



# DOING BUSINESS IN ASIA PACIFIC 2020

<b>OLN</b>	OLDHAM, LI & NIE
PRACTICAL LEGAL SOLUTIONS - ON TIME - NO EXCUSES	

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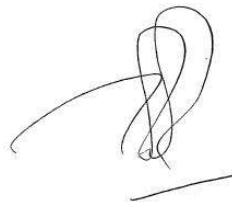
Dear Friends and Colleagues,

As the founding partner of Oldham, Li & Nie Solicitors, I would like to take this opportunity to introduce you to the Doing Business in Asia Pacific Guide, written and produced by Globalaw member firms in the Asia Pacific region. This guide is an effective tool and resource, providing valuable and critical information on legal requirements to operate in respective jurisdictions including our jurisdiction of Hong Kong, one of the freest economies in the world.

Globalaw is an unprecedented international network of over 80 law firms located in over 70 different countries worldwide. It is the go-to network for businesses seeking to do business globally. OLN has been a proud and founder member firm of Globalaw, since its creation in 1994. This enables us to have the necessary international platform to care for all of our clients' cross-border business. OLN ensures that its clients are provided with quick and reliable advice on international legal matters and through its membership and partnership with Globalaw, OLN is able to increase the knowledge our clients need to be successful in the ever-growing global business marketplace. This is especially true in Hong Kong, a free-market economy, highly dependent on international trade and finance.

I hope you will find this guide to be practical, knowledgeable and a key resource in your box of tools to develop your business. On behalf of OLN, I look forward to assisting you with your business needs and welcome any questions you may have.

Best regards,



Gordon D. Oldham

**Senior Partner**  
**Oldham, Li & Nie Solicitors**



## AUSTRALIA

- Geographic location: Oceania, continent between the Indian Ocean and the South Pacific Ocean.
- Commonwealth of Australia – democratic, federal-state system recognising the British monarch as sovereign.
- Language: English.
- Currency: Australian Dollar (AUD).
- Race/religion: Multicultural and Multidenominational.
- Current business environment:
  - o Strong and growing economy
  - o Sophisticated capital markets
  - o Australian Stock Exchange
  - o Attractive environment for private equity
- Investment growth areas: property, resources and mining, technology, venture capital.

## 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.
- Different legal frameworks apply depending on the structure chosen, including the Corporations Act 2001 (Cth) (Corporations Act), contract law, industry specific legislation and the common law.
- Other possible options for doing business in Australia: agency arrangement, licence or distribution arrangements, franchise arrangement, contractual joint ventures.  
Key features of common structures:

Structure	Feature
Sole trader	Legal entity – individual simplest form of business structure Unlimited personal liability for obligations Income taxed at marginal rates No specific legislation applies to sole traders
Partnership (excluding tax law partnerships)	Legal entity – two or more individuals or companies. Not a separate legal entity from the partners themselves Relatively easy and inexpensive to establish and operate Limited to 20 partners (unless it is a professional partnership) Partners must carry on a business Subject to partnership agreements and the various State Partnership Acts, common law and contract law Assets held jointly Joint and several liability for obligations and debts In certain States, limited partnerships are able to be established

Joint Venture	<p>Legal entity – two or more individuals or companies</p> <p>Partners carry on business as a joint venture (have the same strategic goals but remain separate entities)</p> <p>May be incorporated or unincorporated</p> <p>Subject to common law and contract law and in the case of a incorporated partnership, the Corporations Act</p>
Australian company	<p>Separate legal entity</p> <p>Can hold assets and is liable for obligations</p> <p>Quick and simple procedure for incorporating</p> <p>Two main types - public company or a proprietary company</p> <p>Proprietary company is limited to 50 non-employee shareholders</p> <p>Each have requirements for having at least one Australian resident director. Public companies must also have an Australia resident secretary</p> <p>No residency restrictions for shareholders and no minimum capital requirements</p> <p>Tax rates which apply to companies vary depending on the activities of the entity (base rate entity, 27.5% company tax rate which is proposed to move to 25% as of 2021-22 and for all other entities, 30%)</p>

Trust	<p>Widely used for small businesses, particularly family businesses</p> <p>Trustee is liable for trust obligations and will generally have recourse against the trust's property</p> <p>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</p> <p>Trustees are generally not taxed on income earned by the trust and distributed to beneficiaries. If there are no 'presently entitled' beneficiaries, the trustee will be liable for the tax on income earned by the trust</p> <p>Trusts are governed by common law and various Trust Acts</p>
Managed Investment Schem	<p>Usually used as an investment vehicle in which members gain an interest by contributing money that is pooled for a common purpose</p> <p>Members do not have day-to-day control over the operation of the scheme</p> <p>May be registered or unregistered</p>
Foreign company	<p>A foreign company may carry on business in Australia as a branch</p> <p>The company must register as a foreign company with ASIC</p> <p>Must have a registered office and appoint a local agent to represent it</p> <p>Lodge financial statements and comply with notification obligations in accordance with the Corporations Act</p>

**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 (Cth) (FATA).
- 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:
  - o National security
  - o Competition
  - o Other Australian Government policies (including tax)
  - o Impact on the economy and the community
  - o Character of the investor
  - o Additional factors
- A foreign person includes 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 characterised as a 'significant action' and a 'notifiable action':

Action	Details
Significant Action	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.

Notifiable Action	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. 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 a Notifiable Action, and therefore be subject to both compulsory notification and certain orders by the Treasurer.
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- o 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\$266 million (in a sensitive sector)
    - A\$1,154 million (no-sensitive sector)
    - A\$1,154 million for Chile, New Zealand and the United States where the investor is acquiring a direct interest in an Australian agribusiness;
    - A\$58 million for Canada, China, Japan, Mexico, Singapore and South Korea (based on the value of the consideration for the acquisition and the total value of other interests held by the foreign person (together with any associates) in the entity).
    - All other investors
  - A\$266 million (all sectors)
  - A\$58 million (based on the value of the consideration for the acquisition and the total value of other interests held by the foreign person (together with any associates) in the entity).
- o Certain proposed investments in "prescribed sensitive sectors". These have different thresholds. For example, investments in the media sector have a threshold of 5% or more regardless of the value of the investment.
- o Direct investments by foreign governments and their related entities, regardless of the value of the investment.
- o 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%
  - Investors from Free Trade Agreement partner countries:

- Agricultural land (including an interest in an agricultural land corporation or trust):
  - > A\$1,154 million for Chile, New Zealand and the United States
  - > A\$15 million (cumulative) for Canada, China, Japan, Mexico, Singapore and South Korea
- Developed commercial land (including hotels, motels, hostels and guesthouses) valued at \$266 million
- Acquiring low threshold land (sensitive land – such as airports etc.) valued at \$58 million or greater
- Acquiring interests of 10% or more in listed Australian land corporations or trusts or acquiring interests of 5% or more in unlisted Australian land corporations or trusts value at \$266 million or greater
- 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 land, 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.
- o 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:
  - o Make an order prohibiting a proposed transaction; or
  - o Approve it with or without conditions; or
  - o 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. In respect of business and company acquisitions, the fee payable is: A\$2,000 where the consideration is A\$10 million or less; A\$25,700 where the consideration is above A\$10 million and not more than A\$1 billion and A\$103,400 where the consideration is in excess of A\$1 billion.
- 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).

### **Foreign Purchaser Duty Surcharge**

- All of the States (not the Territories) have introduced additional duty surcharges, and in 3 states and 1 territory, 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 applies for a failure to remit.
- The regime applies to contracts entered into after 1 July 2016.

### **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:
  - o 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.
  - o 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 are normally 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. By way of example, the application fee on the acquisition of a residential property valued at \$5,000,000 is A\$56,700.

### 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 developed commercial real estate valued at A\$266 million or more—
- If the real estate is “sensitive” (e.g. public infrastructure, or land leased to a government agency), then a \$58 million threshold applies.
- Privately owned agreement country investors (Canadian, Chilean, Chinese, Japanese, Mexican, New Zealand, Singaporean, South Korean and United States investors) only need to apply for developed commercial real estate valued at A\$1,154 million or more.
- 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. By way of example, the application fee on the acquisition of commercial property valued at A\$10,000,000 or less is A\$2,000.

### 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\$1,154 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. By way of example, the application fee on the acquisition of an agricultural property valued at \$3,000,000 is A\$25,700.

## 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 organisation 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 organisation is permanently established or resident in Australia). Designated services are itemised 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. Organisations 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:

- o Part A: The program must include a risk assessment of the organisation’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 organisation 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:
  - o 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;
  - o Cross-border movement reports; and
  - o AML/CTF compliance reports.

These reporting obligations include the following:

- Reporting entities must report to AUSTRAC:
  - o 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;
  - o a customer transaction involves physical currency of A\$10,000.00 or more; and
  - o 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 requires 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:
  - o any records the reporting entity has created relating to the provision of designated services;
  - o documents provided by a reporting entity’s customers relating to the provision of designated services; and
  - o 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
Individuals	Taxed under a progressive system with the highest marginal tax rate of 47% (including a 2% Medicare levy)
Trusts	Trustees generally taxed at rate of 47%
Companies	Generally taxed at corporate rate of 30% (but if a small business entity, a lower rate applies)
Non-residents	Where non-residents, taxed on Australian-sourced income (excluding dividends, royalties and interest, which are subject to withholding tax) Subject to CGT on capital gains from disposal of assets that are taxable Australian property (i.e. taxable Australian real property and indirect interests in Australian real property) CGT discounts do not apply

**Corporate Tax**

- Australian resident companies are taxed at the corporate tax rate of 30% (or 27.5% for small business 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.
- 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 capitalisation 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 onpayments of unfranked non-portfolio dividends (including nonshare 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'). The PRRT originally applied to petroleum projects in certain offshore areas. However, the scope of the PRRT was expanded from 1 July 2012 to extend to various onshore petroleum projects (including coal seam gas, tight gas and oil shale projects) and the North West Shelf project (but not to the Joint Petroleum Development Area in the Timor Sea).

