法管辖区，对公司注册的主要要求有哪些？费用如何？

投资登记证书

在设立公司之前，外国投资者必须提出投资项目并申请投资登记证书。[14]

原则性批准

根据投资项目的范围和性质，外国投资者在获得投资登记证书之前必须先获得相关部门的原则性批准。原则性批准是决定相关项目获得许可的先决事项。[15]

投资存款

对于涉及从政府租赁土地或由政府分配土地而且需要变更土地用途的投资项目，外国投资者必须存入一笔存款。存款金额从项目投资资金的 1 % 至 3 % 不等，具体取决于项目的性质和规模。[16]

在线注册

在提交投资登记证书申请之前，投资者必须在“国家外商投资门户网站”上进行在线注册。

申请文件

包括法律所规定的文件在内的投资登记证书申请文件，应提交给相关的省级规划与投资部。

企业注册登记证书

在获得签发投资登记证书之后，外国投资者可继续向商业登记机构申请企业注册登记证书。企业注册登记证书是对公司的注册登记予以认证的文件。

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11 预估的时限自发证机关收到适合的申请文件之时开始起算。

12 《投资法》第33.2条

13 第118/2015号令第30.6与31.8条

14 《投资法》第22条

15 《投资法》第31、32、33、34和35条

16 《投资法》第42条

6. 在您所在司法管辖区，公司注册后有哪些主要的报告要求?

报告义务

在公司注册登记之后对公司的企业注册登记证书所进行的任何修改，均须在商业登记机构进行登记或通知商业登记机构。该机构有三天时间来决定是否接受或拒绝登记请求或通知。[17]

公司印章

新成立的公司可以自行设计自己的印章，但必须就该印章的设计向总部所在地的商业登记机构进行通知，以便公众可以通过国家商业登记门户进行查阅。[18]

公司秘书

越南法律并未对公司秘书做出明确要求。

7. 在您所在司法管辖区，是否存在对外国公司的任何控制因素或限制?

附条件的行业

与许多国家类似，越南保留其限制在某些附条件行业投资的主权。基于国防和国家安全、社会秩序和安全、社会伦理以及公共卫生等原因，附条件行业的投资项目必须满足一定的条件。这些条件同样适用于外国投资者和本地投资者。此外，越南还通过施加特殊条件的方式保留其限制某些领域的外国投资的主权，譬如：

(a) 对外国所有权的限制；

(b) 对越南合伙人的投资形式和要求；

(c) 业务细节；以及

(d) 越南作为缔约国的国际条约所规定的其他条件。

关于越南根据条约设定的条件，基本条件见越南加入世贸组织一揽子文件中所包含的服务贸易具体承诺减让表。根据东盟经济共同体框架相关规定，对来自东盟国家的外国投资者的限制条件相对较少。

最低资本要求

在某些业务中，有最低注册资本（即在公司在其企业注册登记证书中登记的股本或权益资本）的要求，譬如银行与房地产业务。

在某些类型的投资项目中，项目公司的注册资本必须占据该项目的总投资资本的一定比例，例如房地产开发项目。

经营许可证

公司获得企业注册登记证书签发之后和在越南开展相关业务之前，需要取得经营许可证。

对于社会和国家经济利益具有重大影响的行业，如教育、银行和保险等行业，需要取得经营许可证。

符合业务条件证书

该证书是为了确保公司已经满足了针对其产品或服务的强制性要求。例如，外商投资贸易公司必须获得贸易许可证。

8. 在您所在司法管辖区，公司的典型董事结构（或家族式管理结构）以及责任问题是怎样的?

