

A dark blue world map is shown in the background. Overlaid on the map are several white, curved lines that connect different points across the globe, symbolizing a global network. Three specific points are highlighted with white dots: one in North America, one in Europe, and one in Asia.

# 2024 GLOBALAW

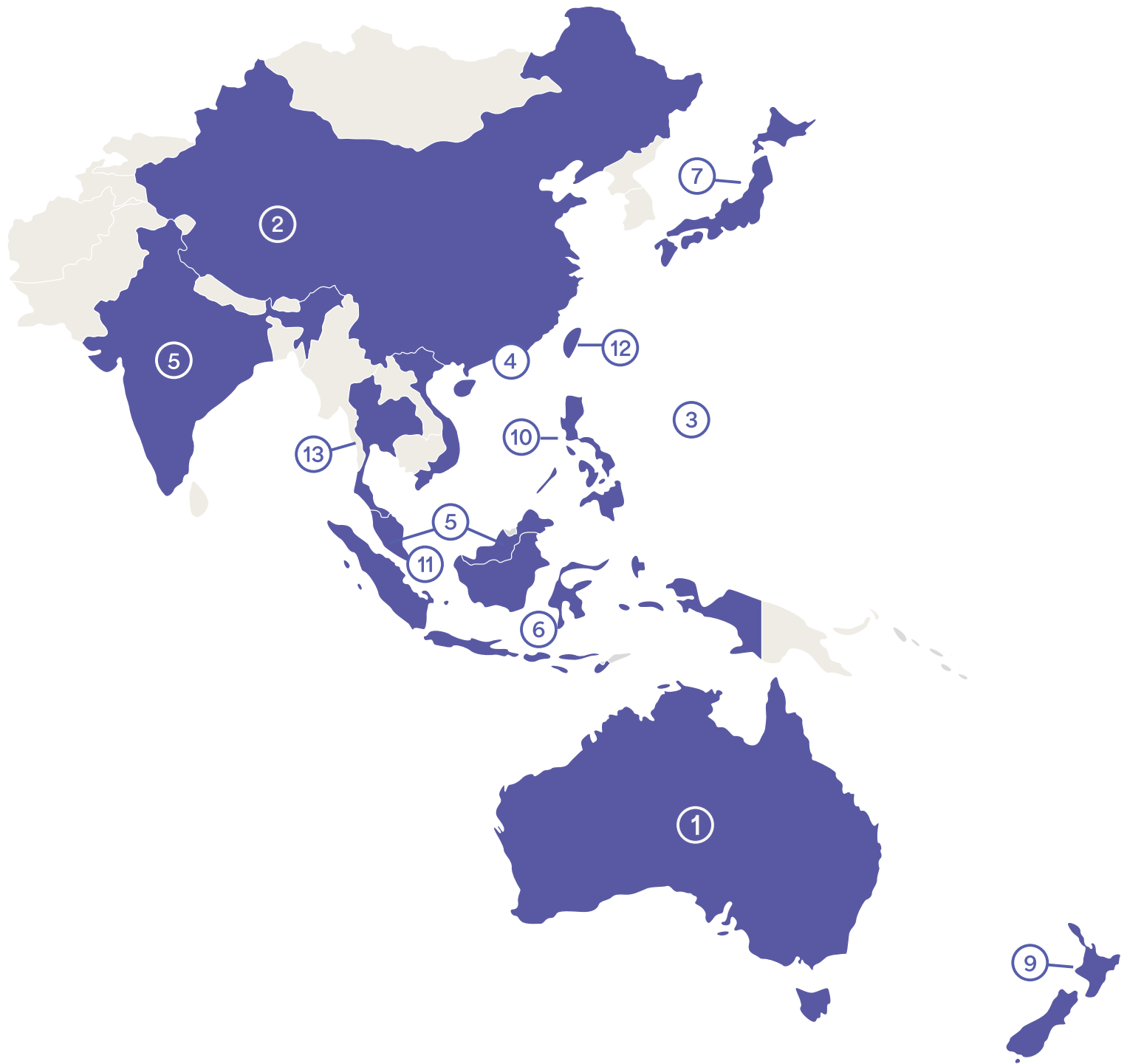
## APAC Doing Business Guide

With **14 members** operating across the Asia-Pacific region, Globalaw's growing network in the region provides an effective platform to meet global client needs.



## DISCLAIMER

This publication is for general information purpose only. It does not purport to provide comprehensive full legal or other advice. Globalaw Ltd. and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication. This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.



## Globalaw APAC Map

- |                                                                              |                                                               |
|------------------------------------------------------------------------------|---------------------------------------------------------------|
| 1. Australia - <a href="#">McInnes Wilson Lawyers</a>                        | 8. Malaysia - <a href="#">Abdullah Chan &amp; Co</a>          |
| 2. China - <a href="#">GoldenGate Lawyers</a>                                | 9. Aotearoa New Zealand - <a href="#">Simpson Western</a>     |
| 3. Guam - <a href="#">Calvo Fisher &amp; Jacob, LLP</a>                      | 10. Philippines - <a href="#">CDRP Law</a>                    |
| 4. Hong Kong - <a href="#">Oldham, Li &amp; Nie</a>                          | 11. Singapore - <a href="#">Goodwins Law Corporation</a>      |
| 5. India - <a href="#">Abacus Legal Group &amp; Ahlawat &amp; Associates</a> | 12. Taiwan - <a href="#">Stellex Law Firm</a>                 |
| 6. Indonesia - <a href="#">Bagus Enrico &amp; Partners</a>                   | 13. Thailand - <a href="#">Legal Advisory Council Limited</a> |
| 7. Japan - <a href="#">Chuo Sogo Law Office, P.C.</a>                        |                                                               |

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## Introduction by Peter J. Brown, President Globalaw

Dear Friends and Colleagues,

It is my great pleasure to welcome you to the 2024 Asia Pacific (APAC) Doing Business Guide, which has been written and produced by our member firms in the region\*. Globalaw is an international network of over 80 independent law firms that provides its members with a global platform to serve their clients' legal needs.

Last produced in 2020, the APAC Doing Business Guide has been significantly upgraded this year and now covers a total of 13 jurisdictions where our members are present. It serves as an immediate resource for clients of Globalaw firms, providing valuable and critical information about the different legal requirements to operate in these specific jurisdictions.

The APAC Doing Business Guide addresses fundamental topics for any company or enterprise seeking to do business in each of these 13 jurisdictions, including immigration law, employment law, taxation, intellectual property, foreign investment, and data protection, among other topics.

The Asia Pacific region is of ever growing importance in the world economy. Today, the APAC region hosts more than half of the world's population and, in 2021, accounted for around 37% of world GDP. This level is expected to rise up to 42% by 2040, making it the leading economic region in the world. China and India are the key economic drivers in the region and, while the region may have been known historically as a manufacturing and technology hub, there is an increasing emergence of a much wider range of industries in the region, such as hospitality, healthcare, waste management, and real estate.

This APAC Doing Business Guide follows a long tradition of guides produced by Globalaw, such as the 2021 Europe and Latin America Guides. These guides are a testament to the individual and collaborative expertise of the law firms within the Globalaw network and we hope that they will provide an immediate roadmap to learn more about the fundamentals of doing business in a concise, informative and "desktop" format for your ready reference.

In addition to the contributing firms, I would also like to acknowledge the professionals at MCI for their time and effort in making this Guide a reality. If you would like to learn more about the resources of Globalaw, please visit our website at [www.globalaw.net](http://www.globalaw.net).

Yours sincerely,

Peter J. Brown

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Information for each country may change over time. Please contact the primary contact at the respective Globalaw firm to confirm that country's information. Contact details for each firm and primary contact are located at [www.globalaw.net](http://www.globalaw.net).

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## KEY FACTS

- Geographic location: Oceania, continent between the Indian Ocean and the South Pacific Ocean.
- Commonwealth of Australia – democratic, federal-state system. Strong independent judicial system.
- Language: English.
- Currency: Australian Dollar (AUD).
- Race/religion: Multicultural and Multidenominational.
- Current business environment:
  - Strong and growing economy
  - Sophisticated capital markets
  - Australian Stock Exchange
  - Attractive environment for private equity
- Investment growth areas: property, resources and mining, technology, venture capital.
- Key financial center in the Asia Pacific region. Key business centers include Sydney, Melbourne, and Brisbane.



## BUSINESS PRESENCE

- Main types of business for profit structure in Australia: Sole Trader, a joint venture, Limited Liability Company (private or public), Partnerships (limited liability partnerships and general law partnerships), discretionary trusts, Unit Trusts or in the case of a foreign company, a branch or a registered foreign company. Managed Investment Schemes.
- Different legal frameworks apply depending on the structure chosen, including the Corporations Act 2001 (Cth) (Corporations Act), contract law, trust law, industry specific legislation and the common law.
- Other possible options for doing business in Australia: agency arrangement, license or distribution arrangements, franchise arrangement, contractual joint ventures.

Key features of common structures:

Structure	Feature
<b>Sole trader</b>	<ul style="list-style-type: none"> <li>• Legal entity - individual simplest form of business structure Unlimited personal liability for obligations</li> <li>• Income taxed at marginal rates No specific legislation applies to sole traders</li> <li>• GST may apply to the provision of goods, services and rights</li> </ul>
<b>Joint Venture</b>	<ul style="list-style-type: none"> <li>• Legal entity - two or more individuals or companies Partners carry on business as a joint venture (have the same strategic goals but remain separate entities)</li> <li>• May be incorporated or unincorporated</li> <li>• Subject to common law and contract law and in the case of a incorporated partnership, the Corporations Act</li> </ul>
<b>Australian company</b>	<ul style="list-style-type: none"> <li>• Separate legal entity</li> <li>• Can hold assets and is liable for obligations</li> <li>• Quick and simple procedure for incorporating</li> <li>• Companies incorporated in Australia will receive an Australia Company Number (ACN)</li> <li>• Two main types - public company or a proprietary company Proprietary company is limited to 50 non-employee shareholders Each have requirements for having at least one Australian resident director. Public companies must also have an</li> <li>• Australia resident secretary No residency restrictions for shareholders and no minimum capital requirements</li> <li>• Apply to the Australian Taxation Office for an Australian Business Number (ABN) and Tax File Number (TFN)</li> <li>• Tax rates which apply to companies vary depending on the activities of the entity (base rate entity at 25%, and for all other entities, 30%)</li> <li>• GST may apply to the provision of goods, services and/rights</li> <li>• Consider the advantages and disadvantages of establishing an Australian branch to incorporating a subsidiary</li> <li>• Where the foreign company does not intend to carry on a business in Australia, it may establish a representative office</li> <li>• Directors of the company will need a Director Identification Number (DIN)</li> <li>• Requirement to keep a company register, keep and lodge financial statements and reports each financial year, etc.</li> <li>• Public companies are required to appoint a director within one month of incorporation</li> <li>• Under the Corporations Act, several requirements arise including certain documents to be filed with ASIC</li> </ul>





<b>Trust</b>	<ul style="list-style-type: none"> <li>• Widely used for small businesses, particularly family businesses Trustee is liable for trust obligations and will generally have recourse against the trust's property</li> <li>• Rights of beneficiaries will depend on the terms of the trust deed but generally have no specific interest in any particular asset and no right to directly control the use or disposal of any particular asset of the trust</li> <li>• Trustees are generally not taxed on income earned by the trust and distributed to beneficiaries (note: beneficiaries may be taxed at marginal rates)</li> <li>• If there are no 'presently entitled' beneficiaries, the trustee may be liable for the tax on income earned by the trust at marginal rates</li> <li>• GST may apply to the provision of goods, services and/rights by trusts</li> <li>• Trusts are governed by common law and various</li> <li>• Trust Acts</li> </ul>
<b>Managed Investment Scheme</b>	<ul style="list-style-type: none"> <li>• Widely used for small businesses, particularly family businesses Trustee is liable for trust obligations and will generally have recourse against the trust's property</li> <li>• Rights of beneficiaries will depend on the terms of the trust deed but generally have no specific interest in any particular asset and no right to directly control the use or disposal of any particular asset of the trust</li> <li>• Trustees are generally not taxed on income earned by the trust and distributed to beneficiaries (note: beneficiaries may be taxed at marginal rates)</li> <li>• If there are no 'presently entitled' beneficiaries, the trustee may be liable for the tax on income earned by the trust at marginal rates</li> <li>• GST may apply to the provision of goods, services and/rights by trusts</li> <li>• Trusts are governed by common law and various</li> <li>• Trust Acts</li> </ul>
<b>Foreign company</b>	<ul style="list-style-type: none"> <li>• A foreign company may carry on business in Australia as a branch - consider the advantages and disadvantages of establishing an Australian branch to incorporating a subsidiary</li> <li>• The company must register as a foreign company with ASIC</li> <li>• Must have a registered office and appoint a local agent to represent it</li> <li>• Lodge financial statements and comply with notification</li> <li>• obligations in accordance with the Corporations Act</li> <li>• Australian taxation implications will arise</li> </ul>

## FOREIGN INVESTMENT RESTRICTIONS AND CONDITIONS

- Restrictions on Investment - Shares, Business, Urban Land
- Foreign investment in Australia is subject to the Foreign Acquisitions and Takeovers Act 1975 (Ct) (FATA) and Foreign Acquisitions and Takeovers Regulation 2015 (Cth) (FATR).
- Whether notification of an investment by a foreign person is required is determined by reference to the type of investor, the type of investment, the industry sector in which the investment will be made and the value of the proposed investment.
- Under the FATA, foreign persons may need to seek the approval of Australia's Foreign Investment Review Board (FIRB) before making an investment in Australia.
- The outcome of FIRB's review takes the form of a recommendation to the Federal Treasurer, who retains the ultimate discretion to determine whether or not approval will be granted to a foreign investment proposal. If a proposal is deemed to be contrary to the "national interest" it can be blocked. "National interest" includes the consideration of:



- National security
- Competition
- Other Australian Government policies (including tax)
- Impact on the economy and the community
- Character of the investor
- Additional factors
- A foreign person includes an individual that is not ordinarily resident in Australia, a foreign natural person, a foreign corporation (i.e., any corporation, including an Australian corporation, in which a foreign person holds 20% or greater interest, or in which a foreign person with other unrelated foreign corporations, holds an aggregated 40% or greater interest) and in certain circumstances, the trustee of a trust.
- Under FATA and the accompanying regulations, the government is required to be notified of certain proposals. Proposals which are required to be notified to the government relate to notification of foreign investment which is characterized as a 'significant action' and a 'notifiable action':

Action	Details
<b>Significant Action</b>	<ul style="list-style-type: none"> <li>• An investment by a foreign person that does not require notification to the Treasurer before that action can be undertaken. Notification of investments which fall within significant action is generally required as the Treasurer's approval is required.</li> </ul>
<b>Joint Venture</b>	<ul style="list-style-type: none"> <li>• A Notifiable Action is an investment by a foreign person in respect of which notification of the proposed action to the Treasurer is compulsory before that action can be taken.</li> <li>• Offences and civil penalties may apply if notice is not given. An action is only notifiable if it meets certain threshold tests. A proposed foreign investment by a foreign person may be both a Significant Action and</li> <li>• a Notifiable Action, and therefore be subject to both compulsory notification and certain orders by the Treasurer.</li> </ul>

- Acquisition by foreign persons of a substantial interest of 20% or more in an existing Australian business or corporation the value of which exceeds:
  - Investors from Free Trade Agreement partner countries:
    - A\$310 million indexed annually (in a sensitive sector)
    - A\$1,339 million indexed annually (no-sensitive sector)
    - A\$1,339 million (agribusiness)
      - All other investors (i.e., foreign persons other than foreign government investors)
  - No threshold for residential land
  - A\$310 million for business acquisitions (all sectors)
  - Agribusinesses: \$15 million calculated by adding the consideration to the value of agricultural land that the acquirer already holds
    - When calculating whether a foreign person holds a 'substantial interest', any interests held by an associate of the foreign person is also relevant.
    - Certain proposed investments in "prescribed sensitive sectors". These have different thresholds. For example, investments in the media sector have no threshold regardless of the value of the investment.
    - Direct investments by foreign governments and their related entities, regardless of the value of the investment.
- Acquisitions of "interests" in Australian urban land (including buying real estate, obtaining, or agreeing to enter a lease, financing and profit-sharing arrangements) that involve:



- All other investors acquiring interests in residential land, vacant commercial land and interests in corporations or trusts if the residential land or vacant commercial land is 10% or more of the entity's total assets - the threshold is \$0 (i.e., notifiable regardless of value)
- Investors from Free Trade Agreement partner countries:
- Agricultural land (including an interest in an agricultural land corporation or trust):
  - A\$1,339 million for Chile, New Zealand, and the United States
  - A\$15 million (cumulative) otherwise
- Developed commercial land: \$67 million
  - Free Trade Agreement partner countries: \$1,339 million (except Peru or Hong Kong which is subject to the \$67 million threshold)
- Acquiring interests of 10% or more in listed Australian land corporations or trusts: \$0 threshold
- Acquiring mining and production tenements (including an interest in an Australian land corporations or trusts holding the same) the threshold is \$0
  - Residential land, regardless of value
  - Vacant commercial law, regardless of value
  - Buying shares or units in an Australian urban land corporation or trust estate (i.e. a company or trust where the value of its land assets exceeds 10% of its total assets), regardless of value
  - A\$1,339 million for Chile, New Zealand and the United States
  - Other land (not listed above or having a specific FIRB threshold): \$310 million
  - The Treasurer has a 30-day period to make a determination.
- An interim order prohibiting implementation can be made within 30 days of receiving the notice, prohibiting implementation for a period of up to 90 days. On advice of the FIRB, the Treasurer may:
  - Make an order prohibiting a proposed transaction; or
  - Approve it with or without conditions; or
  - Indicate that the government has no objection.
- Direct investments by foreign governments and their agencies, including proposals to establish new businesses, require approval irrespective of size.
- All foreign government investors, as defined in FATA, must notify the Government and get prior approval before making a direct investment in Australia, regardless of the value of the investment.
- Applicants for FIRB approval are required to pay a fee for each application made. Fees are imposed for considering applications, not for approvals, and must be paid before an application will be considered. FIRB's time limit to consider the application does not start until the fee is paid.
- FATA does not apply to investments by US investors in financial sector companies, subject to the operation of the Financial Sector (Shareholdings) Act 1998 (Cth).
- There are currently a number of drafts, proposed FIRB amendments to reduce regulatory burden by clarifying certain aspects of the framework and streamlining some less sensitive types of investment.

### Foreign Purchaser Duty Surcharge

- Various States and Territories have introduced additional duty surcharges and, land tax surcharges, for foreign investors that acquire direct or indirect interests in Australian real estate.
- The amount of the surcharge, definition of a foreign person, concessions available varies in each State and Territory.

### Foreign resident capital gains withholding regime

- Foreign investors holding "taxable Australian property", in Australia looking to sell "taxable Australian property" or holds an interest (10% or greater) in an entity which holds "taxable Australian property", will be subject to a relatively new withholding regime.
- Purchasers who acquire interests in Australian land valued at \$750,000 or more from foreign resident vendors will be required to pay 12.5% of the first element of the asset's cost base (usually, the purchase price and excluding adjustments) to the Commissioner of Taxation (Commissioner).



- The amount will be required to be paid to the Commissioner on or before the settlement. Administrative penalties apply for a failure to remit.

## Real Estate - General

- Foreign persons seeking to buy Australian land (residential, commercial, or agricultural land) or lease Australian land for a term exceeding 5 years must seek prior approval through the FIRB unless an exemption applies.
- Foreign persons intending to buy real estate in Australia should make purchase contracts conditional on foreign investment approval, unless approval has already been granted, the foreign person is exempt from the FATA, or the asset being acquired is below the money threshold for that class of Australian land.
- Foreign Government investors must seek approval of the FIRB before acquiring any interest in Australian land (regardless of its class and value).

## Real Estate - Residential

- Non-resident foreign persons cannot buy established dwellings as investment properties or as homes except as:
  - Companies operating a substantial Australian business can apply to the FIRB for approval to buy established dwellings to house their Australian-based staff. Such proposals are normally approved subject to the company undertaking to sell the property if it is expected to remain vacant for six months or more.
  - Non-resident foreign persons need to apply to buy established dwellings for redevelopment (that is, to demolish the existing dwelling and build new dwellings). Proposals for redevelopment may be approved as long as the redevelopment increases Australia's housing stock (at least two dwellings built for the one demolished). Approvals are usually granted subject to development conditions (including that the existing dwelling(s) is demolished and construction of the new dwelling(s) is completed within four years of the date of approval).
- Non-resident foreign persons need to apply to buy vacant land for residential development. These are normally approved subject to conditions (including that the development is completed within four years from the date of approval).
- Non-resident foreign persons need to apply to buy new dwellings in Australia. Such proposals are normally approved without conditions.
- Property developers (including foreign property developers) can apply for an exemption certificate to sell apartments in a development direct to a foreign purchaser (without the foreign purchaser requiring their own FIRB approval). The property developer can only obtain an exemption certificate if the development will consist of 50 or more dwellings and a development approval has been granted.
- Foreign owners of residential real estate must report annually to the Australian Taxation Office (ATO) about the use of their property in the previous 12 months. An annual vacancy fee will be imposed by the ATO if the property was not occupied or genuinely available for rent for at least 6 months in that 12-month period.
- Foreign persons must pay a fee to the FIRB for each application. The application fee for residential property varies depending on the value of the property being acquired.

## Real Estate - Commercial

- Foreign persons need to apply to buy or take an interest in vacant land for commercial development, regardless of the value of the land. Such proposals are normally approved subject to development conditions (including that the foreign person commences continuous construction of the proposed development on the land within five years of the date of approval)
- Foreign persons need to apply to buy or take an interest in vacant commercial real estate: no threshold
- Foreign persons need to apply to buy or take an interest in commercial real estate that is not vacant valued at A\$67 million or more–
  - Free Trade Agreement partner countries: \$1,339 million (except Peru or Hong Kong which is subject to the \$67 million threshold)
- Foreign persons must pay a fee to the FIRB for each application. The application fee for commercial property varies depending on the value of the property being acquired.





## Real Estate - Agricultural

- Agricultural land is land in Australia that is used, or that could be reasonably be used, for a primary production business.
- Foreign persons must notify the Government and get prior approval for a proposed acquisition of an interest in agricultural land where the cumulative value of agricultural land that the foreign person (and any associates) already holds exceeds, or immediately following the proposed acquisition is likely to exceed, \$15 million. Privately owned agreement country investors from Chile, New Zealand and the United States have a higher monetary threshold (A\$339 million).
- All acquisitions of agricultural land by foreign persons must be notified to the ATO.
- Foreign persons must pay a fee to the FIRB for each application. The application fee for agricultural property varies depending on the value of the property being acquired.

## CENTRAL BANK EXCHANGE CONTROL

### Currency Restrictions/Anti-Money Laundering

- Restrictions apply to domestic and international cash and non-cash transactions, whether in Australian or foreign currency. The most significant legislation in this area is the Anti-Money Laundering and Counter Terrorism Financing Act 2006 (Cth) (AML/CTF Act), the Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No.1) (AML/CTF Rules), the Anti-Money Laundering and Counter-Terrorism Financing (Prescribed Foreign Countries) Regulations 2018 (AML/CTF PFC Rules) (together, the AML/CTF Laws) and the Criminal Code 1995 (Cth).
- The main regulatory body that ensures compliance with this legislation is the Australian Transaction Reports and Analysis Centre (AUSTRAC). The AUSTRAC website ([www.austrac.gov.au](http://www.austrac.gov.au)) contains important information about AML/CTF compliance in Australia, including the AUSTRAC compliance guide which consolidates a range of AUSTRAC guidance material relating to the obligations of reporting entities under the AML/CTF Laws.
- An organization is subject to the AML/CTF Act to the extent it provides a “designated service” to a prescribed person, and subject to the provision of that service having a sufficient geographical link to Australia (for example, where the organization is permanently established or resident in Australia).
- Designated services are itemized under the AML/CTF Act, and comprise services which could provide opportunities for money laundering and terrorism financing. These services include a broad range of financial services and banking services, as well as gambling services and bullion trading. Organizations that provide designated services are “reporting entities” under the AML/CTF Act, and must then comply with all relevant AML/CTF Laws.
- The AML/CTF Act includes the remittance sector and remittance providers are required to register with the new AUSTRAC Remittance Sector Register.

Reporting entities are required under the AML/CTF Act to develop and maintain an AML/CTF program for their business. Reporting entities are required under the AML/CTF Act to develop and maintain an AML/CTF program for their business. The specific requirement of an AML/CTF program are set out in the AML/CTF Rules, which is in two Parts:

- Part A: The program must include a risk assessment of the organization’s activities and implement AML/CTF policies and procedures to identify, mitigate and manage AML/CTF risks on the basis of the risk assessment. The risk assessment must be approved by the governing board and senior management of the reporting entity and be subject to ongoing oversight by them.
- Part B: The organization must ensure that it has in place an adequate “customer due diligence” (CDD) framework to ensure that it knows its customers and understands their financial activities, facilitating better identification of potential AML/CTF risks. Most CDD obligations must be completed before the provision of a designated service by the reporting entity to a customer.” Reporting obligations and other requirements
- There are three different types of ongoing reporting obligations that reporting entities must comply with, each requiring the reporting entity to report to AUSTRAC in certain circumstances:
  - if a reporting entity forms a suspicion on reasonable who



- Transaction reports, which comprise threshold transaction reports, international funds transfer instruction reports and suspicious matter reports;
  - Cross-border movement reports; and
  - AML/CTF compliance reports.

These reporting obligations include the following:

- Reporting entities must report to AUSTRAC:
  - if a reporting entity forms a suspicion on reasonable grounds that: a service being provided relates to money laundering or terrorism financing, or the customer is not who they claim to be;
  - a customer transaction involves physical currency of A\$10,000.00 or more; and
  - where certain services relate to International Funds Transfer Instructions.
- Reporting entities must identify and verify the identity of their customers and re-verify a customer's identity in some circumstances. Identification and verification require the collection of reliable and independent documentation and data.
- Some minimum information is necessary, depending on the type of customer.
- Ongoing customer due diligence is required, such as the monitoring of transactions, to detect complex and unusual transactions.
- Records must be kept for a period of seven years, being:
  - any records the reporting entity has created relating to the provision of designated services;
  - documents provided by a reporting entity's customers relating to the provision of designated services; and
  - documents associated with the customer identification process.

## TAXATION

### General

The Australian Taxation Office administers most direct and indirect taxes in Australia. A number of taxes, however, are levied by the State and Territory governments, e.g., transfer duty, land tax and payroll tax.

Australia is a party to international double tax agreements that may impact applicable tax treatments.

### Taxation of Income

Australian residents are generally taxed on income and capital gains earned domestically and in foreign jurisdiction.

Action	Details
<b>Individuals</b>	<ul style="list-style-type: none"><li>• Taxed under a progressive system with the highest marginal tax rate of 47% (including a 2% Medicare levy)</li></ul>
<b>Trusts</b>	<ul style="list-style-type: none"><li>• Trustees generally taxed at rate of 47%</li><li>• Individual beneficiaries may have varying tax rates</li></ul>
<b>Companies</b>	<ul style="list-style-type: none"><li>• Generally taxed at corporate rate of 30% (but if a base rate entity, a lower rate may apply)</li><li>• Liable to pay CGT on gains relating to the disposal of certain assets</li><li>• CGT discounts do not apply</li></ul>
<b>Non-residents</b>	<ul style="list-style-type: none"><li>• Where non-residents, taxed on Australian-sourced income (excluding dividends, royalties and interest, which are subject to withholding tax)</li><li>• Subject to CGT on capital gains from disposal of assets that are taxable Australian property (i.e., taxable</li><li>• Australian real property and indirect interests in Australian real property)</li><li>• CGT discounts do not apply</li><li>• Controlled Foreign Company (CFC) regime may apply</li></ul>



## Corporate Tax

- Australian resident companies are taxed at the corporate tax rate of 30% (or 25% for base rate entities) on their worldwide trading profits, capital gains and other assessable income.
- Foreign resident companies are also liable to tax, at the corporate rate of 30%, but only on their Australian sourced income and other limited categories of statutory income specified in the taxing legislation.
- Foreign resident companies that operate in Australia through a permanent establishment are taxed at the corporate rate of 30% to the extent that its income is attributable to the permanent establishment.
- A tax consolidation regime is available for 100% owned Australian group companies.
- Pay As You Go (PAYG) rules require companies and other businesses to collect and remit to the Australian Taxation Office various taxes, including instalments of income tax payable by the company or business, as well as instalments of income tax or related taxes from payments made to employees and contractors. There is a proposed measure to require certain companies to make PAYG instalments monthly. Under new laws, company directors and their associates may be liable for PAYG withholding non-compliance tax where the amount remitted to the Australian Taxation Office is less than the amount withheld and the director or associate is entitled to a PAYG withholding credit.
- Various other anti-avoidance provisions apply depending on the residency status of the companies involved. For example, Australia operates a controlled foreign companies
- (CFC) regime, thin capitalization rules and also has extensive transfer pricing provisions. The government is continually reviewing international tax arrangements.
- Generally, no deduction is allowed on dividends paid by a company to its shareholders.
- Dividends paid to shareholders are included in the assessable income of those shareholders, but an imputation system applies which may give shareholders a credit for the tax paid by the company (e.g., where ‘franked dividends’ are paid).
- The imputation system only applies to dividends paid by Australian resident companies. The availability of credits is subject to holding period rules.
- A deduction is allowed in limited circumstances for on payments of unfranked non-portfolio dividends (including nonshared dividends) by an Australian resident company to its foreign resident parent.
- Withholding tax is imposed on the gross amount of the unfranked dividend. The general dividend withholding tax rate is 30 per cent. However, for dividends paid to residents of double tax treaty countries, the rate provided in the treaty applies (generally 15 per cent or lower).
- There are also anti-avoidance provisions which tax certain non-dividend payments, loans, asset transfers and private asset uses from private companies as unfranked dividends (Division 7A). The Board of Taxation is conducting a review of Division 7A and has released a discussion paper for these purposes.
- To ensure that the community receives an appropriate share of the large returns that can follow the development of rich petroleum deposits, Australia also has a resource rent tax regime (the petroleum resource rent tax or ‘PRRT’), with certain exclusions for onshore petroleum projects from 1 July 2019 onwards.

## Individual Income Tax

- Residents are subject to Australian tax on their worldwide income, less allowable deductions.
- Foreign source income derived by residents is taxed on a gross basis with foreign tax credits being available for tax paid at source.
- Tax liability arises when income is “derived”. Individuals are generally treated as deriving income when it is paid or credited to them rather than when entitlement to the income accrues.
- Marginal income tax rate scales apply. The top marginal rate is 47% (including a 2% Medicare levy), which applies to income in excess of AUD\$180,000.
- Resident taxpayers are exempt from tax on their first A\$18,200 of taxable income (this is the “tax free threshold” for 2023-24).
- Non-residents are subject to Australian income tax only on their Australian source income.
- Non-resident taxpayers are unable to access the tax-free threshold.



- Foreign source income of non-residents is expressly exempt from Australian income tax.
- Individuals who qualify as temporary residents are generally able to access certain tax concessions which effectively allow them to be taxed as non-residents (except for employment and personal services income from either Australia or overseas, and income from employee shares or rights).
- Most taxpayers (who exceed relevant low-income family thresholds) pay Medicare levy of 2% of their taxable income. This levy is designed to help fund the Medicare scheme, which gives Australian residents access to health care.
- Taxpayers may be exempt from paying the Medicare levy if they are a foreign resident, or only liable at a reduced rate if their income is below a certain threshold. Taxpayers may also have to pay the Medicare levy surcharge if their income is above a certain threshold and they, or any of their dependents, do not have appropriate private patient hospital cover.
- Other specific purpose taxes are occasionally levied against individuals' taxable income.

## Capital Gains Tax

- Capital gains tax (CGT) provisions apply where a CGT event happens to a CGT asset.
- There are a wide range of CGT events, not limited to the disposal of assets. For example, becoming, or ceasing to be, an Australian resident are CGT events.
- Capital gains and losses made on CGT assets acquired on or before 19 September 1985 are generally excluded.
- A withholding regime applies a 12.5% withholding obligation (taxed at the source) to disposals of taxable Australian real property (except residential property) by non-residents.
- Capital gains are taxed as income under Australia's tax regime, but special rules apply in calculating the taxable amount and applicable tax rate.
- While net capital gains are treated as part of a taxpayer's assessable income, where capital losses are incurred, they can only be offset against capital gains and not against other income but can generally be carried forward to the next year if there are insufficient capital gains to offset those losses.
- Non-residents are subject to Australian CGT only in respect of taxable Australian property acquired after 19 September 1985.
- There are five categories of taxable Australian property, including:
  - Taxable Australian real property
  - Indirect Australian real property interests
  - Business assets used in a permanent establishment of a foreign resident
  - Options and rights over any of the preceding assets; and
  - Assets where a CGT gain or loss is deferred when an entity ceases to be an Australian resident.
- Capital gains made by a non-resident on the disposal of other assets are not taxable under the CGT provisions.
- A 50% CGT discount applies to individuals and most trustee taxpayers where the asset has been held for 12 months or more prior to sale. No CGT discount is available to companies. Eligibility for the 50% discount is being removed for capital gains earned by non-residents after 8 May 2012 on taxable Australian property, such as real estate and mining assets.

## Tax losses

- There are complex rules governing the use of tax losses incurred by companies. For a company's tax losses to be carried forward to a future year, it must satisfy a continuity of ownership test or, failing that, a business continuity test.
- Currently, a company will satisfy the business continuity test if it carries on the same business since the tax losses were incurred ('the same business test'). However, the same business test is currently in the process of reform and will be supplemented by a new and more flexible 'similar business test'. Under the similar business test, companies may be able to access losses where their business, while not the same, uses similar assets and generates income from similar activities and operations.



## Withholding Tax

- Australian withholding tax is levied on the payer of dividends, interest, royalties, and other limited categories of income paid to non-residents. As withholding tax is a final tax, there is no further tax payable by the non-resident on such income in Australia.
- Similar treatment may apply to individuals who are or who become temporary residents of Australia. Individuals who hold a temporary visa and fall within the definition of temporary resident may be exempt from Australian tax on income from sources outside Australia. However, they will be taxed in respect of employment or services income earned while a temporary resident. The following rates of withholding tax generally apply, but these may be reduced by any applicable double tax agreement between Australia and the country of residence of the nonresident payee:
  - Unfranked dividends - 30%
  - Interest - 10%
  - Royalties - 30%
- Other common types of payments subject to withholding tax:
  - Managed investment trust income
  - Film royalties
  - Rentals
  - Technical assistance fees.
- A final withholding tax rate of 10% applies from 1 July 2012 to payments from managed investment trusts holding energy-efficient buildings constructed to residents in specified foreign countries.

## Indirect Tax

- Australia has a goods and services tax (GST) regime.
- GST applies to the supply of most things.
- If an entity is carrying on an enterprise and meets or exceeds the GST turnover thresholds, requirement for GST is compulsory.
- Notable exceptions include GST-free supplies of food, medical and health services, education, childcare, the export of goods, and religious services. Input taxed supplies such as financial supplies, residential rent, and residential accommodation, are also not subject to GST.
- The current GST rate is 10%.
- Stamp duty (now transfer duty) is a state and territory-based tax levied at various rates on certain dutiable transactions.
- All Australian states and territories impose their own duty regime, requiring the instruments that effect a dutiable transaction to be stamped by the respective government authority to denote the payment of applicable duty.
- Duty is charged at various rates based on the nature of the transaction and the dutiable value of the transaction.
- Generally, duty is payable by the transferee (e.g., purchaser) in the transaction.
- The following are general examples of dutiable transactions:
  - Land transfers
  - Business transfers
  - Transfers of equity interests in an entity that is a landowner
- Certain exemptions are available in all Australian states for some corporate reconstructions.
- Excise taxes are levied by state and commonwealth governments on selected articles, including:
  - Cigarettes
  - Alcoholic beverages
  - Petroleum products manufactured in Australia
- The rates of tax vary by type of product.
- Some products are free of excise.
- Land tax may apply depending on the values of property.
- Payroll tax may be levied on employers on payments made to employees.





## Payment Times Reporting Scheme

- The Payment Times Reporting Scheme came into effect in January 2021.
- It requires qualifying Reporting Entities to lodge returns detailing payment practices to small business suppliers.

## General anti-avoidance regime

In addition to the specific anti-avoidance measures contained in Australian tax law, Australia has a general anti-avoidance regime contained in Part IVA of the ITAA36 which gives the ATO the power to effectively reverse a tax benefit where it considers that a scheme was entered into or carried out for the sole or dominant purpose of enabling a taxpayer to obtain a tax benefit in connection with the scheme.

## Double Taxation Treaties

- Where assessable income is liable to be taxed in both Australia and another country, relief may be available, e.g., under:
  - The specific terms of a double tax agreement between Australia and that other country; or
  - The foreign tax offset provisions contained in the Australian tax legislation.

## Transfer pricing

- Transfer Pricing Rules may apply to transactions between Australian resident companies and connected foreign entities.
- Australia's transfer pricing regime can apply if any of the conditions operating are not arm's length conditions. The rules apply not simply to price, but can extend also to a gross margin, net profit, or the division of profit between entities, as well as other conditions.
- The law permits the actual transaction entered into by the taxpayer to be ignored, so that the taxpayer is taxed on a hypothetical, re-characterized arm's length arrangement.
- Taxpayers must prepare and keep prescribed transfer pricing documentation in order to limit their penalty exposure.
- Certain entities that have a relevant connection with Australia and that have annual income (or are members of a group that is consolidated for accounting purposes and that has total global annual income) of A\$1 billion or more must prepare and submit to the Australian Taxation Office (ATO) statements in an approved form reporting on the entity's (and the group's) global operations to assist the Commissioner of Taxation carry out transfer pricing risk assessments.

## Country by country reporting

Country-by-country reporting (CbCR) forms part of international measures targeting tax avoidance, by providing a comprehensive basis of tax data and legal information reported within countries and between countries.

Australian CbCR requirements apply to a 'significant global entity' (SGE) (multinational groups with annual global income of A\$1 billion or more) for income years commencing on or after 1 January 2016. There has been a recent change to the SGE regime commencing for income years on or after 1 July 2019, with SGE's only being required to comply with CbCR if they also meet the newly created 'country-by-country reporting entity' definition.

The provided information assists the ATO to assess risk and select taxpayers for further investigation.

## MAAL and DPT

- Multinational anti-avoidance law (MAAL) is designed to prevent multinationals from avoiding their taxable presence in Australia and ensure they pay tax on the profits sourced from their economic activities in Australia.
- MAAL only applies to significant global entities (foreign entities, or entities that are part of a global group, that have an annual global income in excess of A\$1 billion) where a foreign entity makes supplies to an Australian customer and the revenue is not taxed in Australia. Diverted profits tax (DPT) is an anti-avoidance provision affecting significant global entities (which the global turnover is A\$1 billion or more) to ensure that those entities do not reduce the amount of Australian tax by diverting profits offshore (to a low tax jurisdiction) through related party arrangements/ schemes.



- The DPT imposes a penalty tax rate of 40% to Australian tax benefits obtained in income years commencing on or after 1 July 2017.
- The DPT will not apply where the taxpayer satisfies any of the following exceptions:
- the \$25 million income test
- the sufficient foreign tax test
- the sufficient economic substance test

### Digital Services Tax

Australia does not unilaterally impose a digital services tax. However, it is an active participant in the OECD's creation and implementation of best-practice taxation guidelines.

As part of the OECD's 'Pillar One and Two' initiatives to address the tax challenges arising from the digitalization of the economy, Australia is expected to swiftly implement both initiatives.

Notably, Pillar Two seeks to implement a minimum 15% rate of taxation. Whilst the technical mechanics of Pillar Two are still being finalized, it is expected to be implemented in Australia in 2023. Multinationals are encouraged to proactively consider the application of Pillar Two and bolster their internal governance systems to manage the additional compliance burdens in anticipation for its implementation. Additionally, Pillar One is expected to commence in 2024 and outlines the basis for potential future international agreements dealing with taxable presence and profit allocation rules between countries.

## TAX AND INVESTMENT INCENTIVES

### Pioneer Status

- There are a number of incentives to encourage multinationals to set up a regional headquarters company in Australia, including:
  - Deductions for set up costs incurred 12 months either side of the date on which the regional headquarters company first derives assessable income in Australia from the provision of regional headquarters support;
  - Deduction for certain relocation costs;
  - Limited payroll tax relief in some states;
  - Early Stage Venture Capital incentives;
  - Streamlined immigration procedures.

### Capital Allowances

- Under the uniform capital allowance rules, a deduction for depreciation is generally allowed in respect of plant, machinery and equipment and other assets at various rates over the useful life of an asset.
- Depreciation is calculated on a diminishing value basis unless the taxpayer elects to use prime cost.
- To calculate the applicable rate of depreciation for a particular asset, reference must be made to the formulas prescribed by Australian tax law.
- The Australian Taxation Office publishes an annual taxation ruling to provide guidance on the effective life of a wide range of depreciable assets.
- Companies that incur expenditure on research and development (R&D) may be eligible to claim a number of tax concessions, including:
  - A refundable tax offset equal to the entity's company tax rate plus an 18.5% premium for eligible entities with an aggregated turnover of less than \$20 million per annum, provided they are not controlled by income tax-exempt entities
  - A non-refundable refundable tax offset for all other eligible entities equal to the entity's company tax rate plus a two-tiered premium determined on the notional R&D expenditure as a proportion of total expenditure for the income year. The new rates will be the company tax rate plus
    - 8.5% for R&D expenditure up to 2% of total expenditure
    - 16.5% for R&D expenditure above 2% of total expenditure.
- A Digital Games Tax Offset has been introduced for eligible game developers.





## Investment Tax/Reinvestment Allowances

- Tax incentives apply to encourage foreign investment into the Australian venture capital market and to encourage international venture capital managers to locate in Australia by allowing “flowthrough” taxation of certain venture capital entities.
- In 2012/13 there were amendments to clarify the operation of the Taxation of Financial Arrangements (TOFA) regime including in respect of the tax timing methods.
- The government proposes to proceed with amendments to ensure only net gains and losses are recognized for tax purposes for certain intragroup liabilities and assets that are subject to the TOFA regime upon exit of a member from a consolidated group.
- The government plans to proceed with amendments to clarify the tax hedging rules.
- The government will proceed with the proposal to amend the debt/equity tax rules in order to restrict the application of an integrity provision that deems an interest from an arrangement that funds a return through connected entities to be an equity interest under certain circumstances.
- The government will proceed with a proposal that would allow certain trusts and partnerships to keep accounts solely or predominantly in a foreign currency to calculate their net income using that foreign currency.