### 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\$18,201 of taxable income (this is the "tax free threshold" for 2018/19).

- 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 dependants, do not have appropriate private patient hospital cover.
- Other specific purpose taxes are occasionally levied against individuals' taxable income.
- Non-resident individuals participating in the Seasonal Labour Mobility Program are subject to a 15% final withholding tax.

### 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:
  - o Taxable Australian real property
  - o Indirect Australian real property interests
  - o Business assets used in a permanent establishment of a foreign resident
  - o Options and rights over any of the preceding assets; and

- o 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:
- o Unfranked dividends – 30%
  - o Interest – 10%
  - o Royalties – 30%
- Other common types of payments subject to withholding tax:
    - o Managed investment trust income
    - o Film royalties
    - o Rentals
    - o Technical assistance fees.
  - A final withholding tax rate of 10% applies from 1 July 2012 to payments from managed investment trusts holding energyefficient buildings constructed to residents in specified foreign countries.

### Indirect Tax

- Australia has a goods and services tax (GST).
- GST applies to the supply of most things.
- 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:
  - o Land transfers
  - o Business transfers
  - o Transfers of equity interests in an entity that is a landow
- 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:
  - o Cigarettes
  - o Alcoholic beverages
  - o Petroleum products manufactured in Australia
- The rates of tax vary by type of product.
- Some products are free of excise.

### Double Taxation Treaties

- Where assessable income is liable to be taxed in both Australia and another country, relief may be available, e.g. under:
  - o The specific terms of a double tax agreement between Australia and that other country; or
  - o The foreign tax offset provisions contained in the Australian tax legislation.
- A new transfer pricing regime commenced for income years beginning on or after 29 June 2013.
- Other international tax developments since 1 July 2013 include:
  - o The government has announced that it will proceed with certain proposed changes to tax measures on non-portfolio dividends but will not proceed with a proposal to formalise the existing practice of exempting a foreign government's income from passive portfolio investments such as interest, dividends and managed funds distributions.
  - o The government will not proceed with proposals to reform the CFC and foreign source attribution rules.
  - o The government will proceed with certain proposals to tighten the Offshore Banking Unit regime.
  - o The government will proceed with the third element of the Investment Manager Regime.

- o The government will proceed with the proposal to lower the thin capitalization debt limits.
- o The government has confirmed that amendments to ensure that foreign pension funds can access the Managed Investment Trust withholding tax regime, applicable from 1 July 2008, will proceed as announced.

### 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-characterised 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.

### 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 antiavoidance 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.

## 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:
  - o Deductions for set up costs incurred 12 months either side

- o of the date on which the regional headquarters company first derives assessable income in Australia from the provision of regional headquarters support;
- o Deduction for certain relocation costs;
- o Limited payroll tax relief in some states; and
- o 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:
  - o An accelerated rate of deduction (generally 125%) is allowed for wages, salaries, other labour costs and expenditures incurred directly on R&D activities and for certain payments to approved outside bodies, subject to an A\$20,000 threshold;
  - o Expenditure on R&D plant incurred after 29 January 2001 is eligible for effective life depreciation at 125%;
  - o A 100% deduction can be claimed for expenditure incurred in acquiring rights to pre-existing "core" technology;
  - o An incremental concession (175% deduction) applies where companies increase their level of R&D expenditure;
  - o A refundable tax offset, equal to the value of the R&D deduction, is available for small companies;
  - o A 43.5% refundable tax offset for eligible entities with an aggregated group turnover less than A\$20m provided they are not controlled by income tax exempt entities; and
  - o A non-refundable 38.5% tax offset, may be available to other eligible entities, with the ability to carry forward any unused nonrefundable offsets to future income years.
- The government proposed to introduce a minimum exploration development incentive for small exploration companies, and amend the immediate deduction for mining exploration to exclude mining rights and information.

### 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 recognised 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 keeping 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.

## 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.

**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 \$145,400 as at 1 July 2018, 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), annualised 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:
  - o Trainees, apprentices and junior employees;
  - o Employees to whom training arrangements apply; and
  - o Employees with a disability.
- Award minimum wages include the rates of minimum wages and:
  - o Wage rates for junior employees, employees to whom special training arrangements apply and employees with a disability;
  - o Casual loadings; and
  - o Piece rates.

**Statutory Contributions**

- Taxation is compulsorily exacted by both the Federal Government and the Governments of the States. These include:
  - o Payroll tax (State based);
  - o PAYG deductions from employees' remuneration (Federal);
  - o 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);
  - o Fringe benefits tax (Federal);
  - o Termination payments (Federal);
  - o 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 organisations 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:
  - o trade in personal information;
  - o are related to a larger business;
  - o 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);
  - o 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 organisations must deal with personal information. Organisations 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 organisations 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 organisations 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 organisation's privacy policy.

Certain activities by organisations 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 organisations in the course of journalism; and
- the handling of personal information by contractors working for registered Australian political parties or political representatives.

Organisations may apply to the Office of the Australian Information Commissioner to be bound by a specific Privacy Code. If approved, the organisation 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 organisations may be subject to the GDPR requires where the organisation 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 centre 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 organisation 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 organisation 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 organisations that carry on business in Australia from supplying, acquiring or using address-harvesting software and harvested address lists.

**DATA PROTECTION**

**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 law suits against large (or insured) entities have increased in popularity in recent years, particularly following

a number of well publicised 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 bring 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

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.

### 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 specialised, non-ongoing work;
- participate in non-ongoing cultural or social activities at the invitation of an Australian organisation; or
- in limited circumstances, participate in an activity or work relating to Australia's interests.

Generally, the stay period allowed is up to three months but up to six months 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 traveller 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)

This visa allows skilled workers to come to Australia and work for an approved business for either two or four years. An Australian or non-Australian business can sponsor a person for this visa if the business cannot find an Australian citizen or permanent resident to do required skilled work. This visa allows the holder to bring their immediate family with them to Australia.

Obtaining this visa is a 3-step process as follows:

1. The business must become an approved sponsor;
2. The business must nominate the position to be filled; and
3. The applicant must apply for the visa.

A business can become an approved sponsor if it can show it has a good employment track record.

To apply the visa applicant must:

- have been nominated by an approved business;
- be nominated to work in an occupation on the relevant occupation list;
- meet the skill requirements for the nominated occupation;
- meet any registration and licensing obligations; and
- have the requisite level of English.

### Permanent Residency Visas

There are numerous Permanent Residency visas which can be granted for either:

- workers nominated by employers (Employer Nomination Scheme); or
- independent skilled workers who are able to obtain enough 'points'.

The Employer Nomination Scheme visa is a two-part process. Firstly, the worker must be nominated by an Australian employer and then a visa application is made. Employers can nominate workers who have either worked for the employer previously or new workers who have never worked for the employer previously.

Independent skilled workers will be eligible for a non-sponsored visa if they can score enough points in the categories of age, skill, work experience, English level, partner skills. This visa is a twopart process, being the lodgement of an expression of interest and then a visa application.

Permanent Residency visas allow the holder to bring their immediate family with them to Australia. [☞](#)



## CHINA

- 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.

### 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 "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 Industry and Commerce. Special industries' (e.g. advertising) initial approval shall also be overseen by the State Administration for Industry and Commerce.
- 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 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.

## 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 are under the 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.
- Local governments in certain districts may still provide FIEs with local tax preferential treatment.

## 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.

## INTEREST 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 labour 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 programmes 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 – has come 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.
- 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 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, using 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.

### *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.

### *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:
  - o Individuals who make a large direct investment in China for

three consecutive years.

- o 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.
- o 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.
- o Individuals who are the spouse or unmarried child under 18 years old of a person under item(1), (2) or (3) above;
- o 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;
- o Individuals who are unmarried persons under 18 years old dependent to their parent; or
- o 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 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.
- 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 prioritise the development of three sectors - tourism, modern services and hi-tech industries. [C](#)



## GUAM

- Guam is a territory of the US and is subject to US law and local law enacted by Guam's legislature.
- Guam is strategically located in the Western Pacific within a three to five-hour flight from most commercial centres in East Asia, including Tokyo, Manila, Hong Kong and Singapore. Guam has an area of 541.3km<sup>2</sup>.
- 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: 168,000, 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: US 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 exist, however, these laws are widely regarded as unconstitutional

and unenforceable. Nevertheless, some foreign businesses choose to form local entities with which to acquire real property on Guam in order to further reduce any risk of divestiture.

#### *Approvals and Licensing*

- Appropriate approvals and licenses are required for the operation of any business activity. These may be obtained from the Department of Revenue and Taxation or, in the case of professional service firms, from the appropriate self-governing body. For example, 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 fee payable vary depending on the certificate or license sought.