公司的业务和运营事务主要由董事会（如果是股份公司）或成员委员会（如果是有限责任公司）进行管理。相比之下，董事会和成员委员会可能与其他国家的董事会具有相同的职能、权力和权限，并且董事会／成员委员会的每个成员都应被视为董事。一般情况下，董事会和成员委员会的成员应分别由股东和出资成员任命。

股份公司中的董事会由公司股东选举产生的 3-11 名成员组成，[19] 每次任期五年，任期次数不做限制。[20] 董事会的成员有权选举其中一名成员担任董事会主席，对董事会的运作进行管理。在有限责任公司中，成员委员会应由所有出资成员组成。[21] 与董事会相类似，成员委员会的所有成员有权选举

17 《企业法》第31和32条

18 第96/2015号令第15.4条

19 《企业法》第143.2(d)条

20 《企业法》第150.2条

21 《企业法》第56条

其中一名成员担任成员委员会主席，以对成员委员会的运作进行管理。

在越南，董事会的主席与成员、成员委员会的主席与成员、总经理以及其他董事统称为公司管理人员。[22] 该等公司管理人员对公司负有若干受信义务：

(a) 根据所适用的法律以及公司章程的规定履行被赋予的权利和义务；

(b) 审慎地、真诚地、以最佳的方式来保护公司的最大利益；

(c) 为公司和股东的最大利益作为行动的指南；不得使用公司的信息、秘密或商业机会；不得为利己目的或服务于其他方的利益而滥用公司的职位、权力或资产；以及

(d) 当其本人以及其关连人士对其他公司拥有或持有控制权益或股份时，及时、准确地通知本公司。[23]

9. 在您所在司法管辖区，建立公司所要求的最低董事及股东人数是多少？是否存在董事必须是自然人的任何要求？

根据《企业法》之规定，单一成员的有限责任公司由一个被称为所有者的组织或个人创建。多位成员有限责任公司由作为其成员的两名以上、50 名以下的个人和 / 或组织创建。股份公司的注册登记至少需要三名个人和 / 或组织作为其股东。

公司的董事必须是实际管理公司整体运营的自然人。股份公司董事会的所有成员均须由股东选举产生，也必须是自然人。[24] 对于有限责任公司而言，机构性成员只能通过其授权的代表来行使其在该公司中所应具有的权利和履行其所应承担的义务，该代表必须为自然人。[25]

22 《企业法》第18.4条
23 《企业法》第71.1、83和160条
24 《企业法》第151.1条
25 《企业法》第15.1条

10. 在您所在司法管辖区，对股份发行有哪些要求？

根据《企业法》之规定，只有股份公司有权发行股票，但有限责任公司私募发行股份以转换为股份公司的情形除外。[26] 发行股份所需的条件是以股票发行的形式和发行股票的公司类型（即公众股份公司或非公众股份公司）为依据的。简单来说，越南法律对股份发行所规定的典型要求如下所示。

私募发行

私募发行是指将股份直接发行给专业证券投资者或不超过 100 名的非专业证券投资者，而非通过大众媒体或互联网的形式进行发行。[27]

由非公众公司或有限责任公司转为股份公司的，要求如下：[28]

(a) 对于股份公司而言，发行计划和募集资金使用计划必须经过股东大会批准。对于转换为股份公司的有限责任公司，上述计划必须由成员委员会或公司的所有者予以批准；和

(b) 如果公司经营的业务属于附条件行业的，则必须满足行业专门法律所规定的其他条件。

针对公众公司的要求如下：[29]

(a) 发行计划和募集资金使用计划必须经过股东大会的批准；

(b) 以私募形式发行的股份自发行阶段完成之日起至少一年才能进行销售，特定情况除外；

(c) 两期股份发行之间的时间间隔不得少于六个月；以及

26 2012年7月28日《对证券法若干条款进行指导的越南政府法令》（第58/2012/ND-CP号，以下简称"第58号令"）第3.2条
27 2010年11月24日国会《证券法修正案》（以下简称《证券法修正案》）第1.3条
28 第58号令第4.1和4.2条
29 第58号令第4.3条

(d) 如果公司经营的业务属于附条件行业的，则必须满足行业专门法律所规定的其他条件。

公开发行

公开发行是指通过以下方式之一进行的股份发行：通过大众媒体进行的发行；向 100 名以上的非专业投资者进行的股份发行；或者向不确定数量的投资者[30]进行的股份发行。在股份公开发行中，作为发行方的股份公司无论是否公众股份公司，均须满足如下条件：[31]