## Tax Exemptions

- Capital gains tax exemption applies to certain gains made by foreign residents on venture capital investments.
- Conditions for the exemption include registration, holding the investment at least 12 months, the investment must be in an eligible venture capital investment, and the partners must be from Canada, France, Germany, Japan, the UK or the US or another prescribed country.
- Individuals who hold a temporary visa and qualify as a “temporary resident” are exempt from Australian tax on certain foreign source income or capital gains. They are treated similarly to non-residents, even though in many cases they would have been classed as residents under the normal tax rules. They are also exempt from interest withholding tax. Special rules apply to employee shares and rights. These concessions generally apply to income years on or after 1 July 2006, but the withholding tax concessions apply to payments made on or after 6 April 2006.

## Austrade

- The Australian Trade and Investment Commission, a Government agency, advances Australia’s international trade and investment by providing Government assistance to international buyers and investors.

# EMPLOYMENT LAW

## General Legal Framework

- The Commonwealth Fair Work Act 2009 (FW Act) is the primary piece of industrial relations legislation. There are also various equal opportunity and anti-discrimination laws, and occupational health and safety laws.
- The FW Act applies to trading or financial corporations, foreign corporations, all Commonwealth government agencies, and aircrew and waterside workers engaged in interstate trade and commerce. All States, except for Western Australia, have also now referred power to the Commonwealth to enable the FW Act to apply to other private sector employers, such as partnerships and unincorporated associations.
- State industrial relations laws principally cover State public servants and also partnerships and unincorporated associations in Western Australia. However, State laws continue to apply to private sector employers in relation to matters such as long service leave (but not other forms of leave), occupational health and safety, workers’ compensation, and anti-discrimination.

## The National Employment Standards

- The National Employment Standards (NES) under the FW Act stipulates 10 minimum standards for employment. It is not possible to contract out of the NES. These are:
  - Maximum weekly hours of work – 38 hours per week plus reasonable additional hours.



- Requests for flexible working arrangements (including changes in hours of work, patterns of work and location of work) for employees that are parents (or carers) of a child of school age or younger, carers (within the meaning of section 5 of the Carer Recognition Act 2010 (Cth)), have a disability, are 55 years or older, are experiencing violence from a member of the employee's family, or a member of the employee's household who requires care or support because the member is experiencing violence from the member's family.
- Parental leave and related entitlements – up to 12 months' unpaid leave for each employee, plus a right to request an additional 12 months' unpaid leave, plus other forms of maternity, paternity, and adoption-related leave. A separate Commonwealth-funded paid parental scheme provides parents of children born or adopted on or after 1 January 2011 to leave while receiving the national minimum wage for up to 18 weeks.

The pay is funded by the Federal Government. It is in addition to other entitlements including employer-funded paid parental leave (which is common as a matter of company policy).

- Annual leave – four weeks paid leave per year for full-time employees, plus an additional week for certain shift workers.
- Personal/carer's leave and compassionate leave and unpaid family and domestic violence leave – 10 days paid personal/carer's leave for full-time employees, two days' unpaid carer's leave as required, two days' compassionate leave (unpaid for casuals) as required, and five days of unpaid family and domestic violence leave in a 12-month period.
- Community service leave – unpaid leave for voluntary emergency activities and leave for jury service, with an entitlement to be paid for up to 10 days for jury service.
- Long service leave – a transitional entitlement for certain employees who had certain long service leave entitlements before 1 January 2010. Long service leave is primarily dealt with by State legislation and provides a certain amount of paid leave after a certain period of service (for example, 2 months' leave after 10 years' service in New South Wales).
- Public holidays – a paid day off on a public holiday, except where reasonably requested to work.
- Notice of termination and redundancy pay – up to four weeks' notice of termination (five weeks if the employee is over 45 and has at least five years of continuous service) and up to 16 weeks' redundancy pay, both based on length of service.
- Provision of a Fair Work Information Statement – employers must provide this statement to all new employees. It contains information about the NES, modern awards, agreement-making, the right to freedom of association, termination of employment, individual flexibility arrangements, rights of entry, transfer of business, and the respective roles of the Fair Work Commission and the Fair Work Ombudsman.
- The FW Act provides for modern awards to set minimum terms and conditions of employment for many employees. Terms and conditions of employment can also be controlled through enterprise agreements made under the FW Act.
- Modern awards and enterprise agreements often deal with entitlements such as overtime and penalty rates for work outside normal business hours, on weekends or shift work. They operate in conjunction with the NES. It is not possible to contract out of an award or an enterprise agreement but there can be some limited flexibility over certain requirements, e.g., when work is done, and whether allowances can be rolled up into an annual salary.

## General protections

An employer must not take 'adverse action' against an employee or prospective employee for a number of prohibited reasons, including because:

- the person is a member of a union or has engaged in industrial activities;
- the person has a protected attribute (e.g., race, sex, sexual orientation, disability, age etc.); or
- the person has a workplace right or has or has not exercised a workplace right.

'Adverse action' broadly means any form of detrimental action and includes refusing to hire a prospective employee, discriminating against an employee and dismissing an employee.

Workplace rights include, for example:

- an employee having a benefit or role under a workplace law (e.g., a union official with a right to enter a workplace to inspect safety breaches);



- an employee being entitled to commence or participate in a proceeding under a workplace law (e.g., to make an unfair dismissal claim);
- an employee being able to make a complaint or inquiry in relation to their employment.

Examples of unlawful adverse action would include not promoting an employee because they have made a complaint about their employment; giving an employee a written warning because of their union activities; or dismissing an employee because they have taken paid personal leave or made a workers' compensation claim.

The general protections regime also prohibits an employer from dismissing an employee because they are temporarily absent from work due to illness or injury.

There is no minimum service requirement or maximum remuneration cap in relation to a general protections claim. A court may order reinstatement or damages (with no cap) for breach of the general protection provisions. Also, a reverse onus of proof applies – which means the employer has to prove it acted for only lawful reasons.

### Modern Awards

- Modern awards are binding on employers and employees in a specified class (for example by reference to a particular industry or task) in respect of employees in specified role classifications. Awards can be excluded for an employee to whom the award would otherwise apply where the employee's salary (and other agreed benefits) is more than the High-Income Threshold (currently \$162,000 as of 1 July 2022, indexed on 1 July annually), provided that the employee has been given a written guarantee of annual earnings in accordance with the FW Act.
- Awards regulate minimum wages. Awards may also include provisions relating to types of employment, arrangements for when work is performed, overtime and penalty rates (including or shift workers), annualized wage or salary arrangements, allowances, leave and leave loadings, superannuation, procedures for consultation, representation and dispute settlement, pay and conditions for outworkers.
- The Clerks – Private Sector Award 2010 is an award which will apply to most employees performing clerical or administrative functions. There are various industry awards that cover clerical employees and exclude the Clerks Award (for example, in the banking, finance, insurance and retail industries). Senior managers are not usually covered by any award (no matter what their rate of pay is). For instance, there is no award that has general application to private sector lawyers (although legal graduates may have some coverage).

### Enterprise Agreements

- Enterprise agreements can be negotiated directly with employees on a collective basis (most commonly by employee union bargaining representatives) in accordance with the FW Act. Agreements are employer (or even business/work site) specific and contain enhanced conditions to suit the business. They override an award but must provide conditions of employment that are “better off overall” for employees when compared to the applicable award.

### Minimum Wage Requirements

- The Fair Work Commission is responsible for setting minimum wages for employees in the national workplace relations system. Minimum wages for employees covered by an award are specific in the award. Minimum wages for employees who are not covered by an award or agreement are specified in the national minimum wage order which is reviewed annually. The Fair Work Commission also reviews award minimum wages annually.
- The national minimum wage order sets the national minimum wage, casual loadings, and special national minimum wages for all award/agreement free employees in the following classes:
  - Trainees, apprentices and junior employees;
  - Employees to whom training arrangements apply; and
  - Employees with a disability.
- Award minimum wages include the rates of minimum wages and:
  - Wage rates for junior employees, employees to whom special training arrangements apply and employees with a disability;
  - Casual loadings; and
  - Piece rates.



## Statutory Contributions

- Taxation is compulsorily exacted by both the Federal Government and the Governments of the States. These include:
  - Payroll tax (State based);
  - PAYG deductions from employees' remuneration (Federal);
  - Compulsory 2% Medicare levy (Federal - please note that foreign residents and temporary residents will generally not be entitled to Medicare benefits and on that basis, may be eligible for an exemption from paying the Medicare levy, but would need to apply for an exemption);
  - Fringe benefits tax (Federal);
  - Termination payments (Federal);
  - Employers also have various taxations reporting and compliance obligations if they provide employee share schemes to employees.

## Superannuation

- Employers are required to make superannuation contributions on behalf of employees (known as superannuation guarantee or 'SG') based on an employee's "ordinary time earnings", subject to minimum and maximum thresholds.
- The SG rate increased to 9.5% in 2014/15 and will remain at that rate until 2020/21 and then increase by 0.5% each year until it reaches 12% in 2025/26.
- The SG exemption age of 70 was abolished from 1 July 2013. Contributions can be made to a complying superannuation fund, and employees can generally choose a fund. From 1 January 2014, employer SG contributions must be made to a superannuation fund that offers a MySuper product if an employee has not chosen a fund.
- Employers are entitled to a deduction on their superannuation contributions for employees regardless of age.
- Employees may also choose to salary sacrifice into superannuation, subject to limits.
- Australian workers are unable to access their superannuation benefits until they reach a minimum age (generally age 60 where the worker retires) or meet other conditions for release.
- After permanently leaving Australia and expiry of a temporary resident visa, an expatriate employee may apply for a refund of their superannuation, subject to withholding tax and certain other conditions. However, if an employee is an Australian citizen or permanent resident heading overseas, the superannuation remains subject to the same rates even if the employee is leaving Australia permanently. This means employees cannot access super until they reach preservation age and retire or satisfy another condition of release.
- Various tax concessions are available to superannuation funds and the benefits withdrawn from those funds, whether as an income stream or lump sum.

## DATA PROTECTION

Australia regulates data privacy and protection through a mix of federal, state and territory laws.

### Privacy

The main legislative scheme in Australia in regards to privacy is the Privacy Act 1988 (Cth) (Privacy Act) which covers, among others:

- private sector and non-profit organizations with an annual turnover of more than A\$3 million;
- all health service providers and Federal Government contractors regardless of their turnovers;
- Federal Government agencies;
- businesses with an annual turnover of A\$3 million or less (small businesses) that:
  - trade in personal information;
  - are related to a larger business;
  - are reporting entities within the meaning of the Federal Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (but only in relation to the activities carried on by the small business for the purpose of that Act or rules or regulations made under that Act, such as the reporting of suspicious transactions and cross-border movements of cash over A\$10,000);
  - small businesses that are not automatically covered by the Federal Privacy Act but have opted-in to the Act.





The Privacy Act contains 13 Australian Privacy Principles (APPs) which set down broad principles on how organizations must deal with personal information. Organizations and agencies that are covered by the Privacy Act are referred to as «APP entities».

The APPs include:

- restrictions on the collection of personal information which is any information or opinion about an identified individual or an individual who is reasonably identifiable, such as a person's name or address;
- restrictions on the collection of sensitive personal information (such as information related to a person's racial or ethnic origin, or religious or philosophical beliefs);
- restrictions on the use and disclosure of personal information so collected, including restrictions on the use and disclosure of personal information for direct marketing;
- restrictions on the disclosure of personal information to individuals and organizations outside of Australia;
- requirements designed to ensure that personal information collected, used or disclosed is kept securely and is accurate, complete and up to date;
- obligations on organizations to ensure that individuals are provided with access to their personal information and given the opportunity to correct that information;
- restrictions on the use of government-issued identifiers (such as tax file numbers);
- obligations to ensure that individuals are able to access an organization's privacy policy.

Certain activities by organizations are exempt from the obligations imposed under the Privacy Act. These include:

- the handling of current and former employee records by employers where the handling is directly related to the employment relationship;
- the handling of personal information by media organizations in the course of journalism; and
- the handling of personal information by contractors working for registered Australian political parties or political representatives.

Organizations may apply to the Office of the Australian Information Commissioner to be bound by a specific Privacy Code. If approved, the organization will be required to comply with that Privacy Code instead of the APPs.

The Office of the Australian Information Commissioner has significant powers, which will generally be exercised by the Privacy Commissioner, including the ability to:

- accept enforceable undertakings
- seek civil penalties in the case of serious or repeated breaches of privacy
- conduct privacy assessments of APP entities.

## GDPR

Businesses which undertake business in Australia may be subject to the General Data Protection Regulation (GDPR) where those businesses have 'business' within the European Union (EU).

GDPR regulates the processing of personal data and imposes (in some cases) greater obligations and protections than under the Privacy Act.

Australian organizations may be subject to the GDPR requires where the organization either:

- supply goods or services to, or monitor, individuals in the EU through an online presence; or
- process personal data in connection with the activities of an EU establishment (which is undefined, but seems to require effective and real exercise of activity through stable arrangements), including potentially where this is done via a data center of a service provider located in the EU. Personal data is defined under the GDPR to mean any information «relating to» an identified or identifiable natural person (a data subject). The GDPR regulates the processing of personal data (i.e., collection, storage, alteration, use and disclosure) and grants privacy rights directly to data subjects. Businesses subject to the GDPR must satisfy the following:
- notify individuals of the purpose for which personal data will be processed;
- restrict processing to the purpose for which personal data was collected, except in specific circumstances;
- store personal data securely;
- allow individuals to access their personal data; notify regulators and individuals in the event of certain data breaches;



- comply with the rights of individuals to erase person data or to restrict the purpose for which the data can be processed and the ability to withdraw consent for the processing of personal data;
- consent to use of data must be in writing;
- report data breaches where the breach is likely to result in a risk to an individual's rights and freedoms.

Businesses with links to the EU and Australia will need to ensure that it complies with the obligations of both the GDPR and the Privacy Act.

### Spam Act

The Spam Act 2003 (Cth) (Spam Act) prohibits the sending of unsolicited commercial electronic messages such as emails, SMS, MMS and instant messages which have an "Australian link".

«Australian link» is very broad and includes messages sent:

- from within Australia;
- by an individual or organization whose central management and control is in Australia (whether or not the message is actually sent from Australia);
- where the computer, server or device that is used to access the message is located in Australia;
- where the account holder or organization receiving the message is present in Australia.

Whether or not a message is «commercial» depends on the content of the message; the way in which the message is presented; and the content that can be located using any links, telephone numbers or contact information contained in the message.

The Spam Act also prohibits individuals and organizations that carry on business in Australia from supplying, acquiring or using address-harvesting software and harvested address lists.

## DISPUTE RESOLUTION

### Judicial Structure

- As a Federation of States, Australia's judicial system comprises of a Federal and several State jurisdictions. Each State or Territory has its own Supreme Court which exercises full power over all matters arising under the law of that State or Territory.

The Federal Court system exercises original jurisdiction over all laws enacted by the Federal Parliament. The High Court of Australia is the ultimate Court of Appeal, hearing appeals from each of the States and Territories and from the Federal Courts.

- Within the various jurisdictions there are both general courts, with jurisdiction over legal disputes generally, and specialist courts, which have jurisdiction over particular areas of the law (for example, Family Law disputes).

### Court System

- Australian Courts operate under the adversarial model, in which each party to a proceeding is entitled to be represented by Counsel. The proceedings are overseen by a judge or judicial officer, who acts as the ultimate arbiter in questions of law. In the civil jurisdiction, this judicial officer also operates as the ultimate finder of fact. Jury trials are almost never used in the civil jurisdiction.

### Alternative Dispute Resolution

- Alternative Dispute Resolution (ADR) has gained increasing acceptance among both the general public and legal profession.
- Mediation has become an increasingly common alternative to formal litigation. Parties to a dispute are assisted by an impartial person or persons who work together to isolate the issues in dispute in order to develop a consensual settlement acceptable to both parties. It is common for civil disputes to be referred to mediation before they are heard by the court in a formal litigious setting. In some jurisdictions, mediation is mandatory before proceeding to trial. Mediations are conducted confidentially and evidence of what was said at mediation cannot be used in subsequent Court proceedings.



- Arbitration has also become a common method by which disputes are resolved. The issue is referred to an arbitral body, generally by agreement, which considers the elements in a judicial manner, and makes a legally binding «award» which alters the rights of the parties. Each State has adopted legislation to govern the conduct of domestic-based arbitrations. These legislative measures roughly follow an agreed uniform approach. International arbitration may be governed by Federal legislation which adopts the United Nations Commission on International Trade Law (UNCITRAL) model on an “opt-out” basis.

### Complex Litigation

- Advances in electronic record keeping, the rising presence of multinational corporations and the rising cost of litigation has led to an increase in complex matters before Australian Courts. Electronic document management and discovery is more widely used, requiring legal firms to be familiar with the use of electronic document databases. Courts across all jurisdictions have developed more practical case management systems to facilitate faster resolution of large-scale disputes.
- Class action lawsuits against large (or insured) entities have increased in popularity in recent years, particularly following
- a number of well publicized national public inquiries. In class actions, a group (or class) of plaintiffs who have suffered similar loss and damage at the hands of a common defendant brings a collective suit against that defendant. This becomes a cost-efficient way for plaintiffs to bring legal claims as the costs are spread across the group of plaintiffs, avoiding doubling up on legal work.

## IMMIGRATION PROCEDURES - FOR BUSINESS

Visiting Australia for short-term business or work The Migration Legislation makes a distinction between ‘work’ and ‘business’ activities.

Care must be taken to ascertain which activities are being undertaken so the correct visa can be obtained. Home Affairs’ policy contains detailed guidance on what activities comprise ‘business activities’.

In general terms, they include:

- making general business or employment enquiries;
- investigating, negotiating, signing or reviewing a business contract;
- activities carried out as part of an official government-to-government visit; and
- participating in conferences, trade fairs or seminars, as long as you are not being paid by the organizers for your participation.

The appropriate visas for ‘business activities’ are the various visitor visas issued for business purposes. The appropriate visa for short-term work situations is the Under Home Affairs policy, ‘non-ongoing’ means a position that needs to be filled on a short-term basis, not exceeding three months, or a maximum of six months in very limited circumstances.

Anyone who wishes to travel to Australia to work or conduct business must obtain an Australian Visa. There are numerous visas which may be available for people who wish to work in Australia or conduct business in Australia. Each visa allows the visa holder to conduct different specified activities while in Australia. Below is a brief overview of the most common visa options. Australian Migration Law is complex and frequently changing and therefore a Registered Migration Agent or Migration Lawyer should be consulted to assist with obtaining the most appropriate visa, especially where longer term visa options are required.

Business visitors may apply for an Electronic Travel Authority (ETA) or eVisitor visa, depending on their country of passport.

There is also a global talent visa program which provides a streamlined pathway to permanent residency for individuals with exceptional talent in certain areas.

Further, under the Business Skills program, business visitors can come to Australia to start or manage businesses without the need for a sponsor, subject to certain requirements.





## Temporary Working Visas

### **Subclass 400 - Temporary Work (Short Stay Activity) Visa**

This visa is for people who want to travel to Australia to:

- do short-term, highly specialized, non-ongoing work;
- participate in non-ongoing cultural or social activities at the invitation of an Australian organization; or
- in limited circumstances, participate in an activity or work relating to Australia's interests.

To access this visa, the proposed work must be highly specialized, where the person possesses skills which are not readily available to the Australian business from the local labor market.

Generally, the stay period allowed is up to three months but up to six months (in limited cases) may be considered in limited circumstances if supported by a strong business case. This visa allows the holder to bring their immediate family with them to Australia.

### **Subclass 600 - Visitor Visa (Business visitor stream)**

This visa is for people who want to travel to Australia:

- to conduct business visitor activities, such as attend a meeting or a conference, or investigate a business or employment opportunity but cannot be used to work or sell goods or services; and
- usually for up to three months at a time

This visa does not allow the holder to conduct work other than business visitor activities.

There are particular streams within this subclass of visa available for citizens of the People's Republic of China (such as the frequent traveler stream)

### **Subclass 651 - eVisitor Visa**

This visa is similar to the subclass 600 visa but is for people who hold passports of particular countries who want to travel to Australia:

- to conduct business visitor activities, such as attend a meeting or a conference, or investigate a business or employment opportunity; and
- for up to three months at a time within a 12-month period (multiple visits may be allowed).

This is a free visa. This visa does not allow the holder to conduct work other than business visitor activities.

### **Subclass 482 - Temporary Work Visa (Medium and Long Stay)**

The Temporary Skill Shortage (Subclass 482) (TSS) visa is the primary visa program available to and used by businesses to sponsor overseas employees to work in Australia on a temporary basis. It is available to organizations already established in Australia, as well as organizations based outside of Australia that want to either establish operations in Australia for the first time or fulfil contractual obligations in Australia.

TSS visa is a sponsored visa. This means that the organization wishing to hire an overseas worker must be approved as a 'standard business sponsor' by Home Affairs before it can sponsor that person on a TSS work visa.

#### **482 visa application process :**

1. Step 1 (Sponsorship Application): The employer applies for approval as a business sponsor.
2. Step 2 (Nomination Application): The employer nominates the position to be filled.
3. Step 3 (Visa Application): The prospective employee applies for the Subclass 482 visa.

The TSS visa has a short-term stream (visa granted for up to 2 years) and a medium-term stream (visa granted for up to 4 years). In order to qualify for the TSS, the role needing to be filled must appear as an occupation on the Combined List of Skilled Occupations and must be advertised in a prescribed way before the application can be lodged. The applicant must have a minimum of two years of relevant work experience, the skills to fulfil the role and meet the English language, health and character requirements.

The Australian Government is regularly reviewing the visa programs, requirements and conditions and the Home Affairs website should be checked for updates.



Home Affairs' published service standard for processing TSS sponsorship, nomination and visa applications varies. Processing times vary according to demand, the complexity of the application, and the impact of COVID-19, so it is important for employers to plan ahead to factor application preparation and processing times into the hiring process.

### **Subclass 188 – provisional visa**

This visa allows you to own and manage a business in Australia, conduct business and investment activity in Australia or undertake an entrepreneurial activity in Australia.

### **Immigration compliance**

This is an increasingly complex and important aspect of the Australian immigration system. Underpinning immigration compliance is the premise that non-Australian citizens can only work in Australia if they have a visa containing appropriate work rights.

Similarly, the Employer Sanctions provisions of the Migration Legislation provide that employers may only employ workers with the right to work in Australia on their visa. The provisions impose strict liability, and employers who inadvertently employ a foreign worker without appropriate work rights will automatically be liable for an offence under the civil liability provisions of the Act unless they can show that they took certain prescribed steps (including conducting work rights checks).

### **Permanent residence in Australia**

Employer nominated migration under the Employer Nomination Scheme (Subclass 186) and Regional Sponsored Migration Scheme (Subclass 187) enables businesses to nominate highly skilled workers for permanent residence from overseas, or in Australia on temporary visas.

It requires evidence of, at least, a two-year contract with the nominating employer from grant of the permanent residence, but the visa holder becomes a permanent resident and can effectively remain in Australia indefinitely. No sponsorship obligations are imposed on the employer pursuant to this visa scheme.

## **INTELLECTUAL PROPERTY**

Australian laws provide significant protection for intellectual property, for example patents, copyrights, trade names, trademarks, domain names and confidential information. For example:

- The Trade Marks Act 1995 (Cth) provides for the registration of trademarks to allow for the distinction of goods and/or services between persons.
- Copyright in Australia is covered by the Copyright Act 1968 (Cth) and may be granted in respect of activities such as artistic, literary, and musical works.
- Patents are covered by the Patents Act 1990 (Cth) and can provide exclusivity to an applicant.
- Under the Design Act 2003, short-term registrations for designs may be available to provide an owner with protection for the visual appearance of a product.
- Common law protections may also be available.

Importantly, from 20 September 2022, Australian businesses are able to get priority to register for a new, shorter domain '.au' rather than the historic limitations to ". com.au" and ". net.au"



## KEY FACTS

- China is one of the big countries in the world with an area of 9.6 million km<sup>2</sup>.
- Population is over 1.3 billion consisting of 56 nationalities. Han nationality makes up over 90% of the population.
- The main religions are Buddhism, Taoism, Islam and Christianity.
- Mandarin is the national language. English is popularly used in urban areas and for business.
- Currency: Renminbi (RMB).
- The PRC is under the leadership of the Chinese Communist Party. Since the founding of new China in 1949, China's economy has witnessed great achievements. China has become second largest economy.
- Investment growth areas include biotechnology industry (encompassing agriculture, food, industrial and medical biotechnology), tourism, research and development, medical device industry, shipping and transportation, manufacturing-related services, and agriculture.





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## BUSINESS PRESENCE

- Main vehicles available to foreign direct investors: representative office, equity joint venture ('EJV'), cooperative joint venture ('CJV'), wholly foreign-owned enterprise ('WFOE'), and partnership enterprise.
- PRC laws allow and encourage foreign investors to set up foreign investment holding company ('FIHC') and multinational corporations' regional headquarters ('MCRH') in China.

## FOREIGN INVESTMENT RESTRICTIONS AND CONDITIONS

### Negative List

- From time to time, the National Development and Reform Commission, and the Ministry of Commerce jointly publish a "negative" list that specifies sectors where foreign investment is either restricted or prohibited. China aims to gradually shorten the negative list and open up more sectors to foreign investment or remove the restrictions on foreign ownership. Sectors that are not on the list are open for foreign investment.

### Foreign Investment Approval Authorities

- The National Development and Reform Commission ("NDRC"), the Ministry of Commerce, and their local counterparts are mainly responsible for approvals or filings in relation to foreign investment. The foreign investment in the sector that is not on the Negative List requires filing while foreign investment in the sector that is on the negative list requires an approval. As to some special industries, relevant authorities (e.g. the State Food and Drug Administration) may also take part in approving procedures.
- After approved by or filed with the Approval Authorities, the incorporation documents of all business entities shall further be registered with the local counterparts of
- State Administration for Market Regulation. Special industries' (e.g., advertising) initial approval shall also be overseen by the State Administration for Market Regulations.
- Among others, the routine management of FIES is conducted by the Tax Bureau, the State Administration of foreign Exchange, the Customs, the Administration of Quality Supervision etc.

### Eligible Foreign Investors

- There are mandatory requirements on the qualification of foreign investors in certain industries (such as establishing an education institution or financial institution).

### Partnership enterprises

- Foreign companies, enterprises or natural persons can also set up a partnership.
- Foreign invested partnerships should comply with the regulations of the Partnership Enterprise Law of PRC and the rules for the accessibility of foreign investment.

### Representative office

- Representative offices are entitled to carry out market research, product publicity, etc., but they are not allowed to engage in any profit-making activities.
- Foreign investors should make registration to the authorities for the set-up of its representative office.

### National Security Review Related to Foreign Investment

Any foreign investments in China that impact or potentially impact the national security of China are subject to security review. Specifically, foreign investment in the following sectors is subject to national security review:

1. Invest in the military industry, military-related industry and other areas relating to China's national defense security, as well as investment in the surrounding areas of military installations and military facilities;
2. Invest in important areas relating to national security, including important agricultural products, important energy and resources, important equipment manufacturing, important infrastructure, important transportation services, important cultural products and services, important information technology and Internet products and services, important financial services, key technologies, etc., and obtain de facto control of the invested enterprise.



The office of the Working Mechanism will take the lead and undertake the daily work of foreign investment security review.

After any application for security review is submitted to the office of Working Mechanism, the office shall, within fifteen (15) working days from the date of receiving the application materials, make a decision on whether a security review needs to be conducted on the reported foreign investment and notify the relevant parties in writing. If the office of Working Mechanism decides that security review is required, it shall conduct a general review and complete it within thirty (30) working days. If the office of Working Mechanism is of the view that the proposed investment has or may have an impact on national security, it shall make a decision to conduct a special review. A special review shall be completed within sixty (60) working days after the special review procedure is launched and may be extended under special circumstances.

## FOREIGN EXCHANGE CONTROL AND PROFIT REPATRIATION

- RMB, the national currency of China, is not yet a freely convertible currency and China is still a foreign exchange control country.
- Under PRC laws and regulations, foreign exchange under capital account items is subject to control, while legal entities, including FIEs, are relatively free to deal with their foreign exchange under current account items such as goods and service trading.
- The profits generated by a Chinese entity of a foreign investor are permitted to be repatriated out of China. In fact, foreign investors seldom have the problem in converting its post-tax profit into foreign currencies and repatriating out of China, provided that the required documents are furnished and in order.

## TAX COMPLIANCE

- The taxes applicable to foreign investment enterprises («FIEs») in China include i) enterprise income tax («EIT»); ii) value added tax; iii) consumption tax; iv) customs duties; v) land value added tax, etc.
- Business transactions between affiliated enterprises shall be conducted at arm's length and on independent basis. Otherwise, the taxing authority shall have the right to adjust the FIE's taxable income.

### Main tax Rates applicable to FIEs

- EIT:
  - 15%: applicable to “encouraged hi-tech enterprises”
  - 20%: applicable to small-scale enterprises earning a “small profit”
  - 25%: applicable to all enterprises other than those mentioned above
- VAT:
  - In terms of various industries, general taxpayers shall apply to VAT rates that are classified as: (i) 17%, (ii) 13%, (iii) 11%,
  - (iv) 6%, (v) 4%, (vi) 3%, (vii) 0%

### Preferential tax treatment for FIEs

- The tax treatment for both FIEs and domestic enterprises has become consistent, and most nationwide preferential tax treatments will not be available or continued anymore. Even the Urban Maintenance and Construction Tax, and Education Surtax have applied to FIEs and foreign individuals since 1 December 2010.
- Foreign investors will preferential benefits in certain sectors such as high technology sector and certain regions such as the Western Regions.
- Local governments in certain districts may still provide FIEs with local tax preferential treatment.



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## CONTRACT LAW

- In China, to entering into a contract, the parties shall have the appropriate capacities for civil rights and civil acts.
- A contract may be made in writing, in an oral conversation, as well as in any other form.
- Where the parties enter into a contract by a memorandum of contract, the contract is formed when it is signed or sealed by the parties.
- Parties of a foreign related contract may select the applicable law for resolution of a contractual dispute, except otherwise provided by law. Where parties of the foreign related contract failed to select the applicable law, the contract shall be governed by the law of the country with the closest connection thereto.

## PRODUCT LIABILITY

- The Product Quality Law of the PRC has been formulated with a view to reinforcing the supervision and regulation of product quality, improving the quality of products, clarifying the liabilities for product quality, protecting the legitimate rights and interests of consumers and safeguarding the social and economic order.
- The time period for claims for compensation for the damages caused by the defects of the product is two (2) years from the time when the injured party knows or ought to know that his rights and benefits are damaged. However, the limitation of action for claims shall be one year on cases concerning the sales of substandard goods without proper notice to that effect.
- If a substandard product causes property damage or physical injury to others, the manufacturer or seller shall bear civil liability in accordance with the laws. If the transporter or storekeeper is responsible for the matter, the manufacturer or seller shall have the right to demand compensation for its losses.

## LIMITATION

- Interest rate for personal loan could be higher than that for the Banks and shall not exceed quadruple of the Bank's interest rate.

## LABOUR LAW

- Generally, FIEs are entitled to recruit their employees freely, except representative offices which must recruit the local Chinese staff through government-approved labor agencies.
- The enterprise may not lay off an employee at will or without due cause. If the enterprise (employer) decides to terminate the employment contract with an employee, it shall give the employee severance pay subject to PRC Labor Law.
- FIEs are required to participate in unemployment, medical and work-related injury programs, and social insurance schemes pursuant to relevant national regulations and to pay social insurance premiums in full and on time in accordance with local standards. The new Social Insurance Law of PRC, which has established a standard social insurance system – including basic retirement plan, basic medical, work-related injury, unemployment, and child-bearing insurance – came into force on 1 July 2011.
- In addition, FIEs shall reserve housing accumulation funds on behalf of their Chinese employees and shall use such funds according to local regulations.

## REAL ESTATE

### Limits on Ownership

- Typically, the foreigners may purchase real estate in China according to relevant laws and regulations, provided that i) the purpose of the purchase is not for the investment; ii) the foreigners satisfy certain conditions and qualifications.



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- Land in urban areas is owned by the State and land in rural areas is owned by ‘collectives’. The State retains ownership of state-owned land at all times. An owner of a property only acquires the use’ of that land for a certain period. The term of land used for industrial purposes is 50 years while the term for residence purpose is 70 years, which is renewal.

#### Ownership Registration System

- The transfer of ownership should be registered; otherwise, the transfer will be invalid. The registration system includes primary registration of estate title, change of registration, transfer of registration, cancellation of registration and etc., and the registration information is open to public search subject to satisfaction of a certain conditions.

## INTELLECTUAL PROPERTY

- China has acceded to most of the important international intellectual property protection conventions. The legal framework within China now provides for comprehensive protection to the investors for their intellectual property rights.

#### Term

- The duration of patent right is 20 years for an invention and 10 years for a utility model or design, commencing from the date of the patent application.
- The period of validity of a trademark is 10 years from the date of approval of the registration, and the registration can be renewed for an additional 10 year periods.
- The period of copyright protection, in most cases, extends to the life of the author plus 50 years, and the period for film, television, video and photographic works is 50 years, commencing from the date of the work’s first publication.

#### Infringement and Rights Protection

- Without a written contract of the IP licensor, use of the IP may constitute an infringement. The patentee or any interested party may either bring a lawsuit with the people’s court, or request the patent administrative department, for settlement.

## MERGER AND ACQUISITION

- Both Equity Merger and Acquisition and Asset Merger and Acquisition are available. The merger/acquisition should be subject to Company Law of the People’s Republic of China and Ministry of Commerce PRC on Promulgation of the Provisions on M&A of a Domestic Enterprise by Foreign Investors.

#### Industry Restrictions on Investment/Acquisition

- In M&A of domestic enterprises, foreign investors shall comply with the requirements regarding the investors’ qualifications and industrial, land and environmental protection policies as set forth in the laws, administrative regulations and departmental rules and the relevant requirements under industry policies.

## DISPUTE RESOLUTION

#### Consultation/mediation

- Most business contracts in China contain a clause stipulating that negotiation should be employed before any other dispute settlement mechanisms are pursued.





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### Arbitration

- If parties to the contract wish to choose arbitration as a mode of dispute resolution, they must indicate in their contracts that disputes will be resolved through arbitration.
- Agreements to arbitrate usually specify a choice of arbitration body, which may be located in China or abroad, and a choice of law to govern the dispute. For foreign-related disputes, parties to the contract may specify the nationality of members of the arbitration panel in the contract.
- There are several Chinese government-sponsored arbitration bodies for handling cases involving at least one foreign party: the China International Economic and Trade Arbitration Commission ('CIETAC') and Shanghai International Economic and Trade Arbitration Commission ('SHIAC'). For maritime disputes, the China Maritime Arbitration Commission ('CMAC') is prevailing.
- Contracts involving foreign companies doing business in China often provide for CIETAC or SHIAC arbitration.
- China acceded to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the 'New York Convention') in 1987. Under the New York Convention, arbitral awards rendered in other signatory countries are recognized and enforceable in China. Arbitral awards by Chinese arbitration bodies are enforceable in other countries signatory to the New York Convention.

### Litigation

- Foreign individuals and companies can bring action in court in the same manner as Chinese citizens and companies.
- China has four levels of courts: basic courts, intermediate courts, high courts, and the national Supreme People's Court.
- Foreign individuals and companies can only engage PRC qualified lawyers working with Chinese law firms as their legal representatives in court.
- A people's court shall complete the adjudication of a case to which ordinary procedure is applied within six months after the case is accepted. Where an extension of the term is necessary for special circumstances, a six-month extension may be given upon the approval of the president of the court. Any further extension shall be reported to the people's court at a higher level for approval.
- In deciding cases the Chinese courts follow the system whereby the court of second instance is the court of last instance.

## ENFORCEMENT OF FOREIGN ARBITRAL AWARDS OR JUDGEMENT

### Enforcement of Arbitral Awards

- If an award made by a foreign arbitration institution needs the recognition and enforcement of a people's court of the People's Republic of China, the party shall directly apply to the intermediate people's court located in the place where the party subject to the enforcement has its domicile or where its property is located. Typically, the people's court shall deal with the matter according to the New York Convention.

### Enforcement of Foreign Judgments

- If a legally effective judgment or ruling made by a foreign court seeks the recognition and enforcement of a people's court of the People's Republic of China, the party may directly apply to the intermediate people's court of the People's Republic of China that has the jurisdiction over the case for the recognition and enforcement, or the foreign court may, according to the provisions of the international treaties concluded or acceded to by the People's Republic of China or based on the principle of reciprocity, request the recognition and enforcement of a people's court.
- China has signed the Hague Convention on Choice of Court Agreements (the "Hague Convention") under which the courts of a member state are obliged to recognize and enforce a final judgment of the court of another member state designated in parties' exclusive choice of court agreement without review of the merits, subject to a limited number of grounds. The Convention is awaiting the approval of Chinese congress.



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### Liquidation

- The liquidation expenses shall be paid out of the property currently held by the foreign-owned enterprise on a priority basis. Prior to completion of the liquidation of a wholly foreign-owned enterprise, the foreign investor may not remit or carry the enterprise's funds out of the People's Republic of China and may not dispose of the enterprise's property on its own authority.

### Bankruptcy Proceedings

- The bankruptcy proceedings shall apply to the Enterprise Bankruptcy Law of the PRC. The outline of bankruptcy proceedings is comprised of application, acceptance by the people's court, bankruptcy liquidation and allocation, termination of the bankruptcy and cancellation of registration. The time frame of bankruptcy proceedings is subject to the type of business and the specific practice of bankruptcy proceedings.

## IMMIGRATION PROCEDURES

### Passport and visa requirements

- For entering China, foreigners shall apply to the visa-issuing authorities stationed abroad for a visa according to the laws and regulations of visa for the PRC. All persons entering China must possess valid national passports or other internationally recognized travel documents valid for travel to China. These passports or travel documents must have at least six months' validity left before expiration and at least one blank page remaining.
- The foreigner who enters China for diplomatic or official reasons shall obtain diplomatic or official visas; and courtesy visas shall be issued to foreigners who are given courtesy due to their special status. The scope and measures for issuing diplomatic, courtesy, and official visa shall be stipulated by the Ministry of Foreign Affairs.
- The foreigner who enters China due to non-diplomatic or official reasons including work, study, family visit, travel, business activities and talent introduction shall obtain appropriate types of ordinary visa. The types of ordinary visa and relevant issuance measures shall be stipulated by the State Council.

### Visas for PRC and Work Permits

- F Visa: Visitor visa for academic, cultural, scientific, and other non-commercial activity visit.
- M Visa: Commercial business visa is issued to a person who is invited to come to China for commercial and trade business.
- X2 Visa: Study visa for pursuing short-term advanced studies or for doing short-term fieldwork. These activities shall not exceed 180 days.
- Z Visa: Work Visa is issued to those who intend to work in China. According to the Rules for the Administration of Foreign Employment (Rules) a domestic employer must apply to the local labor bureau of the Ministry of Labor for an employment license for the prospective foreign employee. And in practice, the threshold for approval is relatively low. It is the sole responsibility of an employer to apply to the local labor bureau of the Ministry of Labor for an employment license for the prospective employee. Entities that employ foreigners or enroll foreign students shall report relevant information to local public security organs.

### The Chinese Green Card System

- Foreign nationals who wish to apply must fall under at least one of the eligible categories below:
  - Individuals who make a large direct investment in China for three consecutive years.
  - Individuals who make outstanding contributions to China's development or are considered by the Chinese government to be critical to the needs of the country.
  - Individuals who have held a high-level position and have resided in China for three of the past four years, in a business which promotes the country's economic, scientific, and technological development or social progress.
  - Individuals who are the spouse or unmarried child under 18 years old of a person under item (1), (2) or (3) above;



- Individuals who are the spouse of a Chinese citizen or of a foreigner with permanent residence status in China, and (i) have at least five years of marriage relation, (ii) have stayed in China for at least five successive years, with at least nine months of stay in China each year, and have stable source of subsistence and a dwelling place;
- Individuals who are unmarried persons under 18 years old dependent to their parent; or
- Individuals who are persons who are or above 60 years old, who have no directly related member of their family abroad and are to be dependent to any directly related member of their family in China, and have stayed in China for at least five successive years, with at least nine months of stay in China each year, and have stable source of subsistence and a dwelling place.
- If the individual is successful in their application, they will be granted a five- or ten-year renewable permanent residency card, which allows them to enter or exit China freely without having to apply for a visa. There is no requirement to continuously renew the work permit, as tied to their current local employer.

## CHINA (SHANGHAI) PILOT FREE TRADE ZONE

- For deepening of reform, on August 17th 2013, the State Council of PRC issued the official approval of building China (Shanghai) Pilot Free Trade Zone (“CSPFTZ”) to explore new ways and accumulate new experience.

### Background and Major Tasks

- Focusing on the strategic requirement of “serving China from global perspective” and the strategic mission of “construction of four centers in Shanghai”, setting up CSPFTZ is to actively explore innovative management model of government in trade and investment in China, open service industry wider to the world.
- CSPFTZ will be progressively developed into a zone featured with investment and trade facilitation up to international standards, free conversion of currencies, convenience and efficiency, and an internationally recognized legal environment.
- It will be prompted to be a pilot zone for implementation of new rules for international investment, a spearheading zone for trade in services innovation, a cluster zone for offshore industrial system, a precursor zone for overseas investment services, an antecedence zone for improved supervision and a demonstration zone for innovative government administration.