### EXCHANGE CONTROL

- None

### TAXATION

- Gross Receipts Tax (aka Business Privilege Tax)
  - o Businesses – 5% on monthly gross income due by the 20th day of the following month income received or accrued



- o Commercial banks and lending institutions – 4% on annual net income due by the 90th day following tax year
- Use Tax – 4% assessed on personal property imported into Guam.
  - o not applicable to items imported for resale, to used goods, to property with a value of \$1,000 or less to aircraft parts and materials
- Hotel Occupancy Tax – 11% of daily room rate
- Alcoholic Beverage Tax – tax on all imported alcoholic beverages (locally manufactured alcoholic beverages are exempted)
  - o \$10 per wine gallon on distilled beverages
  - o \$2.75 per wine gallon on vinous beverages
  - o \$0.04 per each 12 fl. ounce on malted beverage
- Tobacco Tax – tax on all imported tobacco products of \$0.35 per each 100 cigarettes
  - o 10% of landed cost of cigars
  - o \$0.35 per pound for all others
- Real Property Tax
  - o Upon the sale of land and/or buildings – 35% of the full cash value.
  - o On the assessed value – .005% for land and .01% for building plus an additional .01% if the building has an assessed value
  - o Is \$1,000,000 or more.
- Amusement Tax - \$50 to \$250 on various types of coin-operated machines.
- Recreational Facilities Tax - \$5 to \$100 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
  - o \$0.10/gallon on diesel
  - o \$0.04/gallon on aviation fuel
  - o \$0.11/gallon on all other fuel
- Personal Income Tax
  - o Guam individual tax rates are the same as those imposed under the US Internal Revenue Code.
  - o Personal income taxes are imposed progressively based upon income with a marginal tax rate ranging from 10% to 35%.
  - o Income brackets and associated marginal tax rates can be found in Section 1 of the Guam Territorial Income Tax Law.
- Corporate Tax
  - o 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.
  - o Other corporations doing business on Guam incur income tax liabilities to Guam on all Guam source income.
  - o Corporations are required to file an income tax return for the calendar year on or before March 15 of the following year.
  - o Corporations on a fiscal year basis must file income tax return on the 15th day of the third month following the close of the fiscal year.

## TAX AND INVESTMENT INCENTIVES

### Qualifying Certificate Program

- Guam’s principal program for incentivising investment in Guam is its Qualifying Certificate (“QC”) 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 abatement as follow:
  - o Up to 75% Rebate of corporate income tax for up to 20 years.
  - o Up to 75% Rebate of corporate dividends tax for up to five years.
  - o Up to 100% abatement of real property tax for up to 10 years on property utilised by the QC beneficiary to operate its business.
  - o Up to 100% abatement of gross receipt tax on income derived from the sale of alcoholic beverages and petroleum products manufactured in Guam for up to 10 years.

## EMPLOYMENT LAW

- Guam is subject to the US 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.
  - o Minimum wage: the federal minimum wage is \$7.25 per hour effective 24 July 2009. The Guam minimum wage is \$8.75 per hour effective March 1, 2020.
  - o Overtime: covered nonexempt employees must receive overtime pay for hours worked over 40 per work week (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.
  - o 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 has also adopted a local version of the FLSA which largely mirrors the federal law.

- Guam recognises “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, COBRA Act and WARN Act, apply to employers on 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 and all decisions are subject to appeal to the Supreme Court.
- The local courts of Guam have been in operation for almost 60 years, and have therefore 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 US District Court of Guam provides the forum for disputes arising out of federal law. Appeals from the US District Court of Guam are made to the US Circuit Court of Appeals for the Ninth Circuit.
- In 2004, Guam enacted a law that established rules for international arbitration on Guam. Based upon the UNCITRAL rules of arbitration, arbitral awards granted under the law and certified by the US District Court of Guam are enforceable in every nation that is a signatory to the UNCITRAL Convention. Although in its nascent stage of development, the Guam International Mediation and Arbitration Center is expected to eventually serve as the principal forum for international arbitration on Guam.

## IMMIGRATION PROCEDURES

### Passport and Visa Requirements

- All persons entering Guam must possess valid national passports or other internationally recognised 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 US State Department:
- The “E” visas are for individuals or employees of corporations that have made a substantial investment in a US business or property.
- The “L” visas are commonly known as transfer visas used to bring an employee into the US to work for his same employer abroad.
- The “H” visas are typically for contract workers who enter the US for a specific project or a one-time assignment.
- H-The “J-1” visa is for participants who seek volunteer or minimally paid practical training in the US in a specific field of interest.
- H-1B and H-2B Worker Program

The United States Citizenship and Immigration Service (USCIS) has exempted Guam from the national quota imposed on the issuance of H-1B and H-2B worker visas in order to allow contractors to bring in the skilled labour necessary to satisfy the high demand from federal and local construction projects. However, since 2018, USCIS has been approving H-2B visas only for workers hired for construction projects that support the realignment of U.S. military personnel from Okinawa to Guam. As of January 2019, the Philippines is no longer on the list of countries eligible to send workers to Guam under the H-2B program. Many other countries in the Asia-Pacific region, including Japan, Republic of Korea, Singapore, Taiwan, and Thailand, as well as many countries from other regions, remain on the eligible countries list. Even though the Philippines has been removed from the list, USCIS has discretion to approve, and has been approving in significant numbers, H-2B visa applications for Philippines workers for Guam construction projects on a project by project basis. [c](#)



## HONG KONG

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- 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 centre 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 organisations.
- 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) and no statutory anti-trust laws.
- 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 organisations.

### 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. Current tax rate around 16.5%.

- Interest earned by companies (other than financial institutions) on deposits with an authorised institution are exempt from profits tax.
- Losses can be carried forward without limit.

#### Property Tax

- Charged on every person who owns any building 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 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).
- Charged on a sliding scale, the top rate being 17% (2008/09 onwards).
- In determining whether or not all services are rendered outside Hong Kong, no account is taken in respect of services rendered in Hong Kong during visits not exceeding a total of 60 days per year.

#### 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 0.2% on shares or securities, and max 4.25% on transfer of real properties.
- Capital tax on the creation of authorised capital of a company: HK\$1 per HK\$1,000.00.
- No withholding taxes (with exception), no taxes on dividends, no taxes on any other types of income except those mentioned above, no capital gains tax, no gifts tax and no wealth tax.

## TAX AND INVESTMENT INCENTIVES

- There are few treaties for the avoidance of double taxation between Hong Kong and other countries, 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 tax profits attributable to a permanent establishment 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 labour organisations/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\$28.00 per hour will be implemented on 1 May 2011.
- No statutory provisions prescribe maximum working hours, but it is currently under review.
- Employees are entitled to a minimum of between 7 and 14 days annual leave per year.
- 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 salary of HK\$20,000) to a retirement scheme that is registered as an MPF scheme. Every employee is also required to contribute at least 5 per cent of their salary (up to a maximum salary of HK\$20,000 pm) 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.
- Hong Kong has a non-contributory social security system to provide a basic social safety net. No deductions are made from salaries in respect of social security contributions.
- Subject to the qualifying requirements, female employees are entitled to paid maternity leave of 10 weeks or as provided by the terms of the employer, whichever is more favourable. Maternity leave pay is paid at the rate of four-fifths of a month's pay.
- Employees are entitled to pay sick leave at the rate of four-fifths of a month's pay, with conditions applying.
- Severance pay is applicable for employees of more than 24 months if he/she is dismissed by reason of redundancy, or laid off, with a maximum payment of HK\$390,000. Contractual gratuity and retirement scheme benefit due to the employer's contributions may be set-off against an employee's entitlement to the severance pay.

- Long service pay applies to employees working for more than five years, calculated on the period of service and salaries, and subject to a maximum payment of HK\$390,000.
- 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.

## INTELLECTUAL PROPERTY

- Intellectual Property protection in Hong Kong comprises patents, trademarks, industrial design, copyright, geographical indications and layout designs of integrated circuits.
- Registered patents, trademarks/service marks, industrial design and geographical marks enjoy monopoly rights/protection for specific periods of time.
- Unregistered trademarks protected by the Hong Kong courts under the tort of passing off.
- Copyright protection for literary, musical or artistic works, sound recordings, broadcasts and films.
- Know-how may be protected as confidential information under contract, rules of common law and equity, and can be assigned or licensed.
- Remedies for infringement of all intellectual property rights include an injunction, disclosure upon oath, delivery up for destruction or forfeiture, damages and/or an account of profits and legal costs. In the case of serious counterfeiting, the courts may grant orders to search premises and seize infringing goods and evidence without prior notice to the infringer. The Customs and Excise Department also have wide powers of search, seizure and arrest under the criminal provisions to enforce trademark and copyright.

## 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\$1,000,000) the Court of First Instance, with machinery for appeals to the Court of Appeal, and thereafter to the Court of Final Appeal.
- The judiciary is generally recognised 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 defence within the prescribed time, and for obtaining summary judgement without a trial where there is no bona fide defence 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 some jurisdictions (largely certain Commonwealth and Western European countries but excluding the United States) may be registered in the High Court and enforced in Hong Kong.