(a) 在登记所发行的股份时，在作为发行方的股份公司账目中所计算的实缴注册资本至少为 100 亿越南盾；

(b) 发行年度之前的一个年度的业务经营是盈利的，并且从该年度至发行年度尚未发生任何亏损；

(c) 其发行计划和募集资金使用计划已经股东大会批准；以及

(d) 办理公开发行证券登记的公众公司必须承诺在股东大会批准发行阶段结束之日起一年内将证券送至有组织的股票市场。

11. 在您所在司法管辖区，公司应该注意哪些主要的劳动法律法规？劳动法中是否存在任何受到严格监管的方面？

关于越南就业的主要法律法规如下所示：

(a) 2012 年 6 月 18 日国会《劳动法典》、2012 年 6 月 20 日国会《工会法》、2008 年 12 月 14 日国会《健康保险法》、2014 年 11 月 20 日国会《社会保险法》以及实施这些法律的相关执行法令和通告；

(b) 最高人民法院的年度实践总结和指引；以及

(c) 公司的集体劳动协议和内部工作规则。

一般而言，越南劳动法规为雇员提供强有力的保障。法律法规的制定倾向于保护雇员的利益和福利，尤其是关于公司单方面终止或解雇以及保险方面的问题。如果有终止或解雇理由失当或程序不当情形，雇主有责任向雇员进行赔偿，并向政府支付罚金。

越南的劳动法要求强制购买社会、健康和失业保险。此类保险费用的支付义务由雇主和雇员按特定的比例分担。如果出现违规行为，依照违规行为的性质和严重性，政府可以对公司进行罚款甚至追究公司的刑事责任。[32]

如果公司招聘外国雇员，则必须确保从劳动部门获得工作许可证，方可让该等外国雇员在越南为公司工作。

12. 在您所在司法管辖区，现行的公司治理制度是什么性质的？哪些机构或政府部门监管公司治理？

关于股份公司和有限责任公司的公司结构，请参见问题 1。通常，股东大会和成员委员会分别是股份公司和有限责任公司中最高的决策机构。董事会有义务遵守和执行股东大会的决议。但是，董事会自身也有权力对公司章程授权的或股东大会专门委托董事会决定的事项做出决定。此外，总经理负责公司的日常业务，并向股东大会和董事会（如果是股份公司）或成员委员会（如果是有限责任公司）负责。

在申请公司注册登记时，有关政府机构将对公司治理进行评估和批准。通常情况下，投资者在设立公司时，应当向商业登记机构提交包含公司治理内容（在公司章程内）的申请文件。如果一旦投入运营，并且公司随后转为上市公司，其公司结构将受到越南国家证券委员会的进一步管理。[33] 如果公司是信贷机构，其公司治理应由越南

30 2006年6月29日的国会《证券法》第6.12条（以下简称《证券法》）

31 《证券法》第12条以及《证券法修正案》第7条

32 参见2015年11月27日国会《刑法》第214条和第216条的规定

33 《证券法》第25和26条以及“第58号令”第34条

国家银行进行监督。如果公司是保险公司，其公司治理应由财政部进行监督。[34]

13. 在您所在司法管辖区，设立公司是否授予任何类型的居留权？是否存在为取得该等居留权（如适用的话）而须与当地人士（例如您国家的公民）设立合伙或合资企业的方式的任何情形？

根据《外国人在越南入境、出境、过境和居留法》之规定，允许外国投资者申请 DT 签证（DT 签证为签发给在越南经营业务的外国投资者和律师的签证）。[35] 在越南入境时，边境检查站的出入境管理处将给予临时居留许可证，并在投资者的护照或单独签证上加盖其印章。DT 签证的临时居留许可证的有效期为 12 个月。如果需要更长的居留期，则外国投资者必须获得有效期为 5 年的临时居留许可证。[36]