### Special Administrative Measures of CSPFTZ for Admittance of Foreign Investments (Negative List)

- On the basis of the relevant foreign investment laws and regulations, the Special Administrative Measures of CSPFTZ for Admittance of Foreign Investments (Negative List) (2014) (“Negative List”) lists the admittance measures that will be inconsistent with the national treatment and will be taken for the foreign investment projects and establishment of foreign investment enterprises within CSPFTZ.
- As to the fields beyond the Negative List, the foreign investment projects will be subject to filing, other than approval, system (except those domestic investments projects which remain to require approval pursuant to the provisions of the State Council). The contracts and articles of association of the foreign investment enterprises will be subject to filing, other than approval system.
- In addition to the special administrative measures listed regarding the foreign investments, the foreign investors are prohibited (limited) to make investments to industries prohibited (limited) by the state and the international treaties entered into or participated by China, to make investments to projects that will endanger the national security and social security, and to involve in operating activities that will endanger the social and public interests.
- The foreign capital mergers and acquisition, the strategic investments of foreign investors to the listed companies, and the capital contributions by offshore investors with equities of domestic enterprises conducted in the Pilot Free Trade Zone shall satisfy relevant provisions, and if national security review and anti-monopoly review are involved, then relevant provisions shall prevail.
- The Negative List shall, mutatis mutandis, be applicable to the investments in CSPFTZ made by the investors from Hong Kong Special Administrative Zone, Macao Special Administrative Zone, and Taiwan.



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- If there are more favorable policies in the Arrangement for Establishing Closer Economic and Trading Relationship by Mainland China and Hong Kong Special Administrative Zone, Macao Special Administrative Zone and its supplementary agreements, the Framework Agreement for Economic Cooperation between Mainland and Taiwan and the follow-up Service and Trade Agreement between Mainland and Taiwan, and the free trade treaties executed by China that are applicable in CSPFTZ and are available for qualified investors, then such relevant agreements and treaties shall apply.
- The Negative List will be adjusted properly from time to time subject to the foreign investment laws, regulations, and the demands for the development of CSPFTZ.
- In addition, in 2018, China rolled out a plan for establishing its southern island province of Hainan as a pilot free trade, a largest free trade zone, which will prioritize the development of three sectors - tourism, modern services and hi-tech industries.

### Hainan Free Trade Port

Since the China (Shanghai) Pilot Free Trade Zone was established in 2013, the country has set up 21 FTZs. The FTZs are likely to accelerate the opening-up of industries, including telecommunications, insurance, and e-commerce. China is currently putting great effort to transform Hainan Island into a world leading free trade port. The Hainan FTP is expected to make bolder trials on increasing openness in the services industry, including senior care, audits, and professional designing. The Hainan Free Trade Port Law had been adopted, which lays the legal foundation required to transform the entire island of Hainan into a globally influential free trade port (FTP).

Hainan FTP will be opened to freely importing and exporting goods with other countries, so long as the merchandise is not on the prohibited or restricted list.

The negative list for foreign investments will be simplified to allow for a more accessible Chinese market. In December of 2021, the Hainan FTP authorities released a new negative list that permits expanded market access to foreign investment in sectors previously restricted like education, telecommunications, manufacturing, mining, and business services.

Enterprises that (a) are registered in Hainan FTP, (b) have “substantive operations” in Hainan, and (c) with their main business in the encouraged industries in Hainan are entitled to corporate income tax at a reduced rate of 15 percent from January 1, 2020, to December 31, 2024. During the period from 2025 to 2035, the applicable scope of the lowered corporate income tax rate of 15 percent will be expanded to benefit all Hainan enterprises (only except those in a “negative list” sector). In addition, qualified high-end and urgently needed talents working at Hainan FTP can enjoy a partial individual income tax (IIT) exemption.





## KEY FACTS

- Guam is a territory of the US and is subject to US law, as well as local law enacted by Guam's legislature.
- Guam is strategically located in the Western Pacific and has an area of 541.3km<sup>2</sup>. Guam is located within a three (3) to five (5)-hour flight from most commercial centers in East Asia, e.g., Tokyo, Manila, Hong Kong and Singapore.
- Guam has three branches of government: the executive, which is headed by the governor, a unicameral legislature, and the judiciary, which is comprised of the Superior Court and the Supreme Court.
- Population: 173,000; Comprised of: Chamorro (39%), Filipino (26.3%), Pacific Islander (11.3%), White (6.9%), Other Asian (6.3%), Other (2.3%) and Mixed (9.8%)
- Religious composition: Roman Catholic (85%).
- English and Chamorro are the two official languages. English is universally spoken.
- Currency: U.S. Dollar.
- Investment growth areas include: tourism, shipping and transportation industry, government contracting and consulting, and retail.





## BUSINESS PRESENCE

- Main types of business models in Guam: corporations, limited liability companies (including single member LLCs), partnerships, limited liability partnerships, professional corporations, registered foreign corporations and registered foreign limited liability companies.
- Corporations and limited liability companies are the most prevalent.
- Branch offices of foreign corporations may be opened in Guam. These require registration with the Department of Revenue and Taxation (“DRT”). Once properly licensed according to their particular trade or business, these corporations are generally permitted to engage in any business except full-service banking.

## FOREIGN INVESTMENT RESTRICTIONS AND CONDITIONS

### Restrictions in Equity Participation

- None.

### Restrictions in Real Property Acquisition

- Laws limiting the ownership rights of foreigners still appear on the books; however, these laws are generally regarded as unconstitutional and, likely, unenforceable.

### Approvals and Licensing

- Appropriate approvals and licenses are required for the operation of any business activity. These may be obtained from the DRT or, in the case of professional service firms, with the appropriate self-governing body, e.g., in the case of lawyers, the Guam Bar Association and, in the case of architects, the Guam Board of Registration for Professional Engineers, Architects and Land Surveyors.
- Application process and prescribed fees vary depending on the certificate or license sought.

## EXCHANGE CONTROL

- None

## TAXATION

- Gross Receipts Tax (aka Business Privilege Tax)
  - Businesses – 5% on monthly gross income due by the 20th day of the following month income received or accrued
  - Commercial banks & lending institutions – 5% on annual net income due by the 90th day following tax year
- Use Tax – 4% assessed on personal property imported into Guam.
  - not applicable to items imported for resale, to used goods, to property with a value of \$1,000 or less and to aircraft parts & materials
- Hotel Occupancy Tax – 11% of daily room rate
- Alcoholic Beverage Tax – tax on all imported alcoholic beverages, locally manufactured alcoholic beverages are exempted
  - \$18 per gallon on distilled beverages
  - \$4.95 per wine gallon on vinous beverages
  - \$0.07 per each 12 fl ounce on malted beverage
- Tobacco Tax – tax on all imported tobacco products
  - \$20.00 per each 100 cigarettes
  - \$0.53 – \$0.66 per cigar (varies by size)
  - \$53.00 per pound for all others



- Real Property Tax
  - Upon the sale of land and/or buildings – 35% of the full cash value
  - On the assessed value – .0972% for land and .388% for buildings
  - An additional .388% is assessed on buildings with a value of \$1,000,000 or more
- Amusement Tax - \$50 to \$1,250.00 on various types of coin operated machines
- Recreational Facilities Tax - \$50 to \$250 on various types of facilities such as bowling alleys, golf courses, billiard halls, shooting gallery, etc.
- Liquid Fuel Tax – levied on a distributor of liquid fuel
  - \$0.14/gallon on diesel
  - \$0.08/gallon on aviation fuel
  - \$0.15/gallon on all other fuel
- Personal Income Tax
  - Guam individual tax rates are the same as those imposed under the U.S. Internal Revenue Code
  - Personal income taxes are imposed progressively based upon income with a marginal tax rate ranging from 10% to 35%
  - Income brackets and associated marginal tax rates can be found in Section 1 of the Guam Territorial Income Tax Law.
- Corporate Tax
  - Guam domestic corporations are subject to income tax on their income from all sources at the same rate schedule published by the U. S. Internal Revenue Service for the applicable tax year.
  - Other corporations doing business in Guam incur income tax liabilities to Guam on all Guam source income.
  - Corporations are required to file an income tax return for the calendar year on or before March 15 of the following year.
  - Corporations on a fiscal year basis must file income tax returns on the 15th day of the third month following the close of the fiscal year.

## TAX AND INVESTMENT INCENTIVES

### Qualify Certificate Program

- Guam’s principal program for incentivizing investment in Guam is its Qualifying Certificate Program.
- The program is administered by the Guam Economic Development Authority (“Authority”). The Program has proven to be highly successful, particularly in the development of Guam’s primary industry – Tourism.
- Any trust, partnership, sole proprietorship, limited liability partnership, limited liability company, or corporation, formed under the laws of Guam and licensed to do business in Guam and engaged in a wide range of business activities (as set forth in 12 GCA § 58104) may apply for participation in the Program.
- Businesses selected by the Authority for participation in the Program receive tax rebates and/or tax abatements, including, but not limited to, the following:
  - Up to 75% rebate of corporate income tax for up to twenty (20) years.
  - Up to 75% rebate of corporate dividends tax for up to five (5) years.
  - Up to 100% abatement of real property tax for up to ten (10) years on property utilized by the QC beneficiary to operate its business.
  - Up to 100% abatement of gross receipt tax on income derived from the sale of alcoholic beverages and petroleum products manufactured in Guam, or from the rental of land, buildings, or equipment in Guam, for up to ten (10) years.
  - Up to 100% abatement of gross receipts tax and up to 100% abatement of income tax on income derived from investing funds generated from insurance underwriting in Guam, or from the construction of affordable housing in Guam, for up to twenty (20) years.



## EMPLOYMENT LAW

- Guam is subject to the U.S. Fair Labor Standards Act (“FLSA”), which covers most hourly wage earners and their employers. The FLSA’s principal function is that it establishes minimum wage and overtime pay. Guam has adopted a local version of the FLSA, entitled the Minimum Wage and Hour Act of Guam, which largely mirrors the federal law.
  - Minimum wage: Guam’s minimum is \$9.25 per hour (higher than the federal minimum wage).
  - Overtime: Covered non-exempt employees must receive overtime pay for hours worked over 40 per workweek (any fixed and regularly recurring period of 168 hours – seven consecutive 24-hour periods) at a rate not less than one and one-half times the regular rate of pay. There is no limit on the number of hours employees 16 years or older may work in any workweek. The FLSA does not require overtime pay for work on weekends, holidays, or regular days of rest, unless overtime is worked on such days.
  - Hours Worked: Hours worked ordinarily include all the time during which an employee is required to be on the employer’s premises, on duty, or at a prescribed workplace.
- Guam recognizes “at will” employment relationships, which allow parties to an employment relationship to terminate the relationship for any reason except one which violates public policy or any local or federal statute.
- Local and federal laws, including Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), COBRA Act and WARN Act, apply to employers in Guam.

## INTELLECTUAL PROPERTY

- Intellectual property is protected by a bevy of federal laws.
- Creators of intellectual property can seek protection over their intellectual property rights by applying federally, as appropriate, for a trademark, copyright, or patent.
- In certain cases, limited trademark and copyright protection can arise without application.
- In addition to federal laws, Guam statutes (including a local trademark law) and common law protect parties’ rights to intellectual property.

## DISPUTE RESOLUTION

- Guam has both a local and federal court system. Disputes arising out of local law are tried at the Superior Court of Guam and all decisions are subject to appeal to the Supreme Court of Guam.
- The local courts of Guam have been in operation for almost sixty years, and so have developed a deep and broad body of common law. In cases of first impression, Guam courts typically look for guidance to common law trends in the States.
- The U.S. District Court of Guam provides the forum for disputes arising out of federal law. Appeals from the U.S. District Court of Guam are made to the U.S. Circuit Court of Appeals for the Ninth Circuit.
- In 2004, Guam enacted a law which established rules for international and domestic arbitration in Guam. Based upon the UNCITRAL rules of arbitration, any arbitral awards granted under this law and certified by the U.S. District Court of Guam will be enforceable in every nation that is a signatory to the UNCITRAL Convention. Although the Guam International Mediation and Arbitration Centre, envisioned under this law, has never been developed, Guam courts have shown a willingness to enforce arbitration agreements and arbitration awards pursuant to this law.

## IMMIGRATION PROCEDURES

### Passport and Visa Requirements

- All persons entering Guam must possess valid national passports or other internationally recognized travel documents valid for travel to Guam.
- Applications for visas (where necessary) may be made at the nearest United States embassy, consulate, or mission abroad.



## Visa Types

- There are several types of work visas available from the U.S. State Department:
- The “E” visas are for individuals or employees of corporations that have made a substantial investment in a U.S. business or property. This includes the EB-5 category of visas by which foreign nationals who invest at least \$1,000,000 in a business that creates at least 10 full-time jobs may obtain Permanent Resident Status (i.e., U.S. Green Card holder status).
- The “L” visas are commonly known as transfer visas used to bring an employee into the U.S. to work for his same employer abroad.
- The “H” visas are typically for contract workers who enter the U.S. for a specific project or a one-time assignment.
- The “J-1” visa is for participants who seek volunteer work or minimally paid practical training in the U.S. in a specific field of interest.

## H-1B and H-2B Worker Program

- To help with the lack of sufficient workforce personnel for the various construction projects that must be completed in conjunction with the ongoing U.S. military buildup in Guam, the United States Citizenship and Immigration Service (USCIS) has exempted Guam from the quota normally imposed on the issuance of H-2B workers and, in addition, has allowed Guam employers to petition for an exemption from the temporary need requirement normally imposed for H-2B workers in Guam that fall under the Fiscal Year 2021 National Defense Authorization Act. The exemption from the H-2B quota will extend until December 29, 2029. These exemptions have allowed contractors to bring in the skilled labor that will be required to satisfy the demand from federal and local projects generated as a result of the ongoing buildup.

## Nationals of Eligible Countries May Visit Guam Visa-Free

- The countries of Australia, Brunei, Hong Kong, Japan, Malaysia, Nauru, New Zealand, Papua New Guinea, Republic of Korea, Singapore, Taiwan, and United Kingdom currently participate in Guam’s Visa Waiver Program. Nationals from these countries are eligible to visit Guam for up to 45 days without a visa.





## KEY FACTS

- A population of 7.1 million, with three languages commonly spoken: English, Cantonese and Mandarin.
- Legal system based on the English common law system and on the rules of equity, with a strict adherence to the principles of the Rule of Law and to the independence of the judiciary.
- The Basic Law, the constitution of Hong Kong, provides that for a period of 50 years from 1 July 1997, Hong Kong will enjoy a high degree of autonomy and will be allowed to retain its current political, social, commercial, and legal system including the capitalist economic and trade systems that have made it the successful international financial and business center that it is.
- The Hong Kong Dollar (HK\$) has been pegged at HK\$7.80 to US\$1 since 1983.
- Hong Kong has full autonomy in the conduct of its external commercial relations and can conclude and implement bilateral or multilateral trade agreements with states, regions and international organizations.
- A founding member of the World Trade Organisation (WTO), Asia-Pacific Economic Co-operation (APEC), and has a number of double tax treaties, these being with mainland China, Luxembourg, Belgium, Thailand and Vietnam.



## BUSINESS PRESENCE

- Operates a free enterprise, free trade, ‘laissez-faire’ economic system with minimal government interference in all sections of the economy. Companies and individuals may import
- or export capital at their own discretion and profits and dividends derived from a business in Hong Kong can be freely converted and remitted.
- No taxation on dividends, no exchange controls or foreign currency regulations (except those that relate to suspected terrorist financing and money laundering).
- Various sectors of the financial and securities community are regulated by the Hong Kong Stock Exchange (HKSE), the Securities and Futures Commission (SFC) and the Hong Kong Monetary Authority (HKMA).
- A foreign company wishing to carry on business in Hong Kong can do this through a company incorporated in Hong Kong, a branch office of that foreign company, or by establishing a representative office in Hong Kong.
- Companies incorporated in Hong Kong can be public or private and can be limited by shares or by guarantee.
- Companies limited by guarantee are generally set up by non-profit organizations.

## FOREIGN INVESTMENT RESTRICTIONS AND CONDITIONS

- No restrictions are imposed on foreigners owning equity in Hong Kong companies or the acquisition by foreigners of real property in Hong Kong.

## EXCHANGE CONTROL

- No exchange control, and no restriction on repatriation of capital, profits, dividends, interest, and rental income by foreign investors.

## TAXATION

### Profits Tax

- Liability to tax, as a general rule, will arise when certain types of income have a source within Hong Kong. In general, income which arises or is derived from outside Hong Kong will not be assessed to tax by the Hong Kong Inland Revenue Department subject to the refined FSIE regime (as discussed below).
- On 1 January 2023, the Inland Revenue (Amendment) (Taxation on Specified Foreign-sourced Income) Ordinance 2022 (the “Amendment Ordinance”) came into operation. Under the Amendment Ordinance, certain offshore passive income arising in or derived from a territory outside Hong Kong (including interest, dividends, disposal gains from the sale of equity interests (“disposal gains”) and IP income, will be deemed to be sourced from Hong Kong and chargeable to profits tax if the income is received in Hong Kong by a constituent entity of a multinational enterprise group. Such passive income can still be exempt from profits tax if the covered taxpayer satisfies the economic substance (for interest, dividends, and disposal gains) or nexus approach (for IP income) requirements, or participation exemption (for dividends and disposal gains) requirements, generally speaking. The government recently issued a consultation paper regarding proposed further refinements to Hong Kong’s foreign-sourced income exemption (“FSIE”) regime, under which the government proposed the adoption of a definite and exhaustive list to include disposal gains on other types of assets (in addition to equity interests) to align with the latest EU requirements. The government aims to secure the passage of the amendment bill by the end of 2023 and implement the further refined FSIE regime starting from January 2024.
- The two-tiered profits tax rates regime provides that the profits tax rate for the first \$2 million of assessable profits is 8.25% for corporations and 7.5% for unincorporated businesses (such as partnerships and sole proprietorships). Assessable profits above \$2 million will be subject to the standard rate of 16.5% for corporations and standard rate of 15% for unincorporated businesses. As an anti-avoidance measure, a ‘group of connected entities’ can only nominate one entity within the group to enjoy the two-tiered tax rates for a given year of assessment.
- Interest earned by companies (other than financial institutions) on deposits with an authorized institution are exempt from profits tax.
- Losses can be carried forward without limit.



## Property Tax

- Charged on every person who owns any buildings or land in Hong Kong and based on the rent payable in respect of such land or buildings for each year of assessment.
- Exemption from property tax for corporations for any income earned in respect of any property brought into charge
- for profits tax purposes or the corporation occupies the property for the purpose of producing profits assessable to profits tax.
- The rate of property tax is 15% (2008/09 onwards). Property is also subject to rates based on an assessed rateable value for each property.

## Salaries Tax

- Charged on every person in respect of his income arising in or derived from Hong Kong from any office or employment of profit and any pension.
- Income is deemed to include all wages, salary, leave pay, perquisites, bonus, and allowances, and includes the rental value of a residence provided by an employer to an employee.
- The employee can elect to have this rental value to be deemed to be equal to 10% of the total income paid by the employer to the employee (therefore reducing the tax liability if his rent allowance exceeds 10% of his total income).
- Salaries tax is computed at progressive rates on the net chargeable income (total income – deductions – allowances) or at standard rate on the net income (total income – deductions), whichever is lower. The progressive rate ranges from 2% to 17% whereas the standard rate is 15% currently.
- In every year of assessment, taxpayers of salaries tax are entitled to a basic allowance. On top of that, there are allowances such as married person's allowance, child allowance, dependent parent and dependent grandparent allowance. Taxpayers may also claim deductions, such as deductions for donations made to approved charitable organizations, expenses of self-education and tax reduction for domestic rents (which is applicable to a year of assessment commencing on or after 1 April 2022).
- Generally speaking, a person who renders services in Hong Kong during visits for not more than a total of 60 days for a year of assessment will have no liability to salaries tax.

## Other Taxes

- Stamp Duty on documents effecting the transfer of shares and securities which are required to be registered in Hong Kong or transfer or lease of land and buildings situated
- in Hong Kong: at various rate, with 0.26% on the amount of consideration of shares or securities, and a maximum of 8.5% on the amount of consideration of non-residential properties.
- Special Stamp Duty (SSD) is payable for acquisition of any residential property on or after 27 October 2012 if such property is disposed of within 36 months from the date of acquisition, at a maximum rate of 20% (if the property is disposed of within 6 months or less).
- Buyer's Stamp Duty (BSD) is payable for acquisition of any residential property on or after 27 October 2012 if the purchaser is not a Hong Kong permanent resident, at a flat rate of 15%.
- No withholding taxes (with exceptions), no taxes on any other types of income except those mentioned above, no capital gain tax or dividends tax (subject to the Amendment Ordinance and its proposed further refinements as mentioned above), no capital duty, no gifts tax, no wealth tax, no estate duty and no inheritance tax.



## TAX AND INVESTMENT INCENTIVES

- Hong Kong has signed Comprehensive Avoidance of Double Taxation Agreements (“CDTA”) with 46 jurisdictions as of July 2023, one of which is the PRC.
- An arrangement was entered into between the PRC and Hong Kong for the avoidance of double taxation on income, the effect of which is to determine the charging right to tax profits between the two jurisdictions and provide for credits if profits are taxed in both jurisdictions. The arrangement is based largely on the Organisation for Economic Co-operation and Development (OECD) model double taxation treaties.

## EMPLOYMENT LAW

- Employment in Hong Kong is less regulated than it is in many other jurisdictions such as the European Union and the United States.
- There are a number of labor organizations/trade unions in Hong Kong but no closed shops.
- No statutory requirement that a percentage of employees must be local nationals or that a percentage of payroll be paid to local national employees.
- A minimum wage of HK\$40 per hour has come into force since 1 May 2023.
- In general, there are no statutory provisions prescribing maximum working hours for employees aged 18 years or above, but it is currently under review.
- Employees are entitled to a minimum of between 7- and 14-days annual leave with pay per year, depending on the number of year(s) of service.
- In general, every employer in Hong Kong contributes an amount equal to at least 5% of an employee’s salary (up to a maximum monthly contribution of HK\$1,500) to a retirement scheme that is registered as a Mandatory Provident Fund (“MPF”) scheme. Every employee is also required to contribute at least 5% of their salary (up to a maximum monthly contribution of HK\$1,500) to the scheme.
- Employers are required to maintain insurance coverage in respect of work-related injuries but, otherwise, there is no statutory requirement to provide medical benefits.
- The main form of social security in Hong Kong is the MPF System. Employees can claim a tax deduction under salaries tax for the mandatory contributions that he makes to an MPF scheme up to a maximum deduction of HK\$18,000 for each year of assessment.
- Subject to the qualifying requirements, female employees are entitled to paid maternity leave of 14 weeks or as provided by the terms of the employment contract, whichever is more favorable. Maternity leave pay is paid at the rate of four-fifths of the average daily wages earned by an employee in the 12-month period preceding the first day of the maternity leave. The 4-week maternity leave pay for the 11th to 14th week of the maternity leave is subject to a cap of HK\$80,000 per employee.
- Since 18 January 2019, subject to qualifying requirements, male employees are entitled to paid paternity leave of 5 days. Paternity leave pay is paid at the rate of four-fifths of the average daily wages earned by an employee in the 12-month period preceding the day or the first day of paternity leave (depending on whether the employee takes all 5 days of paternity leave in one go or on separate days).
- Employees are entitled to paid sick leave at the rate of four-fifths of the average daily wages earned by an employee in the 12-month period preceding the sickness day or the first sickness day, with conditions applying.
- Severance payment is applicable for employees who have been working for more than 24 months if he/she is dismissed by reason of redundancy, or laid off, with a maximum payment of HK\$390,000. Long service pay applies to employees who has been working for more than 5 years, if he/she is dismissed by reason other than his serious misconduct or redundancy, or if the employee dies or resigns on ground of ill health or resigns at age 65 or above and is subject to a maximum payment of HK\$390,000. An employee will not be simultaneously entitled to both long service payment and severance payment.





- Currently, when an employer is required to make a severance payment or a long service payment, it may reduce the payable amount by the value of benefits paid to an employee derived from the employer's contributions under a MPF scheme (both mandatory and voluntary contributions). It should be noted that the Legislative Council passed the Employment and Retirement Schemes Legislation (Offsetting Arrangement) (Amendment) Bill 2022 on 9 June 2022, which abolishes the use of the accrued benefits of employers' mandatory MPF contribution to offset severance payment and long service payment after the new law comes into effect in 2025 (exact date to be announced by the Hong Kong Government).
- Hong Kong employees are subject to salaries tax taxable on 'assessable income'. As such, suitably tailored remuneration packages can have tax advantages for the employee without any detrimental effects on the employer's Hong Kong Profits Tax liability, since all costs of rewarding employees should be allowable expenses incurred in the production of chargeable profits. For instance, when an employee is provided with a place of residence by his employer, the rental value of it should be assessed to salaries tax but such rental value is capped at a maximum of 10% of the employee's total net income (depending on the type of accommodation provided).

## IMMIGRATION PROCEDURES

- Hong Kong has visa-free entry for residents from over 170 countries and territories for trips ranging from 7 to 180 days. Short-term visitors may conduct business negotiations and sign contracts while entering Hong Kong on a visitor visa or entry permit.
- To employ people from overseas it must be demonstrated that the proposed employee has special skills, knowledge or experience not readily available in Hong Kong.
- An investment visa requires the applicant to be a shareholder of a Hong Kong-registered company, either by registering and setting up a company in which the applicant is the major investor or investing in a Hong Kong-based company. Details on the viability of proposed business must be provided.
- The Capital Investment Entrant Scheme (CIES) which facilitated the entry for residence by capital investment entrants was suspended with effect from 15 January 2015 until further notice. However, the Financial Secretary announced in the 2023-24 Budget that the government will introduce a new CIES that will generally adopt the framework and application criteria of the original CIES, with possible adjustments to the investible areas in Hong Kong and investment threshold. The government is formulating details and application arrangements of the new CIES and will make an announcement once the same are finalized.
- Dependant visa: persons who are successful in receiving one of the above visas may also bring their spouse and dependent children under the age of 18 to Hong Kong provided there are sufficient funds and suitable accommodation for them. The limit on their stay is the same as that of the applicant sponsor.
- Every adult (and child aged 11 years or above) who enters and is permitted to stay in Hong Kong for more than 180 days must apply for a Hong Kong Identity Card within 30 days of arrival. Applying for the card from the Immigration Department is simple and free.
- Generally speaking, a person who wants to work in Hong Kong should obtain the right of abode, the right to land or a visa/entry permit to enter Hong Kong for taking up the employment.

## INTELLECTUAL PROPERTY

- Intellectual property rights that are recognized and protected by specific legislations in Hong Kong include trademark, patent, design, copyright, plant varieties and layout-design of integrated circuits.
- Personal information, as part of a person's right of privacy, is a citizen's intangible property also recognized and protected by a specific legislation in Hong Kong parallel to intellectual property rights over intangible assets.
- Trademarks, patents, and designs can be registered in Hong Kong to enjoy territorial protection within Hong Kong. A registered trademark can be renewed on a perpetual basis. Registered patent and design each has a maximum term (years) of validity and upon expiry, such intellectual property right will go into the public domain open to free use.



- An unregistered trademark can be protected in Hong Kong under the common law based on the owner's proof of goodwill in the mark acquired through prior use.
- Copyright protects mainly literary, dramatic, musical, or artistic works, sound recordings, broadcasts, cable programs and films. Copyright subsists in a work from the date the work is created. There is currently no copyright registration system in Hong Kong.
- Trade secrets and know-how are confidential information that can be protected under the law of contract or common law of confidence.
- The usual remedies for infringement of intellectual property rights include injunction order by the Court, disclosure upon oath, delivery up of the infringing goods for destruction or forfeiture, payment of damages based on an account of profits and legal costs. The Hong Kong Customs and Excise Department has extensive powers of search, seizure, and arrest under the criminal provisions to enforce trademark and copyright and handles complaints alleging false trade descriptions.

## DISPUTE RESOLUTION

### Litigation

- Similar to that in England and various Commonwealth countries, Hong Kong courts adopt an adversarial common law system with the legal representatives of the parties appearing before the District Court or (for cases over HK\$3,000,000) the Court of First Instance, with mechanism for appeals to the Court of Appeal, and thereafter to the Court of Final Appeal.
- The judiciary is generally recognized as independent and free from Government interference.
- Provisions exist for obtaining default judgment without a trial where the defendant does not file an acknowledgement of service or a defense within the prescribed time, and for obtaining summary judgement without a trial where there is no bona fide defense to a claim.
- The High Court has specialist judges hearing admiralty, arbitration, commercial, company and construction-related matters.
- Many types of foreign monetary judgement obtained in the superior courts of 15 designated countries, namely Australia, Bermuda, Brunei, India, Malaysia, New Zealand, Singapore, Sri Lanka, Belgium, France, Germany, Italy, Austria, the Netherlands, and Israel may be registered in the High Court and enforced in Hong Kong. For the countries not listed, it can be enforced at common law whereby the foreign judgment will be the cause of action.

### Arbitration

- As the only place in China adopting the common law system, Hong Kong is a popular seat and venue for international arbitration.
- The Arbitration Ordinance (Cap. 609) in Hong Kong is similar to the UNCITRAL Model Law which is a model law familiar by most countries.
- Hong Kong is one of the parties of the New York Convention. A Hong Kong arbitral award can be enforced in over 160 contracting parties of the New York Convention.
- Hong Kong arbitral awards can be reciprocally enforced in the mainland of China and Macau. In particular, mainland China allows simultaneous enforcement of awards in the mainland and Hong Kong.
- Before the issue of arbitral award, mainland China also allows arbitrations seated in Hong Kong to apply for interim reliefs including property preservation, evidence preservation and conduct preservation in the mainland courts.
- A number of well-known international arbitration centers have established their offices in Hong Kong, including Hong Kong International Arbitration Centre (HKIAC), the International Chamber of Commerce (ICC), and the China International Economic and Trade Arbitration Commission (CIETAC).
- Hong Kong is one of the few places allowing third party funding in arbitration.



# HONG KONG

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## Mediation

- As an alternative to litigation or arbitration, mediation is becoming an increasingly popular procedure.
- The recent reform of litigation rules in Hong Kong provides that any party who unreasonably refuses to attempt mediation to resolve the dispute may be subject to a sanction on costs.
- The HKIAC is active in promoting mediation and training mediators and maintains lists of accredited mediators.

## Other Tribunals

- As is the case in many comparable jurisdictions, there is a wide range of specialist tribunals and courts dealing with land, tenancy, labor, licensing, professional disciplinary and other matters.





## KEY FACTS

- The largest democracy and the most populous country in the world just beating China in the year 2023.
- A parliamentary democracy, immense regional diversity, a federal government with a balance of power between the Centre and the States, a robust and independent judiciary- these characteristics make India a force to reckon with.
- Legal system is based on English common law and statutory law.
- The judiciary consists of the Supreme Court of India at the apex, High Courts at the State level and District and Session Courts at the district level.
- Hindi is the principal official language of the Republic of India. While English is the secondary official language. English is widely written and spoken especially in urban areas and for business transactions.
- Currency: Indian Rupees (INR)- ₹.





INDIA

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## BUSINESS PRESENCE

- Main types of business models in India: locally incorporated companies (may be limited by shares or by guarantee), one- person companies, sole proprietorships, partnerships, and limited liability partnerships.
- Foreign companies may incorporate company under the (Indian) Companies Act, 2013 either as a joint venture company or as a wholly owned subsidiary subject to foreign investment restrictions.
- Foreign companies may also open branch offices, project offices or liaison offices in India in accordance with the provisions of the Foreign Exchange Management Act, 1999.
- Merger of a foreign company with an Indian company is permitted and so is merger of an Indian company with a foreign company subject to Reserve Bank of India (Central Bank of India) approval. Companies operating in India are governed by the Companies Act 2013 which has repealed the historic Companies Act 1956. In addition to the Companies Act, there are various sector specific legislations which need to be adhered to such as Banking Regulation Act, Electricity Act, Airports Authority of India Act etc. depending upon the sector of operation.

## FOREIGN INVESTMENTS RESTRICTIONS AND CONDITIONS

- Foreign collaboration and equity participation in India is regulated by the Foreign Direct Investment (FDI) policy announced by the Government of India and the Foreign Exchange Management Act, 1999 (FEMA).
- FDI can be made by non-residents in equity shares, fully, mandatorily, and compulsorily convertible debentures, and fully, mandatorily and compulsorily convertible preference shares of an Indian company.
- FDI can be made through two routes i.e., the automatic route and the government route.
- Under the automatic route, the foreign investor or the Indian company does not require any approval from the Reserve Bank of India or Government of India for the investment.
- Under the government route, prior approval of Government of India is required, and the company will have to file an application through Foreign Investment Facilitation Portal, which facilitates single-window clearance.
- Foreign Direct Investment ('FDI') is prohibited in India in the following sectors:
  - Atomic Energy Generation
  - Any Gambling or Betting businesses
  - Lotteries (online, private, government, etc.)
  - Investment in Chit Funds
  - Nidhi Company
  - Agricultural or Plantation Activities (although there are many exceptions like horticulture, fisheries, tea plantations, Pisciculture, animal husbandry, etc.)
  - Housing and Real Estate (except townships, commercial projects, etc.)
  - Trading in Transferable Development Rights (TDRs)
  - Manufacturing of Cigars, Cigarettes, or any related tobacco industry

## FDI OVERVIEW OF IMPORTANT SECTORS

### Pharmaceuticals

- India has a prominent and rapidly growing presence in the field of global pharmaceutical industry. It is the largest provider of generic medicines globally, occupying a 20% share in global supply by volume, and also supplies 60% of global demand for vaccines.
- India ranks 3rd worldwide for production by volume and 14th by value, thereby accounting for around 10% of world's production by volume and 1.5% by value. India is the 4th largest Asian medical devices market.
- The Indian pharmaceutical industry includes a network of 3,000 drug companies and 10,500 manufacturing units. It is projected to reach a value of US\$ 130 billion by 2030. Indian medicines are preferred worldwide, thereby rightly making the country the "Pharmacy of the World".
- 100% Foreign Direct Investment (FDI) is allowed under the automatic route for greenfield pharma.



INDIA

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- 100% FDI is allowed in brownfield pharma; wherein 74% of FDI is allowed under the automatic route and thereafter through government approval route. India's share of pharmaceutical and drugs in the global market is 5.92%. Formulations and Biologics constituted the major portion of India's exports with a share of 73.31% followed by drug intermediates and bulk drugs. The cumulative FDI equity inflow in the Drugs and Pharmaceuticals industry is USD 21.46 bn during the period April 2000 to March 2023. This constitutes almost 3% of the total FDI inflow received across sectors. During April-February 2023, the exports of drugs and pharmaceuticals stood at US\$ 22.9 billion. During 2021-22, the country exported pharma products worth US\$ 24.62 billion, while in 2020-21, the exports grew at 18% YoY to US\$ 24.4 billion. This robust performance was achieved despite the global supply chain disruptions, lockdowns, and subdued manufacturing. In February 2023, India exported US\$ 2.05 billion worth of drugs and pharmaceuticals, a 4.72% increase from US\$ 1.96 billion in February 2022. USA, UK, South Africa, Russia, and Nigeria are India's top five export destinations. India played a key role during the Covid-19 pandemic and demonstrated its ability to be a consistent and reliable pharma supplier to the world even during time of crisis.

### Food Processing

- The government has permitted 100 per cent FDI through automatic route in manufacturing of food products subject to sectoral rules and regulations
- 100 per cent FDI is allowed through government route in retail trade in respect of food products produced/ manufactured in India including e-commerce regarding food products manufactured or produced in India.
- The Indian food processing sector has attracted more than US\$ 6 billion worth of foreign direct investment (FDI) since 2014-15. Moreover, the food processing industry has attracted FDI equity worth US\$ 709.72 million during 2021-22. The total FDI received in the food processing sector is US\$ 11.79 billion from April 2000 till December 2022.

### Civil Aviation

- India is the world's fastest growing domestic aviation market and has posted the fastest full-year growth rate for three years in a row.
- Up to 100% FDI in civil aviation in India is permitted in Non- scheduled air transport services under the automatic route.
- Up to 100% FDI is permitted in helicopter services and seaplanes under the automatic route.
- Up to 100% FDI is permitted in MRO for maintenance and repair organizations; flying training institutes; and technical training institutes under the automatic route.
- Up to 100% FDI in the aviation sector is permitted in Ground Handling Services subject to sectoral regulations & security clearance under the automatic route.
- India's aviation industry is expected to witness US\$ 4.99 billion investment in the next three years. The Indian government is planning to invest US\$ 1.83 billion for development of airport infrastructure along with aviation navigation services by 2026.

### Railways

- India has the fourth-largest railway system in the world, lagging behind only U.S., Russia and China. The Indian Railways is the largest rail network in Asia and the world's second largest under one management.
- Indian Railways envisages a prospective investment of \$190 bn in the next 5 years.
- Indian Railways is the backbone of long-distance passenger transport in India with a network that spans more than 66030 km, making it the world's third largest rail network and the fourth largest rail freight carrier.
- 100% Foreign Direct Investment (FDI) is allowed for developing infrastructure and improving safety features. The cumulative FDI equity inflow in the Railway related components industry is USD 1.23 bn during the period April 2000 to March 2023.

### Automobiles

- India is expected to be the world's third-largest automotive market in terms of volume by 2026.



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- The industry currently manufactures 25 mn vehicles, of which 3.5 mn are exported. India holds a strong position in the international heavy vehicles arena as it is the largest tractor manufacturer, second-largest bus manufacturer and third largest heavy trucks manufacturer in the world.
- 100% FDI is allowed under automatic route along with full delicensing, making it easy for investors to set up their manufacturing plant/shop in India.
- The cumulative FDI equity inflow in the Automobile Industry is USD 34.74 bn during the period April 2000 to March 2023. This constitutes 5% of the total FDI inflow received across sectors.

## Defense Manufacturing

- The Indian Defence sector, the second largest armed force is at the cusp of revolution. The Government has identified the Defence and Aerospace sector as a focus area for the Self-Reliant India initiative, with a formidable push on the establishment of indigenous manufacturing infrastructure supported by a requisite research and development ecosystem India aims to achieve a turnover of USD 25 Bn including export of USD 5 Bn in Aerospace and Defence goods and services by 2025.
- The Government has opened up the Defence industry for private sector participation to provide impetus to indigenous manufacturing. The opening up of the industry also paves the way for foreign original equipment manufacturers to enter into strategic partnerships with Indian companies.
- FDI in the defense sector is allowed up to 74% through automatic route (from earlier 49%) for companies seeking new industrial licenses. FDI beyond 74% and up to 100% will be permitted under the Government route. The cumulative FDI equity inflow in the Defence industry is USD 15.78 mn during the period April 2000 to March 2023.

## Information Technology and Business Process Management (IT & BPM)

- India's e-commerce market is projected to grow at 18% annually through 2025.
- The Telecom industry in India is the second largest in the world with a subscriber base of 1.17 bn as of August 2022 (wireless + wireline subscribers).
- The Government of India has allowed up to 100% Foreign Direct Investment (FDI) under the automatic route in the IT & BPM sector.
- The cumulative FDI equity inflow in Computer Software & Hardware is USD 94.92 bn during the period April 2000 to March 2023. This constitutes 15 % of the total FDI inflow received across sectors.

## Renewable Energy

- Up to 100% FDI is allowed under the automatic route for renewable energy generation.
- India holds 1000+ GW renewable energy potential.
- India stands 4th globally in Renewable Energy Installed Capacity (including Large Hydro), 4th in Wind Power capacity & 4th in Solar Power capacity (as per REN21 Renewables 2022 Global Status Report).
- India is the 3rd largest market in the world for new solar photovoltaics (PV) capacity (as per REN21 Renewables 2022 Global Status Report).
- India aims to reach a non-fossil fuel energy capacity of 500 GW by 2030.

## E-commerce

- 100% FDI under automatic route is permitted in marketplace model of e-commerce.
- The Indian e-commerce market is expected to grow to US\$ 200 billion by 2026.
- The Indian e-commerce industry has been on an upward growth trajectory and is expected to surpass the U.S. to become the second largest e-commerce market in the world by 2034.
- The ongoing digital transformation in the country is expected to increase India's total internet user base to 900 million by 2025.

## Tourism and Hospitality

- The Tourism and Hospitality industry in India is one of the largest service industries. Tourism is an integral pillar of the incumbent Government's Make in India program.



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- India is the 8th largest country in terms of contribution to travel & tourism GDP.
- India is ranked 10th out of the top 46 countries in the World in the Medical Tourism Index FY21.
- By 2029, the Indian tourism sector is likely to grow at 6.7% per annum and achieve 9.2% of GDP with USD 488 bn.
- 100% FDI is allowed under the automatic route in the Tourism and hospitality industry in India, subject to applicable regulations and laws.
- 100% FDI allowed in tourism construction projects, including the development of hotels, resorts and recreational facilities.
- The cumulative FDI equity inflow in the Hotel and Tourism industry is USD 16.71 bn during the period April 2000 to March 2023. This constitutes 2.63% of the total FDI inflow received across sectors.

## OTHER FACTORS GOVERNING “DOING BUSINESS IN INDIA”

### Restrictions On Real Estate Acquisition

- The general provisions with respect to purchase/sale of immovable property by foreign corporate bodies or individuals are set out in the FEMA and the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018.
- No person resident outside India is permitted to transfer any immovable property in India, unless with the approval of the RBI.
- A person resident outside India who has established in India, in accordance with the Foreign Exchange Management (Establishment in India of a Branch Office or a Liaison Office or a Project Office or any other Place of Business) Regulations, 2016, a branch/project office or other place of business (excluding a liaison office) for carrying on in India any permitted activity can acquire any immovable property in India that is necessary for or incidental to carrying on such activity, subject to compliance with other applicable laws and RBI reporting in a prescribed format.
- Such person may transfer the immovable property so acquired by way of mortgage to an authorized dealer as a security for any borrowing.

## TAXATION

### Direct Taxes

- New tax slabs with reduced tax rates for different slabs have been introduced.
- India's direct tax collections jumped 15.9 per as on March 31, 2023, compared with the corresponding period a year ago.
- Gross Corporate Tax collection (provisional) in FY 2022-23 has shown a growth of 16.91% over the gross corporate tax collection of the preceding year.
- The tax authorities have put to good use various tools at their disposal including a repository of information gathered as annual information returns and an effective linkage that has been established between the direct tax and indirect tax wings.

### Indirect Taxes

- Indirect Tax is a tax which is levied on goods and services and paid to the government indirectly. The liability to pay indirect tax can be transferred or passed on from one entity to another.
- In the pre-GST era, there were numerous indirect taxes charged on goods and services, which sometimes meant that taxpayers had to pay more than the actual price.