### Arbitration

- Hong Kong law provides for international arbitrations (as defined in the UNCITRAL Model Law) to be governed by a slightly amended UNCITRAL Model Law, and domestic arbitrations by provisions of the Arbitration Ordinance (Cap 341 of the Laws of Hong Kong) which are similar, although not identical, to the English Arbitration Acts 1950 and 1979.
- The New York Convention governing enforcement of arbitral awards applies to Hong Kong.
- There are also arrangements for mutual enforcement of arbitral awards between Mainland China and Hong Kong similar to the New York Convention.
- All awards (including non-convention awards) may be enforced in Hong Kong in the same way as a judgement of the Court of First Instance, with the leave of the court.
- Arbitration as a means of dispute resolution has been actively pursued in Hong Kong for many years, in particular by the Hong Kong Government, which inserts arbitration clauses in all its major building and civil engineering contracts.
- Hong Kong International Arbitration Centre (HKIAC) operates panels of international and local arbitrators of experience and distinction. The Chartered Institute of Arbitrators East Asia Branch is heavily involved in the training of arbitrators. A local institute, the Hong Kong Institute of Arbitrators, has also been set up.
- Commercial, shipping and building arbitrations, some very substantial, frequently take place in Hong Kong.

### 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, labour, licensing, professional disciplinary and other matters.

## IMMIGRATION PROCEDURES

- Hong Kong has visa-free entry for residents from over 170 countries and territories for trips ranging from seven 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.
- Capital Investment Entrant Scheme (CIES) requires a capital investment of HK\$10 million into a legitimate asset class in Hong Kong, (real properties investment excluded). Applicants must also demonstrate that they can support themselves and their dependants without public assistance. Approved CIES applicants are allowed to take up employment or establish a business.
- Dependant visa: persons who are successful in receiving one of the above visas may also bring their spouse and dependant 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. [↗](#)



## INDIA

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- The largest democracy and the second most populous country in the world.
- 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 characteristic 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, 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.
- The current GDP growth rate is at 5 percent for the financial year 2019-2020 and is expected to rise to 6-6.5 per cent for the financial year 2020-2021.
- Currency: Indian Rupees (INR).

### 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 Companies Act 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 approval Companies operating in India are governed by the Companies Act 2013 which has repealed the historic Companies Act 1956 (except for few sections of the Companies Act, 1956 which continues to apply as on date but shall be repealed soon). In addition to the Companies Act, there are various sector specific legislations which need to be adhered 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, Ministry of Finance, Foreign Investment Promotion Board (FIPB), is required.
- Foreign Direct Investment ('FDI') is prohibited in India in the following sectors:
  - o Lottery business including government/private lottery, online lotteries etc.
  - o Gambling and betting, including casinos etc.
  - o Chit funds
  - o Nidhi company

- o Trading in Transferable Development Rights (TDR)
- o Real estate business or construction of farm houses
- o Activity/sector not opened to private sector investment (e.g. atomic energy and railway transport other than mass rapid transport systems)
- o Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
- o Trading in Transferable Development Rights(TDRs)

## 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 50% of global demand for vaccines.
- India ranks 3rd worldwide for production by volume and 13th by value, thereby accounting for around 10% of world's production by volume and 1.5% by value.
- The Department of Pharmaceuticals aims to make India a hub for end-to-end drug discovery under its 'Pharma Vision 2020'.
- 100% Foreign Direct Investment (FDI) is allowed under the automatic route for greenfield pharma.
- 100% FDI is allowed in brownfield pharma; wherein 74% of FDI is allowed under the automatic route and thereafter through government approval route. Pharmaceutical export from India stood at US\$ 19.13 billion in 2018-19 and reached US\$ 9.36 billion in 2019-20. It is expected to grow by 30 per cent to reach US\$ 20 billion in the year 2020.
- India is the largest supplier of generic medicines globally (20 to 22 per cent of global export volumes)
- This sector witnessed Rs.19,213.17 million FDI equity inflows in 2019.

### 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.
- India has received USD 463.44 million FDI in the food processing sector during April-September period of 2019-20.

### 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 aviation sector is permitted in Ground Handling Services subject to sectoral regulations & security clearance under the automatic route.
- FDI inflows in India's air transport sector (including air freight) reached US\$ 1,904.37 million between April 2000 and June 2019.
- India's aviation industry is expected to witness Rs 35,000 crore (US\$ 4.99 billion) investment in the next four 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 US, Russia and China.
- 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.
- Foreign Direct Investment (FDI) inflows into Railways Related Components from April 2000 to June 2019 stood at US\$ 977.24 million.

### Automobiles

- India is expected to be the world's third-largest automotive market in terms of volume by 2026.
- 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.
- The sector attracted \$22.4 bn FDI during April 2000 - June 2019; accounting for 5.1% of the total FDI inflows
- 100% FDI is allowed under automatic route
- The industry shares 7.1% in the GDP of the country and 4.3 % in India's export

### Defense Manufacturing

- India plans to spend \$130 bn on military modernization in the next 5 years, as achieving self-reliance in defence production is a key target for the Government of India.
- 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. Annual Turnover by Private sector in Defence and Aerospace sector in 2018-19 is \$2.4 bn.
- 100% FDI is allowed in Defence industry; wherein 49% is allowed under automatic route and beyond 49% through Government's pre approval route.



**Information Technology (IT)**

- India is emerging as the hub for “Digital Skills”. The country spends \$1.6 bn annually on training workforce in the sector.
- Up to 100% FDI is allowed in Data processing, Software development and Computer consultancy services; Software supply services; Business and management consultancy services, Market research services, Technical testing and Analysis services, under automatic route
- 100% FDI is permitted in B2B E-commerce.
- It shares more than 45% in India’s services export and forms a part of India’s GDP with share of 8%.
- India received Rs.64,730.01 FDI equity inflow for the year 2019.

**Renewable Energy**

- In 2019, India was ranked as the fourth most attractive renewable energy market in the world.
- Up to 100% FDI is allowed under the automatic route for renewable energy generation
- India holds 1000+ GW renewable energy potential.
- There has been an increase of 137 % in renewable installed capacity from 2013 to 2019.
- India received \$4.8 billion FDI in last five years

**E-commerce**

- 100% FDI under automatic route is permitted in marketplace model of e-commerce.
- India’s e-commerce industry is expected to reach \$125-150 billion by FY20 on increased internet penetration
- 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 US 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 829 million by 2021 from 636.73 million in FY19
- India’s internet economy is expected to double from US\$ 125 billion as of April 2017 to US\$ 250 billion by 2020, majorly backed by ecommerce. India’s E-commerce revenue is expected to jump from US\$ 39 billion in 2017 to US\$ 120 billion in 2020, growing at an annual rate of 51 per cent, the highest in the world.

**FOREIGN VENTURE CAPITAL INVESTMENTS**

- Foreign Venture Capital investments (FVCI) are those investments which are made at the initial growing stage of ventures. It is a financing to small and start-up ventures, which has high risk and potential to develop near future.
- The term Foreign Venture Capital Investor (FVCI) has been defined under the SEBI (Foreign Venture Capital Investor) Regulations, 2000 [FVCI Regulations] to mean an investor incorporated or established outside India, which proposes

to make investments in venture capital fund(s) or venture capital undertakings in India and is registered under the FVCI Regulations.

- Under the SEBI (Foreign Venture Capital Investor) Regulations 2000, the investor can invest up to 25% of its total funds in 1 Venture Capital fund.
- A SEBI Registered FVCI can invest in domestic venture capital fund registered under SEBI (Venture Capital Fund) Regulations, 1996 or a Category-I Alternative Investment Fund registered under SEBI (Alternative Investment Fund) Regulations, 2012. Such investment shall be regulated by applicable provisions of FEMA, 1999 and FDI Policy, 2016 including sectoral caps as applicable.
- FVCIs can purchase equity / equity linked instruments / debt / debt instruments, debentures of an IVCU or of a VCF through initial public offer or private placement in units of schemes / funds set up by a VCF. At the time of granting approval, the Reserve Bank permits the FVCI to open a Foreign Currency Account and/or a Rupee Account with a designated branch of an AD Category – I bank.

**FOREIGN PORTFOLIO INVESTMENTS**

- SEBI introduced the concept of Foreign Portfolio Investors, regulated by SEBI (Foreign Portfolio Investors) Regulations, 2011, which encompasses the Foreign Institutional Investor (FII), Qualified Foreign Investor (QFI), and sub-accounts under one category.
- Foreign portfolio investment (FPI) refers to investing in the financial assets of a foreign country, such as stocks or bonds available on an exchange.
- The Central Bank in consultation with the government and SEBI has drafted a special route for FPI known as the Voluntary Retention Route (VRR). The proposed VRR scheme envisages long term and stable overseas portfolio investment in Indian debt markets, unlike the present investments where the FPI pull-offs are sudden.

**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.
- People with an annual income of Rs half a million to Rs .75 million will have to pay a reduced tax rate of 10 percent; between Rs 750,000 to Rs 1 Million: 15 percent; between Rs 1 Million and 1.25 Million: 20 percent; between Rs 1.25 Million and 1.5 Million: 25 percent; and above Rs 1.5 Million and above: 30 percent.
- Tax on cooperative societies is proposed to be reduced from present rate of 30% to 22% plus surcharge and cess with no exemption/deduction.
- Co-operative societies from Alternative Minimum Tax (AMT) just like companies under the new tax regime are exempted from the Minimum Alternate Tax (MAT).
- A new direct tax dispute settlement scheme — “Vivaad se Vishwaas” scheme is launched to bring down litigation in direct taxation scheme. Interest and penalty will be waived under this scheme for those who wish to pay the disputed tax amount till March 31.