法律并没有规定外国投资者必须与当地公民合作，或者必须与越南当地合作伙伴建立合资企业才能取得在越南的居留权。要获得 DT 签证，外国投资者必须由越南的组织或个人进行邀请或提供保证。在发出邀请或提供保证的单位做出通知后，投资者应当将他 / 她的护照、申请文件和照片提交给越南境外签证机关以便在三个工作日内获得 DT 签证。[37]

要获得临时居留卡，向外国投资者发出邀请或者提供保证的越南单位应提交包括书面邀请、投资者护照和 DT 签证在内的全套文件。

14. 在您所在司法管辖区，公司何时纳税？可能适用于公司的主要税种有哪些？

外国投资者在越南设立的公司在税收方面享受与越南本国企业同等的待遇。以下是根据越南法律规定适用于内外资公司的各类税种清单：

(a) 增值税（即“VAT”）是指对生产、流通到消费环节所产生的商品或服务的增加价值而征税的税种。增值税按月支付。存在免除增值税的情形。[38] 除此之外，根据商品或服务的类型，增值税的税率从 5% 至 10% 不等。

(b) 企业所得税（即“CIT”）是对公司的应税利润所征收的税种，每季度支付一次。企业所得税的标准税率在 2014 年由 25% 降至 22%，然后自 2016 年 1 月 1 日起降到 20%。[39]

(c) 适用于进出口货物的进出口关税通常在有关货物由海关办理清关放行前支付。[40] 根据法律规定，进出口关税的税率范围为 0% 到 40%，具体取决于货物是进口还是出口以及货物的具体类目。

(d) 个人所得税（即“PIT”）是对越南个人所得收入征收的一种税。个人所得税按月支付，并在自然年度年末结算。根据个人所得税法律规定，个人所得税的纳税人包括居民纳税人和非居民纳税人。居民纳税人应对其在全球范围内取得的收入按照累进税率（最高税率为 35%）缴纳个人所得税，而非居民纳税人则对其在越南取得的就业收入按照 20% 的固定税率缴纳个人所得税。[41]

15. 在您所在司法管辖区，竞争法如何对公司进行规范？

越南的竞争法律[42]对制造或供应产品或服务的商业组织和个人涉及“限制竞争”和“不正当竞争”的活动进行管理。

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34 《信贷机构法》第22, 37和51条

35 《外国人在越南入境、出境、过境和居留法》第8.7条

36 《外国人在越南入境、出境、过境和居留法》第31.1(a)条

37 《外国人在越南入境、出境、过境和居留法》第17.2条

38 2013年12月31日的《财政部第219号通告》第9条

39 2014年6月18日《财政部第78号通告》第11条

40 2016年4月6日国会《进出口法》第9.1条

41 2007年11月21日《个人所得税法》（修订版）第26条

42 2004年12月3日国会第27/2004/QH11号法律（以下简称《竞争法》）

“限制竞争”活动指的是降低、扭曲或阻碍市场竞争的活动，包括限制竞争协议、滥用市场支配地位或垄断地位以及经济集中。[43]“不正当竞争”活动指的是在公司经营期间违反商业道德、造成或可能造成国家利益和 / 或其他公司或消费者合法权益受损害的行为。[44]

被发现有上述行为的个人或者组织，应当受到警告或罚款。根据严重程度，可能会被施加额外的惩罚，例如吊销商业登记证、撤销使用许可证或执业证书的权利或者没收用于作出该等行为的工具。此外，还可被采取措施对此类行为造成的后果进行补救，例如重组、对公司进行拆分与剥离、删除合同或商业交易中的非法条款或条件。如果此类行为对国家、个人或组织造成损失，也可能要支付赔偿金。[45]

16. 在您所在司法管辖区，公司应了解的知识产权主要有哪些？

越南知识产权法将知识产权分为三类：版权及邻接权、工业产权以及植物品种权，[46]每类知识产权均由不同的权力机关进行管理。因为这些权利可能会对公司财产产生相当大的影响，因而公司应对知识产权进行相应的考量。