### GST as an Indirect Tax

- Goods and Services Tax (GST) was implemented in India as an indirect tax in 2017. It came with the aim to bring uniformity in taxation across the country.
- Several irrelevant taxes were dissolved, and one uniform tax was introduced in the form of GST. This reduced the confusion among customers because of different tax rates being imposed in different states for different goods, previously. Therefore, consumer awareness has increased dramatically as compared to the pre-GST era.





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- GST has also replaced most of the state and central taxes in India.
- It has been introduced as consumption-based tax as opposed to the production-based tax in the pre-GST era.
- The system became more transparent and simplified after all processes were made electronic. Everything is now required to be completed through the GST Portal which has made it much easier to track and detect any corrupt activities.

#### Double Taxation Relief and Tax Treaties

- India has one of the largest networks of tax treaties for the avoidance of double taxation and prevention of tax evasion.
- The country has Double Tax Avoidance Agreements (DTAAs) with over 85 countries under Section 90 of the Income Tax Act, 1961.
- Taxpayers have the option to choose between the provisions of the tax treaty or the Income Tax Act, whichever is beneficial to them.
- If the foreign income source of a resident is taxed in a country with which no double taxation avoidance agreement exists, and such income is also taxed in India, then resident taxpayers may claim a tax credit in respect of such doubly taxed incomes to the extent of the taxes paid in the source country or the rate of tax in India, whichever is lower.

## EMPLOYMENT LAW

- In a civilized society, working people have rights and responsibilities that are established by the fundamentals of labor law. As a form of social security for all citizens, the country's current labor laws provide progressive benefits like health insurance, an old-age pension, maternity benefits, gratuity payments, and others. The labor sector in India can be broadly divided into 3 categories: organized workforce, unorganized workforce and the self-employed making the sector varied and segmented.
- Matters related to employment in India are primarily governed by the Constitution of India, specific laws formed by the Centre and the State, municipal laws, collective and individual agreements, as well as judicial precedents. Labor is a subject on the concurrent list of the Constitution, therefore both the Centre and the states can frame laws and rules.
- The following are the labor laws in India which lay down and regulate various aspects of labor:
  - Factories Act 1948: The major objective of this act is to provide for health, safety, welfare, working hours and leave of workers in factory.
  - Shops and Commercial Establishment Acts: This act regulates payment of wages, terms of service, holidays, leaves, working conditions, hours of work, overtime, etc. for people employed in shops and commercial establishments (such as hotels, restaurants, bakeries, societies, charitable trusts, educational institutions, etc.)
  - Contract Labour (Regulation and Abolition) Act, 1970: This act regulates the engagement of contractor and contract labor by the principal employer.
  - Industrial Employment Standing Order Act, 1946: It regulates and codifies the conditions of service of any establishment employing 100 or more workmen. The regulatory authority provides certification for the work to be performed.
- Building and other construction workers (Regulation of Employment and Conditions of Service) Act, 1996: This act regulates matters related to the safety, welfare and health of the workers engaged in building construction activities.
- Industrial Disputes Act, 1947: This act provides a machinery for regulating the rights of employees and settlement of industrial disputes in a peaceful and harmonious manner, along with provisions for strike, layoffs, unfair labor practices, lockouts and closure of an establishment, etc.
- Trade Unions Act, 1926: This act establishes rights, duties and obligations of trade unions and facilitates their registration. The most important right of a trade union as granted by the act is to negotiate and secure terms of employment acceptable to its members by adopting various forms of collective bargaining.



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- Payment of Wages Act, 1936: It regulates the payment of wages to certain classes of person employed in the industry and provides for responsibility of paying wages, fixation of wage period, time and mode of payment of wages, and permissible wage deduction.
- Minimum Wages Act, 1948: It stipulates minimum rates of wages that must be paid to skilled and unskilled laborers considering various factors such as industry, location, nature of work to be undertaken.
- Payment of Bonus Act, 1965: This act obligates employers to pay bonus to employees and provide the principle and formula for the calculation of bonus, minimum and maximum bonus payable and enforcement of liability for payment of the bonus.
- Equal Remuneration Act, 1976: It provides for the payment of equal remuneration to men and women workers and for the prevention of discrimination on the ground of sex, against women in the matter of employment.
- Payment of Gratuity Act, 1972: This Act provides for payment of gratuity, a retirement benefit paid upon cessation of employment.
- Workmen's Compensation Act, 1923: This Act provides workmen and /or their dependents some relief in case of accidents arising out of or during employment and causing either death or disablement.
- Employees Provident Fund and Miscellaneous Provision Act, 1952: This act provides scheme wherein both the employee and the employer make an equal into a national fund which attracts a stipulated interest per annum, and the accumulated amount is paid on retirement to the employee along with the interest that has accrued.
- Employees' State Insurance Act, 1948: This act provides for a scheme wherein the employer and the employee must contribute a certain percentage of the monthly wages to the insurance corporation.
- Maternity Benefit Act, 1961: This act envisages provisions of maternity leave, maternity bonus and other benefits with respect to childbirth.
- Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013: This act seeks to protect women from sexual harassment at their workplace. It provides for a redressal of grievances related to sexual harassment at workplace. It is mandatory for organizations to provide a mechanism to enforce the right to gender equality of working women.
- The Apprentice Act, 1961: The act was enacted to supplement the program of industrial training with on- the-job training and regulate the training arrangements in the industry.
- Child Labour (Prohibition and Regulation) Act, 1986: The Act prohibits employment of a Child below the age of 14, in any employment including as a domestic help. It outlines where and how children can work and where they cannot.
- The New Labour Code: It is pertinent to note here that the Indian government recently approved the enactment of four new labor codes - the Code on Social Security, the Industrial Relations Code ("IR Code"), the Occupational Safety, Health and Working Conditions Code ("OSH Code") and Code on Wages 2019. These labor codes have been approved by the Indian legislature and are on their way to becoming law soon; These codes will replace and consolidate a substantial number of labor legislations in India and will undeniably influence companies and their employment policies in India. The following are some of the objectives of the four codes soon to be implemented:
  - The amalgamation of 29 Central legislations relating to wages, working conditions, social security, safety, and health.
  - To ensure consistency in definitions for ease of compliance.
  - To increase business accessibility, generate employment, and give employers more flexibility in terms of employee mix and hiring.
  - To simplify and make clear the issues surrounding contract labor.
  - To standardize issues related to union recognition and negotiating agents, rationalize wages, and address unethical behavior.
  - The rationalization of enforcement authorities and the implementation of a web-based inspection process.



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## INTELLECTUAL PROPERTY RIGHTS PROTECTION

- To protect the intellectual property rights in the Indian territory, India has defined the formation of constitutional, administrative, and jurisdictional outline whether they imply the copyright, patent, trademark, industrial designs, or any other parts of the intellectual property rights.
- Trademarks are governed by the Trademarks Act of 1999, copyrights are governed by the Copyrights Act, 1957, geographical indications are governed by the Geographical Indications of Goods (Registration and the Protection) Act, 1999, industrial design by Designs Act, 2000 and patents by Patent Act, 1970.
- India is a member of the World Intellectual Property Organization (WIPO) and a signatory to the Paris Convention, Berne Convention and the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).
- India's intellectual property laws conform to international standards and provide adequate protection to both local and foreign investors.
- India's legal framework caters to the following areas of intellectual property:
  - Trademarks
  - Patents
  - Copyrights
  - Industrial designs
  - Geographical indications
  - Layout designs of integrated circuit
  - Varieties of plant
  - Information Technology and Cybercrimes
  - Data protection

### Patents

- A patent is a form of right granted by the government to an inventor or their successor-in-title, giving the owner the right to exclude others from making, using, selling, offering to sell, and importing an invention for a limited period, in exchange for the public disclosure of the invention.
- Patent was first introduced to the realms of Indian business in the year 1911 courtesy of the Indian Patent and Designs Act, 1911. This Act was superseded in the year 1972 with the enforcement of the Patents Act, 1970. The Act, which is now the governing Act for Patents in the country till now, went through an amendment in 2005 to be compliant with the TRIPS agreement and is now known as the Patents (Amendments) Act, 2005. The Amendment oversaw the extension of product patent to all fields of technology including foods, drugs, chemicals, and micro-organisms. Furthermore, the provisions pertaining to Exclusive Marketing Rights (EMRs) have been repealed and a provision enabling grant of a compulsory license has been framed as its replacement.
- Patent owners may give permission to, or license, other parties to use their inventions on mutually agreed terms.
- A patent is granted protection for a period of 20 years and after its expiry the owner no longer holds exclusive rights to the invention, and it becomes available for commercial exploitation by others.
- Inventions in all branches shall be patentable if they meet the three tests of being new, involving an inventive step and being capable of industrial application.

### Trademarks

- A trademark is a unique symbol that differentiates one brand from the other and is considered essential for protecting the brand from being illegally replicated.
- The TRIPS agreement for the protection of trademarks incorporates the protection of distinguishing marks, recognition of service marks, indefinite periodical renewal of registration, abolition of compulsory licensing of trademarks, etc.
- In view of enacting the newly fabricated laws, the Indian Trade and Merchandise Marks Act, 1958 was annulled to pave the way for the Trade Marks Act, 1999.
- The Trademarks Act of 1999 provides for the registration of service marks, the filing of multiclass applications, enhancing the term of trademark registration to 10 years, the recognition of the concept of well-known marks, etc.



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### Copyright

- The Act was formulated in the year 1957 and has been amended from time to time to be on par with the international standards as specified in TRIPS.
- The Act preserves the right of artistic endeavors which includes painting, sculpting, drawing, engraving, photography, artistic craftsmanship, dramatic work, literary work, musical work, sound recording, and cinematography and is reflective of the Berne Convention for Protection of Literary and Artistic Works, 1886 and the Universal Copyrights Convention.
- Apart from these two conventions, the country is a party to the Geneva Convention for the protection of rights of Producers or Phonograms.
- The country is also an active member of the World Intellectual Property Organization (WIPO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO).
- The creator of the work is accorded with lifetime copyrights, which will continue to be valid a little more after his/her lifespan, i.e., until 60 years after his/her death. The creator is not only vested with rights of authorship but the rights of protecting his/her works against any amendments.

### Industrial Designs

- Industrial design means only the features of shape, configuration, pattern, ornament or composition of lines or colors applied to any article whether in two dimensional or three dimensional or both forms, by any industrial process or means whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction and does not include any trademark.
- The TRIPS agreement has accorded India with the ingredients that help in the protection of industrial designs.
- The Designs Act, 2000, caters to these requirements by providing protection to original and aesthetically appealing designs which have the potential for commercial applications and is in consonance with the evolvments in technology and economical advancements.

### Geographical Indication

- A geographical indication is a name or sign used on certain products which corresponds to a specific geographical location or origin (e.g., a town, region, or country).
- The TRIPS agreement has listed out the minimum standards of protection of GIs and additional protection for wines and spirits. In view of this, India has adopted legislative measures by enacting the Geographical Indications of Goods (Registration and Protection) Act, 1999 and the Geographical Indications of Goods (Registration and Protection) Rules, 2002.

### Layout Designs of Integrated Circuits

- The Semiconductor Integrated Circuits Layout Design Act, 2000, was drafted into the Indian governing system in compliance with the TRIPS agreement. The Act is aimed at ensuring the protection of layout designs in integrated circuits.

### Plant Varieties

- As a part of the ratification of the TRIPS agreement, India has enacted the Protection of Plant Varieties and Farmers Act, 2001 (commonly known as the “Plant Act”), as per the recommendations of the International Union for Protection of New Varieties of Plants, Geneva. The Act has facilitated the creation of a Protection of Plant Varieties and Farmers Rights Authority. The body is entrusted with the task of promoting the development of new varieties of plants as well as the protection of plant varieties and the rights of the farmers and breeders. Till now, the Indian Government has notified more than 100 crops with their genera to be registered under the initiative.

### Information Technology and Cyber Crime

- The laws associated with the domain of information technology are governed by the Information technology Act, 2000. The Act is aimed at rendering a legal recognition of transactions pursued through electronic data interchange and other means of electronic communication involving the use of alternative to paper-based methods of communication and storage of information with governmental agencies.





The provisions of the Act include: (a) The grounds on which the government may interfere with data and (b) The laws pertaining to the breach of conduct and its implications. The breach could be in the form of a penalty for damages to computers systems, tampering with computer source, breach of confidentiality and privacy, etc.

### Data Protection

- Data Protection laws refer to a collection of privacy laws, policies, and procedures which are intended to curtail the privacy intrusions caused by the collection, storage, and dissemination of personal data. Personal data, in general terms, is the information or data pertaining to a person who can be identified from a particular piece of information or data collected by a government, private organization or an agency.
- India doesn't have an express law for Data Protection, though certain provisions for the same can be found in the relevant laws, which includes the Information Technology Act, 2000, and the Indian Contract Act, 1872. A codified law for this purpose is likely to be enforced in the forthcoming days as it is in the final stage of its implementation.

## DISPUTE RESOLUTION

- The dispute resolution process in India mainly involves the following:
  - Litigation
  - Arbitration
  - Conciliation
  - Mediation
- Supreme Court of India is the highest court of appeal.
- Each state has a High Court along with subsidiary District Courts.
- Civil Disputes at first instance may be heard at the District Court or High Court, depending on complexity and pecuniary jurisdiction. Cases from the lower courts may go into appeal to High Court and then to the Supreme Court.
- A civil, criminal, or commercial dispute may be filed in the court having territorial jurisdiction and depending upon level of crime and pecuniary jurisdiction.
- The place of cause of action and the place of residence of the defendant are necessary determinants of territorial jurisdiction.
- Every judgment delivered by the Supreme Court becomes the Law of the Land to be followed by all the other lower courts.
- Several special courts and tribunals have been constituted in India to deal with specific disputes like:
  - Tax Tribunals
  - Consumer Dispute Redressal Forums
  - Insurance Regulatory Authority of India
  - Industrial Tribunals
  - Debts Recovery Tribunals
  - National Company Law Tribunals and its Appellate Authority
  - Motor Accidents Claims Tribunals
  - Airports Economic Regulatory Authority
  - Central Electricity Regulatory Commission

## ENFORCEMENT OF FOREIGN JUDGMENTS

- India is not a party to the Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters. However, India has executed bilateral treaties with various countries regarding reciprocity in enforcement of judgments and decrees.
- In India, the provisions of Code of Civil Procedure (CPC) are applicable for enforcing of foreign judgments from reciprocating and reciprocating-territories.



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- A judgment passed by the Court in reciprocating territory can be enforced by filling an execution petition under section 44-A of CPC.
- A judgment passed by the Court in non-reciprocating territory can be enforced by filing a suit in a court having competent jurisdiction in India on that foreign judgment or on the original cause of action or both.

## IMMIGRATION PROCEDURES

### Passport and Visa Requirements

- Foreign nationals desirous of coming into India are required to possess a valid passport of their country and a valid Indian visa.
- Foreign nationals should ensure that they are in possession of valid Indian visa before they start their journey to India except nationals of Nepal and Bhutan who do not require a visa to enter India, and nationals of the Maldives who do not require a visa for entry in India for a period up to 90 days (a separate visa regime exists for diplomatic/official passport holders).
- The Consular Passport and Visa (CPV) Division of the Ministry of External Affairs is responsible for issuance of Indian visas to the foreign nationals for their visit for various purposes. This facility is granted through various Indian missions abroad.
- The Bureau of Immigration handles the immigration procedures at major international airports.

### Types of Visas issued

- India offers a variety of visas to accommodate different visitor's needs:
- Employment Visa: Issued for highly skilled individuals intending to take up employment, valid for 5 years or the contract period, and extendable in India.
- Business Visa: For those visiting India for business purposes, valid for up to 5 years and extendable in India.
- Project Visa: Intended for executing projects in the Power and Steel sectors, it is valid for 1 year or the actual duration of the project or contract.
- "X"/Entry Visa: For accompanying families of foreign nationals, it is valid for up to 5 years.
- Tourist Visa: For individuals visiting India for tourism, it is valid for 30 days and is not extendable in India.
- Research Visa: For individuals pursuing research in any field, it is valid for 5 years and can be extended in India.
- Transit Visa: For travelers passing through India, it is valid for 15 days and cannot be extended in India.
- Conference Visa: For individuals attending international seminars or seminars held by government institutions, public sector units, or non-governmental organizations, its validity is for the duration of the conference.
- Medical Visa: For those seeking medical treatment in India at recognized and specialized hospitals and treatment centers, it is valid for 1 year.
- Journalist visas: Are given to professional journalists and photographers for up to three months' stay in India. The journalist visa is normally valid for single entry to India.



## KEY FACTS

- Strategically located in Southeast Asia at the intersection between the Pacific and Indian Oceans, bordering the Malacca Straits, with an area of 1.922.570 km<sup>2</sup>.
- Practices democracy with a Republic system.
- Bahasa Indonesia is the national language. English is widely written and spoken especially in urban areas and for business.
- With a GDP of more than US\$ 1,3 trillion in 2022, Indonesia is among the fastest- growing economy in Asia and the largest economy in Southeast Asia.
- Population of more than 275 million people and more than 175 million active internet users makes it one of the largest consumer markets with huge potential for growth, especially in the digital business and telecommunication sector.
- Other investment growth areas include digital business, trade, manufacturing industry, telecommunications, infrastructure, power, tourism, and real estate.
- Currency: Indonesian Rupiah (IDR or Rp).





## BUSINESS PRESENCE

- Main types of business models in Indonesia: locally incorporated companies in the form of limited liability companies, cooperatives, permanent establishments including representative offices, state-owned companies or regional-owned companies, sole proprietorships, and partnerships.
- Foreign direct investment must be established in the form of limited liability company (Perseroan Terbatas or “PT”) incorporated pursuant to Indonesian law and domiciled within Indonesia. A PT that has foreign participation in its shareholding structure is categorized as foreign investment limited liability company (PT Penanaman Modal Asing or “PT PMA”).
- Establishing a representative office can also be a simple method to create a legal presence in Indonesia. In principle, there are 4 (four) types of representative office in Indonesia: (i) Foreign Company Representative Office (Kantor Perwakilan Perusahaan Asing or “KPPA”) which are utilised by foreign companies or groups of foreign companies for purposes of managing the interests of a company or affiliated companies and/or preparing for the establishment and development of a foreign investment company in Indonesia and in other countries; (ii) Foreign Trading Company Representative Office (Kantor Perwakilan Perusahaan Perdagangan Asing or “KP3A”) which are utilised to act as selling agents, manufacturing agents and/or buying agents; (iii) Foreign Construction Services Representative Office (Badan Usaha Jasa Konstruksi Asing or “BUJKA”) which are utilized by the foreign construction services company to engage in construction project in Indonesia together with an Indonesian participant through joint operation; and (iv) Foreign Electricity Support Services Representative Office (Kantor Perwakilan Jasa Penunjang Tenaga Listrik Asing) which are utilized by the foreign electricity support services company to engage on high-cost electricity support services works.

## FOREIGN INVESTMENT RESTRICTIONS AND CONDITIONS

### Restrictions in Shareholding Equity Participation

- All business sectors or business categories are open to investment activities, except for business sectors or business categories which are expressly declared closed or open subject to certain conditions, such as partnership requirement with local micro, small and medium business.
- Foreign shareholding restrictions are also imposed through relevant laws set forth in the Indonesia Investment Positive List (previously the Investment Negative List) issued by the government and periodically modified.
- In general, the minimum amount of total investment (equity plus loan) applicable for a PT PMA is IDR 10 billion—excluding land and buildings, for each of its business activity. Please note that this minimum investment restriction can be higher depending on the sector concerned (e.g., construction).
- However, the minimum capital which must be injected as capital and subscribed in shares is only IDR 10 billion regardless of the number of activities conducted by the PT PMA.

### Approvals and Licensing

- Under the implementation of Government Regulation No. 5 of 2021 on the Implementation of Risk-based Licensing (“GR 5/2021”), the issuance of business license is now being carried out based on the assessment of the level of risk and the scale of business activity. Based on the results of a risk assessment, it can then be determined whether the business falls under low, medium, or high-risk business.
- Each of every business activity is now classified under the 2020 version of Indonesia Standard Industrial Classification (Klasifikasi Baku Lapangan Usaha Indonesia or “KBLI»). Further, in each sector requiring risk-based business licensing, GR 5/2021 has provided details that need to be fulfilled and known by business actors, such as (i) related KBLI code, KBLI title, the scope of activities, risk parameters, risk level, business license, period, validity period, and business licensing authority, (ii) requirements and / or obligations for risk-based business licensing, and (iii) risk-based business licensing guidelines.
- Appropriate approvals and licenses are required for the operation of most business activities. These may be obtained through the Online Single Submission (“OSS”) system, the relevant ministry, government agencies and/or regional government.





- Under the OSS regime, all business players are required to register through the OSS system and obtain a Business Identification Number (Nomor Induk Berusaha or “NIB”).
- NIB alone is sufficient to carry out low-risk businesses, whilst medium-risk businesses are required NIB and Standard Certificate (Sertifikat Standar). Lastly, high-risk businesses are required NIB and License/Permit (Izin) to be able to perform such businesses. Please note, however, that some business activities may also require the obtainment of a Supporting License (Perizinan Berusaha Untuk Menunjang Kegiatan Usaha or PB-UMKU).
- Application process and prescribed fees payable vary depending on the prescribed condition for the application and geographical location where the activity is proposed.

## EXCHANGE CONTROL

- Exchange controls are governed by Law No. 24 of 1999 concerning Foreign Exchange Traffic and Exchange Valuation System.
- No foreign exchange restrictions are imposed on flows of foreign exchange except with regard to offshore commercial loans. However, domestic transactions must use Indonesian Rupiah (IDR / Rp).
- Bank Indonesia, the central bank of Indonesia also requires all foreign loans to be registered and reported to Bank Indonesia.

## TAXATION

### Corporate Tax

- The Corporate Income Tax (“CIT”) rate of 22% applies to net taxable income.
- Public companies that satisfy a minimum listing requirement of 40% and certain other conditions are entitled to a tax discount of 3% off the standard rate, providing an effective tax rate of 19%.
- Domestic corporate taxpayers with an annual turnover less than IDR 50 billion, are entitled to a tax discount of 50% off the standard tax, imposed on their taxable income from its gross turnover up to IDR 4.8 billion.
- Certain domestic corporate taxpayers, i.e., cooperatives, limited partnerships, firm, PT, or village-owned enterprises/village-owned joint ventures with gross turnover less than IDR 4.8 billion are entitled to Final CIT at 0.5% rate.

### Personal Income Tax

- Tax obligors in Indonesia are subject to graduated tax rates from 5% to 35% on income accrued in or derived from Indonesia.
- Apart from Indonesian citizen, a person is categorized as Indonesia’s tax obligor if that person resides or is present in Indonesia for at least 183 days in period of 12 months or is present for an entire tax year and has intention to reside in Indonesia.

### Withholding Tax

- Income paid by tax residents and permanent establishments to other tax residents or permanent establishments is subject to tax withholding of 15% of the gross amount of: (i) Dividends; (ii) interest, including premiums, discounts and compensation for loan repayment guarantees; (iii) royalties; and (iv) gifts or rewards.
- Withholding of 2% of net income on gross amount estimates are required for: (i) rents of assets other than land, property, and buildings; and (ii) service fee for technical, management, construction, consulting and other services other than those received by individual taxpayers and already subject to withholding by their employers.
- Non-tax residents are subject to a 20% withholding tax, deemed final in nature (subject to certain exceptions), on the following: (i) Dividends; (ii) interest, including premiums, discounts, and compensation for loan repayment guarantees; (iii) royalties, rents and other income connected with the use of property; (iv) compensation for services, work and activities; (v) gifts and awards; (vi) pensions and other periodic payments; (vii) swap premiums and other protected value transactions; and (viii) profits due to release of debt.
- Taxpayers who do not have a taxpayer identification number (Nomor Pokok Wajib Pajak or NPWP) will be subject to 100% surcharge in addition to the standard applicable tax rate.



### Other Taxes

- Export and import taxes are stipulated by regulations of the Minister of Finance as determined by the types and purposes of goods exported or imported.
- Stamp duty is payable in nominal amounts on certain documents executed within Indonesia.

### Double Taxation Treaties

- Indonesia has signed and ratified bilateral tax treaties with the following countries: People's Democratic Republic of Algeria; the Republic of Armenia; Australia; Republic of Austria; People's Republic of Bangladesh; Republic of Belarus; Kingdom of Belgium; Brunei Darussalam; Republic of Bulgaria; the Kingdom of Cambodia; Canada; People's Republic of China including Republic of China (Taiwan); Republic of Croatia; Czech Republic; Kingdom of Denmark; Arab Republic of Egypt; Republic of Finland; French Republic; Federal Republic of Germany; Hong Kong Special Administrative Region of People's Republic of China; Hungarian People's Republic; Republic of India; Italian Republic; Islamic Republic of Iran; Japan; Hashemite Kingdom of Jordan; Democratic People's Republic of Korea (North Korea); Republic of Korea (South Korea); State of Kuwait; the Lao People's Democratic Republic; Grand Duchy of Luxembourg; the Federation of Malaya (Malaysia); Republic of Mauritius; United Mexican States; Mongolia; Kingdom of Morocco; Kingdom of the Netherlands; New Zealand; Kingdom of Norway; Islamic Republic of Pakistan; Independent State of Papua New Guinea; Republic of Philippines; Republic of Poland; Portuguese Republic; the State of Qatar; Romania; Russian Federation; Kingdom of Saudi Arabia; Republic of Serbia; Republic of Seychelles; Republic of Singapore; Slovak Republic; Republic of South Africa; Kingdom of Spain; Democratic Socialist Republic of Sri Lanka; Republic of Sudan; Republic of Suriname; Syrian Arab Republic; Kingdom of Sweden; Swiss Confederation; the Republic of Tajikistan; Kingdom of Thailand; Republic of Turkey; Republic of Tunisia; Ukraine; United Arab Emirates; United Kingdom of Great Britain and Northern Ireland; United States of America; Republic of Uzbekistan; Socialist Republic of Vietnam; Bolivarian Republic of Venezuela; and the Republic of Zimbabwe.

### Value Added Tax

- Value Added Tax ("VAT") is an indirect tax imposed on all goods and/or services, unless stipulated otherwise. At the moment, the VAT rate is 11%. However, by 1 January 2025 at the latest, the rate will be increased to 12%.
- However, a VAT rate of 0% is applied to the following taxable events:
  - (i) Export of taxable tangible and intangible goods;
  - (ii) Export of taxable luxurious goods; and
  - (iii) Export of taxable services.

## TAX AND INVESTMENT INCENTIVES

### General

- The Indonesian government provides facilities to investors who undertake business expansion or conduct new capital investments which fulfil one of the following criteria: (i) absorb a large amount of labor; (ii) include high priority scale investments; (iii) include development infrastructure; (iv) implement technology transfers; (v) conduct pioneering industries; (vi) are located in remote/isolated areas, underdeveloped areas, border areas or other areas which are deemed necessary; (vii) protect environmental preservation; (viii) implement research, development and innovation activities; (ix) partner with micro, small, medium or cooperative businesses; or (x) involve industries which utilize capital goods or machines or equipment which are produced domestically.
- Types of facilities which are to be granted to investors may take the form of: (i) income tax reduction; (ii) exemption or relief/reduction from import duties on capital goods, machines or equipment for production requirements which are not yet capable of being produced domestically; (iii) exemption or relief/reduction of import duties on basic commodities or auxiliary materials for production requirements for certain periods of time and on certain conditions; (iv) exemption or postponement of value added tax on imports of capital goods or machines or equipment for production requirements which are not yet capable of being produced domestically for a certain period of time; (v) accelerated depreciation or amortization; and/or (vi) relief/reduction from tax on land and buildings especially for certain business sectors, in certain territories or regions or zones.



## Special Economic Zones

- Special Economic Zones (Kawasan Ekonomi Khusus or “KEK”) are designated areas where certain economic activities are encouraged and facilitated by the government.
- There are currently 20 (twenty) KEK in Indonesia, located in various regions of the country, including Sei Mangkei, Batam, Bintan, and Karawang.
- The government offers various facilities for companies operating in KEK. Said facilities shall consist of fiscal facilities in the form of taxation, customs and excise, regional taxes and regional levies, and non-fiscal facilities, in the form of goods traffic, licensing, immigration, land and spatial planning, investment, and employment facilities, as well as other facilities and easements that can be provided in the zones within the KEK.
- The fiscal facilities in the form of taxation provision are: (i) income tax reduction for the investors; (ii) elimination of value added tax and/or sales tax on luxury goods and/or import taxes and/or regional taxes and/or regional levies fiscal; (iii) exemption of import duties and no import tax on imports of capital goods for the purpose of the construction of business facility; (iv) exemption of excise; and/or (v) other taxation provision.

## STAMP DUTY

- Stamp duty is payable in the amount of up to IDR 10,000 on documents such as agreements, notarial deeds, invoices, and statement letters.

## EMPLOYMENT LAW

- Law No. 13 of 2003 on Manpower (“Manpower Law”) and Law No. 2 of 2004 on Industrial Relation Dispute Settlements are the general rule of thumb of manpower regulations in Indonesia. While, both: (i) Government Regulation No. 35 of 2021 on Employment Agreement for a Specified Period of Time, Outsourcing, Working Time and Rest Time, and Termination of Employment; and (ii) Government Regulation No. 36 of 2021 on Wages, are the major implementing regulation of the aforementioned primary manpower/industrial relation laws.
- Employment relationships exist because of a work agreement between an employer and its workers. The Manpower Law separates employment relationships into two categories: (i) Employment Agreement with an Unspecified Period of Time (Perjanjian Kerja Waktu Tidak Tertentu); and (ii) Employment Agreement with a Specified Period of Time (Perjanjian Kerja Waktu Tertentu or “PKWT»). Please note that PKWT can only be performed for particular work, namely: (i) work that is completed at once; or (ii) work that is temporary.
- Normal working hours include: (i) seven hours per day and 40 hours per week for a six-day work day week; or (ii) eight hours per day and 40 hours per week for a five-day work day week.
- Employees are entitled to statutory benefits which include rest days, public holidays, annual leave, maternity leave, Employee Social Security Program (Badan Penyelenggaraan Jaminan Sosial Tenaga Kerja or “BPJS Tenaga Kerja”) and termination benefits.
- Minimum wage differs from one region to another as determined by the respective local government.
- Every employee/laborer has the right to form and become a member of an employee/laborer union.
- Employees/laborers may perform strikes provided that they are conducted without contravening the law with a prior written notice to the entrepreneur/employer and the local of government within not less than seven business days.
- Each company employing no less than 10 workers is obliged to create a set of company regulations. Company regulation is a set of rules and regulations made in writing by an entrepreneur that specifies work requirements, disciplinary requirements, and code of conduct of a company. Company regulation must be registered to the manpower office, and the validity of a company regulation shall last for no longer than 2 years and be subjected to revision upon its expiration.



## INTELLECTUAL PROPERTY

- Intellectual property protection in Indonesia is comprised of copyrights, industrial designs, integrated circuits layout designs, patents, trademarks, trade secrets, geographic indications, and protection of plant varieties.
- Copyrights, industrial designs, integrated circuits, patents, trademarks, trade secrets and protection of plant varieties may be transferred by inheritance, gift/donation, testamentary disposition, written agreement, and other manner in accordance with the prevailing law.
- In 1979, Indonesia ratified the Paris Convention for the Protection of Industrial Property. Subsequently, Indonesia withdrew its reservations relating to Arts. 1-12 of the Paris Convention while still maintaining its reservation with regards to Art. 28 paragraph [1] of the Paris Convention in 1997.
- In 1997, Indonesia has also ratified the Patent Cooperation Treaty and its Regulations resulting from the State Members of the World Intellectual Property Organization meeting in Washington on 19 June 1970 with reservations as to Article 59 of the treaty.
- In its development, Indonesia has further ratified the Agreement Establishing World Trade Organization (“WTO Agreement”) and has adopted the Agreement on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods (TRIPS) as part of the WTO Agreement.
- In 1997, Indonesia has accepted the Trademark Law Treaty dated 27 October 1994 as drawn up by the State Members of the World Intellectual Property Organization in Geneva, Switzerland.

## DISPUTE RESOLUTION

### Litigation

- Civil disputes in the first instance may be heard at the District Court. Cases may go on appeal to the High Court, cassation at the Supreme Court and then for Supreme Court Judicial Review.
- Employment disputes are heard in the Industrial Relations Court.
- Alternative Dispute Resolutions and Arbitration
- Alternative Dispute Resolution (“ADR”) is available and includes out of court settlement through consultation, negotiation, mediation, conciliation, or expert evaluation.
- Disputes subject to settlement through arbitration are only those disputes in the trade/commercial sector concerning rights which according to prevailing laws and regulations are fully controlled by the parties to the dispute, which include, among other fields: (i) Matters arising in the field of trade and commerce; (ii) banking matters; (iii) finance matters; (iv) investment matters; (v) industrial matters; and (vi) intellectual property rights.
- The District Court has no authority to adjudicate disputes arising between parties who are already bound by arbitration agreements.
- Indonesia has the Indonesian National Board of Arbitration (Badan Arbitase Nasional Indonesia or “BANI”), an independent institution which provides various services relating to arbitration, mediation, and other forms of out of court dispute resolution.
- The cost for BANI arbitration varies depending on the value of claims in dispute.
- Enforcement of Foreign Arbitral Awards
- Central Jakarta District Court is the only court that is authorized to enforce and execute foreign arbitral award, after the following prerequisites is fulfilled.
  - a. was rendered by arbitrator or arbitral tribunal in a country which is bounded, either bilaterally or multilaterally, with Indonesia through an agreement, on the recognition and execution of foreign arbitral award;
  - b. is still within the scope of trade;
  - c. is consistent with the public order of Indonesia;
  - d. has secured the exequatur from the Chief of Central Jakarta District Court; and
  - e. foreign arbitral award which involves the Republic of Indonesia as one of the disputing parties, may only be executed after securing the exequatur from the Supreme Court of the Republic of Indonesia which will be delegated to the Central Jakarta District Court.





## IMMIGRATION PROCEDURE

### Passport and Visa Requirements

- Every person who enters the territory of Indonesia is required to possess a valid passport. Foreigners entering Indonesia may also be required to possess a visa, to obtain a valid entry permit and to enter and exit through examination by immigration officials at immigration check points.
- Application for a visa is submitted to the head of representative of the Republic Indonesia abroad or to officers in other places as stipulated by the government of the Republic of Indonesia.

### Professional's Passes and Work Permits

- A visit visa may be issued to foreigner who visits Indonesia for business purposes for a maximum of 60 days (for residing) and 180 days (for pre-investment visit) from the date of grant of an entry permit.
- Every employer who employs foreign labour must apply expatriate utilisation plan (Rencana Penggunaan Tenaga Kerja Asing or "RPTKA") from the Minister of Manpower or an authorised official. Once approved, the RPTKA will constitute as validation to recruit expatriates and is one of the bases for the issuance of KITAS.
- Limited Residence Permit or Izin Tinggal Terbatas or "ITAS" may be issued to a foreigner who visits Indonesia for the purpose of investing or working in Indonesia for a maximum of 5 years and can be renewed once (entire stay is not more than 10 years).
- Representatives of foreign nations are exempt from the obligation to possess a written permit for utilisation of foreign labour as diplomatic and consular officials.

### Special Permanent Residency or Other Permits

- Visit permits may be converted to become ITAS on the basis of application by the foreigner and his/her sponsor with the condition that he/she is already present in Indonesia for the purpose of, among others, investing or working as an expert or company manager.
- ITAS are issued to foreigners to reside in the territory of Indonesia for a limited period of time. The status of ITAS may be converted to become permanent residence permits or Izin Tinggal Tetap "ITAP" based on application by the foreigner with condition that he/she has already been present in Indonesia for at least 3 continuous years for the purpose of, among others, investing or working as an expert possessing unique qualifications or as a high-ranking company officer.
- Permanent residence permits are issued for foreigners to reside permanently in the territory of Indonesia.



## KEY FACTS

- Japan is geographically located in East Asia with an area of 377,944 km<sup>2</sup>. It consists of four main islands laid out from north to south: Hokkaido, Honshu, Shikoku, and Kyushu. The capital city is Tokyo. Other large cities are Osaka, Yokohama, Sapporo, Nagoya, Kyoto, Kobe, Fukuoka, Kawasaki, Saitama, and Hiroshima.
- Japan is a constitutional monarchy with a parliamentary government. The Japanese Royal Family holds no political or executive power and serves in a symbolic role. The head of the government is the Prime Minister.
- The Japanese Parliament (the Diet) consists of two houses: the House of Representatives being the lower house and the House of Councillors being the upper house.
- Population of 124,947,000 people, comprising Japanese (98%), Chinese (0.53%), Korean (0.30%), and others (1.08%).
- Religious composition of the country is primarily Shinto and Buddhist.
- The national language is Japanese.
- Currency is the Japanese Yen.
- Japan is a leading country in areas including machinery and equipment, metals and metal products, textiles, autos, chemicals, electrical equipment, and processed foods.





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## BUSINESS PRESENCE

- Main types of business structures available to a foreign enterprise: unregistered representative offices, registered branches, corporate subsidiaries (Kabushiki Kaisha, Godo Kaisha), limited liability partnerships, distributorship arrangements and joint ventures.
- Among the above, use of corporate subsidiaries is most common. These may be established by completing the necessary procedures stipulated in the law and registering the corporation, or by acquiring an already established Japanese company.
- Unregistered representative offices are the easiest to establish. There are no registration requirements. However, the permitted activities of such offices are limited. An unregistered office cannot engage in direct profit-making or commercial activities and cannot open bank accounts in the name of the office.
- Registered branches may be the simplest means of establishing a foundation for business in Japan. The largest difference between a registered branch and a subsidiary
- is that all liability resulting from the action of the branch ultimately lies with the foreign company, unlike a subsidiary company which is liable for its own acts.

## FOREIGN INVESTMENT RESTRICTIONS AND CONDITIONS

### Restrictions in Equity Participation

- The Foreign Exchange and Foreign Trade Act requires investors to make the notification prior to the foreign investment in specific areas. In the other areas, a post-facto notification is required, and the Bank of Japan has been authorized to administer the reports submitted by foreign investors.
- Japan has continuously increased the opening of its market to foreign investors; however, some areas remain restricted to foreign investors – such as the telecom sector – due to national interest.

### Restrictions in Real Property Acquisition

- Generally, there are no restrictions for foreign ownership of real estate. However, the government may prohibit or restrict such ownership if the foreigner's country prohibits or restricts ownership of real property by Japanese persons or entities.
- Acquisition of real property of a non-resident is a transaction subject to reporting to the Ministry of Finance under the Foreign Exchange and Foreign Trade Act.

### Permits and Licensing

- Certain businesses require permits or licenses, such as utilities, banks, insurance, broadcasting, nuclear power, pharmaceutical, civil aviation, and railroad business.
- Importation of illegal items including narcotics, firearms, explosives, counterfeit currency, pornography, and products that violate intellectual property laws is prohibited.
- Importation of alien animal species, medical products, pharmaceuticals, food products, alien plants, drugs, and chemicals is regulated, due to the effect it has on the economy, health, public order and morality.
- Exportation of certain items listed in the Export Trade Control Order is regulated and requires licenses from the Minister of Economy, Trade and Industry.

## EXCHANGE CONTROL

- The Foreign Exchange and Foreign Trade Act has been substantially liberalized. In only limited circumstances is a license or prior notification required under the Act for
- making or receiving payment, capital transactions, inbound direct investment and foreign trade between residents and non-residents. However, a post-facto notification is required in many cases.
- Prior notification to Japan Customs is necessary when importing or exporting means of payment and/or securities exceeding 1,000,000 yen and ingot of gold (purity: more than 90%) exceeding one kilogram.



## TAXATION

### Corporate Tax

- Corporations located in Japan are required to pay corporate tax and local income tax (the amount of which varies depending on the locality). In principle, a domestic corporation is liable to pay corporate tax on both domestic and foreign source income while a foreign corporation is liable to pay corporate tax when it has domestic source income.
- Currently (as of 1 August 2023), companies are taxed at the rate of 23.2% of domestic source income. When combined with local income taxes, and enterprise tax, the effective tax rate can be around 29.74%.

### Personal Income Tax

- Individuals resident in Japan are subject to graduated national tax rates from 5% to 45% depending on income and a local tax rate of 10%. In addition to these taxes, individuals are required to pay 2.1% of their national income tax amount as a “special income tax surcharge for reconstruction” to finance the reconstruction of the disaster-hit Tohoku region by 2037.
- Non-resident individuals are subject to income tax in respect of domestic source income.

### Withholding Tax

- For certain income, the payor of the income is required to withhold tax at a rate specified by law (with a special income tax surcharge levied for reconstruction in addition to this base rate). Generally, the payer can claim a tax credit with respect to the withheld amount against income tax when the annual tax return is filed.
- With respect to certain domestic source income, such as dividends, loan interest and royalty payments received by foreign corporations and non-resident individuals, withholding tax is imposed without further adjustments. The withholding tax rate (including the special income tax surcharge for reconstruction) is 20.42% for dividends (15.315% in case of dividends from listed companies), 20.42% for loan interest and 20.42% for royalties, subject to a lower rate provided by the applicable tax treaty.

### Capital Gains Tax on Real Property

- For domestic and foreign corporations, capital gains on real estate asset sales are included in gross income and taxed accordingly.
- For resident individuals, capital gains are taxed separately to other types of income and any gain is taxed at an effective rate of 39.63% (national tax: 30 %; special income tax for reconstruction: 0.63%; local tax: 9%) for property held for 5 years or less and 20.315% (national tax: 15%; special income tax for reconstruction: 0.315%; local tax: 5%) if more than 5 years. Non-resident individuals are exempted from local tax. A discounted rate may be available depending on whether the property is a residence.
- The purchaser of real property from a non-resident individual or a foreign corporation is required to withhold 10.21% of the purchase price and pay the withheld amount to the relevant tax office.

### Other Taxes

- Consumption tax is currently (since 1 October 2019) 10%.

## SUPPORT AND SERVICES ON INVESTING IN JAPAN

- To increase foreign direct investment in Japan, the government founded the “Invest Japan Business Support Centers (IBSCs)” within the Japan External Trade Organization (“JETRO”).
- IBSCs provide information on investment to help foreign companies create their business foundations in Japan, including information on investment opportunities and procedures to obtain business permits and licenses.
- To improve access to the Japanese market, overseas or domestic enterprises can make complaints to the Office of Trade and Investment Ombudsman – a governmental body – stating how the government regulations are an obstacle to exporting and investing in Japan. In principle, an explanation to the complaint should be made within 10 days.