### 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. Some of these indirect taxes imposed on taxpayers were:
  - o Value Added Tax (VAT): VAT was collected by suppliers from customers for every value of goods and services added to every stage of production and distribution
  - o Service Tax: Service tax was imposed on the aggregate/gross amount which the service provider charged on the service recipient.
  - o Central Excise Duty: Central excise duty was to be paid by manufacturers, who then transferred the tax liability to the wholesalers and retailers.
  - o Customs duty: Customs duty was levied on imported goods as import duty which was paid by retailers and customers, ultimately.
  - o Sales Tax: The retailer paid this tax and then transferred the tax liability to the customers by charging goods and services with sales tax

### 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.
- 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.
- Tax payers have the option to choose between the provisions of the tax treaty or the Income Tax Act, which ever 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 tax payers 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, which ever is lower.

## EMPLOYMENT LAW

- The labour sector in India can be broadly divided into 3 categories: organised workforce, unorganised 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.
- The following are the labour laws in India:
  - o Factories Act 1948: The major objective of this act is to provide for health, safety, welfare, working hours and leave of workers in factory.
  - o 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.)
  - o Contract Labour (Regulation and Abolition) Act, 1970: This act regulates the engagement of contractor and contract labour by the principal employer.
  - o 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 with certification for the work to be performed.
- o 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.
  - o 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 labour practices, lockouts and closure of an establishment, etc.
  - o Trade Unions Act, 1926: This act establishes rights, duties and obligations of trade unions and facilitate 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.
  - o 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.
  - o Minimum Wages Act, 1948: It stipulates minimum rates of wages that must be paid to skilled and unskilled labourers considering various factors such as industry, location, nature of work to be undertaken.
  - o 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.
  - o 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.
  - o Payment of Gratuity Act, 1972: This act provides for payment of gratuity, a retirement benefit paid upon cessation of employment.
  - o 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.
  - o 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.
  - o 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.
  - o Maternity Benefit Act, 1961: This act envisages provisions of maternity leave, maternity bonus and other benefits with respect to child birth.
  - o 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 organisations to provide a mechanism to enforce the right to gender equality of working women.
  - o The Apprentice Act, 1961: The act was enacted to supplement the programme of industrial training with on-the-job training and regulate the training arrangements in the industry.
  - o 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.

## 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.
- The major types of intellectual property are:
  - Patents
    - o 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.
    - o 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.
    - o Patent owner may give permission to, or license, other parties to use their inventions on mutually agreed terms.
    - o A patent is granted protection for 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.
    - o 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.
  - Trade Marks
    - o 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.
- o 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.
- o 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.
- o 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.
- Copyright
  - o 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.
  - o 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.
  - o Apart from these two conventions, the country is a party to the Geneva Convention for the protection of rights of Producers or Phonograms.
  - o The country is also an active member of the World Intellectual Property Organization (WIPO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO).
  - o 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
  - o 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.
  - o The TRIPS agreement has accorded India with the ingredients that help in the protection of industrial designs.
  - o 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
  - o 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).

- o 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

## DISPUTE RESOLUTION

- The dispute resolution process in India mainly involves the following:
  - o Litigation
  - o Arbitration
  - o Conciliation
  - o 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 values. Cases may go on 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:
  - o Various Tax Tribunals
  - o Consumer Dispute Redressal Forums
  - o Insurance Regulatory Authority of India
  - o Industrial Tribunals
  - o Debts Recovery Tribunals
  - o Company Law Board
  - o Motor Accidents Claims Tribunals
  - o Airports Economic Regulatory Authority
  - o Central Electricity Regulatory Commission
  - o National Company Law Tribunal

## ENFORCEMENT OF FOREIGN JUDGMENTS

- In India, the provisions of Code of Civil Procedure (CPC) are applicable for enforcing of foreign judgments from reciprocating and reciprocating-territories.
- A foreign judgment can be enforced in following ways:
  - o A judgment passed by the Court in reciprocating territory can be enforced by filling an execution petition under section 44-A of CPC.
  - o 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 passengers 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 Visa issued

- Tourist Visa are issued for a period of 6 months, but it can be granted for more than 6 months as well depending upon the nationality of the tourist. India also issues electronic visa (e-visa) where visitors can easily apply for an Electronic Travel Authorization online, and then get a visa stamp for entry into the country upon arrival, valid for 60 days (increased from 30 days) and up to three entries.
- Entry (X) visa is valid up to 6 months and can also be extended in India.
- Employment visa is issued by providing proof of employment with a company/organization in India, such as a contract that states the terms and conditions. From April 1, 2017, the rule that stipulates applicants must be earning 16.25 lakh rupees (about \$23,000) a year or more has been lowered to allow for foreigners to teach in Central Higher Educational Institutes. Other exceptions are made for volunteers, ethnic cooks, translators, non-English language teachers, and members of Foreign High Commissions and Embassies.
- Business Visa This type of visa differs from an Employment visa in that the applicant won't be working for, and earning an income from, an organization in India. Business visa applicants will require a letter from the organization that they intend to do business with, stating the nature of the business, duration of stay, places to be visited, and intention to meet expenses. These are valid for up to five or 10 years, with multiple entries. However, holders usually aren't allowed to remain in India for more than 180 days at a time, unless they register with the Foreigners Regional Registration Office (FRRO).
- Student visas are granted to people who wish to come

to India and study long-term at an officially recognized educational institution. These are issued for up to five years, depending on the duration of the course. They can also be extended in India.

- Conference Visa is issued to foreign delegates who would like to be part of Indian government organization Conferences are issued such types of visas. These are issued to foreign delegates to be able to attend a conference in India organized by an Indian Government Organization. For foreign candidates who would like to attend a private organization conference in India require to obtain a Business visa.
- Intern (I) Visa-Earlier any foreigner pursuing an internship program in an Indian organization had to obtain an Employment Visa. Post April 1, 2017, upon meeting specific conditions, foreigners can obtain an Intern Visa. There should not be a gap of more than one year after the Intern Visa applicant graduated or done Post Graduation and the start of the intern program. This visa is valid until the internship program duration or for a year. This kind of visa cannot be converted to Employment Visa.
- Journalist Visa is issued for three months to professional journalist or photographer.
- Film (F) Visa is valid up to 1 year to those who wish to make a commercial film or TV show. The visa application is reviewed by Ministry of Information and Broadcasting within 60 days of filing the application.
- Research Visa are issued to professors and scholars who wish to visit India for research related purposes. Applications are sent to the Department of Education, Ministry of Human Resource Development for approval, which may take three months to be granted.
- Transit Visa is issued to visitors staying in India for less than 72 hours can obtain a Transit visa. A confirmed airline booking for the onward journey must be shown when applying for the visa. [☞](#)



## JAPAN

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- 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 126,010,000 people, comprising Japanese (98%), Chinese (0.62%), Korean (0.36%), and others (1.26%).
- Religious composition of the country is primarily Shinto and Buddhist.
- The national language is Japanese. English is studied from age 10.
- 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.

### 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 report foreign investment into Japan, 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 March 2020), 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 30.62%. A corporation whose capital contributions are not more than 100,000,000 yen is taxed at the effective tax rate of 34.59%.

### 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 payee 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, child care 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 2019 brought the minimum wage in Tokyo to 1013 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
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 is 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 international 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. [☞](#)



## SINGAPORE

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- Singapore is located on the southern tip of the Malaysian peninsula, 137 kilometres north of the equator.
- 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.
- Currency: Singapore Dollar (SGD).
- Multi-racial.
- Singapore is an international finance and investment hub, a regional base for MNCs and the world's third-largest foreign exchange centre. With low taxes, double taxation treaties, political and economic stability and international repute for compliance, it is an ideal base for regional headquarters and holding companies, and a gateway for foreign investments into the emerging Asian markets for businesses as well as high net worth individuals.
- 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. Landed residential property refers to properties for the purpose of residence and hence not for industrial or commercial use. It includes vacant land, detached houses, semi-detached houses, bungalows, terrace houses, buildings of less than six storeys and any other land gazetted for residential purposes. But it does not include flats and condominiums of six or more storeys high. 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.
  - o 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.

- o 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, for 2020 onwards you can enjoy 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	0	0
Next \$10,000	2	200
First \$30,000	-	200
Next \$10,000	3.50	350
First \$40,000	-	550
Next \$40,000	7	2,800
First \$80,000	-	3,350
Next \$40,000	11.5	4,600
First \$120,000	-	7,950
Next \$40,000	15	6,000
First \$160,000	-	13,950
Next \$40,000	18	7,200
First \$200,000	-	21,150
Next \$40,000	19	7,600
First \$240,000	-	28,750
Next \$40,000	19.5	7,800
First \$280,000	-	36,550
Next \$40,000	20	8,000
First \$320,000	-	44,550
Above \$320,000	22	

- o The company must be incorporated in Singapore.
  - o 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).
  - o The company must not have more than 20 shareholders.
  - o 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. For 2019 and before, a 75% tax exemption on the first \$10,000 of its chargeable income and a further 50% tax exemption on the next S\$290,000 of its chargeable income.
- o 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.
  - Corporate Income Tax (CIT) Rebate: For 2020, companies will receive a 25% CIT Rebate that is subject to a cap of S\$15,000.

- o The CIT rebate applies to all companies, including registered business trusts, companies that are not tax resident in Singapore and companies that receive income taxed at a concessionary rate.
- o The CIT rebate will not apply to the amount of income, derived by a non-resident company that is subject to final withholding tax.