版权是组织或个人对该组织或个人所创作或拥有的作品所享有的权利。[47]版权所有者不必注册版权才可行使此类权利。换句话说，版权所有者在未进行注册的情况下，即自动对其所创作的作品具有合法的权利。但是，如果发生争议，已取得版权注册登记证书的所有者就不必证明其权利。[48]

工业产权是组织或个人对其所创造或拥有的专利、工业产品外观设计、半导体集成电路的布局设计、商标、商名、地理标志以及商业秘密所享有的权利。为在越南注册工业产权，持有该权利的公司应注意以下几点：

(a) “申请在先”原则：在两方均提出申请的情况下，首先提出申请的申请人将被授予该项专利；[49]

(b) 优先性原则：相对于其他申请人，就同一标的首先提出注册登记申请的申请人可以主张其优先权利，前提是完全符合法定的条件；以及

(c) 适用于各类工业产权的所有权保护期限应有所区别。[50]

17. 在您所在司法管辖区，是否存在规范数据隐私的法律或法规？

越南的数据隐私受 2006 年 6 月 29 日国会《信息与技术法》（第 67/2006/QH11 号）及其指导性规定（以下简称《技术法》）的规范。《技术法》保护技术使用者和开发者确保数据隐私的权利，并且只在取得信息所有者同意的条件下方允许其收集、处理和使用此类信息，除非有例外情形。[51]一旦个人信息被存储在网络环境中，则个人或组织可能会要求检查、更正或删除其信息，并就不当提供个人信息而对其造成的损失要求赔偿。[52]

必须以一切可能的方式防止未经授权的访问、使用、修改、删除和 / 或发布个人或组织信息。任何违反数据隐私的行为都应导致行政后果。[53]此外，犯有这种违法行为的外国人可能会被处以驱逐出境之类的额外惩罚。[54]

尽管保护网络环境中用户的数据隐私是一项义务，但是为了保护其客户，有必要公布在网络环境中进行业务活动的组织和个人的某些信息，包括：

43 《竞争法》第3.3条
44 《竞争法》第3.4条
45 《竞争法》第117条
46 2005年11月29日国会《知识产权法》（第50/2005/QH11）号第4.1条，其经由2009年6月19日国会《知识产权法》（第36/2009/QH12号）修订（简称《知识产权法》）。
47 《知识产权法》第4.2条
48 《知识产权法》第49条
49 《知识产权法》第90条
50 《知识产权法》第93条
51 《技术法》第21.1、21.2和72条
52 《技术法》第22.1和22.3条
53 《技术法》第16.3条
54 174/2013/ND-CP号法令第54.5条

(a) 名称、地址、联系方式；

(b) 经营许可证和 / 或同等文件（如适用）；

(c) 管理信息提供者的主管当局的名称（如适用）；以及

(d) 商品或服务的描述。[55]

18. 是否存在吸引外国公司到您所在司法管辖区的激励措施?

为吸引外国投资者到越南进行投资，为某些行业和区域的外商投资项目提供投资奖励。特别是越南投资法律所提供的投资奖励措施（针对国内外投资者），包括：[56]

(a) 在项目的特定期间或整个期间提供较低的企业所得税税率，或对企业所得税进行减免；

(b) 免除进口关税；以及

(c) 土地租金、土地使用费和土地使用税的免除或降低。

为了有资格享受上述激励措施，企业（由国外或国内投资者所设立的）必须符合以下要求之一：

(a) 投资项目属于“118/2015 号法令”的“附则 I”所规定的优惠投资业务，如生产高科技配套产品或新材料、新能源、可再生能源等；

(b) 投资项目是在指定的优惠投资地理区域之一进行的，此类地理区域是根据“118/2015 号法令”的“附则 II”而予以规定的。

(c) 投资项目从项目注册起三年内的总投资至少达 60,000 亿越南盾；

(d) 投资项目位于农村，而且雇佣至少 500 名雇员；或者

(e) 该公司属于高科技企业、科技型公司或组织。

55 《技术法》第9.2条

56 《投资法》第15.1条

19. 在您所在司法管辖区，对公司破产进行规范的法律是什么?