- The broad discretion given to many government ministries in the implementation and enforcement of regulatory laws can make it difficult for businesses to know in advance whether certain activities are subject to regulation. To assist businesses, a number of ministries and agencies have adopted a system that allows for guidance to be requested from the relevant government body on how regulation will be imposed. This system is commonly referred to as the “No-Action Letter System” and is similar to advance tax rulings that are common in other countries (although in Japan the system is used by ministries and agencies beyond those involved in taxation matters). When a No-Action Letter is submitted, the relevant ministry or agency will respond with a public letter that is made available for other businesses to benefit from the information.

## EMPLOYMENT LAW

- The maximum working hours are 40 hours a week and eight hours a day. The limit may be exceeded when a Notification of Agreement between the employer and the employees (labor union) is submitted to the local Labor Standards Inspection Office. Employer must pay an increased wage for hours which exceed the limit, at a rate within the range of no less than 25% and no more than 50% over the normal wage. However, if the additional hours add up to more than 60 hours per month, the employer must pay a further increased wage at a rate for more than 50% for the hours which exceed 60 hours.
- Employees within the protection of the Labor Standards Act are entitled to statutory benefits such as rest periods, annual paid leave, maternity leave, childcare leave, family medical leave and other leaves of absence from work. Sick leave is not required by law. From April 2019, with respect to employees who are entitled to over 10 days of annual paid leave, after consultation with the employees, employers are required to specify at least 5 specific dates on which the employees are to use annual paid leave or face a fine not exceeding 300,000 yen.
- Employers must provide health insurance, welfare pension insurance and employment insurance.
- Minimum wage requirement is stipulated in the Minimum Wages Act, according to region and industry (e.g., at the time of this writing, the most recent increase in October 2022 brought the minimum wage in Tokyo to 1072 yen per hour).
- Labor unions have a constitutional right to carry out their activities, such as requesting collective negotiation, and no company may refuse such request of negotiation.
- Employers may not prohibit employees from joining labor unions, nor disadvantage an employee because of union membership.
- Labor dispute actions, such as strikes, are not subject to civil and criminal penalties that would otherwise apply, provided that the dispute action is justifiable. Employees in certain sectors are prohibited from taking labor dispute action. These sectors include government employees, and employees working on public projects.

## INTELLECTUAL PROPERTY

- Japanese intellectual property law creates rights relating to copyright, designs, geographic indications, integrated semiconductor circuits, inventions, plant varieties, product forms, trade names, trade secrets, trademarks and utility models.

Protected IP rights	Applicable law
Copyright	Copyright Act
Designs	Design Act
Geographical indicators	Unfair Competition Prevention Act
Integrated semiconductor circuits	Act on the Circuit Layout of a Semiconductor Integrated Circuits
Inventions	Patent Act



Protected IP rights	Applicable law
Plant varieties	Plant Variety Protection and Seed Act
Indications of goods or business (a name, trade name, trademark, markings, containers or packaging for goods belonging to a business, or any other indication of a person's goods or business); trade secrets, foreign states' national flags, coat of arms, and other symbols, official markings of foreign governments, markings of international organizations, domain names	Unfair Competition Prevention Act
Trademarks	Trademark Act Unfair Competition Prevention Act
Trade names	Commercial Code Unfair Competition Prevention Act
Trade secrets <ul style="list-style-type: none"> <li>• Manufacturing technologies</li> <li>• Customer lists</li> </ul>	Civil Code
Utility models	Utility Model Act

- Inventions, utility models, designs and trademarks are registered at the Patent Office and are protected for a certain period of time.

Protected IP rights	Protection period
Designs	20 years from the day of registration
Inventions	20 years from the day the application was filed
Trademarks	10 years from the day of registration (renewable)
Utility Models	10 years from the day the application was filed

- A design must be a shape, pattern, or color (or any combination thereof) of an article which produces an aesthetic impression on the sense of sight.
- A patent must utilize technological concepts which use natural laws and rules characterized by a high level of technological creativity.
- A trademark must be characters, figures, signs or three- dimensional shapes (or any combination thereof) used to certify commercial merchandise or commercial merchandise of parties to which the use of trademark has been transferred.
- A trade secret is technical or business information useful for commercial activities, such as manufacturing or marketing, that is kept secret and that is not publicly known.
- A utility model is a form of product, structure, or combination of the two which is created using creative technological concepts based on natural laws and rules.
- Japan is a member of the World Intellectual Property Organization (WIPO) and has ratified the Paris Convention, the Berne Convention, and the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).



## DISPUTE RESOLUTION

- The judicial system in Japan is composed of five types of courts: the Supreme Court, High Courts, Family Courts, District Courts and Summary Courts. The court of first instance may be the Summary Court, District Court, Family Court or High Court, depending on complexity, value and legal issues involved. Judgments in the Summary, District and Family Courts may be appealed to the High Courts and judgments in the High Courts may be appealed to the Supreme Court.
- Alternative dispute resolution (ADR), such as mediation and arbitration are available. Institutions such as the Japan Commercial Arbitration Association (JCAA) provides facilities for arbitration. Besides, the Japan International
- Dispute Resolution Center (JIDRC) was established in 2018, and JIDRC provides new facilities in Tokyo and Osaka.
- The arbitral awards made in such proceedings have the same effect as final and conclusive judgments and the enforceability of such arbitral awards is guaranteed under the Japanese Arbitration Law. Japan has ratified the New York Convention (the Convention on the Recognition and Enforcement of Foreign Arbitral Awards).

## IMMIGRATION PROCEDURES

### Passport and Visa Requirements

- Immigration control in Japan is conducted in accordance with the Immigration Control and Refugee Recognition Act and the Basic Resident Registration Act. Immigration rules have recently changed in Japan. The changes include the establishment of the Immigration Services Agency and the creation of new status of residence to cope with the current shortage of labor in Japan.
- All persons entering into and out of Japan are required to arrive and depart through immigration with possession of a valid national passport with an affixed valid visa or other
- internationally recognized travel documents valid for travelling in Japan. Depending on the country and the visa obtained, passports or travel documents may need to be valid for at least six months beyond the date of entry.

### Business Passes and Work Permits

- Japan has made arrangements with 68 countries and regions (as of September 2019) to waive requirements of a visa when the visit is for a short period of time. The purpose of such a stay may be commerce, conference, tourism or visiting relatives and acquaintances.
- A stay that exceeds 90 days and in which the applicant will perform paid work requires a working visa (and for family visas to be issued to any accompanying family members). Work visas and family visas are valid for 1 to 5 years.
- The number of days required from application to issuance of the visa is approximately five working days. However, when applying for a long-term visa, if a Certificate of Eligibility is not submitted with the application, issuance will take one to three months regardless of whether there is a problem or not.
- All foreign residents in Japan are required to personally appear and register themselves at the municipal office of the city, ward, town or village in which they are resident. Under the Basic Resident Registration Act, foreign residents are eligible to apply for a resident record (juminhyo) and will be provided with a resident card. This card must be carried at all times.



## KEY FACTS

- Malaysia is located at the center of Southeast Asia which has a market of 663.9 million people with a combined gross domestic product (GDP) of USD3.3 trillion. It has one of the world's busiest shipping lanes which is the Straits of Malacca, providing access to the global supply chain via two key Malaysian ports, namely Port Klang and Port of Tanjung Pelepas. Malaysia is also well-connected to major cities in Asia where people can reach it within 8 hours flight from Dubai or Tokyo.
- Malaysia comprises of 2 non-contiguous regions which are separated by the South China Sea and shares its borders with Singapore, Thailand, Indonesia, and Brunei. It has a total land size of just under 330,000 km<sup>2</sup> which is similar to that of Japan, Germany, Finland and Norway.
- The capital city of Malaysia is the Federal Territory of Kuala Lumpur. Malaysia has in West Malaysia, a total of 11 states and 2 federal territories (comprising the States of Johor, Kedah, Kelantan, Melaka, Negeri Sembilan, Pahang, Perak, Perlis, Penang, Selangor and Terengganu and the Federal Territories of Kuala Lumpur and Putrajaya); and in East Malaysia, a total of 2 states and 1 federal territory (comprising the States of Sabah and Sarawak and the Federal Territory of Labuan). Malaysia is a federal constitutional monarchy and 9 of the 13 States, namely Kedah, Kelantan, Johor, Perlis, Perak, Pahang, Selangor, Negeri Sembilan and Terengganu are headed by Malay rulers, who serve as constitutional heads of State. The remaining 4 states namely Penang, Malacca, Sabah, and Sarawak are headed by the Yang Di-Pertua Negeri (Governors) who are appointed for fixed terms of office to serve as constitutional heads of State. Each State has its own written constitution and an elected legislative assembly, and each State Government is led by a Menteri Besar or Chief Minister or Premier of State, who is appointed from amongst the members of the legislative assembly.
- Malaysia also follows a political structure and legal framework that are largely based on the British Westminster parliamentary system and the division of powers between the various State Governments and the Federal Government is defined by the Federal Constitution, which provides for some autonomy for the 13 constituent States.
- Malaysia has a diverse and multicultural population of 32.67 million consisting mostly of Bumiputera (Bumiputera means a Malay individual, or an aborigine as defined in Article 160(2), Article 161A (6) (a) and Article 161A (6)(b) of the Federal Constitution), followed by Chinese and Indians and other races such as Eurasians. English is widely spoken in Malaysia especially in business; however, the national language of Malaysia is Malay (Bahasa Malaysia).
- Malaysia is considered a leading developing country and is classified as an upper-middle income country with a gross national income per capita of USD12,001. Other countries in this category include Argentina, Brazil, Kazakhstan, Mexico, Turkey, and Venezuela. In the past 5 years, Malaysia has had a consistent growth with an average GDP growth of 3.1% per year and it has also maintained a low inflation rate of an average of 1.3% over the last 5 years.
- Malaysia has diverse economy and is led by the services and manufacturing sectors, which is similar to advanced economies and its economy is also driven by electricity, gas and water, construction, agriculture, mining and quarrying, transport, storage and communications, finance, insurance, real estate and business services, wholesale and retail trade and accommodation and restaurants sectors. Digital technology is expected to be the new driver for the economy of Malaysia in the coming decade, and its contribution is projected to reach 22.6% of GDP by 2025.
- The official currency of Malaysia is the Malaysian Ringgit, symbolized by the abbreviation RM or MYR. The Malaysian Ringgit is made up of 100 Sen (Cents) and it is issued in denominations of RM1, RM5, RM10, RM20, RM50 and RM100.





## BUSINESS PRESENCE

- The following are the forms of business organizations available in Malaysia:
  - i. Company
  - ii. Limited Liability Partnership (LLP)
  - iii. Partnership or sole proprietorship
  - iv. Foreign branch office, representative office or regional or global headquarters

### Company

- Companies are governed by the Companies Act 2016 (CA 2016) which provides for 3 types of companies to be incorporated:
  - i. Company limited by shares;
  - ii. Company limited by guarantee; and
  - iii. Unlimited company.
- Most of the companies are incorporated as companies limited by shares which means that they have limited liability, and that the maximum liability of a member is limited to the value of the paid-up share capital. Unlimited companies have no limit to the liability on its members.
- Companies may be formed as either private companies or public companies. A private company is one which has 50 or less members and is prohibited to issue any invitation to the public to subscribe for shares or debentures of the company or to deposit money with the company. A public company can have any number of members and may subject to the approval from the relevant authority, invite the public to subscribe for shares or debentures in the company or to deposit money with the company.
- A company has the following requirements:
  - i. Director - A company shall have a minimum 1 director in the case of a private company and 2 directors in the case of public company, and a director shall be a natural person who is at least 18 years of age and ordinarily resides in Malaysia.
  - ii. Share Capital - There is no minimum paid up share capital requirement for the incorporation of a company. However, some ministries and authorities may require a certain minimum paid up share capital. For example, the Ministry of Domestic Trade and Cost Of Living Affairs (MDTCA) requires a minimum paid up share capital of RM1,000,000 for foreign-owned companies (i.e. company with foreign equity at 51% and above) who wishes to operate in the Wholesale, Retail and Trade sectors; and the Immigration Department of Malaysia also requires a minimum paid up share capital as set out below if an employment pass for an expatriate is required

Equity held	Minimum paid up share capital
<b>100% local owned</b>	RM250,000
<b>Local and foreign owned</b>	RM350,000
<b>100% foreign owned</b>	RM500,000

- iii. Audited annual financial statements - A company is required to prepare and circulate to its shareholders the audited annual financial statements in accordance with the approved accounting standards issued or adopted by the Malaysian Accounting Standards Board (MASB) and the requirements of the CA 2016, and thereafter lodge the same with the Companies Commission of Malaysia (CCM) within a prescribed period.
- iv. Registered office - A company is required to have a registered office in Malaysia to which all communications and notices may be addressed, and the address of the company secretary's office may be used as the official address of the company.



- Further, there are additional disclosure requirements for public companies (PLCs) which are listed on Bursa Malaysia, the stock exchange of Malaysia. PLCs are required to make the relevant disclosures (including environmental, social and governance (ESG) sustainability reporting) in their annual reports in accordance with the Listing Requirements issued by Bursa Malaysia. PLCs are also required to announce their interim financial report on a quarterly basis to their shareholders within 2 months after the end of each financial quarter. PLCs must also ensure that all material information is disseminated on a timely basis with no material omission or misleading statements, in accordance with the Listing Requirements.
- In addition, PLCs also have to comply with the Malaysian Code on Corporate Governance (MCCG) issued by the Securities Commission Malaysia (SC) and disclose their compliance in their annual reports.

### Limited Liability Partnership (LLP)

- LLP is governed under the Limited Liability Partnerships Act 2012 where 2 or more individuals or corporate entities may form an LLP in accordance with the terms of an LLP Agreement. It combines the characteristics of a company and a conventional partnership. An LLP has a separate legal entity existence from its partners and the liabilities of the partners are limited, however an LLP has unlimited capability in conducting business and holding property.
- An LLP has perpetual succession, and its existence, rights and liabilities will not be affected by any change in its partners.

### Partnership or sole proprietorship

- All sole proprietorships and partnerships (excluding LLPs) are unincorporated but must be registered with the Registrar of Business under the purview of CCM except for legal firms which are considered partnerships under the Partnership Act 1961 and must be registered with the Bar Council of Malaysia under the Legal Profession Act 1976. Unlike companies and LLPs, a sole proprietor is solely liable without any limit for the liabilities, debts and obligations of its sole proprietorship and the partners in a partnership are fully and jointly and severally liable without any limit for the liabilities, debts, and obligations of their partnership.

### Other forms of business organizations

- There are also other forms of business organizations that are utilized by foreign investors in Malaysia such as foreign branch office, representative office or regional or global headquarters. These are not legal entities per se, however there are certain privileges and incentives given to such organizations to conduct their businesses in Malaysia without incorporating any legal entities.

## FOREIGN INVESTMENT RESTRICTIONS AND CONDITIONS

- Malaysia welcomes foreign investments as evidenced by the over 5,000 foreign companies from more than 50 countries that have set up operations in Malaysia. The total foreign direct investment (FDI) of these companies stood at USD199.6 billion as of December 2022.
- The Malaysian Government via the Malaysia Digital Economy Corporation (MDEC) is concentrating on initiatives to foster skills in emerging technologies like Big Data Analytics (BDA), Artificial Intelligence (AI), Internet of Things (IoT), Financial Technology (FinTech), data centers, cloud services and robotics. It aims to secure at least RM50 billion in digital economy investments and attract at least 50 Fortune 500 tech companies to establish and expand their businesses in Malaysia by 2025 as part of its five-year plan. To further boost the rate of digital adoption, the Malaysian Government introduced the Malaysia Digital Economy Blueprint in 2020 and some notable points from this blueprint include the following:
  - i. Promotion of the utilization of cloud services - 4 Cloud Service Providers, namely Microsoft, Google, Amazon, and Telekom Malaysia, have received conditional approvals to establish and operate hyper-scale data centers and cloud services in Malaysia.
  - ii. Deployment of 5G technology - The plan to rollout the next-generation mobile 5G technology has started in 2022. This initiative has a dedicated investment budget of RM15 billion spread over a decade.



iii. Establishment of a reliable and secure digital atmosphere - The Malaysian Government intends to enhance the country's cybersecurity stance, and this involves plans to cultivate more than 20,000 cybersecurity talents within the next 5 years and bolster data protection and related regulatory frameworks.

- The Budget 2023 of the Malaysian Government has also introduced a few digital initiatives such as allocation of RM1 billion by Bank Negara Malaysia (BNM), the Central Bank of Malaysia to aid medium and small-medium enterprises in automating and digitalizing their operations as well as to aid the creation of more data centers through tax allowances, secured infrastructure and clean energy facilities, and the allocation of RM725 million to expedite the national digital communication enhancement platform (also known as Jalinan Digital Negara (JENDELA)) digital infrastructure programs.
- Malaysia also has a strong e-commerce market with gross merchandise value expected to rise to USD18 billion in value by 2025 at a compounded annual growth rate of 10%.
- Malaysia has a large number of trading partners and its largest trading partners by volume include China, Singapore and United States.
- Further, despite the challenges posed by the pandemic, Malaysia's external trade has shown resilience with exports witnessing a growth of 25% in 2022 which did not run far from the preceding year at 26%. In addition, with a trade to GDP ratio consistently averaging 130% since 2010, Malaysia stands as one of the world's most open economies.
- Malaysia's Free Trade Agreements includes those entered with ASEAN, Australia, Chile, China, India, Japan, Korea, New Zealand, Pakistan, Turkey and Iran (which is under negotiation and pending ratification), as well as agreements with the Regional Comprehensive Economic Partnership (RCEP), Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), European Free Trade Association (EFTA) (which is under negotiation and pending ratification) and European Union (EU) (which is under negotiation and pending ratification).
- There is no central regulatory body in Malaysia that regulates foreign investments in Malaysia nor any single legislation or guideline that covers all foreign investments. Instead, foreign investment policies and restrictions in Malaysia are sector and industry specific and are regulated by each of the regulatory authorities supervising the relevant sectors and industries through the granting of licenses or approvals, the imposition of local participation requirements such as having a minimum level of Malaysian or Bumiputera equity ownership and the appointment of Malaysian or Bumiputera directors as well as the imposition of limits on foreign equity ownership. Therefore, the allowable percentage of foreign equity ownership varies across different sectors.
- For example, in the case of the real estate sector, under the Guidelines on the Acquisition of Properties issued by the Economic Planning Unit (EPU) of the Prime Minister's Department, any acquisition of property where the acquisition price is RM20 million and above that will result in diluting Bumiputera ownership on the property requires the prior written approval of EPU. Further, foreigners are not allowed to purchase properties which are (i) less than RM1 million per unit; (ii) residential units under the category of low and low-medium cost as determined by the state authority; (iii) properties built on Malay reserved land; or (iv) properties allocated to Bumiputera interest in any property development project as determined by the State Authority.
- Another example in the case of the distributive trade sector, which is regulated by the MDTCA, the MDTCA encourages and advises foreign business operators involved in distributive trade services to seek the prior approval of MDTCA before starting their operations in Malaysia. MDTCA further states that companies with foreign investors engaged in distributive trade should adhere to the following recommendations: (i) appoint Bumiputera or Malay director(s); (ii) employ Malaysian personnel at all levels particularly for the management positions and above; (iii) have only 15% of the total workforce consist of low skilled foreign workers; (iv) develop and provide transparent standard operating procedures for local suppliers to market their goods; (v) encourage Bumiputera or Malay participation in the distributive trade sector; (vi) employ at least 1% of the total workforce of persons with disabilities in large formats; (vii) increase the utilisation of local airports and ports in the export and import of goods; (viii) encourage utilisation of local professional services which are available in Malaysia; (ix) submit audited annual financial reports to MDTCA; (x) support the initiatives and the agenda for sustainable development as provided under the Sustainable Development Goals provided by the Department of Economic and Social Affairs of the United Nations; and (xi) comply with all the by-laws and regulations of the local authorities.



- In the case of the healthcare sector, Malaysia has dual healthcare system comprising government-run hospitals and clinics and privately owned hospitals and clinics, catering to different segments of the population. The private healthcare system and facilities are supported by well-trained doctors and medical staff, and this has positioned Malaysia as a top medical tourism destination for healthcare travelers from various countries such as Australia, Bangladesh, China, India, Indonesia, Japan, Philippines, Singapore, United Kingdom, and United States of America. Malaysia has also been conferred a number of international awards for medical tourism such as the 'Outstanding Leadership in Healthcare Travel in the Asia-Pacific'. Foreign equity for private healthcare facilities is subject to the approval of the Special Committee on Foreign Equity Participation of the Ministry of Health and to increase local participation in business, the Malaysian Government also encourages joint ventures between Malaysian entities and foreign investors. The Malaysian Government had also announced that private hospital services, medical specialists' services and dental specialists' services are among the 17 services sub-sectors that has been liberalized.
- In the case of the education services sector, education in Malaysia encompasses early childhood education up to tertiary education and professional skills training. The Malaysia Education Blueprint (2015-2025) also targets to establish Malaysia as a regional education hub. In recent years, there are many foreign education institutions that have established a presence in Malaysia such as University of Nottingham, Xiamen University, Epsom College and Marlborough College. This is because of the various incentives given by the Malaysian Government as well as the allowance for 100% foreign equity ownership in companies approved by and meeting the requirements of the Ministry of Education and Ministry of Higher Education.
- In the case of the renewable energy (RE) sector, Malaysia aims to achieve a 70% RE capacity in the country's electricity supply by 2050. This goal will create new opportunities for foreign investors and multinational companies especially RE100 companies (i.e. large and ambitious companies and businesses committed to 100% renewable electricity such as Apple, Microsoft, Samsung and Nike), and in an effort to reduce the Levelized Cost of Energy for the development of large scale solar photovoltaics plants (LSSPV), the Malaysian Government has launched a competitive bidding programme called the Large Scale Solar programme which is managed by the Energy Commission (EC) wherein the participants bid for the construction, ownership, and operation of LSSPV plants and thereafter sell the generated electricity by way of power purchase agreements to Tenaga Nasional Berhad (TNB) or Sabah Electricity Sdn Bhd. In this programme, the EC has allowed foreign investors to participate in up to 49% equity interest.
- The Malaysian Government also offers a range of tax incentives to foreign investors and these incentives cover sectors such as manufacturing, agriculture, tourism, approved services, research and development and training.
- There is generally no restriction on doing business or engaging in transactions with persons from other countries except Israel where BNM has issued a specific direction on the prohibition against any person in Malaysia from undertaking or engaging in any dealing or transaction with Israel, its residents and any entities directly or indirectly owned by Israel or its residents.
- Currently, Malaysia does not have a general merger control regime that applies to all sectors and industries. However, there are specific merger control regulations and measures applicable to the aviation and telecommunication industries which are regulated by the Malaysian Aviation Commission and the Malaysian Communications and Multimedia Commission respectively.
- Nevertheless, the Malaysia Competition Commission which is the regulatory authority responsible for competition-related affairs has expressed its intention to amend the Competition Act 2010 to introduce a more overarching merger control regime in Malaysia, however the same has been not been amended to-date.
- In order to ensure an efficient and competitive private sector as well as to protect the interest of the public, the Malaysian Government has implemented the following measures:
  - i. Free and fair competition - The Malaysian Competition Commission scrutinizes allegations of anti-competitive conduct, undertakes market evaluations, and imposes sanctions on violators.
  - ii. Price control and anti-profiteering - The Malaysian Government has the authority to impose penalties on companies that make «unreasonably high profits» from the sale of any goods or the provision of services.





- iii. Conduct in take-overs and mergers - The Malaysian Code on Take-Overs and Mergers 2016 (revised 2021) issued by SC ensures that all shareholders of PLCs are well informed and treated equally in any takeovers.
- iv. Limits on foreign equity ownership - The Malaysian Government has imposed specific foreign ownership requirements on a number of key sectors such as telecommunications, oil and gas and financial services.

## EXCHANGE CONTROL

- Malaysia has a number of exchange control laws and regulations to monitor foreign currency payments and receipts and the key legislation and regulation is the Financial Services Act 2013, the Islamic Financial Services Act 2013 and the Foreign Exchange Policy Notices issued by BNM which sets out the general permissions and directions of BNM in respect of any Malaysian Ringgit or foreign currency payments and receipts, borrowings, investment etc.
- The main regulatory body that ensures compliance with the applicable legislations and regulations is BNM.
- A non-resident is allowed to make or receive payment in Malaysian Ringgit, in Malaysia, to or from another resident or non-resident for (i) any purpose between immediate family members; (ii) income earned or expense incurred in Malaysia; or (iii) settlement of a trade in goods or services (excluding payment between non-residents for settlement of a trade in goods or services outside Malaysia). However, a non-resident is allowed to make or receive payment in foreign currency, in Malaysia, to or from another non-resident for any purpose.
- A non-resident, is allowed to borrow in Malaysian Ringgit in any amount from (i) a resident to finance real sector activity in Malaysia (such as construction or purchase of a residential or commercial property or production or consumption of goods or services); or (ii) a resident with a stockbroking license under the Capital Markets and Services Act 2007, in the form of margin financing for products traded on Bursa Malaysia; or (iii) a licensed onshore bank.
- Residents are usually permitted to open foreign currency accounts with licensed onshore banks or non-resident financial institutions. Furthermore, resident exporters can keep any amount of export earnings in foreign currency in their trade foreign currency accounts held with a licensed onshore bank to fulfil their foreign currency obligations.
- Non-residents are allowed to have an external account (an account in Malaysian Ringgit) with any financial institution in Malaysia. There is no limitation on the quantity of Ringgit funds that can be held in these external accounts.
- The main legislation and regulations relating to Anti-Money Laundering and Counter Terrorism Financing (AML/CTF) in Malaysia are the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA) and the various policy documents issued by BNM which impose reporting obligations on reporting institutions such as financial institutions, money lenders, company secretaries, accountants and lawyers to prevent and mitigate AML/CTF in line with international standards imposed by the Financial Action Task Force and the policy documents issued by BNM.
- Such reporting institutions are required by law and regulations to undertake preventive measures to prevent their institutions from being used as a conduit for money laundering or terrorism financing activities including (i) carrying out risk assessments; (ii) conducting customer due diligence; (iii) submitting suspicious transaction report and cash threshold report (where relevant); (iv) maintaining and retaining records of transactions; and (v) implementing AML/CTF compliance programme that is reflective of the reporting institution's money laundering and terrorism financing risk exposure and its size, nature and complexity.

## TAXATION

- The main taxes in Malaysia are (i) taxes on income (which comprise of income tax and petroleum income tax); and (ii) taxes on transactions (which comprise of sales tax, service tax, stamp duty, customs and excise duties, entertainment duty, windfall profit levy and contract levy).



- As present, there is no capital gains tax in Malaysia except for real property gains tax (RPGT) which is a tax on gains arising from the disposal of real property or shares in real property companies (RPC).

### Income Tax

- Income tax is generally imposed on (i) income accruing in or derived from Malaysia; and (ii) income derived from outside Malaysia and received in Malaysia by residents. However, the following foreign-sourced income received in Malaysia from 1 January 2022 to 31 December 2026 will continue to be exempted from income tax provided certain conditions are met: (i) dividend income received by resident companies, limited liability partnerships, and individuals (in respect of dividend income received through a partnership business in Malaysia); and (ii) all classes of income received by resident individuals (excluding a source of income from a partnership business in Malaysia, which is received in Malaysia from outside Malaysia).
- Resident companies carrying on a business of air or sea transport, banking or insurance are generally subject to income tax on income wherever accruing or derived on a worldwide scope basis.
- Generally, the sources of income subject to tax in Malaysia include (i) gains or profits from any trade, business, profession, or vocation; (ii) gains or profits from an employment, including allowances and benefits-in-kind; (iii) dividends, interest and discounts; (iv) rents, royalties and premiums; (v) pensions, annuities and other periodic payments; and (vi) any gains or profits not falling within the gains as mentioned earlier.
- A company is a Malaysian tax resident for the basis year for a year of assessment if at any time during the basis year, the management and control of its affairs are exercised in Malaysia (e.g., at least 1 of the Board of Directors' meetings is held in Malaysia).
- There is no further income tax on dividends received from a Malaysian company under the single-tier system adopted by Malaysia, which means that the tax on a company's profits is a final tax and dividends are exempt in the hands of shareholders, and companies are not required to deduct tax at source from dividends distributed to shareholders.
- Foreign corporations (similar to Malaysian corporations) are taxed on income accruing in or derived from Malaysia. A broad basis for determining whether or not business profits are derived from Malaysia is to determine whether the foreign corporation is "trading within" Malaysia which is taxable or "trading with" Malaysia which is non-taxable.
- If there is a double taxation agreement (DTA) with the home country of the foreign corporation is in force, the taxation of business profits derived by the foreign corporation is limited to the profits that are attributable to its permanent establishment situated in Malaysia.
- For income such as royalties, interest or service fees that is not attributable to a business carried on in Malaysia, the tax liability of the non-resident will be settled by way of withholding tax deducted by the paying entity.
- For year of assessment (YA) 2023, resident companies are taxed at the rate of 24%. However, a resident company with paid-up capital of RM2.5 million or less, and with gross business income of not more than RM50 million, is taxed at the following rates (provided that specified conditions are met):

Chargeable income	Rate (%)
First RM150,000	15
RM150,001 to RM600,000	17
In excess of RM600,000	24

- Effective from YA 2024, to be eligible for the above preferential rate, not more than 20% of the paid-up capital of the company should be owned, whether directly or indirectly, by one or more companies incorporated outside Malaysia, or one or more non-Malaysian citizens.
- Non-resident companies are taxed at the following rates (unless the relevant DTA provides some other rates):



Type of income	Rate (%)
Business income	24
Royalties	10
Rental of moveable properties	10
Advice, assistance or services rendered in Malaysia	10
Interest*	15
Dividends (single-tier)	Exempt
Other income	10

Note: \*Interest paid to a non-resident by a bank or a finance company in Malaysia is exempt from tax.

- Gross income and profits which are subject to income tax are generally based on the audited financial statements of the company and adjustments will be made for non-taxable and non-tax deductible items.
- Capital receipts (incoming cash flows i.e., receipts originating from the sale of fixed assets, shares, or debt) are non-taxable and certain types of income may also be specifically exempted by statute.
- Deductions are allowed for all outgoings and expenses incurred wholly and exclusively in producing gross income unless specifically disallowed. Non-allowable expenses include domestic or private expenses, income tax or similar taxes, pre-incorporation, preliminary or start-up expenses, capital withdrawn or capital expenditure on improvements.
- There are also earnings stripping rules that apply on interest expense (of more than RM500,000 in a basis period) in connection with or on any financial assistance obtained in cross-border controlled transactions.
- The accounting depreciation charged on buildings, plants and machinery, furniture, office equipment and motor vehicles are not deductible for tax purposes. The law, however, provides for capital allowances (CA) and industrial building allowances (IBA) to be claimed as a deduction on capital expenditure incurred which qualifies as plant (e.g., equipment, machinery, furniture) and industrial buildings (e.g. factory) respectively. The allowance is given in the form of an initial allowance in the year the expenditure is incurred and annual allowance at prescribed rates until the qualifying expenditure is fully claimed.
- Business losses can be set off against income from all sources in the current year and unutilized business losses in a YA can be carried forward for a maximum period of 10 consecutive YAs to be utilized against income from any business source. For a dormant company, the unutilized business losses will be disregarded if there is a substantial change in shareholders.
- Group relief is available to all locally incorporated, resident companies that fulfil certain conditions. A company that qualifies is allowed to surrender a maximum of 70% of its adjusted loss for a YA to one or more related companies. The period in which a company may surrender its adjusted loss is limited to the first 3 consecutive YAs after having completed its first 12-month basis period from commencement of its operations. Companies opting for group relief must make an irrevocable election to surrender or claim the tax loss in the income tax return to be filed with the IRB for that YA.
- Companies currently enjoying certain incentives such as pioneer status, investment tax allowance, reinvestment allowance, etc. are not eligible for group relief.

#### Withholding tax (WHT)

- Payments of certain types of income such as contract payment, interest, royalty, technical fees, payment for services, rent or payment for use of moveable property are subject to WHT which is due and payable to the Inland Revenue Board (IRB) within 1 month after paying or crediting such payments.
- The rate of withholding tax is generally between 10% and 15% unless there is a DTA between Malaysia and the country of the non-resident, in which case, the withholding tax rate may be reduced.
- There is no WHT on dividends paid by Malaysian companies.



## Sales Tax

- Sales tax is a single-stage tax imposed on taxable goods manufactured in Malaysia that are subsequently sold, used or otherwise disposed of by a registered manufacturer or imported into Malaysia by any person.
- All goods are taxable goods unless they are specifically exempted by the Malaysian Government.
- Sales tax is a consumption tax, and the responsibility lies with the registered manufacturer to calculate the tax, levy it and collect it from its customers. In the case of imported goods, sales tax is collected from the importer at the time the goods are cleared from customs control.
- A manufacturer is liable to be registered for sales tax if the total sales value of his taxable goods for a 12-month period exceeds or is expected to exceed RM500,000, however certain manufacturing activities such as the development and printing of photographs and production of film slides, the manufacture of ready mixed concrete and the preparation of foods or drinks by central kitchen for distribution to its premises are not required to register for sales tax as they are registered for service tax.
- Generally, the sales tax rate is at 10% unless it has been prescribed otherwise by the Malaysian Government.
- All goods exported from Malaysia are exempted from sales tax. There are also goods which are specifically exempted by the Malaysian Government such as live ornamental fish and certain food products and certain live animal products.
- To maintain the single-stage tax concept, there are facilities available to allow for inputs (raw materials and components) to be imported or acquired free of sales tax by a registered manufacturer for use in the manufacturing process.
- Sales tax is due at the time the taxable goods are sold, disposed of otherwise than by sale, or first used otherwise than as materials in the manufacture of taxable goods, by the taxable person.
- Any sales tax that falls due during a taxable period is payable to the Royal Malaysian Customs Department (RMCD) latest by the last day of the month following the end of the taxable period.
- A taxable period is a period of 2 calendar months; however, a taxable person can apply to the Director General of Customs to vary the taxable period. If the application to vary the taxable period is approved, the sales tax due is payable to RMCD at the latest by 30 days from the end of the varied taxable period.

## Service Tax

- Service tax is a consumption tax levied and charged on (i) any taxable services (including digital services) provided in Malaysia by a registered person in carrying on his business; (ii) any imported taxable services acquired by any person who carries on business in Malaysia; and (iii) any digital services provided by a foreign registered person to a Malaysian consumer.
- To avoid being taxed twice, local businesses which have acquired digital services from a foreign registered person are exempted from having to account for and pay service tax through the imported taxable service mechanism.
- The rate of service tax is 6% ad valorem for all taxable services and digital services except for the provision of charge or credit card services.

## Import duties

- Imports of goods are generally subject to import duties levied on an ad valorem basis with rates ranging from 0% to 60%.
- Raw materials, machinery, essential foodstuffs, and pharmaceutical products are generally non-dutiable or subject to duties at lower rates.

## Export duties

- Export duties are generally imposed on Malaysia's main commodities such as crude petroleum and palm oil for revenue purpose.





### Excise duties

- Excise duties are imposed on a selected range of goods manufactured in Malaysia or imported into Malaysia such as beer, stout, cider, perry, rice wine, mead, undenatured ethyl alcohol, brandy, whisky, rum and other spirits obtained by distilling fermented sugar-cane products, gin and geneva, cigarettes containing tobacco, electronic cigarette and electric vaporizing device, motor vehicles, motorcycles, playing cards, mahjong tiles and sweetened beverages including premix preparations. No excise duty is payable on goods that are exported.

### Stamp Duty

- Stamp duty is chargeable on instruments and not on transactions and the stamp duty rates vary according to the value of the underlying transaction which is generally taken to be the higher of actual consideration or market value.
- An unstamped or insufficiently stamped instrument is not admissible as evidence in a court of law, nor will it be acted upon by a public officer.
- The penalty imposed for late stamping varies based on the period of delay and the maximum penalty is RM100 or 20% of the deficient duty, whichever is higher.
- The stamp duty for the transfer of shares not listed on the stock exchange is RM3 for every RM1,000 or any fraction thereof.
- The stamp duty for the transfer of properties in general (other than shares and marketable securities) are as follows:

	Portion of total value (RM)	Rate	Stamp duty payable (RM)
On the first	100,000	RM1 per RM100 or part thereof	1,000
On the next	400,000	RM2 per RM100 or part thereof	8,000
On the next	500,000	RM3 per RM100 or part thereof	15,000
In excess of	1,000,000	RM4 per RM100 or part thereof	

### Real Property Gains Tax (RPGT)

- RPGT is imposed on gains arising from the disposal of real property including shares in a RPC at the rates ranging from 0% to 30% on the gains and depending on the number of years since the date of acquisition, and there are also exemptions given to certain type of disposals.
- Real property is defined as any land situated in Malaysia and any interest, option or other right in or over such land and a RPC is essentially a controlled company where 75% or more of its total tangible assets consist of real property and/or shares in RPC. A controlled company is essentially a company which is owned by not more than 50 members and controlled by not more than 5 persons.

### Contract levy

- A levy of 0.125% on contract works having a contract sum above RM500,000 is imposed on every registered contractor by the Construction Industry Development Board (CIDB).

### Individual Income Tax

- Income tax is imposed on income accruing in or derived from Malaysia by any person. Gains or profits from an employment, profession or vocation are taxable if derived from Malaysia.
- Employment income is derived from Malaysia if the employment is exercised in Malaysia and will be subject to income tax even if the income is received outside of Malaysia.



- Exemptions or concessions are given to expatriates in certain situations such as (i) non-resident employees who are short-term visitors (other than public entertainers), if the aggregate period(s) of employment in Malaysia do not exceed 60 days; (ii) expatriates receiving fees as a director of a Labuan entity (until YA 2025); or (iii) expatriates working in approved operational headquarters, regional offices, international procurement centers, regional distribution centers or treasury management centers, based in Malaysia who are taxed on a time apportionment basis in accordance with the employment income attributable to the number of days the employment is exercised in Malaysia.

## TAX AND INVESTMENT INCENTIVES

- In recognizing the importance of private sector investments in Malaysia especially from foreign investors, the Malaysian Government has provided a number of tax and investment incentives measures, and these are typically extended to foreign investors who establish tax resident companies in Malaysia.
- These incentives include tax exemptions on profits and capital-based incentives in the form of allowances or deductions based on the amount of capital expenditure incurred.
- To align with the requirements proposed by the Forum on Harmful Tax Practice of Organisation for Economic Co-operation and Development (OECD), Malaysia has made certain changes to its legislations and introduced incentive programs such as Pioneer Status (PS), Investment Tax Allowance (ITA), Reinvestment Allowance (RA), Malaysia Digital (MD) status, special tax incentives for relocation to Malaysia and Digital Ecosystem Acceleration Scheme (DESAC) as further elaborated below.
- PS incentive is an exemption of income tax on 70% of statutory income (adjusted income after deducting capital allowance) for a period of 5 years and the remaining 30% is taxed at the prevailing corporate income tax (CIT) rate. ITA is an allowance of 60% of qualifying capital expenditure (QCE) incurred on a building or plant and machinery for a period of 5 years. Companies in the manufacturing, agricultural, hotel and tourism sectors or any other industrial or commercial sector that participate in a promoted activity of producing a promoted product may be eligible for the PS or ITA incentive where qualifying conditions are met. There are also enhanced PS and ITA incentives available for companies' undertaking projects in promoted products or activities where the Malaysian Government intends to further expedite growth. Enhanced PS usually takes the form of a full tax exemption whilst ITA is given on 100% of QCE. Currently, eligible projects range from projects of national and strategic importance, high technology, research and development, healthcare, education, to those undertaking green technology activities such as energy conservation and generation of energy using renewable resources.
- RA is an allowance given to resident companies in operation for 36 months or more that incur capital expenditure to expand, modernize, automate, or diversify their existing manufacturing business or approved agricultural project. The allowance given for 15 years from the 1st year of claim, the allowance is computed at 60% of QCE incurred and can be utilized against 70% of statutory income (the 70% restriction does not apply to projects that have achieved the level of productivity as prescribed by the Minister of Finance of Malaysia), the allowance will be withdrawn if the asset for which the allowance is granted is disposed of within 5 years. A special RA of 60% of QCE will be given for YA 2020 to 2024 for companies that have exhausted their existing 15-year RA period and special RA granted for YA 2016 to 2018.
- MD status is previously referred to as Multimedia Super Corridor status. MD Status is a pending tax incentive which will be offered to eligible MD status companies that carry out qualifying activities by utilizing MD promoted tech enablers. The new MD tax incentive is anticipated to be finalized by end of 2023.
- Special tax incentives for relocation to Malaysia are given to attract foreign investors to relocate their operations to Malaysia and are provided until the end of 2024 and include (i) special tax rate of 0% for 10 years for new investment in manufacturing sector (capital investment of at least RM300 million and above); (ii) special tax rate of 0% for 15 years for new investment in manufacturing sector (capital investment of at least RM500 million and above); and (iii) 100% ITA for 5 years for existing company in Malaysia relocating overseas facilities into Malaysia (capital investment above RM300 million). The ITA is available to offset up to 100% of statutory income.



- In respect of DESAC, to support a comprehensive development of the Malaysian national digital ecosystem, tax incentives are available to digital companies up to end of 2025 to obtain reduced income tax rates of 0% to 10% for up to 10 years for eligible digital technology providers and ITA of 100% on qualifying capital expenditure for qualifying activities up to 10 years for eligible digital infrastructure providers.