#### 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
  - o Employment income: Employment income is taxed at 15% or the resident rate, whichever gives rise to a higher tax amount.
  - o 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 programmes

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 centres 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 provide 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 programme 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:
  - **Ordinary Account:** the savings can be used to buy a home, pay for certain types of insurance, investment and education.
  - **Special Account:** for old age, contingency purposes and investment in retirement-related financial products.
  - **Medisave Account:** the savings can be used for hospitalisation expenses and approved medical insurance.

- **CPF Contribution and Allocation Rates from 1 January 2016:**

Employee age (years)	Contribution by employer (% of wage)	Contribution by employee (% of wage)	Total contribution (% of wage)	Credited into		
				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	13	13	26	12	3.5	10.5
61–65	9	7.5	16.5	3.5	2.5	10.5
66 and above	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. From 2016, the CPF salary ceiling will be adjusted from S\$5,000 to S\$6,000 and CPF Annual Limit increased from S\$31,450 to S\$37,740. This affects Singapore Citizens, Singapore Permanent Residents (SPR) in the 3rd year and onwards of obtaining SPR status, and SPRs in the 1st and 2nd year of obtaining SPR status but who has jointly applied with employer to contribute at full employer and employee rates.

## 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 characterised 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 Chief Justice, who is appointed by the President, is the head of the judiciary. The judiciary is made up of the supreme court and the subordinate courts. The supreme court hears both civil and criminal matters and is separated into the court of appeal and the high court. The subordinate courts consist of district courts, magistrates' courts, juvenile courts, coroners' court and small claims tribunals. The Chief District Judge oversees the subordinate courts.

**Alternative Dispute Resolution**

- Singapore is now recognised 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: Citizens of ASEAN countries including most recent Myanmar are exempt from being required to obtain an entry visa prior to travel into Singapore. Foreigners who require visas include citizens of China, India, Georgia, Nigeria and the Commonwealth of Independent States.
- Social visit pass: A social visit pass valid for between 14 days and three months will be issued to all visitors to Singapore. The duration of the pass depends on the nationality of the person and how often he/she travels into Singapore.

**Work passes**

- A person who wishes to stay and work in Singapore is required to obtain the appropriate pass from the Ministry of Manpower before commencing work.
  - o Employment Pass ('EP'): The EP is for foreigner professionals, managers and executives who earn a fixed monthly salary of at least S\$3,600 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.
  - o S pass: This pass is for foreign mid-level skilled staff who earn a fixed monthly salary of at least S\$2,400 and meet the assessment criteria.
  - o Personalised Employment Pass ('PEP'): The PEP is for high-earning Employment Pass holders. 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. The minimum last drawn fixed monthly salary overseas should be at least S\$18,000. Additionally, a PEP holder can remain in Singapore for up to six months in between jobs to evaluate new employment opportunities.

- o 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.
- o 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. [c](#)



## SOUTH KOREA

- Strategically located in Eastern Asia, neighbouring Japan and China, with an area of 100,210 km<sup>2</sup>.
- Adopted a presidential system with powers shared between the executive, legislative and judiciary branches.
- Religious composition of the country consists of Protestantism 19.7%, Buddhism 15.5%, Catholic 7.9%, and Irreligious 56.9% (2015 census).
- Korean (with Hangul, its written form) is the national language. English is also widely written and spoken.
- Currency: South Korean Won (KRW).
- Korean economy is export-driven with production focuses in major industries such as IT, electronics, semiconductor, automotive, shipbuilding, steel, and petrochemical industries.

### BUSINESS PRESENCE

- Main types of business entities in Korea: unlimited partnership (Hapmyung Hoesa); limited partnership (Hapja Hoesa); joint stock companies (Chusik Hoesa); limited liability companies (Yuhan Chegim Hoesa); and, limited companies (Yuhan Hoesa)
- The most common and preferred corporate form is the joint stock company as shareholders' liability is limited to the amount of shareholders' investment and subject to fewer restrictions on the sale and purchase of the company's stock.
- A domestic branch office of a foreign company may be established in Korea. A report must be filed with a foreign exchange bank and a permit must be obtained from the government. In the case of a branch office of a foreign company engaged in financial business, registration with the Ministry of Strategy and Finance is required. Branch offices may operate businesses that generate revenues in Korea, and are not recognised as a form of foreign direct investment. Liaison offices may not carry out businesses that generate revenues in Korea, but may undertake non-sales functions, such as business liaison, market research, etc.

### FOREIGN INVESTMENT RESTRICTIONS AND CONDITIONS

#### *Restrictions in Equity Participation*

- Foreign investment is facilitated by foreign direct investment (FDI) pursuant to the Foreign Investment Promotion Act.
- FDI includes acquisition of shares or equity of a domestic corporation or business, and provision of long-term loans

(five years or more). For FDI through equity acquisition, the foreign investment amount must be at least 100 million Korean Won and the foreigner equity ratio must be 10% or more of the voting stocks of the target company or its total equity investment.

#### *Restrictions in FDI*

- Generally, a foreign investor may conduct, without restraint, various activities of foreign investment in Korea. However, a foreign investor is restricted from investments where it threatens the maintenance of national safety and public order; where it has harmful effects on public hygiene or the environmental preservation of Korea, or is against the morals and customs of Korean society, and where it violates any relevant law of Korea.

#### *Restrictions in Real Property Acquisition*

- Subject to applicable laws and land controls and regulations, a foreign investor may acquire or transfer land and other real property in the territory of Korea.
- To encourage foreign investment and development of national lands in accordance with capital region maintenance and zoning plans, a variety of land controls and regulations and tax incentives may apply depending on the location of the land and/or real property.

#### *Approvals and Licensing*

- Appropriate approvals and licenses, as may be required from relevant government authorities depending on the industry involved, are required for the operation of certain business activities. Application process and prescribed fee may vary depending on the business activity.

## EXCHANGE CONTROL

- The Foreign Exchange Transaction Act regulates the exchange rate system, foreign exchange operations and other certain capital movements, as supplemented by its enforcement decree and regulations. The foreign exchange system is mainly operated by the Ministry of Strategy and Finance and the Bank of Korea.
- Subject to the Foreign Exchange Transaction Act, any person who intends to perform a capital transaction, including the remittance of capital, profits, dividends, interest, and rental income, is required to submit a report on such capital transaction to the Bank of Korea or any other foreign exchange bank.

## TAXATION

### Corporate Tax

- Companies subject to corporate income taxes can be classified according to the status of the corporation: domestic or foreign and for profit or non-profit. Generally, companies are taxed at 10% for taxable income of KRW 200 million or less, 20% for taxable income exceeding KRW 200 million, 22% for taxable income exceeding KRW 20 billion, and 25% for taxable income exceeding KRW 300 billion. Corporate tax applies to domestic source income.
- Generally, a branch office of a foreign company is taxed as a domestic company on Korean-source income. If a tax treaty between Korea and the country in which the foreign company resides allows for the imposition of a branch profits tax, such branch profits tax is imposed on the branch office as provided for in the applicable treaty.

### Personal Income Tax

- Resident individuals in Korea are taxed on their worldwide income. Non-resident individuals are taxed only on their Korea-derived income. Individual income is subject to graduated tax rates from 6% to 42%.
- A person is "resident" in Korea if he or she holds his or her domicile in Korea or has held his or her temporary domicile in Korea for 183 days or more.

### Withholding Tax

- A foreign corporation that has no permanent establishment in Korea is subject to tax on its Korea-derived income, including dividends, interest and royalties, on a withholding basis in accordance with the relevant tax law and tax treaties.

### Real Property and Capital Gains Tax

- Capital gains made by a foreign company from its transfer of real property are subject to corporate taxation, unless a relevant tax treaty provides otherwise.
- In cases where a foreign company has transferred any land used for non-business purposes, it shall pay the tax amount calculated as "corporation tax on the transfer of land, etc."

- Capital gains made by transfer of stocks or equity in a Korean company may be subject to withholding taxes unless a relevant tax treaty provides otherwise.
- Foreign individuals may be subject to taxation for capital gains made from the transfer of real property and stocks or securities of a domestic corporation. However, in the case of capital gains from the transfer of real property, foreigners may benefit from a special long-term holding deduction based on the period of ownership of the real property.

### Other taxes

- Stamp tax: varies between KRW 50 and KRW 350,000 depending on the type of taxable document.
- Customs duty: rate varies depending on the classification of product.  
Individual consumption tax: rate varies between 2% and 20% depending on the type of product.
- Valued added tax: 10%. However, a zero-tax rate and tax exemptions apply to certain goods and services, such as goods to be exported, services provided abroad; and goods and services for national welfare, related to culture and personal services.

## TAX AND INVESTMENT INCENTIVES

### General

- Special tax exemption or reduction may apply to qualified foreign investors based on their investment and investment ratio and location of the investment.
- Categories of qualified investments include research and human resources development, international capital transactions, investment promotion including energy-economising and environmental conservation facilities, constructions, manufacturing, telecommunications, information services and other scientific technology service businesses.

### Incentives

- An array of incentives are granted to qualified foreign invested companies established in Foreign Investment Zones, Free Trade Zones, and Free Economic Zones, which include various reductions or exemptions on corporate and property tax, custom duties, national or local government cash grants, and certain deregulations to help facilitate foreign investments.

## EMPLOYMENT LAW

- The maximum working hours are 52 hours per week, i.e., 40 regular hours per week (or eight regular hours per day) plus 12 overtime hours per week. This limit on overtime working hours may be extended under certain specified circumstances subject to the government's permission as well as employees' agreement. For those businesses with employees of 5 to 49, the 52-hour rule will be applicable



from July 1, 2021 (this 52-hour rule does not apply to those with less than 5 employees).