在越南，《破产法》[57] 对包括信贷机构在内的企业的破产程序与法定时间安排进行规范。如果某一公司在债务到期后的三个月内未能进行债务支付，则该公司应被视为不具有清偿能力。[58] 但是，无清偿能力的公司只有在被有权管辖的法院宣告破产后才能被视为破产，有权管辖的法院在收到无清偿能力的公司、其债权人或雇员的破产申请时，应当对此类情况进行处理。

一旦法院开始破产程序，则破产公司在法院开始破产程序之日前六个月内（或者 18 个月内，如果交易是与关联方进行的）所作出的任何交易（如对未到期债务进行支付的行为）均是无效的。[59] 如果债权人会议没有批准重整计划，则法院应当宣布无清偿能力的企业破产。

20. 在您所在司法管辖区，最近是否存在将影响您国公司法的改革提案或监管变化?

最近，为修改商业法和其他相关法律中的若干条款，出台了《商业法》（修正草案）以征询公众意见。虽然对于该草案将在何时由国会提出并通过尚无正式通知，但《商业法》（修正草案）将对越南的商业法产生重大影响，例如：

(a) 鉴于今后可能会出台新的法律，《商业法》（修正草案）应调整《投资法》第 13.1 和 13.2 条关于投资激励措施的规定，以确保在将来有任何新法律条款被颁佈时，投资者不仅享有原始条款所规定的现行激励措施，而且还可以在其投资项目剩余期间内被授予的相同权利和利益；[60]

57 2016年6月19日国会《破产法》（第51/2014/QH13号）（简称《破产法》）

58 《破产法》第4.1条

59 《破产法》第40与59条

60 《商业法》（修正草案）第1.3条

(b) 在《投资法》第 22.1 条和第 22.2 条的修订规定中，删除了在设立公司前应先有投资项目的规定；[61]

(c) 在符合省级人民委员会的投资政策的前提下，补充和修改了投资项目的范围；[62]

(d) 对于为投资交易而登记的上市公司或公众公司的项目，不再要求出具投资登记证书；[63]

(e) 通过使程序与《企业法》相一致，而非与现行条例规定的专门法律相一致，来简化建立公司的程序；[64] 以及

(f) 通过允许土地使用者在一次性缴清费用的情况下对土地进行分租的方式，放宽对公司的土地限制。[65]

21. 关于您所在司法管辖区或者亚洲地区的公司法，是否有任何特点您想特别强调?

根据 2016 年 12 月 28 日的第 58/2016/QD-TTg 号决定，越南政府制定了 2016 年至 2020 年期间的国有企业（即“SOEs”）重组计划。根据这一计划，国家将通过全部或部分出售国有企业中的国家资本的方式对 240 个国有企业进行资本股份化。因此，投资者将有机会扩大其在越南的投资机会。

对证券市场中贸易公司的外资所有权限制似乎已被撤销。最近，许多贸易公司（如 Vinamilk[66] 和 Domesco 医药进出口股份公司）被允许在维持其贸易业务的同时取消对其外资所有权的上限。[67] 这将打开允许其他公开交易类公司采取同样行动的闸门。

最后但同样重要的是，2016 年年初，财政部公布了一份对外国投资者有利的、指导外国投资者对越南公司进行股权并购活动的通知草案。该通知草案第 7.3.4 条提议，外国投资者持有的股份公司的优先股不得计入该等股份有限公司外资所有权限额的计算中。如果该通知草案被通过，则将很可能促进外国投资者对越南国内股份公司的股份收购行为。

61 《商业法》（修正草案）第1.6条
62 《商业法》（修正草案）第1.10条
63 《商业法》（修正草案）第1.14条
64 《商业法》（修正草案）第2.1条
65 《商业法》（修正草案）第3.8条

66 http://www.reuters.com/article/us-vinamilk-ownership-idUSKCN0Y716G
67 http://cafef.vn/domesco-chinh-thuc-noi-room-ngoai-len-100-20160902073813465.chn

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