## EMPLOYMENT LAW

### Employment Act 1955 (Employment Act)

- The Employment Act covers any person who works under a contract of service with an employer and who does not earn more than RM4,000 a month on wages and provides, amongst others, termination, and overtime benefits for such employees. The Employment Act is only applicable to West Malaysia and the Federal Territory of Labuan. With regards to Sabah and Sarawak, the applicable legislation is the Sabah and Sarawak Labour Ordinances (Labour Ordinances).
- Where employees are not covered by the Employment Act or the Labour Ordinances, then the common law relating to their employment will apply.
- Industrial Relations Act 1967 (Industrial Relations Act)
- The Industrial Relations Act and the Industrial Relations Regulations 1980 (Industrial Relations Regulations) provide safeguards for the legitimate rights, prerogatives and interest of employees and their trade unions and employers and ensure that trade disputes are settled speedily and in a just manner, so as not to prejudice public and national interests.
- The Department of Industrial Relations Malaysia continues to play an important role in maintaining a harmonious environment in the labor market, by helping to avert industrial action through active intervention, consultations as well as negotiations between parties. In the event of a dispute, the Industrial Relations Act and the Industrial Relations Regulations provide for free negotiation between trade unions and employers on a voluntary basis and disputes may be reported to the Ministry of Human Resources for conciliation or referred to the Industrial Court for settlement and awards made by the Industrial Court are final and legally binding. In addition, the Industrial Relations Act and the Industrial Relations Regulations prohibit strikes or lockouts after a dispute has been referred to the Industrial Court.

### The Employment (Part-Time Employees) Regulations 2010 (EPTER)

- The EPTER provides protection for part-time employees who are otherwise not protected under any labor law.
- Some of the protections include payments for hours worked beyond normal hours, paid holidays, paid annual leave, sick leave and weekly rest days for part-time employees who fall within the regulations. EPTER also requires employers to make contributions to the Employees Provident Fund and Social Security Organisation for eligible part-time employees.

### Others

- The health, safety and general well-being of employees are also safeguarded by the other legislative enactments and codes such as (i) Factories and Machinery Act 1967; (ii) Occupational Safety and Health Act 1994; and (iii) Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace.

### Minimum Wage

- The Minimum Wages Order 2022 gazette on 27 April 2022 sets out that the minimum monthly wage in Malaysia is RM1,500 per month.

### Unions

- Omnibus or general workers' unions are not permitted, but unions belonging to the same industry may apply to form a federation of trade unions or become affiliated with the Malaysian Trade Unions Congress or the Malaysian Labour Organisation.
- All trade unions in Malaysia are required by law to be registered with the Registrar of Trade Unions and must comply with the requirements of the Trade Unions Act 1959 which sets out the rules for the conduct of union business, such as the election of officers, strike ballots and the use of union funds.



## Employment conditions

- Employers are liable to pay a monthly contribution to the Employees Provident Fund (EPF) based on the amount of wages of its employees, at the statutory rate between 12% to 13% whereas the employee is liable to pay a monthly contribution of 11%. Employees are allowed by EPF to withdraw these EPF funds in a lump sum at the age of 55 or if such employees continue to work after the age of 55, then at the age of 60, or earlier in the case of incapacity or upon permanent departure from Malaysia. Contributions are mandatory for employees who are Malaysian citizens or permanent residents. Expatriates and foreign workers, who are not Malaysian citizens or permanent residents are not required to contribute to EPF although they may elect to do so.
- Employers are also liable to pay monthly contributions on behalf of each employee to the Social Security Organisation (SOCSO) for the purposes of an insurance scheme to cover any injuries sustained as a result of his employment or any invalidity as a result of a chronic illness that renders such employee invalid and unable to work, for example, heart attack, renal or kidney failure, cancer, mental illness, etc.) or results in the death of such employee.
- The minimum retirement age of employees is 60 years old pursuant to the Minimum Retirement Age Act 2012.
- Employees who fall within the scope of the Employment Act cannot work for more than 45 hours per week and 8 hours per day, or in excess of a spread over a period of 10 hours per day. Overtime hours are permissible, subject to a total of 12 hours per day and 104 overtime hours per month.
- All dismissals must be for “just cause or excuse”, and if a former employer's decision is challenged in the Industrial Court, the former employer must show that there were proper grounds for dismissal (i.e., redundancy, poor performance or misconduct) and that it has complied with the relevant procedures and requirements specific to the ground for termination.

## INTELLECTUAL PROPERTY

- Malaysia adheres to international standards of intellectual property protection and offers safeguards to local investors as well as foreign investors by being a signatory to various international treaties as well as having robust set of intellectual property laws. Some examples of the international treaties include (i) Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) which requires each member state to provide a certain baseline of protection to intellectual property; (ii) Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) which provides for creators of literary and artistic works such as writers, musicians, poets, painters the means to regulate the usage, audience, and conditions surrounding their creations; (iii) Paris Convention for the Protection of Industrial Property (Paris Convention) which forms a union for the protection of industrial property such as patents, trademarks industrial designs, geographical indications; (iv) Patent Cooperation Treaty (PCT) which offers a standardized process for filing patent applications.
- The Malaysian intellectual property laws include Patents Act 1983, Patents Regulations 1986, Trademarks Act 2019, Trademarks Regulations 2019, Industrial Designs Act 1996, Industrial Designs Regulations 1999, Copyright Act 1987, Geographical Indications Act 2022, Geographical Indications Regulations 2022, and Layout-Designs of Integrated Circuits Act 2000.

## DISPUTE RESOLUTION

### Judicial Structure

- The Malaysian legal system is based on the English common law system where the sources of law are legislation and case law precedents. With respect to land matters, Malaysia practices the Torrens system which is a land registration and land transfer system where the register of title confers indefeasibility of title to the registered proprietor and the land is transferred by way of change of the record in the register of title by the registrar.
- Malaysian court system comprises of both criminal courts and civil courts and the hierarchy of courts begins from the Magistrates Court, Sessions Court, High Court, Court of Appeal, and up to the Federal Court.





- Article 121 of the Federal Constitution of Malaysia also provides for 2 High Courts of co-ordinate jurisdiction, namely the High Court in Malaya (i.e., Peninsular Malaysia or West Malaysia) and the High Court in Sabah and Sarawak (i.e., East Malaysia) and this creates 2 separate local jurisdiction of the courts for Peninsular Malaysia or West Malaysia and for East Malaysia.
- There is also a parallel system of state Syariah courts which has limited jurisdiction over matters of state Islamic (Syariah) law involving Muslims.

## Alternative Dispute Resolution (ADR)

- ADR has gained widespread acceptance amongst the public as well as the legal profession and the most common forms of ADR in Malaysia are arbitration, adjudication of construction matters and mediation.
- Arbitration
  - i. The governing law for arbitration in Malaysia is the Arbitration Act 2005 (Arbitration Act). To date, there have been 3 revisions and amendments to the Arbitration Act 2005 since it first came into force in March 2006. The latest amendment, made in May 2018 by the Arbitration (Amendment) (No. 2) Act 2018 (ACT A1569), brought the Arbitration Act in line with the UNCITRAL Model Law.
  - ii. With respect to international arbitration, the Arbitration Act and the UNCITRAL Model Law are largely similar except for certain provisions within the Arbitration Act which are not present in the UNCITRAL Model Law such as consolidation of proceedings and concurrent hearings and determination of preliminary point of law by court.
  - iii. The introduction of the AIAC Arbitration Rules 2021 (AIAC Rules 2021) on 1st August 2021 is a direct response to the current arbitration landscape, aiming to enhance transparency and achieve efficiency in terms of time and cost and the AIAC Rules 2021 is a modernization of the previous AIAC Arbitration Rules 2018, aligning them with the most favorable arbitration practices observed worldwide.
  - iv. The AIAC Rules 2021 has also amalgamated both the UNCITRAL Model Law together with the previous arbitral rules to ensure a complete, unified, and consistent set of procedural regulations which increases accessibility in interpreting the rules of arbitration proceeding in line with the UNCITRAL Model Law.
  - v. The Asian International Arbitration Centre (AIAC) is the defaulting appointing body now.
- Adjudication
  - i. The Construction Industry Payment and Adjudication Act 2012 (CIPAA), the Construction Industry Payment and Adjudication Regulations 2014 and the Construction Industry Payment and Adjudication (Exemption) Order 2014 aim to provide a mechanism for speedy dispute resolution through adjudication and to provide remedies for the recovery of payment and incidental matters, in the construction industry.
  - ii. Adjudication proceedings under CIPAA will be presided over by a neutral and impartial adjudicator agreed by parties, or failing which, appointed by the AIAC. The adjudicator usually has a highly experienced background in the construction law and industry fields relevant to the dispute and the decision of the adjudicator will be binding on the parties.
- Mediation
  - i. Under the Mediation Act 2012, parties in dispute may choose and jointly appoint a mediator from the list of Certified Mediators empaneled with the Malaysian Mediation Centre (a body established under the auspices of the Bar Council of Malaysia) or the AIAC or any other mediators as agreed by the parties.
  - ii. By virtue of the Practice Direction No. 4 of 2016 dated 30 June 2016 issued by the Chief Justice of Malaysia, all judges of the High Court and its deputy registrars and all judges of the Sessions Court and Magistrates and their assistant registrars may, at the pre-trial case management stage or at any stage, give such directions that the parties facilitate the settlement of the matter before the court by way of mediation for matters such as claims for personal injuries and other damages due to road accidents or any other tortious acts because they are basically monetary claims; claims for defamation; matrimonial disputes; commercial disputes; contractual disputes; and intellectual property cases. This practice direction is to encourage parties to reach a settlement without having to go through or complete a long trial process.
  - iii. Mediation may be led by a judge in a court case or may be conducted by the AIAC or by any other mediators as agreed by the parties.



## IMMIGRATION PROCEDURES

- There are 3 types of visas issued by the Malaysian Government to foreign nationals:
  - i. Single Entry Visa - Issued to foreign nationals to enter Malaysia for social or business purposes and normally valid for a single entry and for a period not exceeding 3 months from the date of issuance.
  - ii. Multiple Entry Visa - Issued to foreign nationals to enter Malaysia for business or inter-governmental matters and normally valid for a period of 3 to 12 months from the date of issuance and each entry is for a period not more than 30 consecutive days and extension of stay is not allowed. To apply for the Multiple Entry Visa Application, the applicant must show proof of sufficient funds to stay in Malaysia and possess a valid and authentic return ticket.
  - iii. Transit Visa - Issued to foreign nationals to enter Malaysia while in-transit to another country. However, the foreign nationals on transit without leaving the airport premises and who continue their journey to the next destination do not require a transit visa.
- There are 3 types of work visa which the Malaysian Government can issue to foreign nationals or expatriates.

### Employment Pass (EP)

- EP is a work permit that enables a foreign national or expatriate to take up employment in Malaysia, provided such foreign national or expatriate has a contract of employment of up to 60 months.
- The Expatriate Committee (which is under the purview of the Immigration Department of Malaysia which in turn is under the Ministry of Home Affairs) or the relevant authority for specific sectors such as Malaysian Investment Development Authority (for manufacturing companies), Multimedia Development Corporation (for ICT companies), BNM (for financial institutions) and SC (for capital market institutions), must give prior approval for the foreign national or expatriate to fill a vacancy before an EP can be applied. Typically, approval will only be given if the foreign national or expatriate is a highly skilled person in technical or managerial position that a local talent is unable or unavailable to fill such position.

### Professional Visit Pass (PVP)

- PVP is issued to foreigners or expatriates who wish to remain and provide specific professional visit for a short period in Malaysia such as jockeys and performance artists.
- The application has to be submitted by a sponsor in Malaysia prior to the entry of the foreigner or expatriate into Malaysia and the PVP is valid for a period not exceeding 12 months.

### Temporary Employment Pass

- The Malaysia Temporary Employment Pass is issued for an employment duration of up to 2 years to (i) foreign workers from countries such as Bangladesh (only allowed to work in the Plantation sector), Cambodia, India (not allowed to work in the Manufacturing sector), Indonesia (male workers are not allowed to work in the Manufacturing sector) and Myanmar, to work in the manufacturing, construction, plantation, agriculture and services sectors; and (ii) foreign domestic helpers who are females from countries such as Indonesia, Thailand, Cambodia, Philippine, Sri Lanka, India, Vietnam and Laos.

### Capital Conditions for Malaysian Companies Applying for Employment Passes / PVP

- The companies applying for EPs and/or PVPs are required to have a minimum paid-up share capital before an application for the foreign nationals or expatriates can be processed by the Expatriate Committee and the requirements are (i) RM250,000 for a 100% Malaysian owned company; (ii) RM350,000 for a Malaysian and foreign owned company; (iii) RM500,000 for a 100% foreign owned company; and (iv) RM1,000,000 for a company undertaking distributive trade or involved in the sub-sectors of unregulated services under the purview of MDTCA such as management consulting services, market research and packaging services.



# MALAYSIA

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## Employment process

- Employers who wish to employ foreigners or expatriates are required to obtain prior approval from Department of Labour of Peninsular Malaysia (JTKSM) and the validity period of the JTKSM approval is 6 months. Such employers are also required to advertise the vacancies for a minimum of 30 days on the Malaysia MYFutureJobs portal (which is under the purview of the Malaysia Ministry of Human Resources) unless it is hiring (i) important positions such as C-Suite and key positions; (ii) for its representative office or regional office in Malaysia; (iii) employees who are receiving basic salary of RM15,000 and above; (iv) its investors, shareholders or owners of the business etc.



## KEY FACTS

- Geographic location: Located in the southwest of the Pacific Ocean and is made up of two islands – the North and South Islands.
- The Realm of New Zealand is an area in which the monarch of New Zealand functions as head of state. The realm includes three independent jurisdictions – Cook Islands, New Zealand, and Niue. New Zealand recognizes the British monarch as sovereign and the monarch is represented through the Governor-General.
- Main business centers within the North Island are Auckland, Hamilton, Tauranga, and Wellington. Likewise, within the South Island, Christchurch, Queenstown, and Dunedin.
- Language: Although English, Te Reo Māori, and Sign Language are the official languages, English is the prevalent language spoken.
- Currency: New Zealand Dollar (NZD).
- Current business environment:
- Currently, the economy is in a technical recession.
- From a global time perspective, the New Zealand Stock Exchange is first in the world to open.
- In 2019, the World Bank ranked New Zealand 1st for ease of doing business.
- New Zealand ranks highly for freedom from corruption under Transparency International.
- Political environment: New Zealand's voting system tends to result in coalition governments with either the Labour party (center-left) or National Party (center-right) leading the coalition.
- Legal system: Based on the English model with an independent judiciary. New Zealand's court system is made up of the Supreme Court (highest court), the Court of Appeal, the High Court, District Court, and various other courts and tribunals. Judges are appointed with no political influence to maintain judicial independence. New Zealand is the only country in the world to have an accident compensation scheme which compensates for personal injuries. As such, claimants cannot sue for losses resulting from personal injury.
- Investment growth areas: big retail, energy, information technology, property, retirement villages, technology.





## BUSINESS PRESENCE

- The main business structures in New Zealand are sole trader, general or limited partnerships, joint ventures, limited liability company, Trusts, or with multinational companies, a branch, or a registered foreign company (subsidiary).
- Different laws apply to each structure, including the Partnership Act 1906, Limited Partnerships Act 2008, Companies Act 1993, Trusts Act 2021, Commercial and Contract Law Act 2017, and common law, among others.
- Other possible options for doing business in New Zealand include, but are not necessarily limited to, agency arrangements, license or distribution arrangements, franchise arrangements, and contractual joint ventures.
- Key features of common structures

Structure	Feature
<b>Sole Trader</b>	<ul style="list-style-type: none"> <li>• A structure that is driven by an individual who trades in their personal capacity.</li> <li>• The structure is not a separate legal entity.</li> <li>• No registration is required.</li> <li>• Unlimited personal liability for obligations</li> <li>• Taxed at the sole trader's individual personal tax rate.</li> <li>• Although no specific legislation applies to sole traders, general commercial law applies, eg contract and consumer and fair trading law, among others.</li> </ul>
<b>General Partnership</b>	<ul style="list-style-type: none"> <li>• A structure that is driven by two or more individuals.</li> <li>• No registration is required.</li> <li>• A structure that is increasingly becoming uncommon.</li> <li>• The partners share joint and several liabilities for obligations and debts.</li> <li>• The Partnership is not a separate tax paying entity, so profits or losses of the partnership flow through to the partners.</li> </ul>
<b>Unincorporated joint venture</b>	<ul style="list-style-type: none"> <li>• A structure that is driven by two or more entities, in that, they pool resources together to achieve a common objective. For example, a company with two or more shareholders.</li> <li>• Not a separate legal entity.</li> <li>• Entities as part of the joint venture are not generally jointly and severally liable.</li> <li>• Each joint venture partner includes its proportionate share of the joint venture income or loss in their own tax return.</li> </ul>
<b>Limited liability company</b>	<ul style="list-style-type: none"> <li>• Separate legal entity/person.</li> <li>• Limited liability (the company is liable for obligations).</li> <li>• Can exist in perpetuity.</li> <li>• Level of complexity can vary from a company with many directors and shareholders to one director and shareholder.</li> <li>• Shareholders have rights to dividends and the control of the company can be varied.</li> <li>• Company can be expanded by issuing more shares.</li> <li>• Directors and shareholders can be changed without affecting the existence of a company.</li> <li>• There are costs to incorporate and maintain a company.</li> <li>• Company files its own tax returns – the company tax rate is 28%.</li> </ul>



#### Trust

- In a commercial context, this structure can be used for asset protection purposes.
- Discretionary trusts are more common than trading trusts.
- Able to be structured in several ways but using a company as trustee is advantageous.
- Currently, trustee income is taxed at 33%. From 1 April 2024, this tax rate is changing to 39%. This change brings the tax rate in line with the highest individual personal tax rate.
- From 2021, there is higher compliance and transparency with Trust structures.
- Largely governed by the Trusts Act 2019 and common law.

## OVERSEAS INVESTMENT IN NEW ZEALAND

### Governance on Foreign Investment

- Foreign investment in New Zealand is subject to, among other law, the Overseas Investment Act 2005 and governance by Land Information New Zealand (LINZ) and the Overseas Investment Office (OIO).
- New Zealand citizens, residents, and those who have obtained consent based on committing to live in New Zealand, can acquire residential land. Investors outside of these criteria must prove that they will develop the land and add to New Zealand's housing supply or use the land for non-residential use or for residential use that is incidental to the investor's main business. Certain investments have additional criteria.
- Specifically, an investment will require consent if the transaction involves any one of the following:
  - The overseas person wishes to acquire a direct interest in sensitive land or fishing quota.
  - The overseas persons acquiring an ownership or control interest of more than 25% of an entity that owns sensitive assets.
  - If the overseas person wishes to acquire an ownership or control interest in an entity:
    - the assets of which exceed \$100 million, or
    - the purchase price exceeds \$100 million
    - If an overseas person wishes to start business in New Zealand, where the cost to establish the business is more than \$100 million.
    - the acquisition of assets used in doing business in New Zealand, and the consideration for those assets, exceeding \$100 million.
- These rules apply to entities holding New Zealand assets of this value, whether the transaction occurs in New Zealand or overseas. Different rules apply to New Zealand listed companies.
- The Overseas Investment Regulations exempts certain types of transactions from having to obtain consent.

### Trusts and Consents

- If consent was obtained for the Trust owning the asset at the outset, and the proposed transfer of the sensitive asset from the Trust to an overseas beneficiary is consistent with the conditions of the consent, further consent is not needed.
- The Overseas Investment Regulations exempts certain types of transactions from having to obtain consent.
- However, consent would be needed in these scenarios:
  - Replacing a trustee with an overseas person trustee if this will result in the trust becoming an overseas person.
  - Transferring property to a beneficiary if the Trust did not require consent to initially acquire the property but would now require consent to do so. For example, the land is now sensitive, or the shares owned within a company whose assets now exceed \$100 million.
  - If an investment has been made without the necessary consents, LINZ and the Overseas Investment Office may be able to issue retrospective consent.



## DATA PROTECTION

### Governance

- The Privacy Act 2020 (Privacy Act) is the legislative framework for data privacy law in New Zealand.
- The Privacy Act governs the privacy of specific personal information of individuals by dealing with the collection, disclosure, storage, and use of this information.
- The Privacy Act extends to individuals, public agencies, and private businesses that are resident in New Zealand, in New Zealand when collecting or storing the information, or where information is held or collected while doing business in New Zealand. The Privacy Act defines those captured under it as “agencies”.
- The Information Privacy Principles are the cornerstone of New Zealand data privacy law. These principles are:
  - 1) the purpose for collection
  - 2) source of information – collection from the individual
  - 3) What to tell the individual about collection
  - 4) manner of collection
  - 5) storage and security of information
  - 6) providing people access to their information
  - 7) correction of personal information
  - 8) ensure accuracy before using the information
  - 9) limits on retention of personal information
  - 10) use of personal information
  - 11) disclosing personal information
  - 12) disclosure outside New Zealand and
  - 13) unique identifiers.
- Another aspect of the Privacy Act is that the rules apply beyond New Zealand. The Privacy Act extends to all actions of a New Zealand agency relating to personal information it collects or holds, whether the agency is in New Zealand, where the information was collected or is held, and where the relevant individual is situated.
- The Privacy Act is regulated by the Office of the Privacy Commissioner (OPC), which has powers to enforce the Privacy Act.
- A relatively new update to the Privacy Act included further compliance on agencies with respect to reporting privacy breaches. Specifically, if an agency falls victim to a privacy breach that has caused or is likely to result in serious harm to the individual(s) in question, the agency must report the breach to the OPC and to the affected individual(s). In determining if serious harm may be caused, factors such as the sensitivity of the information, mitigating actions taken, and the recipient of the information are assessed.
- The consequence of not reporting such breaches, without reasonable reasoning, is an offence that can result in a fine of up to \$10,000. Furthermore, non-reporting could mean other laws being breached such as general commercial and employment law.
- If an individual has incurred serious harm or is dissatisfied with the agency’s response to the breach, a complaint can be made to the OPC. The OPC will typically suggest mediation or conciliation. If this form of dispute resolution does not work, the matter can be referred to the Human Rights Review Tribunal; a body that can award remedies.

## COMMERCIAL AND CONSUMER REGIME

- New Zealand offers a relatively open commercial landscape for parties to contract together on mutually agreed terms. Parties to a contract are generally free to negotiate terms subject to the commercial and contracting parameters set forth by law.
- Legislative parameters include consumer protections, trade practice requirements, and credit contracts, among others.



### Consumer Guarantees Act 1993 (CGA)

- The CGA offers consumers certain minimum guarantees for goods (including second hand) and services that are ordinarily purchased for personal, domestic, or household use. Protections offered by the CGA exclude goods or services for commercial use.
- The guarantees include the product being of acceptable quality, fit for a particular purpose, matching a description, and complying with a sample, among others.
- If the goods or services do not meet the guarantees, the consumer has the right to remedies and redress against either the supplier or manufacturer, depending on the circumstances. The main remedies include a repair, replacement, or refund.
- Suppliers of the goods and services cannot contract out of the CGA unless the goods or services are being sold for a commercial purpose.

### Fair Trading Act 1986 (FTA)

- The FTA is consumer protection law and applies to anyone who is in trade. The FTA makes certain trade practices illegal. For example, commercial behaviors that are likely to mislead or deceive consumers. The FTA requires all representations are to be supported unless a representation is puffery (hyperbolic).
- Businesses can only contract out of the FTA where both parties to a contract are in trade and it is fair and reasonable to contract out.
- The FTA is enforced by the New Zealand Commerce Commission (NZCC).
- Credit Contracts and Consumer Finance Act 2003 (CCCFA)
- The CCCFA governs the provision of credit and debt to consumers. The Act sets forth contract disclosure obligations, allows borrowers to have contract terms varied for reasons of hardship, and allows courts to amend oppressive contracts.
- Under the CCCFA, lenders cannot take a security interest over certain types of goods or documents.
- Lenders must apply care, diligence, and skill to satisfy lender responsibilities, guidance of which is provided by the Responsible Lending Code.

### Contract and Commercial Law Act 2017 (CCLA)

- Under the CCLA, unless the parties to a contract agree to otherwise, terms covering aspects such as when title and risk passes, implied guarantees of fitness for purpose and merchantability are read into contracts.
- There are legal remedies for breaches and cancellation of contracts, misrepresentation, or repudiation. There is also a framework for frustrated contracts.
- Illegal contracts have no legal effect, and the courts can grant a range of orders.
- The CCLA treats electronic signatures the same as physical signatures on the condition that the technology used is consistent with legal standards about reliability, tamper-detection, and a traceable paper trail.

### Commerce Act 1986 (Commerce Act)

- The Commerce Act is the legislation governing competition law in New Zealand. The aim of the Commerce Act is to encourage competition within New Zealand for the continuing benefit of consumers. The Commerce Act disallows commercial behaviours that limits competition. The NZCC regulates and enforces the Commerce Act.
- Practices that the Commerce Act prohibit includes:
  - Intentionally entering into a contract, arrangement, or understanding that has the purpose, effect, or likely to substantially lessen competition.
  - A cartel agreement between competitors to price fix, limit output, or allocate market share.
  - Taking advantage of significant market power for anti-competitive purposes.
  - Arrangements to maintain resale price, in that, suppliers of goods maintain and enforce pricing to be set by on-sellers.
- Penalties for prohibited practices are:
  - Prison of up to 7 years and/or
  - A fine of a maximum of \$500,000 for an individual or





- A criminal fine of up to the higher of \$10 million, 3 x the commercial benefit from the offence, or 10% of the company's turnover for businesses
- When communicating with competitors, and consumers and suppliers who are possibly competitors, and especially when entering into vertical relationships with such persons, it pays for businesses to be conscious of compliance.
- The above being said, the Commerce (Cartels and Other Matters) Amendment Act 2017 provides for an exemption allowing for competitors to collaborate to the extent that is reasonably necessary, and which has not been entered into with the overarching purpose of lessening competition. Entities can choose to undergo a clearance process which involves an application to the NZCC to assess whether the exemption applies.

## REAL ESTATE/PROPERTY

### Types of Property Ownership

- In New Zealand, all transfer of real property must be registered with Land Information New Zealand (LINZ); the register recording all land ownership in New Zealand.
- There are 4 recognized types of ownership:
  - Fee Simple/Freehold: The most common form and best type of ownership. The only restrictions on this type of title are those registered against the title.
  - Cross Lease: A cross lease is where two or more persons own an undivided share of land and are granted a lease from all the other owners for their dwelling. Under the lease, each owner is granted an exclusive use area which the other owners cannot use. Any alterations or changes to the leased space must be consented to by the other unit holders.
  - Unit Titles: Used for apartment complexes, commercial units, and other properties where there are commonly used parts of the property and shared expenses. The registered proprietor owns a defined part of the building and a share of ownership in common areas i.e., lifts or shared driveways. A body corporate manages the maintenance and upkeep of the building and shared facilities.
  - Leasehold: an exclusive right to possession, not ownership, of the land and the buildings on it for a period of time according to the terms of the lease.

### Māori Land

- There is a separate register and different regulations for land that belongs to the Māori; the indigenous people.
- Specialist advice is required for any acquisition of Māori land. It would be uncommon for Māori land to be acquired by foreign investors unless as part of a joint venture.

### Residential Land

- Foreign persons seeking to buy residential property in New Zealand must apply to the Overseas Investment Office for Consent unless they are New Zealand citizens or residents, Australian citizens, or Singaporean citizens.
- Consent will not necessarily be granted to persons resident outside these jurisdictions unless they can show they are adding to New Zealand's housing stock.

### Non-residential/Commercial Land

- Foreign persons may buy commercial land if it is not sensitive land.
- Sensitive land includes agricultural land, land on the foreshore of seas or lakes, land with cultural significance, islands, land held for conservation purposes, heritage land, lifestyle land, residential land and other types of land.
- For sensitive land, foreign persons must apply to the Overseas Investment Office for consent.

### Taxes on Property

- There is no stamp duty/tax in New Zealand.
- While there is no pure capital gains tax in New Zealand, there is a quasi-capital gains tax in the form of a "Brightline test" which applies to residential properties brought and sold within 10 years. If there is a change of government in the October 2023 election, there is a high probability that this tax will be repealed.



- Those in the business of buying and selling properties will pay normal corporate rates on any profits.
- Council rates are paid on all types of property. These rates are paid to the local government based on land valuations. Rates for commercial properties tend to be higher than residential properties.

## EMPLOYMENT

### General Legal Framework

- The Employment Relations Act 2000 and the Holidays Act 2003 governs employment law in New Zealand.

### Minimum Legal Entitlements

- While employers and employees are broadly free to negotiate the terms of the employee's employment, there are several minimum employee entitlements that an employer cannot contract out of. These are:
  - Minimum pay - relevant minimum wages must be paid;
  - Requests for flexible working arrangements (including changes in work hours, patterns and location);
  - Parental leave entitlements - up to 26 weeks paid parental leave for the primary carer, plus an additional 26 weeks extended unpaid leave for primary carer and up to two weeks unpaid leave partner's leave;
  - Annual leave - four weeks of paid annual leave per year for permanent employees;
  - Public holidays - 12 paid public holiday days per year, except if the employee is reasonably required to work;
  - Payment of time and a half for work on a public holiday;
  - Sick leave - up to 10 days of paid sick leave per year
  - after six months continuous employment, 10 days can be carried over each year up to a maximum of 20 days;
  - Bereavement leave - three days' paid bereavement leave for certain family members and one day for non-family members (at the employer's discretion);
  - Family violence leave - up to 10 days paid leave days after six months continuous employment;
  - Rest and meal breaks - rest and meal breaks must be provided and rest breaks must be paid;
  - Reasonable compensation must be paid for requirement to be available outside normal work hours.

### Minimum Wage Requirements

- The Minimum Wage Act 1983 sets the minimum wages for employees that are adults, starting-out, and trainees.
- Minimum wage rates apply to all employees, whether they are full-time, part-time, fixed-term or casual.
- All employees over the age of 16 must be paid at least the adult minimum wage unless the person is a starting-out or trainee employee.
- There are very limited exceptions to the application of the Minimum Wage Act 1983:

### Fair Pay Agreements

- The Fair Pay Agreements Act was passed in 2022.
- This regime allows unions, on behalf of employees, to negotiate with employers to ensure all employees in a specific industry receive minimum standards.
- If a Fair Pay Agreement comes into force for a specific industry or occupation and contains terms that are better than the minimum terms provided for by law, the relevant terms of the Fair Pay Agreement will apply to that entire industry or occupation.

### PAYE and Superannuation

- From the wages or salaries that employees earn, income tax is deducted; a tax known as PAYE (pay as you earn).
- Employers are responsible for deducting and paying PAYE on behalf of employees.
- Compulsory ACC Levy - everyone who owns a business or works in New Zealand pays ACC levies. The current levy rate is 1.53%.
- Employers are required to make a contribution of at least 3% of the employee's base salary or wages towards an employee's KiwiSaver. The employer's contribution can be paid as part of the employee's total remuneration.
- Employees can opt out of KiwiSaver.



### Collective Agreements

- Collective agreements can be negotiated directly with employees on a collective basis through unions representing employees in the workplace.
- If an agreement is reached and signed by the parties, the agreement sets the terms and conditions of employment of all union members covered by the agreement.
- Non-union members can collectively bargain with employees. However, their negotiations cannot end in a collective employment agreement.

### Dispute Resolution

- The personal grievance process is governed by the Employment Relations Act 2000.
- Where an employee feels they have been treated unfairly in their employment, they can raise a personal grievance against their employer for any of the following reasons:
  - Unjustifiable dismissal;
  - Unjustifiable disadvantage;
  - Discrimination on one of the prohibited grounds;
  - Sexual or racial harassment; or
  - Duress due to membership or non-membership of a union or an employees' organization.
- An employee has 90 days to raise a personal grievance with their employer.
- If it cannot be resolved with the employer, the employee can apply to the Ministry of Business, Innovation and Employment for mediation.
- Where mediation does not resolve the dispute, or the employer does not engage in mediation, the employee can apply to the Employment Relations Authority (ERA). However, if the parties have not yet attended mediation the ERA will direct them there in the first instance.
- Remedies
- Pursuant to the Employment Relations Act 2000, where an employee successfully pursues a personal grievance against an employee, the ERA has the power to award one or more of the following remedies:
  - Reinstatement – granting that the employee to return to their former position;
  - Reimbursement – the employer may be ordered to reimburse the employee for any lost wages suffered as a result of the personal grievance;
  - Compensation for Hurt and humiliation caused by the personal grievance or the loss of a benefit the employee would have otherwise been reasonably expected to obtain if not for the personal grievance.
  - Compliance – the ERA may order the employer (or employee) to pay the employee any wages or holiday pay owed to an employee, comply with terms of the relevant employment agreement, or pay the other party a penalty.

## IMMIGRATION

### Employer Accreditation Process

- Since 4 July 2022, all New Zealand employers wanting to hire new migrant workers or retain their current migrant workers have been required to become accredited. The new system replaced six existing temporary work visas.
- The accreditation process is a three-step process:
  - Step 1: Employer Accreditation - this requires the business to show they are a “viable and genuinely operating business” by meeting one of the four financial requirements set out by INZ. The business must not have a history of non-compliance and confirm they will ensure steps are taken to carry out employer migrant worker settlement support activities.
  - Step 2: Job Check - employers must complete a labor market test (LMT). The purpose of this step is to advertise the role to ensure Kiwi workers are prioritized and migrant workers are only hired when there is a genuine need.
  - Step 3: Request Migrant to Apply for Visa - once the employer has obtained a job check they will be provided a job token for the approved job. The migrant will then include this job token in their visa application.





## KEY FACTS

- Geographic location: Asia, an archipelagic country in Southeast Asia,
- Democratic country with constitutional republic and presidential system
- Language: English, Filipino
- Currency: Philippine Peso (₱)
- Race/religion: Filipino/ Predominantly Christian
- Current business environment:
- The Philippines' economic dynamism is rooted in strong consumer demand supported by a vibrant labor market and robust remittances. The private sector remains buoyant, with positive performance from the services sector including business process outsourcing, wholesale and retail trade, real estate, and tourism.
- Investment growth areas: property, transportation, resources and mining, technology, venture capital.





## TYPES OF BUSINESS ENTITIES IN THE COUNTRY

- Generally, there are three types of business organizations under Philippine Law: a sole proprietorship, a partnership and a corporation. A corporation is deemed the best business organization given its many advantages

Structure	Feature
<b>Sole Proprietorship</b>	<ul style="list-style-type: none"><li>• Simplest business entity you can have in the Philippines; owned by one individual who has complete control of all the business services, profits, and assets. He alone bears all the responsibility for any liabilities, issues, and debts that the business might incur over time.</li><li>• Foreign investors can become sole proprietors in the country, but they will be subject to the restrictions given by the Foreign Investment Negative List (FINL)</li></ul>
<b>Partnership</b>	<ul style="list-style-type: none"><li>• A contract of partnership two or more persons binds themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves .</li><li>• There is no time limit to the life of the partnership. Partnerships are recorded with the Securities &amp; Exchange Commission (SEC).</li></ul>

### Foreign Investment Restriction

100% foreign ownership was restricted to Retail Trade Enterprises before. With the passage of the Republic Act No. 11659, 100% foreign ownership of public services has been allowed.

\*A foreign natural person may set up an OPC but is subject to limitations in areas of investment partially or wholly restricted from foreign participation or as specified in the Foreign Investment Negative List (FINL).

As of this writing, the latest Foreign Investment Negative List can be downloaded from: <https://www.officialgazette.gov.ph/downloads/2022/06jun/20220627-EO-175-RRD.pdf>

### Business Organizations Organized under Foreign Law

Structure	Feature
<b>Branch Office</b>	<ul style="list-style-type: none"><li>• A Branch Office is a foreign corporation organized and existing under foreign laws. It carries out business activities of the head office and derives income from the host country. It is required to put up a minimum paid up capital of US \$ 200,000.00, which can be reduced to US \$100,000.00 if (a) the activity involves advanced technology; or (b) the company employs at least 50 direct employees. If it intends to operate as a Domestic Market Enterprise (DME) with the sole purpose of selling products and services to the Philippine market, it must register a capitalization of US\$200,000. If it plans to be an export-oriented business that exports 60% or more of its total revenue, it is excluded from the US\$200,000 minimum paid-up capital threshold and can file for as little as PHP5,000 or US\$100.</li></ul>
<b>Representative Office</b>	<ul style="list-style-type: none"><li>• A representative office is a foreign corporation organized and existing under foreign law and DOES NOT DERIVE INCOME from its host country and is fully subsidized by its head office. It is required to have a minimum inward remittance of US \$ 30,000.00 annually to cover its operating expenses. It should be registered with the SEC.</li><li>• Under RA 8756 any MNC may establish a Regional Headquarters (RHQ) or Regional Operating Headquarters (ROHQ) as long as they are existing under other laws than the Philippines, with branches, affiliates and subsidiaries in the Asia Pacific Region and other foreign markets. Both require the appointment of a Resident Agent (RA)</li></ul>



<b>Regional Headquarters (RHQ)</b>	<ul style="list-style-type: none"> <li>An RHQ undertakes activities that shall be limited to acting as supervisory, communication and coordinating center for its subsidiaries, affiliates and branches around the world. It acts as an administrative branch of a multinational company engaged in international trade. It does not derive income from sources within the Philippines and does not participate in any manner in the management of any of its subsidiaries or branch office it may have in the Philippines. Required capital: US \$50,000.00 annually to cover operating expenses.</li> </ul>
<b>Regional Operating Headquarters (ROHQ)</b>	<ul style="list-style-type: none"> <li>ROHQ is not allowed to offer qualifying services to entities other than its parent company's affiliates, branches, and/or subsidiaries. It is also prohibited to directly or indirectly solicit or market goods and services on behalf of its parent company, branches, affiliates, subsidiaries, and/or any other associated entity. An ROHQ derives income within the Philippines. Required capital: US \$200,000.00, one time remittance.</li> </ul>

## Taxation in the Philippines

- Income Tax:** is a tax on a person's income, emoluments, profits arising from property, practice of profession, conduct of trade or business or on the pertinent items of gross income specified in the Tax Code of 1997 (Tax Code), as amended, less the deductions if any, authorized for such types of income, by the Tax Code, as amended, or other special laws. A foreign citizen, or corporation who derives income from the Philippines is subject to this type of tax.
- Corporate Tax:** A domestic corporation is subject to tax on its worldwide income. On the other hand, a foreign corporation is subject to tax only on income from Philippine sources.
- Resident foreign corporations** (i.e., foreign corporations engaged in trade or business in the Philippines through a branch office) are taxed in the same manner as domestic corporations (except on capital gains on the sale of buildings not used in business, which are taxable as ordinary income), but only on Philippine-source income.
- Non-Resident Foreign Corporations** can also be subject to corporate income tax should they derive income from sources within the Philippines.
- Minimum Corporate Income Tax (MCIT):** The MCIT covers domestic and resident foreign corporations which are subject to regular income tax. The term "regular income tax" refers to the regular income tax rates under the Tax Code. Thus, corporations which are subject to a special corporate tax or to preferential rates under special laws do not fall within the coverage of the MCIT.
- Value Added Tax (VAT)** applies to practically all sales of services and imports, as well as to the sale, barter, exchange, or lease of goods or properties (tangible or intangible). The tax is equivalent to a uniform rate of 12%, based on the gross selling price of goods or properties sold, or gross receipts from the sale of services. On importation of goods, the basis of the tax is the value used by the Bureau of Customs (BOC) in determining tariff and customs duties plus customs duties, excise taxes, if any, and other charges. Where the valuation used by the BOC is by volume or quantity, the VAT basis is the landed cost-plus excise taxes, if any.
- Certain transactions are zero-rated or exempt from VAT. Export sales by VAT-registered persons are zero-rated.
- Certain sales of services exempt from VAT, including services provided by financial intermediaries, are subject to percentage taxes based on gross sales, receipts, or income.
- Percentage tax is applicable to Persons or corporations, who are not VAT-registered, who sell goods, properties or services, whose annual gross sales and/or receipts do not exceed three million pesos (Php3,000,000.00) and are exempt from value-added tax (VAT) under Section 109 (BB) of the National Internal Revenue Code, as amended by Republic Act (RA) No. 10963.
  - Persons who lease residential units where the monthly rental per unit exceeds fifteen thousand pesos (Php15,000.00) but the aggregate of such rentals of the lessor during the year does not exceed three million pesos (Php3,000,000.00)



## 2. Persons engaged in the following industries/transactions:

- a) Cars for rent or hire driven by the lessee, transportation contractors, including persons who transport passengers for hire, and other domestic carriers by land for the transport of passengers (except owners of bancas and owners of animal-drawn two-wheeled vehicle) and keepers of garages
- b) International air/shipping carriers doing business in the Philippines on their gross receipts derived from transport of cargo from the Philippines to another country
- c) Franchise grantees of –
  - i. radio and/or television broadcasting companies whose annual gross receipts for the preceding year do not exceed Php 10,000,000.00 and did not opt to register as VAT taxpayers, and
  - ii. gas and water utilities.
- d) Overseas dispatch, message or conversation transmitted from the Philippines by telephone, telegraph, tele-writer exchange, wireless and other communication equipment services, except those transmitted by:
  - i. The Philippine Government or any of its political subdivisions or instrumentalities;
  - ii. Diplomatic services;
  - iii. Public international organizations or any of their agencies based in the Philippines enjoying privileges, exemptions, and immunities which the Philippine Government is committed to recognize pursuant to international agreement; and
  - iv. News services for messages which deal exclusively with the collection of news items for, or the dissemination of news item through, public press, radio or television broadcasting or a news ticker service furnishing a general news service similar to that of the public press.
- e) Banks, non-bank financial intermediaries performing quasi-banking functions
- f) Other non-bank financial intermediaries (including pawnshops as clarified under Revenue Regulations [RR] No. 10 – 2004)
- g) Person, company or corporation (except purely cooperative companies or associations) doing life insurance business in the Philippines
- h) Fire, marine or miscellaneous agents of foreign insurance companies
- i) Proprietor, lessee or operator of cockpits, cabarets, night or day clubs, boxing exhibitions, professional basketball games, Jai-Alai and racetracks, including videoke bars, karaoke bars, karaoke televisions, karaoke boxes and music lounges as clarified under Revenue Memorandum Circular (RMC) No. 18 – 2010
- j) Winnings or ‘dividends’ in horse races

### Tax treaties

- The Philippines has Double Tax Treaty Agreements with 43 countries. In relation to these treaties, the Philippines has adopted Mutual Agreement Procedure Guidelines in the event disputes arise. The Philippine Bureau of Internal Revenue (BIR) has issued a set of guidelines and procedures for requesting mutual agreement procedure (MAP) assistance in the Philippines, a process which is considered an alternative mode of resolving disputes arising from differences or the inaccurate interpretation or application of treaty provisions. The MAP guidelines provide for the process of initiating a MAP request, the supporting documents and information that the taxpayer needs to submit to the Philippine competent authority, and guidance in the implementation of a MAP agreement.