- Workers within the protection of the Labor Standard Act are entitled to statutory benefits such as rest days, public holidays, annual leave, sick leave, hospitalisation leave, maternity leave and termination benefits.
- Minimum wage for 2020 is KRW 8,590 per hour.
- Subject to the Trade Union and Labor Relations Adjustment Act, workers are free to establish and/or join a trade union. Trade unions may engage employers or employer's associations to bargain and enter into collective agreements.
- Employers and employees are statutorily required to equally share pension and social security contributions which include National Pension (9%), Medical Insurance (6.67%), Long-term Care Insurance (10.25% of withheld Medical Insurance amount), and Unemployment Insurance (1.6%). Industrial Accident Compensation Insurance is contributed by employers only (rates vary depending on industries).

## INTELLECTUAL PROPERTY

- Intellectual property rights such as patents, copyrights, trademarks, trade secrets and other industrial property rights are recognised under Korean law. For the protection of such rights, appropriate application and registration procedures permit the holder of such right to enjoy exclusive rights and/or protection for specific periods of time. Registration applications for patents, utility models, industrial designs and trademarks are filed with the Korea Intellectual Property Office. Copyrights are registered with the Korea Copyright Commission.
- Korea is a party to numerous international agreements and treaties, including the WTO Agreement on Trade Related Aspects of Intellectual Property Rights, TRIPs Agreement, the Paris Convention, the Patent Cooperation Treaty (PCT), the Budapest Treat, the Universal Copyright Convention (UCC) and the Berne Convention.
- Korea's intellectual property law conforms to international standards and provides adequate protection to both local and foreign investors.

## DISPUTE RESOLUTION

- The court of first instance for both criminal and civil claims is the District Court. Cases may go on appeal to the High Court and then to the Supreme Court. There are also speciality courts which have exclusive jurisdiction over certain subject matters, including Family Courts throughout the country, the Seoul Administrative Court, the Seoul Bankruptcy Court, and the Patent Court of Korea.
- Korea is a party to the New York Convention of the Recognition and Enforcement of Foreign Arbitral Award 1958, which has been enacted into Korean law since 1973.

- Korean courts routinely recognize arbitration agreements in contracts and also recognize and enforce foreign arbitral awards pursuant to arbitration laws and rules.
- Alternative dispute resolution ("ADR") is available and includes conciliation, mediation and arbitration.
- The Korea Commercial Arbitration Board ("KCAB") is the major body governing domestic and international commercial arbitration in Korea. The fee for a KCAB arbitrator varies depending on the amount of money in dispute.

## IMMIGRATION PROCEDURES

### *Passport and Visa Requirements*

- In principle, all foreign visitors must have a valid passport and obtain a visa from a Korean embassy or consulate in a foreign country in order to enter Korea. If a national of a visa waiver country, such person can enter Korea without a visa as long as the purpose of his/her visit is tourism or other temporary visit.

### *Business Investment Visas and Work Visa*

- Depending on the length of stay and the nature of the business activities to be undertaken, a temporary business visa or other long-term business visa can be issued to those seeking entry for business purposes. Family members of a person eligible for any of the long-term business visas may be eligible for a family dependency visa. A temporary employment visa or other long-term work visa may also be issued to those seeking entry for employment purposes depending on the length of stay and the nature of the employment activity.
- Foreigners who have entered Korea on a long-term visa (not less than 91 days) visa must apply for alien registration within 90 days of his/her arrival in Korea at a local immigration office. [☞](#)



## TAIWAN

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- Taiwan is geographically located North of the Philippines and southeast of China, proximity to the East China Sea, South China Sea, Philippine Sea and Taiwan Strait.
- Total area: 36,188 square kilometers.
- Climate: Oceanic and subtropical monsoon.
- Population: 23 million inhabitants.
- Population density: 637 people per square kilometer.
- Ethnic background : Hakka, Fujianese, Indigenous, Mainland Chinese.
- Population by age: about 13.3% of the total population is less than 15 years of age, and 13.5% is 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 Yuan.
- In contrast to countries such as the United States or England, 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.
- 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\$).

## 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, optical machines, optical supplies and biotechnology.

## 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.

### 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. Shares may be transferred freely one year after the company's incorporation, but 10 to 15% of newly issued shares must be set aside for employee stock purchase plans.

### Approvals and Licensing

- A foreign investment approved (FIA) company must satisfy the requirements of "The Statute for Investment by Foreign Nationals", and be approved by the Ministry of Economic Affairs. Although an investment plan is required, there is no cost to apply and status is usually granted unless it falls under the "Negative List for Investment by Overseas Chinese and Foreign Nationals" designation.

## CENTRAL BANK EXCHANGE CONTROL

### Approvals Required

- There are currently no foreign exchange controls in Taiwan. However, 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:
  - Business entities may conduct transactions of up to US\$50 million a year for payments that are not related to trade.
  - Non-residents of Taiwan may exchange up to US\$100,000. There is no time or frequency limitation to currency exchanges for non-residents.

## 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 5 March 2020, there are 32 comprehensive income tax treaties and 12 international transportation income tax agreements, which have been signed by Taiwan and are currently active.

**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:
  - Holding shares issued by a Taiwanese company, or contributing to the capital of a Taiwanese company;
  - Establishing a branch office, a proprietary business or a partnership in Taiwan; and
  - 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**

- Until 31 December 2019, for the purposes of improving and modernizing industrial production, an investment tax credit of up to 15% of the R&D expenditure against profit-seeking enterprise income tax is available for investments made in equipment or technology used for automation, reclamation of resources, pollution control, etc. The credit is limited to 30% of the income tax payable for current year.
- 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 of 1 March 2020, the basic minimum wage is NT\$23,800 per month, and NT\$158 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 NHI 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 and Administrative laws.

**Court System**

- The court system in Taiwan is divided into three levels: District Court, High Court 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 is heard in District Court.

**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****Social Visit Pass**

- 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 Visit Pass**

- A "One-stop Center for Work Permits applications for Foreign Professionals" was set up by the Council of Labor Affairs (CLA) since 15 January 2004 in order to make the application procedures easier for foreign nationals seeking work permits in Taiwan. The employers of the foreign workers 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 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).[c](#)



## THAILAND

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- 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 66,558,935 million in 2020, 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 93.4 percent of the population. Islam (5.4%), Christianity (1.1%), others including irreligious (less than 0.1%) 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).
- Time zone: GMT+7 (12 hours ahead of East Coast USA during Standard Time)
- Internet TLD: .th
- Calling code +66

## 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 Department of Revenue and Commercial Registration.
- 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.
  - o Advantages and disadvantages to national safety and security
  - o Advantages and disadvantages to national economic and social development
  - o Advantages and disadvantages to public order or good morals
  - o Advantages and disadvantages to arts
  - o Advantages and disadvantages to culture and traditional customs of the nation
  - o Advantages and disadvantages to conservation of natural resources, energy and environmental preservation
  - o Advantages and disadvantages to consumer protection
  - o Size of business and expenditure estimation
  - o Employment of labor
  - o Technology transfer
  - o Research and development
  - o 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:
  - o Treaty of Amity and Economic Relations between the Kingdom of Thailand and the United States of America.
  - o Japan-Thailand Economic Partnership Agreement (JPEPA).
  - o Thailand-Australia Free Trade Agreement (TAFTA).
  - o Asean Comprehensive Investment Agreement (ACIA).
  - o Asean Framework Agreement on Services (AFAS).
  - o The investment promotion law

### *Other Restrictions*

- Foreign ownership of land is not allowed, except for small area 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 the 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.
- There is no restriction on the amount of Thai Baht that may be brought into the country.
- 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 between different types of accounts are not allowed.
- 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
(1) Ordinary company	Accounting Year 2019 20%
(2) Small company (paid up capital <5m Thai Baht and income not exceeding 30m Thai Baht in an accounting year)	Accounting Year 2019
- 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)	Accounting Year 2019 20%
(4) Regional Operating Headquarters (ROH)	10%
(5) Bank deriving profits from International Banking Facilities (IBF)	10%
<b>B. Tax on gross receipts</b>	
(1) Association and foundation	
- For income under Section 40 (8)	2%
- Otherwise	10%
(2) Foreign company engaging in international transportation	3%
<b>C. Remittance tax</b>	
Foreign company disposing profits out of Thailand	10%
<b>D. Foreign company not carrying on business in Thailand but receiving income from Thailand</b>	
(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

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

- 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. Promoted industrial estate/zone: project located within industrial estates or promoted industrial zones shall be granted one additional year of corporate income tax exemption.
  3. Special economic zones: 90 sub-districts in 23 districts of 10 provinces which are Chiang Rai, Nakhon Panom, Tak, Kanjanaburi, NongKhai, Mukdahan, Sa Kaew, Trad, Songklah and Narathiwat.
  4. Promoted border provinces in southern Thailand: Narathiwat, Pattani, Yala, Satun and four districts in Songklah (Jana district, Natawee district, Saba Yoi district and Taypa district).
- 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 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:
  - o Category 1.3 Economic forest plantations (except for Eucalyptus)
  - o Category 3.9 Creative product design and development center
  - o Category 3.11.1 Manufacture of high-risk or high technology medical devices, (e.g. x-ray machine, MRI machine, CT scan machine and implants) or medical devices that are commercialized from public sector research or collaborative public-private sector research in

case projects include R&D and innovation.