## Labor Law

- The Labor Code of the Philippines stands as the law governing employment practices and labor relations in the Philippines. It prescribes the rules for hiring and termination of private employees; the conditions of work including maximum work hours and overtime; employee benefits such as holiday pay, thirteenth month pay, and retirement pay; and the guidelines in the organization and membership in labor unions as well as in collective bargaining.
- The Labor Code contains several provisions which are beneficial to labor. It prohibits termination from employment of Private employees except for just or authorized causes as prescribed in Article 282 to 284 of the Code. The right to trade union is expressly recognized, as is the right of a union to insist on a closed shop.
- Strikes are also authorized for as long as they comply with the strict requirements under the Code, and workers who organize or participate in illegal strikes may be subject to dismissal. Moreover, Philippine jurisprudence has long applied a rule that any doubts in the interpretation of law, especially the Labor Code, will be resolved in favor of labor and against management.

## Minimum Wage Rates

- Minimum Wage Rates are updated and released through the National Wages and Productivity Commission, an agency under the Department of Labor and Employment. As of press time, the latest Wage Order in Effect in the National Capital Region is Wage Order No. 24 which took effect last July 16, 2023. Different rates apply per region.

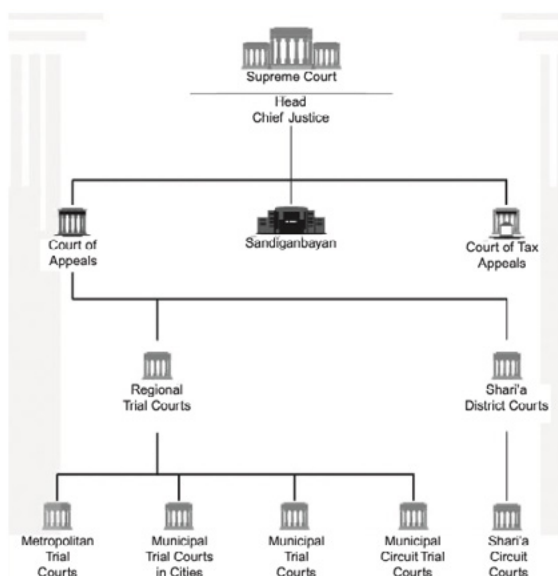
## Statutory Contributions

- Aside from withholding tax, employees and employers are also mandated to make contributions to the Social Security System (SSS), Philippine Health Insurance Corporation (PHILHEALTH), state owned Home Mutual Development Fund (more popularly known as PAGI-BIG fund).

## Justice System Overview

- The justice system in the Philippines is a mixture of the following legal systems: civil, common, Islamic, and customary law. The formal system of trials, appeals and prisons is similar to the United States. Civil code procedures on family and property, as well as the absence of jury trial emanated from Spanish influences. However, the most important statutes which govern trade and commerce, labor relations, banking and currency, taxation as well as governmental operations were derivatives from the United States- introduced at the beginning of the twentieth century. Most laws, official notices, court decisions including those of the Supreme Court are in English.

## Hierarchy of Courts







- The power of the Judiciary is based on the provisions of Article VIII, Section 1 of the 1987 Constitution. There is only 1 Supreme Court.
- The Court of Appeals is an appellate collegiate court in the Philippines. It reviews not only the decisions and orders of the Regional Trial Courts awards, judgments, final orders or resolutions of, or authorized by administrative agencies exercising quasi-judicial functions mentioned in Rule 43 of the 1997 Rules of Civil Procedure, plus the National Amnesty Commission (Pres. Proclamation No. 347 of 1994) and the Office of the Ombudsman.
- Batas Pambansa Blg. 129, or The Judiciary Reorganization Act of 1980, and Republic Act No. 7691 pertain to the jurisdiction of First Level Courts (Metropolitan Trial Court, Metropolitan Trial Courts in the Cities, Municipal Trial Court, Municipal Circuit Courts and Regional Trial Courts).
- Sandiganbayan was created by virtue of Presidential Decree 1606. It primarily deals with violations of Anti-Graft and Corrupt Practices Act, and other offenses and felonies committed by public officers and employees in relation to their office, including those employed in government-owned or controlled corporations, where the penalty prescribed by law is higher than prison correctional. It also exercises appellate jurisdiction from final judgment, order, resolutions of RTCs in cases originally decided by them in their respective territorial jurisdiction.
- Court of Tax Appeals was created by Republic Act 1125 and has exclusive appellate jurisdiction on Decisions by the Commissioner on Internal Revenue, Decisions of the Commissioner of Customs and Decisions of Provincial or City Boards of Assessment.
- Sharia District Courts emanated from Presidential Decree No. 1083 and have appellate jurisdiction over cases as cited in the Code of Muslim Personal Laws of the Philippines which originated from Sharia Circuit Courts.

### Alternative Dispute Resolution

- Alternative Dispute Resolution is governed by Republic Act 9285. Arbitration, conciliation, mediation are just some of the forms of alternative dispute resolution mechanisms that are available in the country.
- International commercial arbitration shall be governed by the Model Law on International Commercial Arbitration (the «Model Law») adopted by the United Nations Commission on International Trade Law on June 21, 1985 (Section 19, RA 9285)
- In interpreting the Model Law, regard shall be had to its international origin and to the need for uniformity in its interpretation and resort may be made to the travaux preparatoires and the report of the Secretary General of the United Nations Commission on International Trade Law dated March 25, 1985 entitled, «International Commercial Arbitration: Analytical Commentary on Draft Trade identified by reference number A/CN. 9/264.» (Section 20, RA 9285)

### Enforcement of Foreign Arbitral Awards

- The New York Convention shall govern the recognition and enforcement of arbitral awards covered by the said Convention.
- The recognition and enforcement of such arbitral awards shall be filed with a regional trial court in accordance with the rules of procedure promulgated by the Supreme Court.
- The applicant shall establish that the country in which the foreign arbitration award was made is a party to the New York Convention.
- If the application for rejection or suspension of enforcement of an award has been made, the regional trial court may, if it considers it proper, vacate its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the party to provide appropriate security. (Section 42, RA 9285)
- A foreign arbitral award, when confirmed by the regional trial court, shall be enforced as a foreign arbitral award and not as a judgment of a foreign court. It shall be enforced in the same manner as final and executory decisions of courts of law of the Philippines.



## IMMIGRATION LAWS

- Foreign nationals who seek to work in the Philippines must obtain the necessary work permit and corresponding visa. The Department of Labor and Employment, through the Bureau of Local Employment, develops standards and guidelines to regulate the employment of foreign nationals in the country and safeguard the interest of Filipino workers, as provided for under Article 40 of the Labor Code of the Philippines. Department Order No. 186 series of 2017 is the latest issuance pertaining to Issuance of Employment Permits for Foreign Nationals.
- Other visas may also be obtained such as the:
  1. Special Investment Resident Visa (SIRV): which is issued to foreign nationals willing to invest at least \$75,000.00 into publicly listed companies, companies engaged in areas listed under the Investment Priority Plans set forth by the Board of Investments or in companies engaged in manufacturing or service sectors. The form of investment could also be in shares of stock for the abovementioned.
  2. Special Resident Retirees Visa (SRRV): this is issued by the Bureau of Immigration upon endorsement of Philippine Retirement Authority. SRRV are further classified unto the following:
    - a. SRRV Smile: for active/ healthy retirees who opt to maintain their SRRV deposit of \$20,000.00 in any Philippine Retirement Authority (PRA) accredited bank.
    - b. SRRV Classic: is for active/ healthy foreign nationals who opt to use their SRR Visa deposit for active investment such as purchase of condominium units (with at least \$50,000.00 price) or long term lease of house and lot.
    - c. SRRV Human Touch: for ailing retirees 50 and above who are in need of medical or clinical care.
    - d. SRRV Courtesy: is accorded to former Filipinos 50 and above or foreign nationals 50 and above who are retired officials of international organizations duly recognized by the Department of Foreign Affairs;
    - e. SRRV Expanded Courtesy: given to retirees of Armed Forces of foreign countries that have existing military ties or agreements with the Philippine Government

## INTELLECTUAL PROPERTY LAWS

- The Philippines is a member of the World Intellectual Property Organization (WIPO). Republic Act 8293 is the Intellectual Property Code of the Philippines which in turn established the Intellectual Property Office of the Philippines. It is further amended by Republic Act 10372 which expanded the Intellectual Property Office into Seven Bureaus. The new amendment also includes additional provisions on Limitation on Copyright, Fair Use of Copyrighted Work, Reproduction of Libraries of Copyrighted Work.

### Data Privacy

- Republic Act 10173, also known as Data Privacy Act of 2012, applies to the processing of all types of personal information and to any natural person or legal entity involved in personal information processing.
- It applies to data controllers and processors who are located in the Philippines, use equipment that is located in the Philippines or who maintain an office, branch or agency in the Philippines. It also applies to actions outside of the territory of the Philippines where the act, practice or processing relates to personal data about a Philippine citizen or resident, or where the entity carries on business in the Philippines and information is collected or held by an entity. The law also provides for the appointment of a Data Privacy Officer or Compliance Officer to ensure appropriate compliance.



## KEY FACTS

- Singapore is an island located in Southeast Asia, off the southern strip of the Malaysian peninsula.
- Race: Multi-racial
- Official languages: English, Malay, Mandarin, and Tamil.
- Currency: Singapore Dollar (SGD).
- Government: Parliamentary republic.
- Singapore has an English-based legal system, and its corporate law operates on a common law basis.
- English is the language of administration and, as such, almost all business is conducted in English.
- Singapore is an international finance and investment hub, a regional base for MNCs and the world's third-largest foreign exchange center. It is an ideal base for regional headquarters and holding companies with its low tax regime, political and economic stability, and its reputation as a trustworthy and productive financial, logistics and transportation hub.
- Investment growth areas include global logistics hub, technology and urban solutions hub, manufacturing, investments, printing and imaging industry, research and development, and intellectual property management hub.





## BUSINESS PRESENCE

- Local incorporation: sole proprietorship, partnership, limited partnership, limited liability partnership, private company limited by shares, public company limited by shares, public company limited by guarantee.
- Branch of foreign corporation: Singapore branch of a foreign company.
- Others: representative office.

## FOREIGN INVESTMENT RESTRICTIONS AND CONDITIONS

### Restrictions in equity participation

- Generally, there are no restrictions on foreign ownership of a corporate entity except for certain industries for policy considerations.
- Broadcasting company: foreign ownership of equity is limited to 49%.
- Newspaper company: there are two classes of shares in a newspaper company – management and ordinary shares. No management shares shall be issued or transferred except to citizens of Singapore or corporations that have been granted written approval by the Minister for Communications and Information.
- Foreigners (including both individuals and foreign-owned Singapore companies) must seek government approval before acquiring landed residential property, association premises, places of worship and workers' dormitories. An exception would be the island of Sentosa, which is the only designated residential area where foreigners can buy a landed house without restrictions.

### Approvals and licensing

- Since there are generally no restrictions on foreign ownership of corporate entities, special approval is generally not required before a foreigner can invest in Singapore.
- Licensing requirements are largely dependent on the type of business activity to be carried on in Singapore and thus the nationality of the investor will not affect the license requirements.
  - Some of the business sectors which may require a license, depending on the exact scope of activities, includes food and beverage outlets, employment agencies, hotels, businesses in the manufacturing sector, and businesses in the wholesale (import, export, and distribution) sector.
  - All traders who import and export goods into and out of Singapore are required to apply for a Unique Entity Number, which will be the identifying number used for all applications for import and export permits. Today, almost all business licenses and permits may be applied for over the internet and are usually processed by the relevant authorities within a few days to a couple of weeks.

## EXCHANGE CONTROL

- The Exchange Control Act governs dealings in gold and foreign currency, and payments in and out of Singapore, among other things.
- Singapore generally does not have a policy for capital controls. Both residents and non-residents are free to remit Singapore dollar funds into and out of the country, and to purchase or sell Singapore dollars in the foreign exchange market.
- A person who enters or leaves Singapore is required to give a report to the immigration officer at the Singapore Customs if he carries with him an amount exceeding S\$20,000 (or its equivalent in a foreign currency). There is no restriction on the amount that can be moved into or out of Singapore as long as a report is given.
- Excessive speculation, whether or not amounting to 'manipulation', is abhorred on the exchange level. Futures and securities exchanges, therefore, have rules on position limits, margin levels, large position reporting and financial, administrative, and accounting requirements for market participants.
- Banks may lend Singapore Dollars to non-resident financial institutions for any purpose whether in Singapore or elsewhere. The bank must comply with certain conditions prescribed by the Monetary Authority of Singapore in the event that the aggregate Singapore Dollar credit facilities exceed S\$5 million per entity.





## TAXATION

### Corporate Tax

- A company is taxed at a flat rate of 17% on its chargeable income regardless of whether it is a local or foreign company. In addition to the low tax rate, all Singapore companies can benefit from certain tax exemption benefits in place of corporate rebates.

**Start-up Tax Exemption (SUTE) Scheme:** The tax exemption scheme for new start-up companies was introduced to support entrepreneurship and to help local enterprises grow. Under this scheme, you can enjoy a 75% tax exemption on your first \$100,000 of chargeable income and a further 50% exemption on the next \$100,000 of chargeable income for your first 3 consecutive years of assessments. For 2019 and before, you can enjoy full exemption on the first \$100,000 of chargeable income and 50% on the next \$200,000, meaning the qualifying company will enjoy an effective tax rate of only about 4.5% on the first S\$300,000 of chargeable income. The exemption applies for the initial three consecutive years. A company will qualify for the SUTE scheme if it satisfies the following criteria:

Chargeable income	Rate (%)	Gross tax payable (\$)
First \$20,000 Next \$10,000	<ul style="list-style-type: none"> <li>0</li> <li>2</li> </ul>	<ul style="list-style-type: none"> <li>0</li> <li>200</li> </ul>
First \$30,000 Next \$10,000	<ul style="list-style-type: none"> <li>-</li> <li>3.50</li> </ul>	<ul style="list-style-type: none"> <li>200</li> <li>350</li> </ul>
First \$40,000 Next \$40,000	<ul style="list-style-type: none"> <li>-</li> <li>7</li> </ul>	<ul style="list-style-type: none"> <li>550</li> <li>2,800</li> </ul>
First \$80,000 Next \$40,000	<ul style="list-style-type: none"> <li>-</li> <li>11.5</li> </ul>	<ul style="list-style-type: none"> <li>3,350</li> <li>4,600</li> </ul>
First \$120,000 Next \$40,000	<ul style="list-style-type: none"> <li>-</li> <li>15</li> </ul>	<ul style="list-style-type: none"> <li>7,950</li> <li>6,000</li> </ul>
First \$160,000 Next \$40,000	<ul style="list-style-type: none"> <li>-</li> <li>18</li> </ul>	<ul style="list-style-type: none"> <li>13,950</li> <li>7,200</li> </ul>
First \$200,000 Next \$40,000	<ul style="list-style-type: none"> <li>-</li> <li>19</li> </ul>	<ul style="list-style-type: none"> <li>21,150</li> <li>7,600</li> </ul>

- The company must be incorporated in Singapore.
- The company must be tax resident in Singapore for the year of assessment in question (a company is tax resident in Singapore if control and management of the company's business is exercised in Singapore).
- The company must not have more than 20 shareholders.
- The company must have at least one shareholder who is an individual beneficially and directly holding at least 10% of the issued ordinary shares of the company.

**Partial tax exemption scheme:** Companies that do not qualify for the aforementioned SUTE scheme may benefit from the partial tax exemption scheme pursuant to which a company will enjoy from 2020 onwards a 75% tax exemption on the first S\$10,000 of its chargeable income and a 50% tax exemption on the next S\$190,000 of its chargeable income.

The partial tax exemption scheme applies to Singapore- incorporated companies as well as Singapore branches of foreign companies. There are no restrictions on shareholding for the scheme to apply.

### Personal Income Tax

- Different tax rates apply for tax residents and non-residents. A person will be treated as a tax resident for a particular year of assessment if he is a Singapore citizen, a Singapore permanent resident who has established a permanent home in Singapore, or a foreigner who has stayed or worked in Singapore for 183 days or more in the previous year (except for a director of a company).



- Tax rates for non-resident individuals

- i. Employment income: Employment income is taxed at 15% or the resident rate, whichever gives rise to a higher tax amount.
- ii. Directors' fees, consultation fees and all other income: Directors' fees, consultation fees and all other income received by a director is taxed at the rate of 22%.

Tax rates for resident individuals: Income tax rates are progressive. This means higher income earners pay a proportionately higher tax, with the current highest personal income tax rate at 22%.

### Withholding Tax

- Interest, commission, fee, or other payment in connection with any loan or indebtedness: 15%\*\*
- Royalty or other lump sum payments for the use of movable properties: 10%\*\*
- Payment for the use of, or the right to use, scientific, technical, industrial, or commercial knowledge or information: 10%\*\*
- Rent or other payments for the use of movable properties: 15%\*\*
- Technical assistance and service fees: prevailing corporate tax rate.
- Management fees: prevailing corporate tax rate.

\*\* These rates apply where income is not derived by the non-resident person through its operations in Singapore: in such a case, the rates are to be applied on the gross payment and the resultant tax payable is a final tax. However, if income is derived by the non-resident person through its operations in Singapore, the tax rate to be applied on the gross payment will be 22% for non-resident individuals and the prevailing corporate tax rate for persons other than individuals.

### Capital Gains Tax

- Capital gains are not subject to tax in Singapore, however, gains regarded as trading gains may be considered revenue and subject to income tax. Therefore, while one-off profits from the sale of shares and real property will not generally be taxed, a vendor who deals in shares/property on a regular basis may be taxed on profits received.

### Indirect taxes

- Stamp Duty on Transfer of Shares in Private Companies. The stamp duty payable in respect of share transfers in Singapore is 0.2% based on the purchase price or market value of shares transferred, whichever is higher.
- Goods and Services Tax ("GST"). GST is a self-assessed tax. Businesses are required to continually assess the need to be registered for GST. In most cases, registering for GST is compulsory when: the turnover of your business is more than \$1 million for the past 12 months; or you are currently making sales and you can reasonably expect the turnover of your business to be more than \$1 million for the next 12 months. A business can also choose to be voluntarily registered for GST.

### Double taxation treaties

- Singapore currently has comprehensive double taxation treaties ('DTA') with more than 60 countries and seven limited DTAs (relating to limited sources of income, generally from shipping and air transport).
- The scope of the DTAs is confined to residents of Singapore and the treaty partner only. Non-residents of either country will not enjoy the concessionary benefits provided under the DTA.

## TAX AND INVESTMENT INCENTIVES

### Incentives and programs

All incentive schemes come with a list of qualifying conditions which must be met before the benefit of the tax concession/ exemption is granted.

- Pioneer Incentive: Tax relief may be granted to a pioneer industry. Income derived from its pioneer activities will be tax exempt for a period of up to 15 years provided specified conditions are satisfied.



- **Development and Expansion Incentive:** Entitles the company to be taxed at the concessionary rate of not less than 5% on income from qualifying activities.
- **Investment Allowance:** Given for fixed capital expenditure for certain projects. This serves as a further capital allowance on qualifying equipment costs incurred within a set period.
- **Overseas Enterprise Incentive:** Provides tax exemption on qualifying income from approved overseas investment/projects for up to 10 years.
- **Enterprise Investment Incentive:** An eligible investor of an approved start-up company may be able to deduct losses arising from the sale of qualifying shares held by him from such start-up company or the liquidation of the start-up company.
- **Research Incentive Scheme for Companies:** Provides co-funding to support the set-up of research and development centers and/or the development of in-house research and development capabilities in strategic areas of technology.
- **Innovation Development Scheme:** Provides co-funding to support innovation in products, processes, and applications.
- **Initiatives in New Technology:** Provides co-funding to support manpower development in the application of new technologies, industrial R&D and professional know-how.
- **Double Deduction for Overseas Investment Development Expenditure:** This encourages Singapore-registered businesses to explore overseas investment opportunities by allowing double deductions for eligible expenses such as airfare, accommodation, rental and maintenance of office facilities, subsistence for employees and consultation fees.
- **Headquarters Programme:** To encourage companies to use Singapore as a base for conducting headquarters management activities. Concessionary tax rates are applicable for entities incorporated or registered in Singapore which provides management, technical, corporate support and headquarters-related services and business expertise to its offices or associated companies outside Singapore on a regional or global basis.
- **Approved Foreign Loan Incentive:** This incentive, which provides for reduced rates of withholding tax, is available to companies wanting to raise a loan of not less than S\$200,000 from a non-resident by means of a financial agreement whereby credit facilities are granted for the purchase of productive equipment for the purposes of its trade or business.
- **Approved Royalties Incentives:** Full or partial exemption on withholding tax for royalty payments or technical assistance fees payable to non-residents. This includes royalties, fees and contributions to R&D costs paid for the transfer of technology.
- **Venture Capital Fund Incentive:** An approved venture company may be exempt or subject to the concessionary tax rate on qualifying income derived from approved investments, subject to various conditions.
- **Double Tax Deduction Scheme:** This allows an approved company to deduct approved project expenses twice against their taxable income.
- **Global Trader Programme:** The program grants a concessionary tax rate on offshore trading income from qualifying commodities and products.

## EMPLOYMENT LAW

### Statutory contributions

- **Central Provident Fund:** Working Singaporeans and their employers make statutory monthly contributions to the CPF and these contributions go into three accounts:
  - i. **Ordinary Account:** the savings can be used to buy a home, pay for certain types of insurance, investment, and education.
  - ii. **Special Account:** for old age, contingency purposes, and investment in retirement-related financial products.
  - iii. **Medisave Account:** the savings can be used for hospitalization expenses and approved medical insurance.



- CPF Contribution and Allocation Rates from 1 January 2023:

Credited into						
Employee age (years)	Contribution by employer (% of wage)	Contribution by employee (% of wage)	Total contribution (% of wage)	Ordinary account (% of wage)	Special account (% of wage)	Medisave account (% of wage)
35 and below	17	20	37	23	6	8
36-45	17	20	37	21	7	9
46-50	17	20	37	19	8	10
51-55	17	20	37	15	11.5	10.5
56-60	14.5	14.5	29.5	12	7	10.5
61-65	11	11	20.5	3.5	6.5	10.5
66-70	8.5	8.5	15.5	1	4	10.5
Above 70	7.5	5	12.5	1	1	10.5

- The above CPF contribution rates apply to private sector and non-pensionable employees who earn monthly wages of S\$750 or more. The CPF salary ceiling will be raised from S\$6,000 to \$8,000 by 2026. The increase will take place in four steps to allow employers and employees to adjust to the changes.

## DISPUTE RESOLUTION

- Being a former British colony, the legal system in Singapore is based on English common law. Singapore's law is founded on four pillars: constitution, legislation, subsidiary legislation, and legal decisions made by judges.
- Singapore's common law is characterized by the practice of judicial precedent. In other words, the law is created by judgements handed down by the courts. In this regard, the judges are only required to apply the ratio decidendi (or the operative reason for the decision) of the higher court within the same hierarchy.
- Major portions of Singapore law, particularly contract law, equity and trust law, property law and tort law, are largely judge-made, though certain aspects have now been modified to some extent by statutes. On the contrary, Singapore's criminal law is largely statutory in nature and can be traced to the exhaustive penal code.

### Court system

- The Judiciary consists of the Supreme Court (comprising the Court of Appeal and the High Court) and State Courts. The Chief Justice and Supreme Court judges are appointed by the President. The Judiciary in the Supreme Court of Singapore consists of 4 Judges of Appeal, 4 Senior Judges, 15 Judges, 6 Judicial Commissioners and 15 International Judges (with appointees from 8 civil and common law jurisdictions such as England, USA, and Hong Kong). Judges in the State Courts are appointed by the Legal Service.

### Alternative Dispute Resolution

- Singapore is now recognized as the leading choice for Alternative Dispute Resolution ("ADR") in Asia. Singapore is also a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the 'New York Convention') and hence, arbitral awards rendered here are potentially enforceable in more than 140 jurisdictions.
- The Singapore Mediation Centre ("SMC"), which is a company limited by the guarantee of the Singapore Law Academy, provides ADR services (such as mediation and adjudication) and ADR training (in negotiation, mediation, and conflict management). The SMC has deep sector-specific competencies in construction, medical, technology and, more recently, sport mediation.





## IMMIGRATION PROCEDURES

### Passport and visa requirements

Entry visa: Singapore offers visa-free entry to citizens of over 155 countries including citizens of ASEAN and the European Union. Foreigners who require visa for entry into Singapore include China, India and the Commonwealth of Independent States.

- Social visit pass: All visitors to Singapore are issued with a social visit pass valid for a duration of 14 to 90 days depending on their nationality and how often they travel to Singapore.

### Work passes

- Foreigners who intend to work in Singapore are required to obtain the appropriate work pass from Singapore's Ministry of Manpower ("MOM") before commencing work. Singapore offers several types of work visas, depending on the applicants' type of work and their level of expertise. Work visas can be applied for online.
- The types of work visas include:
  - i. Employment Pass ('EP'): The EP is for foreigner professionals, managers and executives who earn a fixed monthly salary of at least S\$5,000 and who have acceptable qualifications, with more experienced candidates needing higher salaries. Acceptable qualifications usually mean a good university degree, professional qualifications or specialist skills.
  - ii. S pass: This pass is for foreign mid-level skilled staff who earn a fixed monthly salary of at least S\$3,000 and meet the assessment criteria.
  - iii. Personalized Employment Pass ('PEP'): The PEP is for high-earning Employment Pass holders (with a minimum fixed monthly salary of S\$12,000) and overseas foreign professionals (with a minimum fixed monthly salary of S\$18,000). It is similar to the EP, except a PEP holder is not tied to any particular employer and can switch employment any time he/she wishes without having to apply for another pass.
  - iv. EntrePass: The EntrePass allows eligible foreigners to start and operate a new business in Singapore. This work pass is intended for serial entrepreneurs, high-calibre innovators, or experienced investors.
  - v. Work Permit: A work permit is for semi-skilled foreign workers in the construction, manufacturing, marine, process or services sector. There is also a work permit specifically for foreign domestic workers (FDWs) to work in Singapore.

### Permanent residence

- Foreigners may apply for permanent residence through a variety of schemes.
- The most common method of obtaining permanent residence is to work in Singapore under an EP or S pass for a couple of years before applying for permanent residence.
- Applicants who are not working in Singapore may also obtain permanent residence by investing certain minimum sums in Singapore (in business, venture capital etc.).
- Spouse and unmarried children (below 21 years old) of a Singapore citizen or permanent resident or aged parents of a Singapore citizen are also eligible to apply for permanent residence.



## KEY FACTS

- Taiwan is geographically located North of the Philippines and southeast of China, in close proximity to the East China Sea, South China Sea, Philippine Sea and Taiwan Strait.
- Total area: 36,197 square kilometers.
- Climate: Oceanic and subtropical monsoon.
- Population: 23 million inhabitants.
- Population density: 640.03 people per square kilometer.
- Ethnic background: Hakka, Fujianese, Indigenous, Mainland Chinese.
- Population by age: about 12.55% of the total population is less than 15 years of age, 71.30% between 15 years and 65 years of age, and 16.5% greater than 65 years of age.
- Taiwan has two levels of government, the Central Government and the Local/Municipal Government. The Central Government is composed of five branches: Executive, Legislative, Judicial, Control and Examination Yuans.
- In contrast to countries such as the United States or the United Kingdom, the legal system in Taiwan is based on civil law, similar to Germany or Japan. The primary source of law comes from statutes rather than judicial decisions.
- One significant fact for foreign nationals doing business in Taiwan is: unless otherwise provided by law, legal documents do not have to be in Chinese. English legal documents are accepted in general and are as binding and effective as if they were written in Chinese.
- Language: Mandarin Chinese (official language), Taiwanese, Hakka, and other Chinese dialects. English and Japanese are the most commonly used foreign languages.
- Ethnic Groups: Taiwanese (including Hakka) 87%, mainland Chinese 10%, indigenous 2.5%.
- Religions: mixture of Buddhist and Taoist (80%), Christian (6.1%), other (2.5%).
- Investment Growth Areas: as the economy has shifted from labor-intensive industries to knowledge-based and capital-intensive industries, there are a variety of new investment opportunities available in Taiwan. Some of the world's leading high-tech players are located in Taiwan. The prime industries for potential investment include: semi-conductors, opt-electronics, precision machinery and instrumentation, metals, information and technology equipment, electrical products, aviation, and automotive, biomedical and pharmaceutical products.
- Currency: New Taiwan dollar (NT\$).



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## HISTORICAL AND CURRENT BUSINESS ENVIRONMENT

- Taiwan's economy has gone through several distinctive phases. Until the 1950s, Taiwan's economy was mainly agrarian. This was due to its subtropical climate, which allowed agricultural products to flourish. After land reform policies, the government implemented a series of policies aimed at making Taiwan self-sufficient. Consequently, the manufacturing sector expanded dramatically in the 1950s and Taiwan became a major exporter of textiles and cheap manufactured goods.
- In the 1960s, Taiwan's manufacturing sector shifted to electrical equipment and electronic goods. Between 1962 and 1985 this shift in manufacturing focus allowed the economy to grow at an average annual rate of almost 10 per cent. This was more than double the economic growth rate of industrialized countries during the same period. The 1980s and 1990s saw industrial output shifting to chemical and high-tech production. Plastics became one of Taiwan's largest industries along with steel, fertilizers, and cement. Rubber, glass products, bicycles, food processing and pharmaceutical manufacturing also flourished. Recently, with its highly educated workforce, Taiwan has seen impressive growth in knowledge-based and service-oriented industries. Taiwan is a major global competitor in semiconductors, computer-related products, telecommunications equipment, precision tools, next-generation vehicles, optical machines, optical supplies and bio pharmacy, internet of things, smart machinery, green energy and information security.

## BUSINESS PRESENCE REGULATIONS

### Local Incorporation

- All companies in Taiwan must be incorporated and certified by the Ministry of Economic Affairs.

There are four different types of corporate structure in Taiwan: unlimited company, unlimited company with limited liability shareholders, limited company and company limited by shares. Limited company and company limited by shares are the most common corporate structure in Taiwan.

### Branch of Foreign Corporations

- To establish a branch office in Taiwan, a foreign company must register with the Ministry of Economic Affairs. The branch office must also register with the local tax authorities.

## FOREIGN INVESTMENT RESTRICTIONS AND CONDITIONS

### Restrictions in Shareholdings

- A company where more than one shareholder has limited liability is a "limited company." The shareholders are liable for debts and obligations incurred by the company only

to the extent of their capital contribution. There are strict restrictions on the transfer of shares.

- A "company limited by shares" has at least two shareholders or at least one government or legal entity as a shareholder. It is similar to a US corporate structure. There are no minimum capital requirements. The total capital is divided into shares and each shareholder is liable for the debts and obligations of the company only to the extent of his or her holdings. 10 to 15% of newly issued shares must be set aside for employee stock purchase plans, but companies with 45% or more of the shareholding owned by foreign investors are exempt from such requirement.

### Approvals and Licensing

- To incorporate a new entity in Taiwan, a foreign investor should obtain the approval from the Investment Committee of the Ministry of Economic Affairs. Most industries are 100% open to foreign investors with few exceptions in the "Negative List for Investment by Overseas Chinese and Foreign Nationals". However, for Chinese capital, only industries in the "Positive List" are available for investment.
- Notably, Taiwanese government implements stricter restrictions on the foreign direct investment related to Chinese capital and has adopted a broader view when determining whether a foreign investor should be treated as "Chinese capital" in recent years.





## CENTRAL BANK EXCHANGE CONTROL

### Approvals Required

- While most foreign exchange restrictions have been laxed, some remain in place. Any financial-type foreign exchange accounts must comply with the measures set out in “The Statute Governing Foreign Exchange”. The statute applies to any inflow or outflow of foreign currency funds that involves an exchange of New Taiwan dollars.

### Reporting Requirements

- For any inflow or outflow of foreign currency involving an exchange of New Taiwan dollars, the following measures apply:
  - i. Business entities may conduct transactions of up to US\$50 million a year for payments that are not related to trade. Beyond such amount will require prior approval from the Central Bank.
  - ii. Non-residents of Taiwan may exchange up to US\$100,000. There is no time or frequency limitation to currency exchanges for non-residents. Beyond such amount will require prior approval from the Central Bank.

## TAXATION

### Corporate Income Tax

- According to Taiwan’s Income Tax Law, taxable income is defined as gross revenue minus allowable deductions. For any business with a head office in Taiwan, gross income is income derived from within or outside Taiwan. Locally incorporated companies with overseas operations can deduct taxes paid in those foreign countries.
- Any business with a head office outside Taiwan, but with a local branch office in Taiwan is liable for tax on income derived from local sources. These entities are taxed at the same rate (20%) as domestic Taiwanese companies.
- Income tax of overseas businesses with no fixed office or agent in Taiwan is withheld at a rate of 20% at source.

### Individual Income Tax

- Anyone who maintains domicile in Taiwan or resides in Taiwan for more than 183 days in a taxable year is considered a Taiwan resident and must pay income tax according to the income tax rates (up to 40%).

### Withholding Tax

- The withholding tax rate on dividends distributed by a company or profit distributed by a cooperative is 20%.

### Indirect Tax

- The business tax rate for business entities other than those previously outlined, namely VAT (Value Added Tax) business entities, shall be between 5% and 10% subject to the prescription of the Executive Yuan. The current applicable VAT rate is 5%.
- The VAT on transactions related to banking, insurance, securities brokerages etc., shall be 5%, and VAT on reinsurance transactions is 1%.

### Double Taxation Treaties

- Taiwan’s policy toward tax treaties is to avoid double taxation, prevent fiscal evasion and improve bilateral economic and investment relations. The tax treaties that Taiwan has negotiated follow the OECD and UN models; these take into consideration matters relating to the political and fiscal status, economic and trade of the mutual parties involved.
- As of September 2023, there are 34 comprehensive income tax treaties and 12 international transportation income tax agreements, which have been signed by Taiwan and are currently active.





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## TAX AND INVESTMENT INCENTIVES

### Pioneer Status

- Located at the heart of Asia-Pacific.
- Less than three hours' flying time to seven major cities in the Western Pacific.
- 2.5 days average sailing time to five major Asia-Pacific ports.
- Key geographic and linguistic advantages to deal with the Chinese Market.
- OEM and ODM manufacturer for high-tech industries.
- R&D and test centers for products aimed at the global ethnic Chinese markets.

### Capital Allowances

- Investment as referred to in this "Statute for Investment by Foreign Nationals" shall be as follows:
  - i. Holding shares issued by a Taiwanese company, or contributing to the capital of a Taiwanese company;
  - ii. Establishing a branch office, a proprietary business, or a partnership in Taiwan; and
  - iii. Providing loan(s) to the invested business referred to in the preceding two points for a period exceeding one year.
- If the capital invested in the enterprise is more than 45% of the paid-in capital and such investment capital remains to be more than 45% of the total for 20 years from the inception of the enterprise, the invested enterprise shall not be expropriated or acquired.

### Investment Tax/Reinvestment Allowances

- To encourage innovation, an investment tax credit of up to 15% of the R&D expenditure against profit-seeking enterprise income. The credit is limited to 30% of the income tax payable for the current year.
- For the purpose of optimizing industrial structure to achieve smart upgrade transformation and to encourage application of diversified innovations, companies or limited partnerships that have invested in the hardware, software, technology or technical services in connection with brand-new smart machines or introduction of 5th-generation mobile networks for its own use between January 1, 2019 and December 31, 2024 or in connection with cyber security products or services for its own use between January 1, 2022 and December 31, 2024, with expenditure of more than NT\$1 million and under NT\$1 billion in the same taxable year, may get tax credits against the income tax up to 5%, provided that the amount of such credit should not exceed 30% of the payable income tax.
- Subsidies are available for up to 50% of total spending by foreign companies on the establishment of R&D center in Taiwan.

### Tax Exemptions

- A non-resident individual or a non-resident enterprise, which has been approved to make investments in Taiwan under the "Statute for Investment by Overseas Chinese" or the "Statute for Investment by Foreign Nationals" and receives dividends from a Taiwanese enterprise or profits from a Taiwanese partnership, shall benefit from reduced income tax payable. The tax rate will be reduced to 20% and shall be withheld at the time of payment.

## EMPLOYMENT LAW

### General Legal Framework

- The Labor Standards Law, enacted in 1984, provides the basic guidelines for workers and employers with respect to their rights and obligations.
- The objective of the Labor Standards Law is to provide minimum standards of working conditions, protect labor rights, and to promote social and economic development.



### Sector Requirements

- Employers may only hire foreign workers for employment opportunities that qualify under certain categories and conditions. These are set out in the Employment Service Act. Some examples include: specialized or highly technical workers and Executive/Management for an investment project. Work permits are generally valid for three years with the possibility for the employer to apply for extensions if required.

### Minimum Wage Requirements

- In accordance with the regulation of Article 21 of the Labor Standards Act, wages should be paid in accordance with the agreement between employers and employees, and the wage should not be lower than the basic minimum wage. As from 1 January 2024, the basic minimum wage is NT\$27,470 per month, and NT\$183 per hour.
- A worker's normal working hours should not exceed eight hours per day and the cumulative total working hours for each two-week period should not exceed 84 hours.

### Trade Unions and Insurance

- Taiwan's workforce is divided into two major categories: workers with fixed employers, and workers without fixed employers. Workers with fixed employers are insured through their companies, while workers without fixed employers must join a trade union and be insured through the union.

### Statutory Contributions

- Labor insurance premiums are calculated as follows:
- Employers contribute 70%, the government contributes 10%, and the worker contributes 20%. Workers are covered for injury and illness, childbirth, loss of functioning ability, medical costs resulting from occupational accidents, old-age pension, and death.
- National Health Insurance is a compulsory social insurance in Taiwan.
- Insured persons need only to receive their National Health Insurance IC card and pay their premiums regularly. In cases of injury, illness, or childbirth, they are insured and can access full medical care for a small registration fee and partial payment for treatment or hospitalization.

## DISPUTE RESOLUTION

### General Legal Framework

- Law in Taiwan is mainly based on the civil law system. The legal structure is organized into the six codes: the Constitution, the Civil Code, the Code of Civil Procedures, the Criminal Code, the Code of Criminal Procedures, etc.

### Court System

- The general court system in Taiwan is divided into three levels: District Courts, High Courts, and the Supreme Court. There are 22 District Courts in Taiwan, each divided into civil, criminal, and summary divisions. Almost all civil and criminal cases in the first instance are heard at the District Court level.
- The administrative court system is divided into two levels: Administrative High Courts and Administrative Supreme Court. All the administrative cases in the first instance are heard at Administrative High Court level.

### Alternative Dispute Resolution

- Reconciliation is a form of dispute resolution whereby the parties to a dispute voluntarily agree to try to settle the matter privately with the assistance of a neutral third party. It is not a compulsory procedure.
- Arbitration is another form of dispute resolution recognized in Taiwan and commonly used to resolve commercial disputes.



## IMMIGRATION PROCEDURES

### Visitor Visa

- Visitor visas are used by foreign nationals who hold ordinary passports or other travel documents and plan to stay in Taiwan for less than six months for transit, tourism, family visits, study and business. Information about visitor visa application can be obtained from the Bureau of Consular Affairs, Ministry of Foreign Affairs.

### Professional's Special Work Permit

- A "One-stop Center for Work Permits applications for Foreign Professionals" was set up since 15 January 2004 in order to make the application procedures easier for foreign professionals seeking work permits in Taiwan. The employers of the foreign professionals must submit applications for work permits, together with required documentation to the relevant authority.
- Work permits for foreign professionals are valid for a maximum of three years; if further employment is needed, the employer may apply for an extension four months prior to expiration of the original work permit.

### Work Permits

- In order to legally work in Taiwan, a foreign national must apply for employment authorization, also known as a work permit. The employer must file the application. Foreign nationals may not be self-employed in Taiwan. The employer may only hire foreign nationals for employment opportunities that qualify under the categories set out in the Employment Service Act (see Sector Requirements under Employment Law). Except as otherwise provided by law, work permits are generally valid for three years with the possibility for the employer to apply for an extension.

### Special Permanent Residency or Other Permits

- Resident visas can be issued to applicants who want to stay for more than six months and whose reason for staying in Taiwan includes one of the following: joining family, study or research, employment, investment, medical treatment, missionary work, or other legitimate activities. A holder of a Resident Visa must, within 15 days of entry into Taiwan, or within 15 days following the issuance of a Resident Visa to replace another type of visa, apply to the Bureau of Consular Affairs County/City Service Station at his or her place of residence for an Alien Resident Certificate (ARC) and Re- entry Permit. The ARC is valid between one to three years.
- Citizens of applicable countries and certain foreign nationals who meet specific criteria may enter Taiwan without a visa for a maximum 90-day stay (Visa Exempted Permit).

### Taiwan Employment Gold Card

- The Taiwan Employment Gold Card is a 4-in-1 card, that includes a resident visa, work permit, ARC, and re-entry permit, which allows an applicant to leave and re-enter Taiwan multiple times over the course of 1 to 3 years.
- Application for the Taiwan Employment Gold Card requires assessment of an applicant's professional skills and generally takes 30 to 60 days.





## KEY FACTS

- Thailand is situated in the heart of the Southeast Asian mainland covering an area of 513,115 sq. km., from North 5°30' to 21° and from East 97°30' to 105°30'. Thailand borders the Lao People's Democratic Republic, Cambodia and the Gulf of Thailand to the east, Myanmar and the Indian Ocean to the west, and Malaysia to the south. Thailand has maximum dimensions of about 2,500 kilometers north to south and 1,250 kilometers east to west, with a coastline of approximately 1,840 kilometers on the Gulf of Thailand and 865 kilometers along the Indian Ocean.
- The climate is tropical - rainy, warm cloudy south-west monsoon from mid-May to September and dry, cool north-east monsoon from November to mid-March. The terrain consists of a central plain, an eastern plateau and mountains elsewhere.
- The country's official name is the Kingdom of Thailand and in short, Thailand. The capital is Bangkok.
- The government is a constitutional monarchy. The King is head of state, while the leader of the government is the Prime Minister. Other chief executives also include cabinet members and ministers, together with high-ranking government officials in ministries, bureaus, and agencies. As head of state, the King has the authority to exercise sovereign power through the National Assembly, the Council of Ministers, and the Courts. The Prime Minister functions in the name of the King and is responsible for all royal commands regarding the affairs of the country.
- Thai is the national and official language and English is moderately written and spoken in general and business dealings.
- The population of Thailand, estimated at 67,000,000 million in 2023, includes ethnic Chinese, Malays, Cambodians, Vietnamese, Indians, and others. Immigration is controlled by a quota system.
- Buddhism, the national religion, is the professed faith of 92.5 percent of the population. Islam (5.4%), Christianity (1.2%), Hinduism (0.1%), others (0.8%) are embraced by the rest of the population. There is absolute religious freedom. The King of Thailand, under the constitution and in practice, is patron of all major religions.
- The literacy rate in Thailand is quite high and in recent years there has been an increased emphasis on education. The development of the Kingdom's human resources is its highest priority.
- Currency: Thai Baht (THB).





## BUSINESS PRESENCE

- As in most countries, there are four (4) kinds of business organizations in Thailand: sole proprietorships, partnerships (unregistered and registered), private limited companies and public limited companies.
- The most common form of business organization among foreign investors in Thailand is the private limited company, which is required to have a minimum of three promoters and must file a memorandum of association, convene a statutory meeting, register the company, and obtain a tax identity card and value added tax license, in order to set-up and commence operation of a private limited company.
- Established business organizations in Thailand must also follow accounting procedures specified in the Civil and Commercial Code, the Public Company Act, the Revenue Code, and the Accounting Act. Audited financial statements must also be prepared once a year and filed with the Revenue Department, Ministry of Finance and Department of Business Development, Ministry of Commerce.
- Additionally, there are other forms of business set-up for specific activities, such as Branch Office, Representative Office, and Regional Office, considered under a specific law known as the “Foreign Business Act B.E. 2542 (1999)”
- Joint Venture, Distributorship, Licensing and Agency are also widely used in foreign investment into Thailand.

## FOREIGN INVESTMENT RESTRICTIONS AND CONDITIONS

### Foreign Business Act B.E. 2542 (1999)

- For all foreign investors, a specific law called Foreign Business Act B.E. 2542 (1999) (“FBA”) must be observed. FBA prescribes certain business activities that (1) may not at all be done by a foreigner, or (2) may be engaged by a non-Thai, but only if a Foreign Business License (“FBL”) is applied for and granted.
- Business is considered as «foreign» if it is: (1) a natural person not of Thai nationality (2) a juristic person not registered in Thailand; or (3) a juristic person registered in Thailand having half or more of its capital shares held by (1) or (2); or (4) a juristic person registered in Thailand having half or more of its capital shares held by (1), (2), (3).
- FBA is a restrictive and negative written law applicable to physical business undertakings and project-by-project basis granted by discretion of the Cabinet or the Foreign Business Committee under the Ministry of Commerce, as the case may be. FBA divides businesses into three categories as follows.
  - (a) Category I is absolutely prohibited to foreigners unless there is an exception contained in a special law or treaty. By way of example, they are business of and about newspaper, radio, television, rice farming, forestry, fishery, Thai herb extraction, trade and auction of Thai antiques or objects of national historical value, making or casting Buddha images and alms bowls, trading of land.
  - (b) Category II refers to businesses involving national safety or security, culture, traditional custom, handicraft, national resources and environment. The grant of FBL under this category is subject to permission of the Minister of Commerce with the approval of the Cabinet.
  - (c) Category III is regarded as those in which Thai nationals are not yet ready to compete with foreigners. These businesses are permitted to apply for a FBL provided that approval is first received from the Foreign Business Committee.
- Generally, under the FBA, the following factors need to be considered for the FBL to be issued.
  - i. Advantages and disadvantages to national safety and security
  - ii. Advantages and disadvantages to national economic and social development
  - iii. Advantages and disadvantages to public order or good morals
  - iv. Advantages and disadvantages to arts
  - v. Advantages and disadvantages to culture and traditional customs of the nation
  - vi. Advantages and disadvantages to conservation of natural resources, energy, and environmental preservation
  - vii. Advantages and disadvantages to consumer protection
  - viii. Size of business and expenditure estimation



- ix. Employment of labor
- x. Technology transfer
- xi. Research and development
- xii. Benefits to the nation from allowing non-Thai to engage the activities
- There are certain exemptions from being subject to the FBL under the FBA, where foreigners could instead apply for a Foreign Business Certificate. They are those qualified under:
  - i. Treaty of Amity and Economic Relations between the Kingdom of Thailand and the United States of America.
  - ii. Japan-Thailand Economic Partnership Agreement (JPEPA).
  - iii. Thailand-Australia Free Trade Agreement (TAFTA).
  - iv. Asean Comprehensive Investment Agreement (ACIA).
  - v. Asean Framework Agreement on Services (AFAS).
  - vi. The investment promotion law

### Other Restrictions

- Foreign ownership of land is not allowed, except for small areas for residential housing, in Industrial Estates, or with approval of the Board of Investment. Note that ownership of certain condominium units registered for foreign ownership is allowed with the ratio of units sold to foreign buyer not exceeding forty-nine (49) percent of the overall area of the condominium, and that the funds used to purchase the condominium have been submitted from abroad and properly recorded as such by a Thai Financial Institution. Purchases of condominium units by foreigners fall under the provisions of the Condominium Act B.E. 2551 (2008).
- Separate laws control foreign ownership in other business activities such as banking, insurance, finance, and shipping.

## EXCHANGE CONTROL

### Pioneer Status

- The legal basis for exchange control in Thailand is derived from the Exchange Control Act B.E. 2485 (1942) and Ministerial Regulation No. 13 B.E. 2497 (1954) issued under the Exchange Control Act. These laws set out the principles of controls under which Notifications of the Ministry of Finance and Notices of the Competent Officer are issued.
- The Bank of Thailand has been entrusted by the Ministry of Finance with the responsibility of administering foreign exchange. The governor of the Bank of Thailand shall appoint the officials of the Bank of Thailand as the Competent Officers under the Exchange Control Act (B.E. 2485).
- All foreign exchange transactions are to be conducted through commercial banks and through authorized non-banks that are granted foreign exchange licenses by the Minister of Finance namely authorized money changers, authorized money transfer agents, and authorized companies. Any transactions not conducted through the said licensees require approval from the Competent Officer on a case-by-case basis.
- Foreign currencies can be transferred or brought into Thailand without limit. Any person receiving foreign currencies from abroad is required to sell such foreign currencies to an authorized financial institution or to deposit them in a foreign currency account with an authorized financial institution within 360 days of receipt, except for foreigners temporarily staying in Thailand for not more than 3 months, foreign embassies, and international organizations including their staff with diplomatic privileges and immunities.
- Foreign currency purchased with authorized banks is generally allowed upon submission of the underlying international trade and investment. Corporates in Thailand can engage in derivatives transactions with authorized banks to hedge against foreign exchange risk, provided that supporting documents indicating future foreign currency receipts or obligations are submitted.
- Any person, who brings into or takes out of Thailand an aggregate amount of foreign currency exceeding USD 15,000 or its equivalent, must declare such to a customs officer.



- Any person, who brings into or takes out of Thailand an amount of Thai Baht exceeding THB 450,000, must declare such to a customs officer.
- Nonresidents may maintain foreign currency accounts with authorized banks in Thailand without limit. The accounts can be freely credited with funds originating from abroad.
- Nonresidents may open Thai Baht accounts (1) Non-resident Thai Baht Account for Securities (NRBS) and (2) Non-resident Thai Baht Account (NRBA) with authorized banks in Thailand.
- Transfers in foreign currency for direct and portfolio investments in Thailand are freely permitted. Proceeds must be surrendered to an authorized financial institution or deposited in a foreign currency account with an authorized financial institution in Thailand within 360 days.
- Repatriation of investment funds and repayment of overseas loans can be remitted freely upon submission of supporting documents to an authorized financial institution. In case of repatriation of investment funds, evidence of sale or transfer of such investment shall be submitted. In case of loan repayment, evidence of inward remittance of such loan and loan agreement shall be submitted.
- Investing in or lending to affiliated business entities abroad or investing in or lending to an overseas business entity, which hold shares or have an ownership not less than 10% of resident entity as necessary. Investing in or lending to non-affiliated business entities abroad is allowed in an aggregate amount not exceeding USD 50 million per year.
- Individuals who are allowed to purchase shares of related companies abroad under employee benefit plans are allowed up to USD 1 million per person per year. Individual or corporate investors can invest in securities abroad, other than those under employee benefit plans, through private funds, or securities companies subject to the Securities and Exchange Commission's guidelines and approval from the Bank of Thailand.
- Purchase of immovable properties abroad is allowed up to USD 50 million per person per year.
- Any person purchasing, selling, depositing, or withdrawing foreign currencies with an authorized financial institution shall be required to report such foreign exchange transactions to the authorized financial institution in the form as prescribed by the Competent Officer.

## TAXATION

### Corporate Income Tax

A. Tax on net corporate profits	Rates
<b>(1) Ordinary company</b>	<b>Accounting Year 2023</b>
	20%
(2) Small company (paid up capital <5m Thai Baht and income not exceeding 30m Thai Baht in an accounting year)	Accounting Year 2023
30m Thai Baht in an accounting year)	
- Net profit not over 300,000 Thai Baht	Exempt
- Net profit over 300,000 Thai Baht but not exceeding 3,000,000 Thai Baht	15%
- Net profit over 3,000,000 Thai Baht	20%
(3) Company listed in Stock Exchange of Thailand (SET) and Market for Alternative Investment (MAI)	<b>Accounting Year 2023</b>
	20%
(4) Regional Operating Headquarters (ROH)	10%
(5) Bank deriving profits from International Banking Facilities (IBF)	



## B. Tax on gross receipts

### (1) Association and foundation

- For income under Section 40 (8)

2%

- Otherwise

10%

### (2) Foreign company engaging in international transportation

3%

## C. Remittance tax

Foreign company disposing profits out of Thailand

10%

## D. Foreign company not carrying on business in Thailand but receiving income from Thailand

### (1) Dividends

10%

### (2) Interests

15%

### (3) Professional fees

15%

### (4) Rents from hiring property

15%

### (5) Royalties from goodwill, copyright and other rights

15%

### (6) Service fees

15%

## Personal Income Tax

Level of taxable income (Thai Baht)	Rates
1- 150,000	exempt
150,001 - 300,000	5%
300,001 - 500,000	10%
500,001 - 750,000	15%
750,001 - 1,000,000	20%
1,000,001 - 2,000,000	25%
2,000,001 - 5,000,000	30%
Over 5,000,000	35%

## Value Added Tax

Level of taxable income	Rate
Over 1,800,000 Thai Baht	7%

## Double Taxation Agreements exist with the following countries:

Armenia, Australia, Austria, Bahrain, Bangladesh, Belarus, Belgium, Bulgaria, Cambodia, Canada, Chile, China, Chinese Taipei, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hong Kong, Hungary, India, Indonesia, Ireland, Israel, Italy, Japan, Korea, Kuwait, Laos, Luxembourg, Malaysia, Mauritius, Myanmar, Nepal, the Netherlands, New Zealand, Norway, Oman, Pakistan, the Philippines, Poland, Romania, Russia, Seychelles, Singapore, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Tajikistan, Turkey, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States, Uzbekistan, and Vietnam





## Other Taxes

- (1) Import duties are ad valorem duty and fixed at various rates.
- (2) There is excise tax on petroleum products, non-alcoholic beverages, electrical appliances, crystal products, motor vehicles, motorcycles, entertainment, telephone service, fermented liquors, distilled spirits, special spirits, absolute alcohol, tobacco, playing cards, and perfume.
- (3) Stamp duty on certain documents and instruments, e.g., rental agreement, share transfer instrument, proxy, power of attorney, insurance policy, arbitration award, etc.

## TAX AND INVESTMENT INCENTIVES

- Tax and investment incentives in Thailand are governed by the Investment Promotion Act B.E. 2520 (1977) (as amended), which is implemented and supervised by the Board of Investment.
- The Board of Investment stipulates the following criteria for project approval:
  1. Development of competitiveness in the agricultural, industrial and services sectors
    - (1) The value added of the project must not be less than 20% of revenues, except for projects in agriculture and agricultural products, electronic products and parts, and coil centers, all of which must have value added of at least 10% of revenues.
    - (2) Modern production processes must be used.
    - (3) New machinery must be used.
    - (4) Imported used machinery may be allowed under specific criteria of the Board of Investment.
    - (5) Projects that have investment capital of 10 million Thai Baht or more (excluding cost of land and working capital) must obtain ISO 9000 or ISO 14000 certification or similar international standard certification within 2 years from the full operation startup date, otherwise corporate income tax exemption shall be reduced by one year.
    - (6) For a concession project and the privatization of a state enterprise project, the Board of Investment's criteria are as follows:
      - a) An investment project of state enterprise according to the 1999 State Enterprise Corporatization Act shall not be entitled to investment promotion.
      - b) For Build-Transfer-Operate or Build-Operate-Transfer projects, the state agency that owns the project must submit its project to the Board of Investment for consideration prior to any invitation to bid, and bidders shall be informed of any promotional privilege entitled to them, prior to the bidding. In principle, the Board of Investment will not promote a project where the private sector pays the state for a concession, unless such payment is deemed reasonable in comparison with what the state has invested in the project.
      - c) For Build-Own-Operate projects, including those leased to or managed by the private sector, which in return pays rent to the state, the Board of Investment shall use normal criteria for investment promotion.
      - d) For the privatization of state enterprises according to the 1999 State Enterprise Corporatization Act, in case of expansion after the privatization, only the expansion investment shall be eligible for promotion. Incentives shall be granted according to normal criteria for investment promotion.
  2. Environmental protection
    - (1) Adequate and efficient guidelines and measures to protect environmental quality and to reduce environmental impact must be installed. The Board of Investment will give special consideration to the location and pollution treatment of a project with potential environmental impact.
    - (2) Projects or activities with type and size that are required to submit environmental impact



assessment reports must comply with the related environmental laws and regulations or Cabinet resolutions.

- (3) Projects located in Rayong must comply with the Office of the Board of Investment Announcement No. Por 1/2554 dated May 2, 2011, on Industrial Promotion Policy in Rayong Area.

3. Minimum capital investment and project feasibility

- (1) The minimum capital investment requirement of each project is 1 million Thai Baht (excluding cost of land and working capital), unless specified otherwise on the list of activities eligible for investment promotion that is attached to this announcement. As for knowledge-based services, the minimum capital investment requirement is based on the minimum annual salaries expense specified in the list of activities eligible for investment promotion.

- (2) For newly established projects, the debt-to-equity ratio must not exceed 3 to 1. Expansion projects shall be considered on a case-by-case basis.

- (3) For projects with investment value of over 750 million Thai Baht, (excluding cost of land and working capital), the project's feasibility study must be submitted with details as specified by the Board of Investment.

- Criteria for Shareholding by Foreign Investors

1. For projects in activities under List One annexed to the Foreign Business Act, B.E. 2542, Thai nationals must hold shares totaling not less than 51% of the registered capital.
2. For projects in activities under List Two and List Three annexed to the Foreign Business Act, B.E. 2542, there are no equity restrictions for foreign investors, except as otherwise specified in other laws.
3. The Board of Investment may set foreign shareholding limits for certain activities eligible for investment promotion, as deemed appropriate.

- Investment Zones

1. 20 provinces with low per capita income: Kalasin, Chaiyaphum, Nakhon Phanom, Nan, Bueng Kan, Buri Ram, Phrae, Maha Sarakham, Mukdahan, Mae Hong Son, Yasothon, Roi Et, Si Sa Ket, Sakhon Nakhon, Sa Kaew, Sukhothai, Surin, Nong Bua Lamphu, Ubon Ratchatani and Amnatcharoen.

2. Special economic development zones.

3. Science and Technology Parks that are promoted or approved by the Board of Investment.

- List of Activities Eligible for Promotion are: Section 1: Agriculture and Agricultural Products Section 2: Mineral, Ceramics and Basic Metals Section 3: Light Industry

Section 4: Metal Products, Machinery and Transport Equipment

Section 5: Electronic Industry and Electrical Appliances Industry Section 6: Chemicals, Paper and Plastics

Section 7: Services and Public Utilities

Section 8: Technology and Innovation Development

- Activities classified as activities of special importance and benefits are:

- Category 1.3 Economic forest plantations (except for Eucalyptus)
- Category 3.9 Creative product design and development centers
- Category 4.11.1 Manufacture of air frames, air frame parts and major aircraft appliances, e.g., engines, aircraft parts, propellers and avionics
- Category 5.6 Electronics design
- Category 5.7 Software
- Category 7.1.1.1 Production of electricity or steam power from waste or refuse-derived fuel
- Category 7.8 Energy Service Company (ESCO)
- Category 7.9.2 Industrial zones or technology industrial zones
- Category 7.10 Cloud services
- Category 7.11 Research and development
- Category 7.12 Biotechnology



- Category 7.13 Engineering design
- Category 7.14 Scientific laboratories
- Category 7.15 Calibration services
- Category 7.19 Vocational training centers

## EMPLOYMENT LAW

- Principally, labor and employment issues are scattered in a series of laws, government announcements and regulations of the Ministry of Labor, which are most commonly referred to as follows.

1. Civil and Commercial Code (“CCC”)

The provisions regulating the rights and duties of employers and employees are set out under Title 6 of Book 3 of the CCC, Sections 575 to 586 (“Hire of Services”).

2. Labor Protection Act B.E. 2541 (1998)

The Labor Protection Act is principally describing the minimum labor and employment requirements and standards such as duties of the employer in using labor, arranging compensation, the use of labor consisting of women and minors, providing welfare and safety measures at work as well as governing severance pay for termination of employment.

3. Labor Relations Act B.E. 2518 (1975):

The Labor Relations Act deals with the procedures of negotiations and bargaining as regards labor issues between employers and employees, i.e., the settlement of labor disputes, labor strikes and lockout, the rights of the employees to set up associations and labor unions as well as the rights and duties of these organizations. The Act also covers the establishment of employee committees as a vehicle for holding consultations between the employees and their employers.

4. Act on the Establishment of Labor Courts and Labor Court Procedure B.E. 2522 (1979)

Act introduces the establishment of the Labor Court and labor litigation. The Labor Court is competent for cases dealing with disputes between the employer and the employee arising from the employment contracts or that are concerned with the rights of the employers and employees under the laws of labor protection and labor regulations.

5. The Social Security Act B.E. 2533 (1990)

The Act regulates the establishment of a Social Security Office and Social Security Fund and requires the employers, the employees and the Government to pay monthly contributions in order to help compensate employees in cases of injuries, illness, disability, death, maternity, aging and unemployment. The benefits also include spouse and children of the employee.

6. The Workmen’s Compensation Act B.E. 2537 (1994) The law deals with the employer’s liabilities in case of employee’s death or loss as a consequence of working for the employer. Therefore, the act establishes a compensation fund whereas collection is to be made by employers. In addition, the Act governs conditions and procedures for making claims for employer’s compensation.

- Work Rules and Employment Conditions

Every employer with 10 or more employees must establish written rules and regulations governing working conditions within 15 days from the date the work force reaches 10 in number. These work rules must be in Thai language and be displayed at the workplace. An electronic version of the work rules may also be delivered to the employees. A copy of the work rules must be kept at the employer’s premises at all times. In the case that the work rules provide less rights and interests to employees than those specified by laws (please see below) these rules are void. Thus, clauses waiving employee’s rights are not enforceable. Though work rules are not recited or incorporated in the employment agreement, they have binding effects on the employer and all its employees.

The minimum requirements to be covered by the work rules are as follows:



- (a) Working days, Normal Working Hours and Rest period;
- (b) Holidays and Rules Governing Holidays;
- (c) Rules on Overtime and Work during Holidays;
- (d) Dates and Place of Payment of Wages, Overtime Pay and Pay for Work on Holidays;
- (e) Leave and Rules for Taking Leave;
- (f) Disciplinary Measures and Punishment;
- (g) Submission of Complaints; and
- (h) Termination of Employment, Severance Pay and Special Severance Pay.

Employers are obliged to maintain a register of employees in Thai language containing full personal details of each employee (i.e., name, sex, nationality, date of birth, address etc.) and particulars of each employee's remuneration (wages and other benefits). Documents on wage calculation and payment must show working days and working hours, wage rates, overtime pay, and holiday pay.

- Legal Entitlements under the Labor Protection Act B.E. 2541 (1998)

Issue	Description
<b>1. Working Days</b>	Not more than six (6) days a week.
<b>2. Working Hours</b>	<ul style="list-style-type: none"> <li>• Not more than eight (8) hours a day. Nevertheless, where the work is hazardous to the health and safety of the employee, working hours shall not be more than seven (7) hours a day.</li> <li>• Not more than forty-eight (48) hours a week. Nevertheless, where the work is hazardous to the health and safety of the employee, working hours shall not be more than forty-two (42) hours a week.</li> <li>• There must be one (1) hour rest period each day after the end of the fifth (5th) hour of work.</li> <li>• A female employee shall not work as the followings: (1) mining, construction work performed underground, underwater, in a cave, in a tunnel or in a mountain shaft except where the nature of work is not hazardous to the health and safety of the female employee, (2) the work performed on scaffolding ten meters or higher above the ground, (3) producing or transporting explosive or inflammable material, and (4) other works designated by Ministerial Regulations. For works that may be dangerous to health and safety of the female employee which require working time between 24.00 hours to 6.00 hours, the Director-General may modify, change, or reduce the working time as appropriate for safety and health of the female employee.</li> <li>• A pregnant employee is not allowed to work between 22.00 hours to 6.00 hours, to work on a holiday, or to perform any work as follows: the work involving vibration machinery, driving, or going on a vehicle, lifting, carrying, pulling or pushing loads in excess of fifteen (15) kilograms, the work in a boat, or other works designated by Ministerial Regulations. The pregnant employee is also not allowed to work overtime, unless where the pregnant employee works in an executive position, academic work, clerical work, or work relating to finance or accounting, the employer may require the employee to work overtime on working days insofar as the health of the pregnant employee is not affected, provided that a prior consent of the pregnant employee is given from time to time.</li> <li>• The employment of a child who is less than fifteen (15) years of age is not allowed. The employment of a young worker who is under eighteen (18) years of age shall comply with further requirements, i.e., restricted working hours, overtime work, holiday work, restricted category of work, restricted location of work. There must be one (1) hour rest period each day after the end of the fourth (4th) hour of work.</li> <li>• With the employee's consent, a rest period lasting less than one hour is possible, but the total rest period for the day must not be less than one (1) hour.</li> <li>• When overtime work lasts for not less than two (2) hours beyond normal working hours, not less than twenty (20) minutes of rest period must be allowed before the employee starts to work overtime.</li> </ul>





<b>3. Wages</b>	<ul style="list-style-type: none"> <li>For Work during Normal Working Day: Basic wages must not be less than “Minimum Wages” prescribed for each province from time to time by the Ministry of Labor and Social Welfare. Currently, “Minimum Wages” countrywide must not be less than Thai Baht 328.00 per day. For Bangkok and its perimeter, the Minimum Wages must not be less than Thai Baht 353.00 per day.</li> <li>For Work during Holiday: For an employee who is entitled to receive wages for work on holidays: an additional amount of not less than one time of the amount of the hourly wage rate earned per hour on a normal working day, for the hours working during holiday. For an employee who is not entitled to receive wages for work on holidays: an amount of not less than two times of the hourly wage rate earned per hour on a normal working day, for the hours working during holiday.</li> </ul>
<b>4. Overtime</b>	<ul style="list-style-type: none"> <li>Maximum overtime is thirty-six (36) hours per week.</li> <li>The overtime work which may be hazardous to the health and safety of the employee is not allowed.</li> </ul>
<b>5. Overtime Pay</b>	<ul style="list-style-type: none"> <li>For Overtime Work during Normal Working Day: Not less than one and a half (1.5) times the rate of the hourly wages earned in a normal working day.</li> <li>For Overtime Work during Holiday: Not less than three (3) times the rate of the hourly wages earned in a normal working day.</li> </ul>
<b>6. Holidays</b>	<ul style="list-style-type: none"> <li>Weekly Holiday: There must be at least one (1) day weekly holiday, not necessarily Sunday, and the interval between each weekly holiday must not be longer than six (6) days.</li> <li>Annual Traditional Holidays: Minimum of 13 days of annual public holidays to be announced annually by the employer. In case such traditional holiday falls on a weekly holiday of the employee, a day off to substitute for such traditional holiday on the following working day shall be granted.</li> <li>Annual Vacation Holidays: Minimum of 6 days of vacation holidays for an employee who has worked continuously for one (1) full year.</li> <li>For an employee who has worked less than one (1) year, employer may grant annual vacation holidays on pro- rata basis.</li> <li>If agreed, annual vacation holidays not taken may be cumulative and postponed to the following year.</li> </ul>
<b>7. Leave</b>	<ul style="list-style-type: none"> <li>Sick Leave: As long as the employee is sick, but with pay not exceeding thirty (30) days. A day on which the employee is unable to work due to an injury or an illness caused by work under employment or on maternity leave shall not be regarded as sick leave.</li> <li>Maternity Leave: Ninety-eight (98) days, but with only forty-five (45) days with pay.</li> <li>Personal Leave: Minimum of 3 days of personal leave, with pay, for an employee. Generally, most companies allow 5-10 business days for personal leave per annum. This shall be prescribed in the company’s work rules.</li> <li>Leave for Sterilization: Pursuant to the period prescribed by the doctor, with pay.</li> <li>Military Service Leave: Pursuant to the period notified for such in accordance with laws governing military service with pay no more than sixty (60) day a year.</li> <li>Leave for Training and Professional Improvement: For employees older than eighteen (18) years of age, not more than thirty (30) days or three (3) times per annum, by giving at least 7-day advance notice, with or without pay depending on provisions in the company’s work rules. For employee younger than eighteen (18) years of age, not more than thirty (30) days per annum with pay.</li> </ul>

## INTELLECTUAL PROPERTY

- Thailand recognizes, accepts and protects the following as intellectual properties.
  - Trademark or service mark, which according to the Trademark Act B.E. 2534 (1991) as amended by the Trademark Act (No.3) B.E.2559 (2016), means a mark used or proposed to be used on or in connection with goods or services to distinguish the goods or services bearing the trademark or service mark of the proprietor of such mark from goods or services under another person’s trademark or service mark. Certification mark means a mark used or proposed to be used by the owner on or in connection with goods or service of another person to certify the origin, composition, method of production or quality. Collection mark means a trademark or service mark used or proposed to be used by companies or enterprises of the same group, association, or organization. Under the same Act, “mark” means a photograph, drawing, invented picture, brand, name, word, phrase, letter, numeral, signature, group of colors, shape or three-dimensional object, sound, or any combination of these items. Trademarks



are legally protected by the registration system. The term of trademark protection is 10 years from the filing date which is renewable every 10 years. Thailand is now a member of the Madrid Protocol. As such, international trademark applications can be filed through the “Madrid system”, allowing trademark owners in Thailand to file a single international application designating other members under the Protocol, as well as enabling other member states’ trademark owners to designate Thailand for trademark protection.

- (b) Copyright, which pursuant to the Copyright Act B.E. 2537 (1994) as amended by the Copyright Act(No.5) B.E. 2565 (2022), means exclusive right to do anything under this Act in connection with the work created by the author. Copyright protection is automatic, and no registration is required. However, recordation of copyright at the Department of Intellectual Property will be helpful as evidence of ownership in any litigation that may arise. According to the Copyright Act, “work” comprises of literary work, computer program, dramatic work, artistic work, musical work, audiovisual material, cinematograph film and sound recording. Under the law, “author” refers to the person creating or causing the creation of any work qualified to gain copyright under the Act. However, like any other copyright law in other countries, Thailand also grants neighboring right to the performer which refers to the actor/actress, musician, singer, dancer, and anyone acting, singing, speaking, playing according to his/her role or in any other description. Copyright will exist for the lifetime of the author with an additional 50-year period after the author’s death. In case of juristic person, copyright will exist for 50 years after the work is first published.
- (c) Patent, which pursuant to the Patent Act B.E. 2522 (1979) amended in B.E. 2542 (1999) means letter issued to protect the invention or product design as determined in this Act. Patents are legally protected by the registration system. Terms of patent protection are (i) 20 years from the filing date for patent invention, (ii) 10 years from the filing date for product design, and (iii) 6 years from the application date for petty patent which can be renewable twice for 2 years of each.
- (d) Trade Name means name used in trading or doing business.
- (e) Trade Secrets, which according to the Trade Secrets Act B.E. 2545 (2002) as amended by the Trade Secrets Act B.E. 2558 (2015), means trade information not generally known to the public or not accessible by person(s) who basically deal with such information; however, such information shall have trade benefit due to its confidence and it shall be kept confidential by proper measurement employed by the controller of such trade secrets.
- (f) Integrated Circuit, which according to the Protection of Layout-Design of Integrated Circuits Act B.E. 2543 (2000), means arrangement of electrical circuit in semi-conductor or super conductor material such as an electrical part called IC.

## PERSONAL DATA PROTECTION LAW

### 1. Background and Scope

- The Personal Data Protection Act, B.E. 2562 (2019) (“PDPA”) emerged as Thailand’s first consolidated legal framework dedicated to safeguarding Personal Data. The PDPA was enacted in the Government Gazette on May 27th, 2019, and became fully effective from June 1st, 2022. Enforced by the Personal Data Protection Committee (“PDPC”), the PDPA represents a concerted effort to ensure individual privacy rights and foster secure data practices across the public and private sectors in Thailand.
- Under the PDPA, the term “Personal Data” is broadly defined to cover any information that can identify an individual. In a case of “Sensitive Data”, where Personal Data is related to race, ethnic origin, political opinions, cult, religious or philosophical beliefs, sexual behavior, criminal records, health data, disability, trade union information, genetic data, or biometric data of an individual, such data will be subject to more stringent requirements.
- The PDPA is applicable to the collection, use, and disclosure (“processing”) of Personal Data by a Data Controller or a Data Processor that is in Thailand, regardless of whether such collection, use, or disclosure takes place in Thailand or not. Further, the scope of applicability of the PDPA expands to the collection, use, and disclosure of



Personal Data of an individual who is not in Thailand, where such Data Controller or Data Processor carries out any of following activities:

1. Offering of goods and services to the data subjects who are in Thailand, irrespective of whether the payment is made by the data subject; or
2. Monitoring of data subject's behavior, where the behavior takes place in Thailand.

## 2. Main Concepts

- An individual or a juristic person having the authority to make decisions regarding the collection, use, or disclosure of the Personal Data («Data Controller») is generally prohibited from collecting, using, or disclosing Personal Data without consent given by the owner of the Personal Data («data subject») in advance or at the time of such activities. The Data Controller must make an explicit request for consent in a written statement, or via electronic means. However, the Data Controller may process Personal Data without the data subject's consent if the purpose of such falls under any of the followings: (1) to achieve purposes relating to preparation of the historical documents or the archives for public interest, or for purposes relating to research or statistics, (2) to prevent or suppress a danger to the data subject's life, body, or health (vital interest), (3) to perform in accordance with contracts to which the data subject is a party, or in order to take steps at the request of the data subject prior to entering into a contract, (4) to achieve the purpose relating to public interest; (5) to achieve the purpose relating to legitimate interests of the Data Controller, another person, or entity; and other legal obligations which the data subjects are subject to.
- Although the processing of Sensitive Data also requires the request for consent to be in an explicit manner, the consent given by the data subject has to be explicitly made as well. However, if any of the following legal bases apply, the Data Controller will be allowed to process Sensitive Data without having to obtain the consent from the data subject: (1) the prevention or suppression of a danger to life, body or health of the data subject, where he or she is incapable of giving consent by any reason (vital interest), (2) legitimate activities with appropriate safeguards by the foundations, associations or any other nonprofit bodies with political, religious, philosophical, or trade union purposes, (3) publicly disclosed information, (4) the establishment, compliance, exercise or defense of legal claims, (5) legal compliance to achieve the following purposes: vital interest, employment protection, scientific/historical/statistical research, and substantial public interest.
- In collecting the Personal Data, the Data Controller is obliged to prepare the Privacy Notice to inform the data subject, prior to or at the time of such collection, containing the following details: (1) the purpose of the collection, (2) the case where the data subject has to provide the Personal Data for contract or legal compliance as well as the possible effect where the data subject does not provide the Personal Data, (3) the Personal Data to be collected and the period of retention, (4) categories of persons or entities to whom the collected Personal Data may be disclosed, (5) contact information of the Data Controller, and (6) data subject's right.
- In the event that the Data Controller discloses any Personal Data to a third party who is entrusted to process the Personal Data («Data Processor»), the Data Controller is required to enter into a Data Processing Agreement («DPA») between the Data Controller and the Data Processor to govern any activities relating to the processing of Personal Data.
- Furthermore, the Data Controller and the Data Processor are required to provide appropriate security measures to prevent unauthorized or unlawful loss, access to, use, alteration, correction or disclosure of Personal Data and to notify the data subject of the breach that occurred and prepare and maintain records of Personal Data processing activities (except for small organizations).
- Another requirement under the PDPA is the designation of a Data Protection Officer («DPO») in order to ensure that the Data Controller complies with the PDPA. Every public authority who processes Personal Data will be subject to this requirement in all cases. Meanwhile, the private sector must comply with this requirement only when (1) the collection, use, or disclosure of Personal Data require a regular monitoring of the Personal Data or the system due to the large amount of Personal Data, or (2) the core of such activities is associated with the processing of Sensitive Data.



- Importantly, in the event of the cross-border transfer of Personal Data by the Data Controller, the recipient of such Personal Data is required to have an adequate data protection standard, and such must be carried out in accordance with the rules as prescribed by the PDPC, except for the following circumstances: (1) where it is for compliance with the law, (2) where the consent of the data subject has been obtained, (3) where it is necessary for the performance of a contract to which the data subject is a party, (4) where it is necessary for the performance of a contract between the Data Controller and other persons or juristic persons for the interests of the data subject, (5) where it is to prevent or suppress a danger to the life, body, or health of the data subject or other persons, when the data subject is incapable of giving the consent at such time, or (6) where it is necessary for carrying out the activities in relation to substantial public interest.
- Under the PDPA, data subjects are granted several rights over their own data, including the right to be informed, the right to withdraw consent, the right to access Personal Data and obtain a copy of the Personal Data, the rights to erase, rectify or correct the Personal Data, the right of data portability, the right to object to the processing, and the right to lodge complaint to the relevant authority. In this regard, the Data Controller must ensure its responsiveness to the data subject's request.

### 3. Sanctions

Any violation of the PDPA may result in civil liability, criminal liability, and administrative fines. Under the PDPA, punitive damages may be rendered up to twice the actual damages, including all necessary expenses incurred by the data subject in preventing or suppressing damages. The criminal penalty is an imprisonment of up to 1 year and/or a fine not exceeding 1 million Thai Baht and the maximum administrative fines of up to 5 million Thai Baht.

## DISPUTE RESOLUTION

### System of Court of Justice

- (a) The Thai system of justice is based on civil law. All administration of justice must conform to written legislation. Thailand has no juries. Judges preside over the courts. Different numbers of judges and levels of specialized judicial expertise are required, depending on the level and type of court.
- (b) The Court system in Thailand is divided into three levels: The Courts of First Instance, which are the first level lower courts, where trials take place. The Courts of Appeal, where points of fact or on a point of law, could be appealed. The Supreme Court hears questions of law and some cases on questions of fact from the Courts of Appeal as well as from specialized courts. However, it is subject to the court's consideration whether writ of Certiorari will be accepted even though requirement of such writ of certiorari is fulfilled.
- (c) Additionally, there are other specialized courts, which hear specific areas of laws in dispute. They are Juvenile and Family Court, Bankruptcy Court, Central Intellectual Property and International Trade Court, Central Labor Court and Tax and Duty Court. Specifically, the system of mentioned courts is divided into three (3) levels: (1) the Courts of First Instance, which are the first level lower courts, where trials take place; (2) the Specialized Court of Appeal hears questions of law and fact from the Courts of First Instance, except for the Central Labor Court, which will only hear questions of law; (3) The Supreme Court procedures will be as stipulated in Clause (b) mentioned above.
- (d) In addition to the above, The Administrative Court has the authority and duty to perform a judicial review of the legality of administrative acts, as well as trial and adjudication of cases involving disputes between an administrative agency or state official and a private individual, or between an administrative agency and a state official. The Administrative Court is divided into 2 levels, i.e. The Administrative Court of First Instance and The Supreme Administrative Court. There is also The Constitutional Court with the authority and duty to adjudicate and rule on constitutional cases. The Constitutional Court is the single-level court.





### Alternative Dispute Resolution

- (a) Thailand's arbitration law is the Arbitration Act B.E. 2545 (2002), which is based substantially on the UNCITRAL Model Law. As recognized globally, it is an alternative to court trials.
- (b) Under the law, parties may agree to submit civil disputes to arbitration, provided that there is an agreement or written evidence between or among the parties to do so. There are 3 arbitration institutes in Thailand. They are (1) Thai Commercial Arbitration Committee of the Thai Chamber of Commerce (TCAC), (2) Thai Arbitration Institute, Office of the Judiciary (TAI), and Thailand Arbitration Center of the Ministry of Justice (THAC).
- (c) If the party declines to comply with the arbitral award, a court order must be sought to enforce such award. There is no difference between arbitral awards rendered in Thailand and those in foreign countries so long as the foreign arbitral award is governed by a treaty, convention and/or agreement which Thailand is a party to. To-date, Thailand is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Award (New York Convention 1958).

## IMMIGRATION PROCEDURES

### Passport / Visa Requirements

- Generally, a foreign citizen who wishes to enter the Kingdom of Thailand is required to obtain a visa from a Royal Thai Embassy or a Royal Thai Consulate-General. However, nationals of certain countries do not require a visa if they meet visa exemption requirements as follows:
  - (1) Nationals of countries which are exempted from visa requirements when entering Thailand for tourism purposes. Such nationals will be permitted to stay in the Kingdom for a period of 15, 30 or 90 days, as the case may be. For more information, please see <http://www.mfa.go.th> or <http://www.immigration.go.th>.
  - (2) Nationals of countries which hold bilateral agreements with Thailand on the exemption of visa requirements. Such nationals will be permitted to stay in the Kingdom for a period of 14, 30 or 90 days. For more information, please see <http://www.mfa.go.th> or <http://www.immigration.go.th> for a list of countries, which have agreements with Thailand on exemption of visa requirements.
- Nationals of certain countries may apply for visa upon arrival in Thailand. Travelers with this type of visa are permitted to enter and stay in Thailand for a period not exceeding 15 days. For more information, please see <http://www.mfa.go.th> or <http://www.immigration.go.th> for visa on Arrival.
- To apply for a visa, a foreigner must possess a valid passport or travel document that is recognized by the Royal Thai Government and comply with the conditions set forth in the Immigration Act of Thailand B.E.2522 (1979) and its relevant regulations. In addition, the visa applicant must be outside of Thailand at the time of application. The applicant will be issued with a type of visa in accordance with his or her purpose of visit. For more information on types of visas and general requirements for each type of visa, please see <http://www.mfa.go.th> and/or <http://www.immigration.go.th> for types of visas and issuance of visa.
- Please note that the period of visa validity is different from the period of stay. Visa validity is the period during which a visa can be used to enter Thailand. In general, the validity of a visa is 3 months, but in some cases, visas may be issued to be valid for 6 months or 1 year. The validity of a visa is granted with discretion by the Royal Thai Embassy or Royal Thai Consulate-General and is displayed on the visa stamp.
- The period of stay is granted by an immigration officer upon arrival at the port of entry and in accordance with the type of visa. For example, the period of stay for a transit visa is not exceeding 30 days, for a tourist visa is not exceeding 60 days and for a non-immigrant visa is not exceeding 90 days from the arrival date. The period of stay granted by the immigration officer is displayed on the arrival stamp. Travelers who wish to stay longer than such period may apply for extension of stay at offices of the Immigration Bureau. For information on application for extension of stay, please see the Immigration Bureau website at <http://www.immigration.go.th>.
- Royal Thai Embassies and Royal Thai Consulates-General have the authority to issue visas to foreigners for travel to Thailand. The authority to permit entry and stay in Thailand, however, is with the immigration officers.



## Work Permit/ Temporary Stay Permit / Re-Entry Permit

- Foreigners entering Thailand are not permitted to work, regardless of their type of visa, unless they are granted a Work Permit. Those who intend to work in Thailand must hold the correct type of visa to be eligible to apply for a Work Permit, which generally is a “Non-Immigrant B” visa.
- With entering Thailand are not permitted to work, regardless of their type of visa, unless they are granted a Work Permit. Those who intend to work in Thailand must hold the correct type of visa to be eligible to apply for a Work Permit, which generally is a “Non-Immigrant B” visa.
- Application for Temporary Stay Permit with the Immigration Bureau is conditional that an application for a Work Permit is first applied for with the Alien Occupational Control Division. Therefore, it is a “must” that an application for a Work Permit is filed first and followed by an application for Temporary Stay permit. Please note that the Immigration Bureau shall not give extension of short-term stay permit simply to allow time for a foreigner to apply for a Work Permit.
- Temporary Stay Permit is granted 1 year at a time and renewal is required annually (unless under special rules, e.g., those of the Board of Investment). Work permit is granted and renewable also on an annual basis, so long as the Temporary Stay Permit remains valid. Therefore, it is important to note and recognize that once the Work Permit and Temporary Stay Permit are granted, they are inseparable.
- Despite the grant and validity of the Work Permit and Temporary Stay Permit, foreigners are also required to apply for and obtain a “Re-Entry Permit” to travel in and out of Thailand. Leaving Thailand without a Re-Entry Permit shall affect automatic cancellation of the granted and valid Work Permit and Temporary Stay Permit.

## Permanent Residency

- Foreigners may apply for permanent residence in Thailand if he/she has held Temporary Stay Permit for more than 3 consecutive years.
- The annual quota for granting permanent residency in Thailand is a maximum of 100 persons per nationality. The Interior Minister is responsible for issuing the announcement each year that the quota is open for submission of applications, usually from October to the end of December.
- Immigration Commission has the power to define all regulations concerning permanent residency. The Immigration Bureau is the agency that handles all procedures concerning permanent residency applications. For information on application for permanent residency, please see the Immigration Bureau website at <http://www.immigration.go.th>.

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