- o Category 4.5.1.1 Automation machinery and/or automation equipment with engineering design, including automation system integration and control system configuration.
- o Category 4.10.1.1 Manufacture of trains and/or rolling stocks, e.g. passenger cars and cargo cars, that requires engineering design
- o Category 4.11.1 Manufacture of aircraft or aircraft parts such as airframe, critical parts, appliance equipment or other components
- o Category 4.11.5 Manufacture of aerospace devices and equipment such as devices or equipment related to rockets/spacecraft/space vehicles/propulsion units and auxiliary equipment, etc.
- o Category 4.11.6 Aerospace operating systems such as search, detection, navigation, guidance, aeronautical, nautical systems and instruments, etc.
- o Category 4.21 Manufacture and/or repair of unmanned systems for national defence and parts used in the manufacture and/or repair
- o Category 4.22.2 Simulation and virtual training systems such as virtual training facilitating systems for combat vehicles, personal weapon and unit weapon training field system, Joint Theater Level Simulation systems (JTLS), etc.
- o Category 5.6 Electronics design
- o Category 5.7.1 Embedded software
- o Category 5.7.3 High Value-Added software
- o Category 7.1.1.1 Production of electricity or electricity and steam from garbage or refuse derived fuel
- o Category 7.8 Energy Service Company (ESCO)
- o Category 7.9.1.8 Food innovation industrial zone (Food innopolis)
- o Category 7.9.2.1 Science and technology park
- o Category 7.9.2.2 Digital part
- o Category 7.9.2.3 Data center
- o Category 7.9.2.4 Innovation incubation center
- o Category 7.10 Cloud services
- o Category 7.11 Research and development
- o Category 7.12 Biotechnology
- o Category 7.13 Engineering design
- o Category 7.14 Scientific laboratories
- o Category 7.15 Calibration services
- o Category 7.19 Human Resources Development

## 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)

The 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 from employers. In addition, the Act governs conditions and procedures in making claims for employer's compensation.

### • Work Rules and Employment Conditions

Every employer with ten (10) or more employees must establish written rules and regulations governing working conditions. These work rules must be in Thai language and be announced at the work place within fifteen (15) days of the date that the employer employs ten (10) or more employees. Though, work rules are not recited or incorporated in the employment agreement, they have binding effect on the employer and all its employees. In case that the employer fail to do so, the employer will get fined not more than 20,000 baht.

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 with ten (10) or more employees 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
1. Working Days	<ul style="list-style-type: none"> <li>• Not more than six (6) days a week.</li> </ul>
2. Working Hours	<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 (10) meters or higher above the ground, (3) producing or transporting explosive or inflammable material, and (4) other works designated by Ministerial Regulations. Working time of the female employee performed between 24.00 hours to 6.00 hours may be modified, changed or reduced subject to an order of the Director-General as an appropriation and consideration.</li> <li>• The pregnant employee is not allowed to work between 22.00 hours to 6.00 hours, to work overtime, 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 designed by Ministerial Regulations. However the pregnant employee who works in an executive position, academic work, clerical work or work relating to finance or accounting is not concluded.</li> <li>• An employment of a child who is less than fifteen (15) years of age is not allowed. An employment of young worker who is under eighteen (18) years of ages 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 employee's consent, 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>
3. Wages	<ul style="list-style-type: none"> <li>• For Work during Normal Working Day : Basic wages must not be less than "Minimum Wages" prescribed from time to time by the Ministry of Labor and Social Welfare. Currently, "Minimum Wages" for Bangkok area and all provinces in Thailand is Thai Baht 300.00 per day.</li> </ul>
4. Overtime	<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>
5. Overtime Pay	<ul style="list-style-type: none"> <li>• For 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 Work during Holiday : Additionally, not less than one (1) multiple of hourly wages per hour in a normal working day.</li> <li>• For Work Overtime during Holiday : Not less than three (3) times the rate of the hourly wages earned in a normal working day.</li> </ul>
6. Holidays	<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> </ul> <p>For employee who has worked less than one (1) year, employer may grant annual vacation holidays on pro-rata basis.</p> <p>If agreed, annual vacation holidays not taken may be cumulative and postponed to the following year.</p>
7. Leave	<ul style="list-style-type: none"> <li>• Sick Leave : As long as 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 : Not less than three (3) days.</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 not more than sixty (60) day a year.</li> <li>• Leave for Training and Professional Improvement : Not more than thirty (30) days annually with pay and applicable only for employee younger than eighteen (18) years of age.</li> </ul>

## INTELLECTUAL PROPERTY

- Thailand recognizes, accepts and protects the following as intellectual properties.
  - (a) 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.  
 Trademark is legally protected by registration system.  
 Term of trademark protection is 10 years from the filing date which is renewable every 10 years.
  - (b) Copyright, which pursuant to the Copyright Act B.E. 2537 (1994) as amended by the Copyright Act (No.3) B.E. 2558 (2015), 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 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. Patent is legally protected by 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) amended by the Trade Secrets Act (No. 2) 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.

## 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 points 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.
- 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 Institute of the Board of Trade and (2) Thailand Arbitration Center (3) Thai Arbitration Institute of the Alternative Dispute Resolution Office, Ministry of Justice.
- (c) If the party declines to comply with the arbitral award, 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 to 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 visa 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, 1 year or 3 years. 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 sticker.

- 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 30 days or 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 types 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 the "Non-immigrant B" visa, foreigners are allowed by the Immigration Bureau to have a short term stay permit of 90 days from the arrival date. This 90 day window opens a period where foreigners can still legally stay in Thailand and process an application for a permit of a long stay ("Temporary Stay Permit") to work in Thailand, which (once granted) will be on an annual basis and renewable.
- 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.

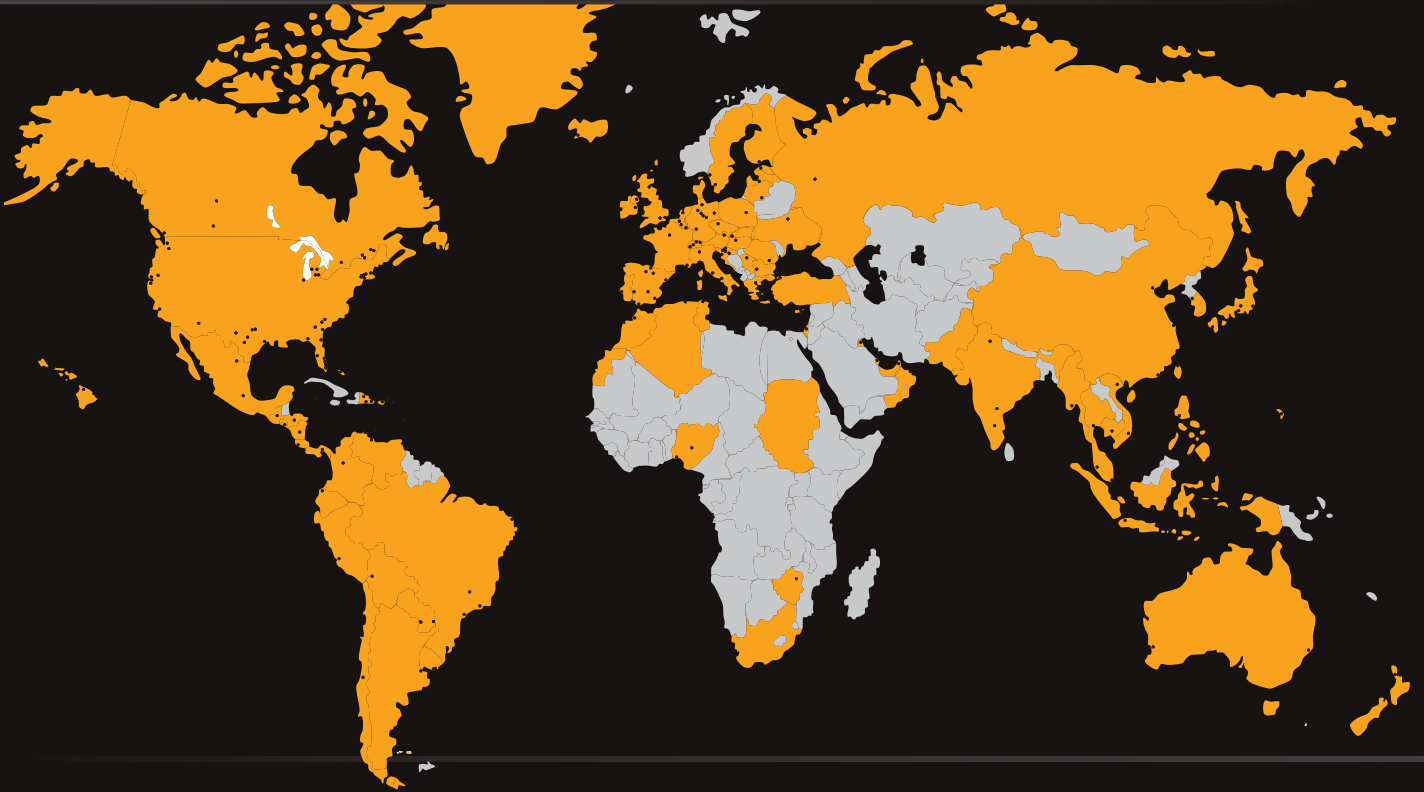
### **Permanent Residency**

- 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 country. 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.
- The 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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